

2022-2023

Title IX and College-Defined Sexual Misconduct Policy

I. Statement of Intent

Swarthmore College is committed to establishing and maintaining a community rich in equality and free from all forms of discrimination and harassment. The College seeks to create an environment in which the greatest holistic academic potential of students and professional potential of employees may be realized. In order to create and maintain such an inclusive climate, all who work and learn at the College are partners in the endeavor to ensure that the community is free from discrimination based on sex or gender, including sexual harassment, sexual assault, and other forms of sexual misconduct. These behaviors threaten our learning, living, and work environments and will not be tolerated.

Prohibited conduct under this policy may also be crimes under Pennsylvania law. Title IX of the Education Amendments of 1972 (“Title IX”) is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment, gender-based harassment, sexual violence, sexual assault, domestic violence, dating violence, and stalking. Title IX says that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Further, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) is federal legislation that requires educational institutions that participate in federal student aid programs to maintain and disclose non-identifying information about the crimes that occur on or near their campus including allegations of sexual misconduct, specifically sexual assault, domestic violence, dating violence, and stalking. In compliance with the Clery Act, the College will publish non-identifying information about Clery criminal offenses and annually submit the College’s Annual Fire Safety and Security Report (AFSSR) to the U.S. Department of Education. For more information about Clery Act compliance or to obtain a copy of the AFSSR, contact the Department of Public Safety. The College, an officer, employee, or agent of the College, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities in this policy as required under the Violence Against Women Act.

In compliance with Title IX, the College will address reported violations of sexual harassment covered under Title IX. The College is also committed to addressing acts that violate our

community standards and are not covered under Title IX, but fall within the definitions of College-defined sexual misconduct.

Swarthmore College is an institution that strives to achieve its mission as a liberal arts college by encouraging the free, open, and civil exchange of ideas. Ideas, creativity, and free expression thrive and can only exist for the entire community in an atmosphere free of sex and gender-based discrimination and harassment.

II. Reason for Differentiation between Title IX Conduct and College-Defined Sexual Misconduct

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 specific 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.

To be clear, the College has not narrowed the range of behavior that can be addressed under this 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. But 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.

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 sexual misconduct, but not the support and resources available to our community members. We remain here to help.

III. Scope of Policy

Swarthmore College's *Title IX and College-Defined Sexual Misconduct Policy* ("Policy") applies to all Swarthmore College community members, including students, employees (including administration, faculty, and staff), volunteers, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at the College. Alleged misconduct subject to this Policy ("prohibited conduct") includes both Title IX sexual harassment (which is defined by law) and College-defined sexual misconduct (which includes allegations that do not meet the definitions under Title IX, but nonetheless violate Swarthmore College's community standards), as discussed further in the Sections VI and VII below.

All community members have a responsibility to adhere to College policies and local, state, and federal law. This policy applies to conduct occurring on Swarthmore College property, at College-sanctioned events, or programs that take place off campus, including study abroad and internship programs. This policy also applies to off-campus conduct that is likely to have a substantial adverse effect on any member of the Swarthmore College community or Swarthmore College.

Swarthmore, Haverford, and Bryn Mawr Colleges are part of the Tri-College Consortium. Swarthmore students may also cross-register with the University of Pennsylvania. Swarthmore students, when studying or visiting on the campuses of Haverford, Bryn Mawr, or the University of Pennsylvania, or when attending a College-related event for one of these four institutions, are subject to this policy. Students from Haverford, Bryn Mawr, or the University of Pennsylvania who are enrolled in Swarthmore College classes are also protected by and subject to standards of this policy and any potential violations may be addressed under this policy.

The College's Policy on Prohibited Relationships prohibits romantic or sexual relationships between College employees and students. Violations of the Policy on Prohibited Relationships will be addressed by that policy, unless the prohibited conduct also violates the *Title IX and College-Defined Sexual Misconduct Policy* in which case it may be addressed in whole or in part by this Policy. Please refer to the provost's office website or human resources website for more information on the Policy on Prohibited Relationships.

IV. Notice of Non-Discrimination

The College expressly prohibits any form of discrimination and harassment on the basis of any College-recognized protected classification, including sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital status, medical condition, veteran status, or disability in any decision regarding admissions, employment, or involvement in a College program or activity in accordance with the letter and spirit of federal, state, and local non-discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, The Age Discrimination in Employment Act, The Americans with Disabilities Act and ADA Amendments Act, The Equal Pay Act, the Pennsylvania Human Relations Act, and the Borough of Swarthmore Ordinance on Non-Discrimination.

Swarthmore College, as an educational community, will promptly and equitably respond to all reports of sexual misconduct in order to eliminate the misconduct, prevent its recurrence, and address its effects on any individual or the community. Please see Section XIII for discussion of how to make a report of prohibited conduct or to file a complaint.

V. Privacy and Confidentiality

Swarthmore College respects the privacy of individuals involved in any report of alleged prohibited conduct, meaning the Title IX coordinator and others responsible for carrying out this Policy will disclose information only as required to implement this Policy or by law. If a reporting party requests that a report of prohibited conduct remain confidential (*i.e.*, with the reporting party's identity not being disclosed to the respondent and an investigation not being commenced), the Title IX coordinator will evaluate that request in the context of the College's responsibility to provide a safe and nondiscriminatory environment for all members of its community. The College may question an employee-respondent about alleged prohibited conduct without disclosing the identity of the reporting party, provided that it does not take disciplinary action against that respondent without implementing the formal complaint processes in *Procedures for Resolution of Title IX Complaints against Faculty/Staff* or *Procedures for Resolution of College-Defined Sexual Misconduct Complaints against Faculty/Staff*.

The reporting party is not required to file a formal complaint to receive supportive measures (Section XII), but there may be instances when disclosing the reporting party's identity is necessary to provide certain supportive measures (*e.g.*, where the responding party would need to know the identity of the reporting party in order to comply with a contact restriction).

