

## Policies and Procedures Manual

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Title: Sexual and Discriminatory Harassment Policy and  
Complaint Process  
Policy Administrator: Director of Human Resources  
Effective Date: Mar-16-2009 (Revised Nov-1-2015)  
Approved by: General Counsel

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**PLEASE NOTE: TO THE EXTENT THIS POLICY AND COMPLAINT PROCESS ADDRESSES SEXUAL MISCONDUCT WHEN THE RESPONDING PARTY IS A STUDENT OR AN EMPLOYEE, IT HAS BEEN SUPERSEDED BY THE COLLEGE'S SEXUAL MISCONDUCT POLICY, WHICH WAS PUBLISHED IN THE FALL OF 2015 AND CAN BE FOUND AT <http://www.holycross.edu/sexual-respect-and-title-ix>. ("EMPLOYEE" IS DEFINED IN THE EMPLOYEE POLICY AND PROCESS FOR RESOLVING COMPLAINTS WHICH IS PART OF THE SEXUAL MISCONDUCT POLICY.)**

**PLEASE DIRECT ANY QUESTIONS TO THE DIRECTOR OF HUMAN RESOURCES AT 508-793-3320; O'Kane Hall B72.**

### **Purpose:**

Holy Cross is committed to providing its students, faculty and staff with an educational and work environment in which all people are treated with respect and dignity. Each person has the right to work and to be educated in an atmosphere that is free from discrimination and harassment on the basis of race, color, religion, gender, national or ethnic origin, sexual orientation, gender identity and expression, age, disability, veteran or active military status, genetic characteristics or any other category protected by law. This policy applies to and prohibits discrimination and harassment on any of these bases in the workplace, the classroom, or in any other setting where students, faculty and staff may find themselves in connection with their education or employment at Holy Cross. Such conduct is unlawful and will not be tolerated by Holy Cross.

In furtherance of the College's zero-tolerance stand against discrimination and harassment, the College provides several avenues for individuals to report complaints, as detailed below. Because the College takes such complaints seriously, it will respond promptly and, where it is determined that improper

conduct has occurred, will act swiftly to eliminate the conduct and impose appropriate corrective action. Integral to this policy is the prohibition against retaliation, which protects the reporting party as well as those who cooperate in the investigation of a complaint from unlawful retaliation.

In setting forth publicly our goal of promoting an educational and work environment that is free of harassment, this policy is neither designed nor intended to limit the College's authority to discipline or take remedial action for conduct which is deemed unacceptable, regardless of whether that conduct satisfies the legal definition of harassment.

## **Policy:**

### **I. STATEMENT**

It is the responsibility of each and every member of the Holy Cross community to foster an inclusive environment and to take a stand against harassment. To that end, Holy Cross requires members of our community to report any incident of discrimination or harassment, whether experienced first-hand or directed against someone else. It is only through reporting that the College can act to investigate and eliminate unacceptable conduct. While the community at large bears this responsibility, staff with managerial or supervisory authority, faculty members, and administrators have a heightened obligation when learning of or observing discriminatory or harassing conduct to advise the victim of his or her rights under this policy and to further report the issue to the Office of Human Resources, or, in the case of a faculty member, to the Academic Vice-President and Dean of the College, or, in the case of a student, to the Vice President for Student Affairs and Dean of Students.<sup>i</sup> So that memories are fresh and to provide adequate opportunity for investigation, response, and resolution, any complaint of discrimination must be reported as soon as possible.<sup>ii</sup>

### **II. INDIVIDUALS PROTECTED BY THIS POLICY**

This policy applies to all current students, faculty and staff. **(SEE NOTE AT BEGINNING OF POLICY FOR EXCEPTIONS.)**

### **III. DEFINITION OF SEXUAL AND DISCRIMINATORY HARASSMENT**

#### **A. Statutory Considerations**

Sexual and discriminatory harassment may occur in numerous forms, many of which are also violations of federal and state laws.<sup>iv</sup> For the purposes of this policy, the following definitions of harassment, based on the language of the applicable statutes, are assumed:

1. *(Sexual Harassment)* Offensive sexual behavior whenever toleration of such conduct or submission to or rejection of it is the basis for a personnel or academic decision affecting an individual, or such conduct has the purpose or effect of creating a hostile living, learning or working environment.
2. *(Discriminatory Harassment)* Conduct that, by reference to the sex, race,

color, religion, national origin, citizenship, handicap, age, sexual orientation, or status as a Vietnam-era veteran of a member or members of the College community, intentionally or recklessly abuses, mocks, or disparages a person or persons so as to affect their educational performance or living or working environment at the College.