Swarthmore College will maintain as private any supportive measures provided to the parties, to the extent that maintaining such privacy would not impair its ability to provide the supportive measures.

Privacy and confidentiality have distinct meanings under this policy:

- A. *Privacy* generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who “need to know” in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.
- B. *Confidentiality* means that information shared by an individual with designated confidential campus or community professionals cannot be revealed to any other individual without express permission of the disclosing individual. Those campus and community professionals include medical providers, mental health providers, religious / pastoral counselors, and the violence prevention advocate, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others or the disclosure is otherwise legally permitted or required. Non-identifying, aggregate data may be shared for statistical purposes consistent with the Clery Act.
 1. *Limitations to Confidentiality.* College employees designated as “responsible employees” are required to share a report of prohibited conduct with the Title IX coordinator or deputy Title IX coordinator. (See Section XIII below for full discussion of reporting requirements).

The Title IX coordinator, in consultation with the Title IX assessment team (as necessary), will conduct an initial assessment of the conduct, the reporting party’s desired course of action, and the necessity for any supportive measures or services to protect the safety of the reporting party and/or the community. The goal is to eliminate any hostile environment.

If a report of misconduct discloses a serious or immediate threat to the campus community, the College will issue a timely notification to the community to protect the health or safety of the community. The timely notification will not include any identifying information about the reporting party. The College may also share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions. At no time will the College release the name of the reporting party to the general public without the express consent of the reporting party or as otherwise permitted or required by law.

All College proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX, the Violence Against

Women Act (VAWA), state and local law, and College policy. No information shall be released from such proceedings except as required or permitted by law and College policy.

VI. Definitions of Sexual Harassment

Below are two definitions of sexual harassment. The first definition (Title IX sexual harassment) is the provided definition pursuant to the federal regulations implementing Title IX. Alleged violations of Title IX sexual harassment will be resolved through the Title IX procedures. The second definition (College-defined sexual harassment) describes behavior that violates Swarthmore community standards. Alleged violations of College-defined sexual harassment will be resolved by the College-Defined Sexual Misconduct procedures.

A. Title IX sexual harassment means:

1. Conduct on the basis of sex that involves an employee of Swarthmore College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
2. An individual engaging in unwelcome conduct determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to the College's education program or activity.
3. In order to constitute Title IX sexual harassment, the alleged misconduct must have occurred:
 - i. in the United States;
 - ii. in Swarthmore College's education program or activity, which is defined as locations, events or circumstances over which the College exercised substantial control over both the respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by the College; **and**
 - iii. the complainant must be participating in or attempting to participate in the College's education program or activity at the time a formal complaint is filed.

- B. College-defined sexual harassment (CDSH) is any unwelcome conduct of a sexual nature or based on sex or gender when at least one of the following conditions are present *and* Section VI.A.3.i-iii are not applicable:

1. *Quid Pro Quo*: Submission to or rejection of such conduct is an explicit or implicit condition of, or the basis of an individual's employment, evaluation of academic work, or any aspect of a College program or activity.
2. *Hostile Environment*: Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive, *or* persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.

CDSH also includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

A single, isolated incident of CDSH alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Both definitions of sexual harassment can take many forms and may:

- Include, but are not limited to sexual advances or requests for sexual favors, inappropriate comments, jokes or gestures, or other unwanted verbal or physical conduct of a sexual nature.
- Be blatant and intentional and involve an overt action, a threat of reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Not include intent to harm, be directed at a specific target, or involve repeated incidents.
- Be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context.
- Be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- Be committed by or against an individual or may be a result of the actions of an organization or group.
- Occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.

- Occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting.
- Be a one-time event or part of a pattern of behavior.
- Be committed in the presence of others or when the parties are alone.
- Affect the complainant and/or third parties who witness or observe the harassment.

Applied definitions of alleged violations of sexual harassment will depend upon the applicability of conditions described in Section VI.A.3.i-iii above. Key determining factors are that the behavior is unwelcome, is sex or gender-based, and is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct.

VII. Definitions of Additional Prohibited Conduct

The following conduct constitutes additional prohibited conduct under the Policy:

- A. *Sexual Assault*. Penetration or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration or attempted penetration by a sex organ of another person, without the consent of the alleged victim.
- B. *Non-Consensual Sexual Touching*. The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the alleged victim, including intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without that person's consent. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.
- C. *Dating Violence*. Violence, including sexual or physical abuse or the threat of such abuse, committed by a person who:
 1. is or has been in a social relationship of a romantic or intimate nature with the alleged victim; and
 2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. the length of the relationship,
 - ii. the type of relationship, and
 - iii. the frequency of interaction between the persons involved in the relationship.

- D. *Domestic Violence*. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of Pennsylvania, or by any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.
- E. *Stalking*. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition:
1. A course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 2. A reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 3. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking includes the concept of cyberstalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include:

- Unwelcome and repeated visual or physical proximity to a person;
- Repeated oral or written threats;
- Extortion of money or valuables;
- Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, and messages on online bulletin boards;
- Unwelcome/unsolicited communications about a person, their family, friends, or co-workers;
- Sending/posting unwelcome/unsolicited messages with an assumed identity;
- Implicitly threatening physical contact;

- Any combination of these behaviors directed toward an individual person.

F. *Sexual Exploitation.* An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of College-defined sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Prostituting another individual;
- Exposing another's genitals in non-consensual circumstances;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

G. *Indecent Exposure.* A person commits an act of indecent exposure if that person exposes their genitals in any public place or in any place where there are other persons present under circumstances in which one knows or should know that this conduct is likely to offend, affront, or alarm.

H. *Bullying and Intimidation.* Bullying includes any intentional electronic, written, verbal, or physical act or a series of acts of physical, social, or emotional domination that cause physical or emotional harm that is sex or gender-based to another student or group of students. Bullying conduct may not only cause a negative effect on individuals targeted but also others who observe the conduct. Bullying conduct is severe, persistent, or pervasive and has the effect of doing any of the following:

1. Substantially interfering with a community member's education, employment, or full enjoyment of the College;
2. Creating a threatening or intimidating environment; or
3. Substantially disrupting the orderly operation of the College.

Bullying is prohibited, and participating in such acts will result in disciplinary action.

Intimidation is any verbal, written, or electronic threats of violence or other threatening behavior directed toward another person or group that reasonably leads the person(s) in the group to fear for their physical well-being. Intimidation is prohibited and participating in such acts will result in disciplinary action.

Anyone who attempts to use bullying or intimidation to retaliate against someone who reports an incident, brings a complaint, or participates in an investigation in an attempt to influence the student conduct process will be in violation of retaliation as described in this Policy and will be subject to disciplinary action.

When acts of bullying and intimidation occur in the context of intimate-partner violence or when the behavior is perpetrated on the basis of sex or gender, the student conduct will be resolved under either *Procedures for Resolution of Title IX Complaints against Students* or *Procedures for Resolution of College-Defined Sexual Misconduct Complaints against Students*; employee conduct will be resolved under either *Procedures for Resolution of Title IX Complaints against Staff and Faculty* or *Procedures for Resolution of College-Defined Sexual Misconduct Complaints against Staff and Faculty*.

- I. *Physical Assault.* Any purposeful action meant to hurt another person. Examples include, but are not limited to, kicking, punching, hitting with or throwing an object, or biting. When these acts occur in the context of dating or domestic violence or when the behavior is perpetrated on the basis of sex or gender, the student conduct will be resolved under either *Procedures for Resolution of Title IX Complaints against Students* or *Procedures for Resolution of College-Defined Sexual Misconduct Complaints against Students*; employee conduct will be resolved under either *Procedures for Resolution of Title IX Complaints against Staff and Faculty* or *Procedures for Resolution of College-Defined Sexual Misconduct Complaints against Staff and Faculty*.

VIII. Procedural Options

If the alleged conduct defined in Section VII meets all of the following conditions, the Title IX procedures will apply. If the alleged conduct defined in Section VII does *not* meet all of the following conditions, then the College-Defined Sexual Misconduct procedures will apply. The conditions are as follows:

- A. The alleged conduct must have occurred in the United States;

- B. The alleged conduct must have occurred in Swarthmore College’s education program or activity, which is defined as locations, events or circumstances over which the College exercised substantial control over both respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by the College; **and**
- C. The complainant must be participating in or attempting to participate in the College’s education program or activity at the time a formal complaint is filed.

IX. Related Definitions

- A. *Coercion.* The use of pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity.

Examples of coercion:

- Threatening to “out” someone based on sexual orientation, gender identity, or gender expression.
 - Threatening to harm oneself if the other party does not engage in the sexual activity.
- B. *Complainant.* Any member of the College community seeking a formal disciplinary process in response to prohibited conduct.
- C. *Consent.* Consent to engage in sexual activity must be knowing and voluntary; it must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact. Consent should not be assumed. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease immediately.

Guidance for assessing consent:

- Prior to initiating any sexual activity, the person(s) initiating and/or continuing the sexual activity is expected to obtain consent. If at any time during the sexual activity, any confusion or ambiguity arises, individuals should pause and seek

clarification regarding consent. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.

- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent should not be inferred solely from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- Consent to previous sexual activity and/or in the context of an intimate relationship does not presume consent is given in any subsequent sexual encounter.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise their own free will.
- Consent cannot be obtained from an individual who is incapacitated. A full discussion of incapacitation follows in Section IX.F below.
- In the Commonwealth of Pennsylvania, the age of majority is 18. Under state law, consent cannot be given by minors under the age of 13 and can only be given by a minor under the age of 16, if the other party is fewer than four (4) years older than the minor.
- Consent cannot be given for sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

D. *Force*. Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.

E. *Formal Complaint*. A document submitted by a complainant and bearing the complainant's physical or digital signature, or otherwise indicating that the complainant is the one filing the formal complaint, requesting that the College investigate the allegations of prohibited conduct. The Title IX coordinator also may sign a formal complaint, as discussed in Section XIII.B, but does not become the complainant by doing so. In order to file a formal complaint, a complainant must be participating in or attempting to participate in Swarthmore College's education program or activity at the time a formal complaint is filed.

F. *Incapacitation*. Incapacitation describes an individual who lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because the

individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person.

Warning signs that a person may be approaching incapacitation may include:

- Slurred speech
- Vomiting
- Unsteady gait
- Odor of alcohol
- Combativeness
- Emotional volatility

Guidance for evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual, with respect to:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature and the quality of the act

Evaluating incapacitation also requires an assessment of whether a responding party should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the responding party's position.

In general, the College considers sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

G. *Intentional*. Intentional is defined as knowingly and/or recklessly engaging in sexual contact without an individual's consent and does not include accidental contact. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct in

any form and does not negate one's intent nor diminish one's responsibility to obtain informed and freely given consent.

- H. *Prohibited Conduct.* Prohibited conduct includes Title IX-covered misconduct and College-defined sexual misconduct.
- I. *Reporting Person.* Any person who makes a report to the Title IX coordinator or deputy Title IX coordinator about prohibited conduct and is seeking resources or support in response to sexual misconduct.
- J. *Responding Person.* Any person alleged, through a report to the Title IX coordinator, to have engaged in prohibited conduct.
- K. *Respondent.* Any member of the College community who has been alleged to have violated the Policy.

X. Retaliation

Retaliation against an individual for participating in any way in a report, investigation, hearing or other proceeding under this Policy is strictly prohibited. No one may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured under this Policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Retaliation can take many forms, including continued abuse or violence, threats, and intimidation. Any individual or group of individuals, not just a complainant or respondent, can engage in retaliation.