**B. Sexual Harassment – further considerations**

Sexual harassment refers to any repeated, unwelcome sexual advances, requests for sexual favors, and/or behavior of a sexual nature that has the purpose or effect of creating a hostile work or learning environment.

While in some cases individuals may make sexual comments or jokes or personal advances without intending harm, such actions can be unwanted and threatening and perceived as harassment. Stopping sexual harassment in its many forms requires an increased awareness on the part of everyone at the College of the impact that such actions may have on others. Unwelcome behavior that may be considered sexual harassment includes but is not limited to:

- unwelcome and unwanted sexual jokes, language, epithets, advances or propositions;
- written or spoken abuse of a sexual nature, or use of sexually degrading or vulgar words to describe an individual;
- the display of sexually suggestive objects, pictures, posters or cartoons;
- unwelcome or unwanted comments about an individual's body or appearance, or gossip regarding an individual's sex life, sexual prowess or sexual deficiencies;
- questions about sexual conduct; and
- verbal abuse consistently targeted at only one sex, even if the content of the verbal abuse is not itself sexual.

**C. Discriminatory Harassment – further considerations**

Discriminatory harassment refers to any verbal or physical conduct that has the purpose or effect of creating a hostile work or learning environment because of an individual's race, color, gender, sexual orientation, religion, age, national origin, veteran status or disability.

Unwelcome behavior that may be considered general discriminatory harassment includes but is not limited to:

- verbal or physical conduct that denigrates or shows hostility or aversion to an individual because of his/her race, color, gender, sexual orientation, religion, age, national origin, veteran status or disability;
- epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to the characteristics described above; and
- written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of the characteristics described above.

#### **IV. CONSENSUAL SEXUAL RELATIONSHIPS INVOLVING EMPLOYEES**

The personal relationships that a student develops with employees may play a fundamental role in that student's education at the College. Given the inherent authority that employees may have over students, a sexual or romantic relationship between a student and an employee can easily raise concerns about sexual harassment. In light of these considerations and the fact that an employee might be called upon to teach, advise, evaluate or supervise any student, the College prohibits employees from engaging in sexual or romantic relations, even if consensual, with any College student. Any employee engaging in sexual or romantic relations with a student, even if consensual, may be found in violation of the College's Sexual Misconduct Policy. The College may make exceptions to this prohibition on a case-by-case basis and only in coordination with the Director of Human Resources and the Title IX Coordinator.

##### **Procedures:**

#### **I. PROCEDURES IN RESPONSE TO SEXUAL OR OTHER FORMS OF HARASSMENT OUTLINED ABOVE: ADVISING, REPORTING, AND INVESTIGATING MECHANISMS**

It is the policy of Holy Cross to support anyone who pursues a harassment complaint under this policy. The College will not permit retaliation of any kind.

It is the goal of this policy and its procedures to create a positive, supportive environment in which people who have experienced harassment or who have concerns about harassment issues feel free to discuss those situations or concerns with someone in a position to address them, secure in the knowledge that they will be listened to and treated with respect.

The following sexual harassment/discriminatory harassment complaint procedures have been developed specifically to ensure that concerns about harassment are listened to and complaints are investigated quickly in a manner that is fair to all. It is important to note that these procedures are not sequentially ordered. An individual may choose any of the following options and may wish to pursue more than one option at the same time. An individual may also bring any work-related problem to his or her supervisor at any time.

At all times, information regarding harassment will be handled with the highest degree of confidentiality possible under the circumstances and with due regard for the rights and wishes of all parties. However, it is important to recognize that there are circumstances where complete confidentiality may not be possible. What constitutes a reasonable response by the College to a report of harassment, furthermore, may depend in part on whether the person reporting the harassment asks that his or her name not be disclosed to the alleged harasser. In each instance, therefore, the recipient of the complaint should inform the individual making the complaint that a request for confidentiality may limit the College's ability to respond. At the same time, the recipient should also

communicate to the person reporting the harassment the College's anti-retaliation provisions and its zero-tolerance stance regarding retaliation. If the person reporting the harassment remains steadfast about confidentiality, then the College will take all reasonable steps to investigate and respond to the complaint without revealing the identity of the person reporting the harassment, so long as doing so does not prevent the College from responding effectively to the harassment and preventing harassment of others.<sup>v</sup>

In all instances where an individual believes that he or she has been harassed, it is helpful, but not necessary, to start the process of resolution by writing down a description of the offensive conduct, the date or dates on which it took place, and the names of anyone who witnessed the conduct or heard the offensive remarks.

### ***Option 1: Self-Help***

Often the immediate goal of someone experiencing harassment is to stop the offensive conduct. To that end, some individuals may prefer to respond to the offending party directly. Some ways to do this include telling the offending party that the conduct is offensive, intimidating or embarrassing; explaining how the offensive behavior affects the complainant's work or education; and asking that the conduct stop. Specific language that a complainant might use includes:

- "I don't think jokes like that are funny. Please don't tell them when I am in the room."
- "I'd like it a lot better if you'd comment on the quality of my work rather than on the way I look."