XI. Role of the Title IX Coordinator

The Title IX coordinator oversees the College's centralized review, investigation, and resolution of reports of sexual misconduct. The coordinator also coordinates the College's compliance with Title IX. The Title IX coordinator can be contacted by telephone, email, or in person during regular office hours.

Title IX Coordinator, Bindu K. Jayne, 504 Fieldhouse Lane, 610-690-3720, bjayne1@swarthmore.edu.

The Title IX coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual misconduct;

- Knowledgeable and trained in relevant state and federal laws and College policy and procedures;
- Available to advise any individual, including a complainant, a respondent, or a third party, about the courses of action available at the College, both informally and formally;
- Available to provide assistance to any College community member regarding how to respond appropriately to reports of sexual misconduct;
- Responsible for oversight of sexual violence prevention education and employee training;
- Responsible for monitoring full compliance with all requirements and timelines specified in the complaint procedures; and
- Responsible for compiling annual and semiannual reports.

In addition, trained deputy Title IX coordinators are also available to offer assistance. The deputy Title IX coordinators are:

- Associate Director of Title IX and Deputy Title IX Coordinator, Chelsey Eiel, Title IX Office, 610-957-6409, 504 Fieldhouse Lane, ceiell@swarthmore.edu
- Deputy Title IX Coordinator for Faculty, Peter Baumann, Provost's Office, 610-328-8433, Papazian 216, pbauman1@swarthmore.edu
- Deputy Title IX Coordinator for Staff, Paula MacDonald, Human Resources, 610-690-5667, 101 S. Chester Road, pmacdon1@swarthmore.edu
- Interim Deputy Title IX Coordinator for Students, Rachel Head, Office of Student Affairs, 610-328-8362, Parrish Hall LL76, rhead1@swarthmore.edu
- Deputy Title IX Coordinator for Physical Education and Athletics, Valerie Gomez, Athletics Front Office, 610-328-8222, Fieldhouse 161B, vgomez1@swarthmore.edu,

XII. Supportive Measures

- A. *Overview.* The College is committed to treating all members of the community with dignity, care, and respect. Any community member affected by sexual misconduct, whether as a reporting party, complainant, responding party, respondent, or third party, will have equal access to support and counseling services through the College. The College recognizes that deciding whether to make a report and choosing how to proceed can be difficult decisions. The College encourages any individual who has questions or concerns to seek the support of campus and community resources. These professionals can provide information about available resources, procedural options, and assistance to any party in the event that a report and/or resolution under this policy are pursued. Individuals are encouraged to use all available resources, regardless of when or where the incident occurred and whether it is reported to the College or law enforcement.

Supportive measures are non-disciplinary, non-punitive individualized services that may be provided to parties upon request, when deemed by the Title IX coordinator to be appropriate and reasonably available. Supportive measures may also be imposed at the initiative and in the sole discretion of the Title IX coordinator. Supportive measures are available beginning at any time after the submission of a report of prohibited conduct. Supportive measures are highly subjective to the needs of the individuals involved and the circumstances presented, so for the best understanding of available options, community members are strongly encouraged to contact the Title IX office.

A reporting party may seek and be provided supportive measures prior to or without ever filing a formal complaint.

Supportive measures are designed to restore or preserve equal access to the College's educational programs and activities, without unreasonably burdening the other party. Supportive measures may be of any duration and may be modified at the discretion of the Title IX coordinator, as circumstances warrant. Supportive measures will be kept confidential to the extent doing so does not impair the College's ability to provide them.

Supportive measures may include, but are not limited to, the following:

- Access to counseling services;
- Extensions of deadlines or other course-related adjustments (with agreement of the faculty of the course);
- Modification of work or class schedules;
- Mutual restrictions on contact between the parties (*i.e.*, contact restrictions);
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas; and/or
- Any other measures deemed appropriate by the Title IX coordinator to preserve equal access to the College's programs and activities.

A student or employee's failure to abide by the terms of any supportive measure may result in discipline and, depending on the circumstances, could be deemed to constitute retaliation.

In general, all supportive measures that require action by the College are implemented through the Title IX coordinator. The violence prevention advocate can also assist with referrals to medical assistance, counseling, campus resources, and provide detailed information about other supportive measures available.

B. *Education and Prevention Programs.* Swarthmore College as a community is committed to the prevention of sexual misconduct through education and awareness programs. Throughout the year, programs designed to promote awareness are presented by a variety of inclusive campus resources. Swarthmore College's Title IX coordinator works campus partners to tailor programming to meet campus needs and climate. Prevention and education programs include an overview of the College's policies and procedures; relevant definitions, including prohibited conduct; discussion of the impact of alcohol and illegal drug use; effective consent; safe and positive options for bystander intervention; and information about risk reduction, resources, and reporting options.

Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation. Returning students and employees will receive ongoing training on a periodic basis.

C. *Emergency Support Services for Prohibited Conduct.* The College encourages all individuals to seek assistance from a medical provider and/or law enforcement as soon as possible after an incident of sexual misconduct. This option can provide for physical safety, emotional support, and medical care to the victim/survivor. It is the best option to ensure medical care, if necessary, and may assist in an investigation by preserving potential evidence. The College will offer to escort any Swarthmore community member to a safe place, provide transportation to the hospital, assist in coordination with law enforcement, and provide information about the College's resources and complaint processes.

Assistance is available from the College and local law enforcement 24 hours a day, year-round, by calling the Department of Public Safety and/or the Swarthmore Borough Police Department. Any individual can request that a member of the Department of Public Safety and/or Swarthmore Borough Police respond and take a report. The College can also assist individuals in obtaining a Protection from Abuse (PFA) order, Sexual Violence Protection order, or Protection from Intimidation order (for minors) from local Pennsylvania authorities. The College can also assist with obtaining orders outside of Pennsylvania. We request that all College community members who obtain a protection order notify public safety to enable the College to provide appropriate assistance. The College will comply with and implement applicable restrictions described in any court-issued protection order. An individual can also contact a Worth Health Center nurse or nurse practitioner (during the academic year) and/or a local medical provider 24 hours/day.

Emergency Response Resources:

- **Department of Public Safety**
610-328-8333/publicsafety@swarthmore.edu
Benjamin West House
Public Safety officers are available 24/7/365 to respond to emergency/crisis incidents as well as non-emergency reports. Public Safety staff can assist with medical escorts, connecting students to CAPS after hours, the on-call division of student affairs staff, or an on-call nurse. They can provide assistance with contacting Swarthmore Police Department to make a report to law enforcement or obtain a Protection from Abuse order. The Ben West House can provide a safe space that is always open and staffed 24 hours a day.
- **911**
- **Swarthmore Borough Police Department**
610-543-0123
121 Park Ave. Swarthmore, PA 19081
- **Delaware County Victim Assistance Center**
610-566-4342 (24-hour hotline)
- **Domestic Abuse Project of Delaware County (DAP)**
610-565-6272 or 610-565-4590 (24-hour hotline)

D. On-Campus Resources

1. Confidential Resources

For individuals who are seeking confidential consultation and support, there are several resources available on campus. The trained professionals designated below can provide counseling, information, and support under legally protected confidentiality. Because these relationships involve privileged conversations, these confidential resources will not share information with the Title IX coordinator or any other employee of the College without the individual's express permission. They may, however, submit non-identifying aggregate information (nature, date, time, and general location of the incident) about the incident for purposes of making a statistical report under the Clery Act.

- **Worth Health Center**
610-328-8058

Adjacent to the Benjamin West Parking Lot right off of Rt. 320, the center comprises student health services, counseling & psychological services, and a comprehensive wellness education team.

- **Student Health and Wellness**

610-328-8058 (daytime)

610-328-8548 (after-hours)

Student health and wellness is available 24 hours a day (during the academic year) to assist students as a confidential resource. The student health and wellness confidential staff includes: nurse practitioners, registered nurses, physicians, victim advocate, and alcohol and drug counselor. An after-hours on-call system provides students with access to a registered nurse for confidential consultation and referral. Student health and wellness can provide the option to any victim/survivor to be evaluated by a nurse to conduct a physical examination and offer to connect them with confidential counseling resources including the campus advocate, CAPS and/or the local rape crisis and/or domestic violence centers. The primary purpose of the medical evaluation is to check for physical injuries and reduce risk of pregnancy, as appropriate, or complications from sexually transmitted infections as a result of the assault. Student Health and Wellness does not provide a Sexual Assault Nurse Examiner (SANE). For more information on accessing SANEs, see Section XII.E.1 below.

- **Alcohol and Other Drugs (AOD) Counselor and Educator**

Josh Ellow

610-957-6152/jellow1@swarthmore.edu

The AOD Counselor and Educator provides prevention programming and confidential clinical care for individuals and groups. All AOD supports are student-centered, trauma-informed, and tailored to the individual needs of each case.

- **Counseling & Psychological Services (CAPS)**

610-328-8059

610-328-7768 (after hours)

In case of emergency: contact public safety at 610-328-8333 or dial 911
CAPS offers a wide range of free and confidential services in a safe space to help students who have experienced violence or trauma of any kind. Initial consultation, individual and group counseling, crisis intervention, and medication reviews are available. In the event of an acute

psychological crisis, consultation is available on a walk-in basis during open hours, or by proceeding to public safety in Benjamin West after hours for a telephone consult with CAPS on-call.

- **Religious and Spiritual Life**

610-328-8328

Sproul Hall 108

These individuals act as religious counselors to provide spiritual guidance along with confidential support on a range of matters. In this policy, “religious counselor” is synonymous with “pastoral counselor” as defined by the U.S. Department of Education and refers to a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. (See *The Handbook for Campus Safety and Security Reporting*, U.S. Department of Education, p. 77, 2011.)

- **Employee Assistance Program**

1-800-437-0911

Carebridge is available 24/7 to provide confidential consultation and referral services to help benefit eligible employees and their families.

2. Additional Campus Resources

In addition to the confidential resources listed above, Swarthmore community members have access to a variety of resources provided by the College. The professionals listed below are trained to support individuals affected by sexual misconduct and to coordinate with the Title IX coordinator consistent with the College’s commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual’s information within the limited circle of those involved in the Title IX resolution process.

- **The Title IX Coordinator and Deputies:**

- Title IX Coordinator, Bindu Jayne, Title IX Office, 610-690-3720, 504 Fieldhouse Lane, bjayne1@swarthmore.edu
- Associate Director of Title IX and Deputy Title IX Coordinator, Chelsey Eiel, Title IX Office, 610-957-6409, 504 Fieldhouse Lane, ceiell@swarthmore.edu
- Deputy Title IX Coordinator for Faculty, Peter Baumann, Provost’s Office, 610-328-8433, Papazian 216, pbauman1@swarthmore.edu