Alternatively, an individual may prefer to send a written message to the alleged offender, either signed or anonymously, indicating that the behavior is unwelcome.

### ***Option 2: Reporting a Complaint***

#### ***A. Investigation***

In those instances where an individual decides that he or she wishes the College to take action, that individual (the "complainant") should notify the appropriate College officer, as follows.

- If the complaint is against a student, the individual should notify the Vice President for Student Affairs, who will refer the matter to the appropriate person for handling under the College's Community Standards process.
- If the complaint is against a faculty member, the individual should notify the Vice-President for Academic Affairs and Dean of the College.
- If the complaint is against a staff member, the individual should notify the Director of Human Resources.

Complaints against students will be handled by the Vice President for Student Affairs or his/her designee as described in the in the College's Community Standards and Disciplinary Procedures for Students.

In the case of a complaint against a faculty member or a staff member, an investigator will meet with the complainant and make a record of her or his statement of events. Specifically, the investigator will request critical information, which may include the following: a description of the incident(s), the name of the alleged offender, the time(s) and location(s) of the incident(s), specific words or actions used, and the name(s) of any witness(es). The investigator's notes will be for the investigator's own use during the investigation and will not be made available to the complainant, the alleged offender, or any witnesses.

The investigator will next meet privately with the alleged offender. The alleged offender will be informed of the allegations and will have the opportunity to respond to them, including submitting a written statement if he or she so desires. The alleged offender may also submit the name(s) of any witness(es). If the alleged offender refuses to participate in the investigation, the College will base its decision on the other information gathered during the investigation and the inferences drawn from that evidence and the alleged offender's unwillingness to cooperate in the investigation. Possible disciplinary action, including termination, could result from the refusal to cooperate in an investigation. Each party will have an opportunity to respond to the other party's statement of events. Any witnesses that the investigator decides should be contacted will be interviewed privately. Neither the individual making the complaint nor the alleged offender will be present at witness interviews.

Upon completion of the investigation, the investigator will report the findings and recommendations to the appropriate College officer. In the case of a complaint against a staff member, this report will be made to the appropriate Vice-President. In the case of a faculty member, this report will be made to the Vice President for Academic Affairs and Dean of the College.

The College officer who receives the findings will review them and may refer the matter back to the investigator for further investigation and/or fact-finding. The College officer can also accept, reject, or modify the investigator's findings and recommendations if the College officer believes that the investigator's findings and/or recommendations are arbitrary, capricious and/or not supported by substantial evidence. The College officer will consult with the General Counsel prior to rejection or modification of the investigator's findings and/or recommendations. The complainant and the alleged offender will be notified of the action taken.

### ***B. Timetable for Investigating Complaints***

The College recognizes that the interests of all persons are best served by the prompt investigation and resolution of harassment complaints. However, difficulty in

scheduling meetings and conducting an investigation may make strict adherence to timetables difficult. Therefore, the following schedule is suggested, but not required:

1. An investigator should be appointed within three business days after a complaint is made.
2. The initial meeting between the complainant and the investigator should take place within two business days of the day that the investigator is appointed.
3. The investigator's initial findings and recommendations should be reported to the appropriate College officer within seven days of completion of the investigation.
4. The College officer should render a decision within five days of receiving the investigator's findings and recommendations (which decision may include a determination that further investigation is required).
5. Final action should be taken on the recommendations of the investigator within ten days after approval by the appropriate College officer.

### ***C. Confidentiality***

All actions taken to investigate and resolve complaints through this procedure shall be conducted with as much confidentiality as possible without compromising the thoroughness of the investigation or the rights of the alleged offender. The investigator will not discuss the complaint or the investigation with anyone who is not involved in the investigation.

### ***D. Resolving the Complaint***

The appropriate College officer shall take appropriate action to resolve the complaint. If the findings reveal that an individual has engaged in actions or conduct that violate this policy, the College officer shall take disciplinary action appropriate to the seriousness of the violation.

Appropriate disciplinary actions against an offender may include (but need not be limited to) one or more of the following:

- Reprimand
- Mandatory counseling and/or sensitivity training
- Removal from or ineligibility for appointment to specific College duties and responsibilities
- Reduction in compensation
- Temporary suspension
- Termination

The College will retain confidential documentation of all investigations, including allegations, any findings, and any disciplinary action until the last person involved has separated from the College. A filing system will be used in which the identity of the complainant will be maintained in a separate file to further protect that individual's privacy.