- Deputy Title IX Coordinator for Staff, Paula MacDonald, Human Resources, 610-690-5667, 101 S. Chester Road, pmacdon1@swarthmore.edu
 - Interim Deputy Title IX Coordinator for Students, Rachel Head, Office of Student Affairs, 610-328-8362, Parrish Hall LL76, rhead1@swarthmore.edu
 - Deputy Title IX Coordinator for Physical Education and Athletics, Valerie Gomez, Athletics Front Office, 610-328-8222, Fieldhouse 161B, vgomez1@swarthmore.edu
- **Division of Student Affairs.** The Swarthmore College division of student affairs oversees the academic support, residential, and social resources available to students at the College. Students are encouraged to reach out to the staff of the division for academic affairs and support, and disability services. A student's dean can help them access all resources in the division of student affairs.
 - **Department of Public Safety.** Public safety officers are available 24/7/365 to respond to emergency/crisis incidents as well as non-emergency reports. Public safety staff can assist with medical escorts, connecting students to CAPS after hours, the on-call division of student affairs staff, or an on-call nurse. They can provide assistance with contacting Swarthmore Police Department to make a report to law enforcement or obtain a Protection from Abuse order. The Ben West House can provide a safe space that is always open and staffed 24 hours a day.
 - In case of emergency: call x8333 or 610-328-8333 (off campus).
 - For general business: call x8281 or 610-328-8281 (off campus).
 - **Whistleblower Hotline**
1-866-292-7713
This toll-free line is available 24/7 and there will always be someone available to speak with you. The line is managed by an outside company that will listen to your concern and direct it to the appropriate college official for prompt and corrective action. You may remain anonymous or you may choose to identify yourself. Regardless of your decision, your information will be documented and addressed appropriately.

E. *Off-Campus Resources*

1. Community Medical Providers

A medical provider, such as Riddle Memorial Hospital, Crozer-Chester Medical Center, or Springfield Hospital, can provide emergency and/or follow-up medical services and provide a forum to discuss any health care concerns related to the incident in a confidential medical setting. These are the current local hospitals, which identify as having Sexual Assault Nurse Examiners (SANE) trained to work to collect evidence in a manner consistent with evidence-collecting requirements in Pennsylvania.

If the incident involves a sexual assault that happened within 72 to 96 hours, the victim/survivor has the option and is encouraged to have evidence collected and preserved by a Sexual Assault Nurse Examiner (SANE) at a local hospital. Preserving the evidence can be used if the victim/survivor chooses to seek resolution through the campus complaint process or take criminal action. If the victim/survivor chooses to have evidence collected, they can be escorted to the nearest hospital by the Department of Public Safety or will be transported by taxi (voucher provided by either student health and wellness or public safety) to the medical provider of the victim/survivor's choice. The victim/survivor can later return to student health and wellness for follow-up medical care.

Under Pennsylvania law, a medical provider may be required to notify law enforcement of a sexual assault under certain circumstances. The medical provider, however, will share limited information with law enforcement, and a complainant may decline to speak with a law enforcement officer or participate in a criminal prosecution. The medical provider will typically also notify the local rape crisis-counseling center, Delaware County Women Against Rape (WAR).

- **Crozer-Chester Medical Center** 610-447-2000, 1 Medical Center Blvd., Chester, Pa. 19013 (3.5 miles)
- **Riddle Memorial Hospital** 484-227-9400, 1068 W. Baltimore Pike, Media, Pa. 19063 (7.5 miles)
- **Springfield Hospital** 610-328-8700, 190 W. Sproul Road, Springfield, Pa. 19064 (3 miles)
- **Mazzoni Center** 215-563-0652 or 215-563-0658 (<http://mazzonicenter.org>)

A lesbian, gay, bisexual, and transgender (LGBT) health care and wellness center with two locations in Center City Philadelphia. At its location on 21 S. 12th St., 8th floor, this organization provides counseling and behavioral health, case management, legal services, prevention and education, housing, and food-bank services. Its location on 809 Locust St. provides comprehensive primary health care services focusing on the needs of LGBT individuals.

2. Off-Campus Confidential Resources

- **Delaware County Victim Assistance Center**

610-566-4342 (24-hour hotline)

Offers comprehensive direct services to victims/survivors of sexual assault including a 24-hour hotline, accompaniment services, counseling services, and assistance with victim compensation. All direct victim services are free and confidential.

- **Domestic Abuse Project (DAP) of Delaware County**

610-565-4590

14 West Second St., Media, Pa. 19063

DAP provides immediate crisis intervention, safety planning, and information and referral on their 24/7 hotline. Staff offers short and long-term supportive/educational counseling, as well as therapeutic counseling designed to address the emotional barriers around abuse.

3. Off-Campus Legal Assistance

- **Equality Pennsylvania & Equality Advocates Pennsylvania**

215-731-1447

1211 Chestnut St., Suite 605, Philadelphia, Pa. 19107

- **Delaware County Bar Association**

610-566-6625

335 W Front St, Media, Pa. 19063

- **Legal Aid of Southeastern Pennsylvania**

610-436-4510

222 N. Walnut Street, Second Floor, West Chester, Pa. 19380

- **Philadelphia Legal Assistance**

215-981-3800

718 Arch St #300N, Philadelphia, Pa. 19106

- **Women Against Abuse Legal Center**
215-686-6311, ext. 19217
- **Women's Law Project**
215-928-9801
125 S 9th St #300, Philadelphia, Pa. 19107
- **Delaware County Women Against Rape (WAR)**
(see contact information above)

Individuals are encouraged to reach out to the Title IX office for a more comprehensive list of services and identity-centered off-campus resources.

XIII. Reporting

- A. *Overview.* The College encourages all community members to report prohibited conduct in order to obtain assistance and maintain a safe campus environment. As outlined above in Section XII.C of this Policy, the College encourages all individuals to immediately seek assistance from law enforcement, public safety, a medical provider, and/or a victim assistance center. All Swarthmore community members, even those who are not obligated by this Policy, are strongly encouraged to report information regarding any incident of prohibited conduct to the Title IX coordinator. To the best of its ability, the College will respond to every report it receives. Anonymous or third-party reports may limit the response the College can provide.

The Title IX coordinator is charged with responding to allegations of sexual misconduct to stop the behavior, prevent its recurrence, and remedy its effects. Specifically the Title IX coordinator, or their designee, will coordinate the initial assessment, offer resources and support, and initiate an investigation when appropriate and/or requested.

- B. *How to Report.* Any person may report conduct constituting possible prohibited conduct to the Title IX coordinator in person, by mail, by telephone, by email or via the online reporting form. The Title IX coordinator will promptly contact the reporting party to discuss the availability of supportive measures (see Section XII) and to explain the process for filing a formal complaint (if applicable). Reporting parties are not required to proceed with a formal complaint to access supportive measures.

Anonymous reporting is permitted via the online reporting form. Depending on the information provided, the College's ability to take action in response to an anonymous report may be limited.

If the reporting party desires to proceed with a formal complaint, the Title IX coordinator or designee will initiate the applicable procedures. If the reporting party decides not to submit a formal complaint, the Title IX coordinator may sign a formal complaint when the Title IX coordinator deems an investigation is necessary to address the prohibited conduct, including in order to provide a safe and nondiscriminatory environment for all members of Swarthmore's community. In deciding whether to sign a complaint, the Title IX coordinator may consider factors such as whether the conduct alleged included threats, violence, serial predation, or weapons.

1. Reports to Authorized and Responsible Employees

There may be instances when a student or employee discloses alleged prohibited conduct to an employee of Swarthmore College. Whether that disclosure constitutes actual notice to the College, triggering its response obligations under this Policy, depends on the role of the employee to whom the disclosure is made, as follows:

- i. *Authorized Employees.* A disclosure or report of prohibited conduct made to an authorized employee (regardless of whether the disclosure is made by the complainant or a third party) constitutes a report to the College (*i.e.*, actual knowledge), triggering a response under this Policy. All authorized employees are required to promptly report disclosures of prohibited conduct to the Title IX coordinator, including all information that has been disclosed to the authorized employee, such as the names of those involved, the location of the incident, the alleged prohibited conduct, etc. The following individuals are authorized employees:
 - Title IX coordinator
 - Provost
 - President
 - Vice president for human resources
 - Vice president for student affairs
- ii. *Responsible Employees.* With the exception of those employees who have recognized confidentiality, all faculty and staff members of the College are designated as responsible employees. Student-employees who serve as

resident advisors, student academic mentors, and SWATeam members are also designated as responsible employees because of the unique functions of their student employment role. All responsible employees are required to share with the Title IX coordinator a report of prohibited conduct about which they become aware. These employees must promptly share all details of the reports they receive.

All students and employees, even if not authorized or responsible employees, are encouraged to report instances of possible prohibited conduct to the Title IX coordinator.

The College will generally not investigate information and statements provided in classroom writing assignments or discussions, research projects, or community public awareness events related to issues of sexual misconduct, unless the reporting party clearly indicates that they wish a report to be made. During such situations and if appropriate, the Title IX coordinator or designee will provide the person making the statement with campus and community resources.

Those employees with reporting obligations do not need to report when incidents of sexual misconduct are communicated during a classroom discussion, in a writing assignment for a class, or as part of a research project.

- C. *Making a Report vs. Filing a Formal Complaint.* A report is defined as notification of an incident of prohibited conduct to the Title IX coordinator by any responsible employee or reporting person. A report may be accompanied by a request for resources, no further action, adaptable remedies, and/or to initiate a formal complaint process. Filing a formal complaint is the request to initiate the College's formal disciplinary process.

At the time a report is made, a reporting person does not have to decide whether to file a formal complaint. The College recognizes that not every individual will be prepared to file a complaint with the College or law enforcement, and individuals are not expected or required to pursue a specific course of action. Choosing to make a report and deciding how to proceed after making the report can be a process that unfolds over time. To the extent possible, the College will respect an individual's autonomy in making these important decisions and provide support that will assist each individual in making that determination. A report may become a formal complaint, either initiated by the reporting party or the Title IX coordinator.

To file a complaint, please contact the Title IX office.

D. *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 or employee, the emergency removal team will undertake an individualized safety and risk analysis concerning the responding party at the request of the Title IX coordinator. For students, the emergency removal team is composed of the student conduct administrator and the director of public safety. For employees, the emergency removal team is composed of the assistant vice president of human resources and the director of public safety. If employee is a faculty member, the provost's office will be consulted. 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 for students and vice president for human resources for employees, 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 or vice president for human resources, as appropriate, 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 or vice president for human resources shall issue a decision as soon as possible under the circumstances. The decision is final and not subject to further appeal.

Separate from the emergency removal process, the Title IX coordinator may request that an employee-respondent be placed on administrative leave, with or without pay.

E. *Reporting to Law Enforcement.* In addition to a College response, the College also encourages reporting parties to pursue criminal action for incidents of prohibited conduct that may also be crimes under Pennsylvania criminal statutes or the applicable criminal statute of the jurisdiction. The College will assist a reporting party, at their request, in contacting local law enforcement and will cooperate with law enforcement agencies if a reporting party decides to pursue the criminal process to the extent permitted by law. Except where the reporting party is younger than 18 years old, the College will generally respect a reporting party's choice to report an incident to local law enforcement, unless the College determines that there is an overriding issue with respect to the safety or welfare of the College community. Where a report involves suspected abuse of a minor younger than 18, the College is required by state law to notify law enforcement and/or the Pennsylvania Department of Public Welfare Division of Child Welfare Services.

The College's policy, definitions, and burden of proof may differ from Pennsylvania criminal law. A reporting party may seek resolution through the College's complaint process, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's determination to prosecute a responding party nor the outcome of any criminal prosecution is determinative of whether prohibited conduct has occurred under this Policy. Proceedings under the Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings and such timing will be determined by the Title IX coordinator in consultation with campus partners.

F. *Third-Party Reporting.* Any individual may make a report concerning an act of prohibited conduct. An individual who is not a responsible employee may report the incident without disclosing or identifying parties involved. Depending on the level of information available about the incident or the individuals involved, the College may be limited in its ability to respond.