In cases in which tenured faculty members are found to have violated this policy and in which termination is the action recommended after the procedures outlined in this policy have been followed, the process outlined in the *Statutes of the Faculty* for actions against such tenured faculty members will then be followed. In cases in which students are found to have violated this policy and in which expulsion is the recommended action after the procedures outlined in this policy have been followed, the process outlined in the College's Community Standards and Disciplinary Procedures for Students will be followed.

## **II. PROTECTION AGAINST RETALIATION**

Retaliation constitutes a very serious violation of this policy and should be reported immediately to the appropriate College officer listed under Section I, Option 2 of this policy. Retaliation against any individual for reporting harassment, whether by the harasser or from another source, will not be tolerated and will be treated in the same manner as harassment itself. Each offense will be investigated and sanctioned separately.

Individuals who are not themselves complainants, but who assist in a harassment investigation, will also be protected from retaliation under the policy.

## **III. FALSE ACCUSATION**

The College recognizes that the question of whether a particular course of conduct constitutes harassment requires a factual determination. The College recognizes also that false accusations of harassment can have serious effects on innocent persons. If, after investigation, it is clear that a person who has accused another of harassment has maliciously or recklessly made a false accusation, the accuser will be subject to appropriate sanctions, including termination. In such an event, the College will also take appropriate action to restore the reputation of the accused.

## **IV. COLLEGE ACTION WITHOUT COMPLAINT**

If the Vice President for Student Affairs and Dean of Students, the Vice-President for Academic Affairs and Dean of the College, or the Director of Human Resources has reason to believe (other than as a result of complaint made under this policy) that harassment has occurred, she or he may make an inquiry and determine whether there is sufficient reason to designate a harassment investigator. In this case, the College will follow the procedures set forth under Section I, Option 2 above.

## **V. DISCRIMINATORY HARASSMENT AND ACADEMIC FREEDOM**

Nothing in this policy should be construed to infringe on the academic freedom of members of the College community and their right to use the academic



forum provided by the College either to discuss controversial subjects or to express ideas with which some or most members of the College community might strongly disagree.

## **VI. STATE AND FEDERAL REMEDIES**

In addition to the above, if you believe you have been subjected to harassment, you may file a complaint with either or both of the government agencies set forth below. Using the College's complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim of 300 days.

### **U.S. Equal Employment Opportunity Commission**

John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203  
(617) 565-3200/(800) 669-4000

### **Massachusetts Commission Against Discrimination**

#### **Worcester Office**

484 Main Street  
Room 320  
Worcester, MA 01608  
(508) 453-9630

#### **Boston Office**

One Ashburton Place  
Sixth Floor, Room 601  
Boston, MA 02108  
(617) 994-6000

#### **Springfield Office**

436 Dwight Street  
Second Floor, Room 220  
Springfield, MA 01103  
(413) 739-2145

#### **New Bedford Office**

800 Purchase Street  
Room 501  
New Bedford, MA 02740  
(508) 990-2390

## Related Information:

Title: MCAD	<a href="http://www.mass.gov/mcad/">http://www.mass.gov/mcad/</a>
Title: EEOC	<a href="http://www.eeoc.gov/">http://www.eeoc.gov/</a>

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<sup>i</sup> Consistent with the privileges that attach to individuals' communications with either health care professionals or members of the clergy, licensed professionals and clergy can serve as confidential resources with whom students can discuss unlawful harassment and its effects. Those individuals have been trained to understand the limits of the privilege they enjoy. If, for example, the substance of a communication from a student who is under the age of 18 involves what may be allegations of abuse or neglect, then under Massachusetts law, even licensed professionals and clergy have an obligation to report the same to the Department of Social Services.

<sup>ii</sup> State and federal laws state that a complaint should be filed no more than 300 days after the last incident occurred, although complainants may subsequently inform the appropriate investigator of extenuating circumstances that may have prevented them from filing within the 300-day time frame. This time limit is consistent with MCAD and EEOC reporting guidelines.

<sup>iii</sup> Pursuant to Title VII of the Civil Rights Act of 1964 and Massachusetts law (c. 151B), the College is obligated to investigate reports of sexual harassment of and by its employees. Moreover, under Title IX, the College is obligated to respond to reports of sexual harassment of students by students and employees.

<sup>iv</sup> In other words, the College will evaluate a request for confidentiality in the context of its responsibility to provide a safe and fair environment for all. In balancing the interests of a request for confidentiality against the College's responsibility, the College will consider the following factors: (1) the seriousness of the alleged harassment, (2) whether there have been other complaints or reports against the alleged harasser, and (3) the rights of the alleged harasser to receive information about the accuser and the allegations if a formal proceeding with the potential to lead to sanctions may result.