The College has created an online reporting form, which can be found on the Title IX office website. All reports of prohibited conduct will go to the Title IX coordinator for review and appropriate response and action. The Title IX coordinator or their designee will respond to all reports submitted. The College will ensure that third-party reports are reviewed and considered for compliance with the Clery Act.

G. *Reporting Considerations*

1. Timeliness of Report, Location of Incident

Reporting parties and third-party witnesses are encouraged to report prohibited conduct as soon as possible in order to maximize the College's ability to respond

promptly and effectively. The College does not, however, limit the timeframe for reporting. If the responding party is no longer a student or employee, the College may not be able to take disciplinary action against the responding party, but it will still seek to meet its Title IX obligation by taking steps to end the behavior, prevent its recurrence, and address its effects. An incident does not have to occur on campus to be reported to the College. Off-campus conduct is covered under this policy.

2. Amnesty for Personal Use of Alcohol or Other Drugs

The College seeks to remove any barriers to reporting. The College will generally offer any student, reporting party, third party, and/or witness who reports prohibited conduct limited immunity from being charged for violations related to the College's alcohol or other drugs policy, provided that any such violations did not and do not place the health and safety of any person at risk. The College may choose, however, to recommend educational and/or therapeutic remedies in certain situations.

3. Statement against Retaliation

As stated above, retaliation is a violation of College policy. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that all parties to a complaint, including the complainant and respondent, as well as third parties such as witnesses may be the subject of retaliation by another individual. All such forms of retaliation are prohibited and should a complainant, respondent, or third party suspect retaliation they are encouraged to report the behavior to the Title IX coordinator. An individual reporting prohibited conduct is entitled to protection from any form of retaliation following a report made in good faith, even if the report is not later substantiated.

4. False Reporting

The allegation of sexual misconduct may have severe consequences and therefore the College takes very seriously the validity of reported information. An individual who makes a report that is later found to have been intentionally false or made maliciously without regard for the truth may be subject to disciplinary action. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation. Similarly, a party or witness who is later proven to have intentionally given false information

during the course of an investigation or resolution may be subject to disciplinary action.

- H. *Reports Involving Minors.* Any Swarthmore College employee who has reasonable cause to suspect abuse of a child (an individual under the age of 18) that the employee has come into contact with during the course of employment must make a report to the Pennsylvania Department of Public Welfare division of Child Welfare Services. This requirement applies to an employee's suspicion of past or present abuse of a person who is a child at the time of the report. All other members of the Swarthmore College community (students, visitors, guests, etc.) are strongly encouraged to report whenever child abuse is suspected.

In the interest of protecting the safety and welfare of a child, any uncertainty about whether reporting is required or whether abuse has actually occurred should always be resolved in favor of making a report. Do not investigate, attempt to obtain proof, or try to solicit information from the child. This responsibility lies with the Pennsylvania Department of Human Services. **If the child is in immediate danger, please call 911 immediately.**

Follow these steps to make an immediate and direct report of suspected child abuse to the Pennsylvania Department of Human Services and to the College:

1. Submit an online report (preferred method) to the Pennsylvania Department of Human Services at www.compass.state.pa.us/cwis or call Pennsylvania's ChildLine at 800-932-0313 (alternative method). *Please Note: If you call ChildLine, you must also submit a written report within 48 hours.*
2. Call Swarthmore College Department of Public Safety (610-328-8333) to inform director of public safety Michael Hill (mhill1@swarthmore.edu), who serves as the College's designee for receiving reports of child abuse. The director of public safety will inform the appropriate College officials in order to ensure the safety of the Swarthmore College community.
3. Complete the Public Safety Online Incident Report Form at: https://cm.maxient.com/reportingform.php?SwarthmoreCollege&layout_id=1

Internal reports will be handled with discretion and in cooperation with the state's Department of Public Welfare or local authorities.

I. *Reporting to External Agencies.* Inquiries or complaints about the College's response to a discrimination complaint or its application of Title IX may be directed to one of the following external agencies:

- U.S. Department of Education, Office for Civil Rights, 215-656-8541, OCR.Philadelphia@ed.gov
- U.S. Equal Employment Opportunity Commission, 1-800-669-4000
- PA Human Relations Commission, 215-560-2496

J. *Timeframes for Resolution.* The College seeks to resolve all complaints of prohibited conduct in a thorough, impartial, and unbiased manner. 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. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and impartiality with promptness.

At the request of law enforcement, the College may agree to defer its fact-gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the reporting party regarding Title IX rights, procedural options, and the implementation of supportive measures to ensure safety and well-being. The College will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation.

K. *Resolution Procedures.* The College has jurisdiction over prohibited conduct and may take disciplinary action against a responding party who is a current student or employee. Disciplinary action against a responding party may only be taken through one of the College's resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of impartiality and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this Policy. The College will provide a prompt, unbiased, and impartial process from the initial assessment to the final outcome.

All staff involved with the resolution processes, including investigators, deputies, case managers, and adjudicators, receive inclusive annual training on the issues related to dating violence, domestic violence, sexual assault, sexual harassment, and stalking, as well as how to conduct an investigation and adjudication process that protects the safety of victims and promotes accountability.

The procedure followed will be determined by the relationship of the respondent to the College and whether or not the alleged conduct is covered under Title IX:

- Complaints against a student will be resolved by the Procedures for Resolution of Title IX Complaints against Students or the Procedures for Resolution of College-Defined Sexual Misconduct against Students.
- Complaints against a staff member, instructional staff member, including faculty will be resolved by the Procedures for Resolution of Title IX Complaints against Faculty/Staff or the Procedures for Resolution of College-Defined Sexual Misconduct against Faculty/Staff.
- Even if the offending individual is not a student or employee, the College will promptly and equitably respond to all reports of prohibited conduct in order to eliminate the misconduct, prevent its recurrence, and address its effects on any individual or the community.