

SWEET BRIAR COLLEGE POLICY ON SEXUAL AND GENDER-BASED MISCONDUCT

I. Introduction

A. *Overview and Purpose:* Sweet Briar College is committed to providing all students and employees, regardless of gender, sexual orientation or gender identity, with an educational environment free from discrimination. The sexual harassment of students/employees, including sexual violence and exploitation, domestic and dating violence, and nonconsensual sexual contact or intercourse, gender-based harassment, and stalking, interferes with students'/employees' right to receive an education/workplace free from discrimination and, in the case of sexual violence, is a crime and is considered "Sexual Misconduct." Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct may be committed by men or by women, and it can occur between people of the same or different sex. This policy covers reports by students/employees of alleged Sexual Misconduct committed by Sweet Briar College students, faculty, staff, or third parties, as well as any report of alleged Sexual Misconduct by a Sweet Briar student/employee when the Reporting Party is not a Sweet Briar student/employee. Sexual Misconduct, as defined by this policy, comprises a broad range of behavior that will not be tolerated. Sexual Misconduct violates Sweet Briar College policy, federal civil rights laws and may also result in criminal prosecution. Sweet Briar College is committed to fostering a community that promotes prompt reporting of Sexual Misconduct, support for anyone who has been subject to Sexual Misconduct, and timely and fair resolution of Sexual Misconduct cases. Creating a safe and respectful environment is the responsibility of all members of the campus community.

B. *Title IX Coordinators.* Sweet Briar College has a Title IX Coordinator located in the Office of Athletics. The Title IX Coordinator: oversees the College's response to Title IX reports; identify and address any patterns or systemic problems revealed by such reports; has knowledge of all reports raising Title IX issues throughout the school; evaluate a student's/employee's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students/employees; conduct/oversee Title IX investigations, including investigating facts relevant to a report and determining appropriate interim measures and support for the Reporting Party; provide training to students, faculty and staff on Title IX issues; and are available to meet with students/employees as needed.

- Title IX Coordinator – Jodi Canfield – jcanfield@sbc.edu or (434) 381-6730
- Deputy Title IX Coordinator – Nickcole Maynard-Errami – nmaynarderrami@sbc.edu or (434) 381-6478

C. *Medical Attention.* It is important to seek immediate medical attention at a local hospital for several reasons:

- To assess and treat any physical injuries;
- To determine the risk of sexually transmitted diseases or pregnancy and to take appropriate measures; and

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- To gather evidence that may be used in a criminal prosecution if the Reporting Party chooses to press charges either immediately or at a later time.

Physical evidence should be collected immediately, ideally within the first 24 hours, and usually not later than 72 hours after the incident. In order not to destroy any evidence needed if the Reporting Party should decide to seek prosecution, it is important that she/he DOES NOT:

- Bathe or shower
- Brush or comb your hair
- Douche
- Change clothes (if clothes are changed, take the clothes worn at the time of the assault to the hospital in a PAPER bag)
- Eat or drink anything or brush or rinse your teeth if there was oral contact
- Touch items at the incident or crime scene
- Put on or remove makeup

Take a change of clothes to the hospital because some items of clothing may be kept as evidence. At the emergency room the physician may collect hair samples, semen and other evidence. The police will be contacted to take possession of these samples until the Reporting Party makes a decision about prosecution. The hospital serving the Sweet Briar area is Lynchburg General Hospital, (434) 200-3027, or 9-1-1 may be called. In the event of a sexual assault, the Reporting Party can tell the front desk at the hospital that she/he needs to be seen by a forensic nurse. A counselor from Lynchburg's Sexual Assault Response Program (SARP) will be called in to accompany her/him and to serve as an advocate.

II. Definitions

A. "Coercion" is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. There is no requirement that a party resists the sexual advance or request, but resistance is an example of a clear demonstration of non-consent.

B. "Dating Violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Reporting Party. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not, however, include acts covered under the definition of Domestic Violence.

C. "Domestic Violence" means a felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the Reporting Party;

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- By a person with whom the Reporting Party shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Reporting Party as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Reporting Party under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- By any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

D. “Effective Consent” is clear, knowing and voluntary. Consent is active, not passive. Silence in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable, clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other form of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Consent cannot be gained by force and/or incapacitation (see definitions below). In order to give effective consent, one must be of legal age.

E. “Force” Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that can overcome resistance or produce consent. For example: “Have sex with me or I will hit you;” “Okay, don’t hit me, I’ll do what you want.”

F. “Gender-based Harassment” means acts of aggression, intimidation, stalking, or hostility based on gender or gender-stereotyping constitutes gender-based harassment. Gender-based harassment can occur if students/employees are harassed either for exhibiting what is perceived as a stereotypical characteristic of their sex, or for failing to conform to stereotypical notions of masculinity or femininity. To constitute harassment, the conduct must unreasonably interfere with an individual’s education or educational activities or create an intimidating, hostile, demeaning, or offensive academic or living environment.

G. “Hostile Environment” may arise when unwelcome conduct of a sexual or gender-based nature affects a student’s/employee’s ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational and/or living environment. A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances create a hostile environment.

H. “Incapacitation,” or diminished capacity, means the physical and/or mental inability to make informed, rational judgments. States of Incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol and other drugs are involved, one does not have to be intoxicated or drunk to be considered incapacitated. Incapacitation is determined by how the alcohol consumed impacts a person’s decision making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the Respondent knew, or a sober, reasonable person in the position of the Respondent should have known, that the Reporting Party was incapacitated. Because incapacitation may be difficult to discern in some circumstances, students/employees are strongly encouraged to err on the side of caution; when in doubt, assume that

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another person is incapacitated and therefore unable to give Effective Consent. Being intoxicated, drunk or under the influence of a drug is never a defense to a report of Sexual Misconduct under this policy.

I. “Intimidation” means any threat of violence or other threatening behavior directed toward another person or group that reasonably leads the target(s) to fear for their physical well-being or to engage in sexual conduct for self-protection.

J. “Non-Consensual Sexual Contact” means Sexual Contact that occurs without Effective Consent. “Sexual Contact” means the deliberate, direct or indirect touching of a person's intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using Force to cause a person to touch his or her own or another person's intimate parts.

K. “Non-Consensual Sexual Intercourse” means Sexual Intercourse that occurs without Effective Consent. “Sexual Intercourse” means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.

L. “Reporting Party” is the person impacted by the alleged sexual misconduct. The person making the report to the Title IX Coordinator is not necessarily the same person impacted by the alleged sexual misconduct.

M. “Respondent” is a person against whom a report of a possible violation of the sexual misconduct policy has been made.

N. “Responsible Employee” is an employee of the College who has the authority to take action to redress the alleged misconduct with appropriate College officials, or an individual whom a student/employee could reasonably believe has this authority or responsibility to redress or report the alleged misconduct. The College has defined **all** employees as Responsible Employees/Mandatory Reporters, including Resident Advisors. The exceptions to mandatory reporting include members of the clergy, medical professionals, and licensed counselors including Horizon, Blue Ridge Medical and pastors, preachers and/or ministers.

O. “Sexual Exploitation” means taking sexual advantage of another person without Effective Consent and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such person; causing the prostitution of another person; recording, photographing, or transmitting identifiable images of private sexual activity and/or intimate parts (including genitalia, groin, breast or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.

P. “Sexual Harassment” means unwelcome conduct of a sexual nature which unreasonably interferes with a person’s college employment, academic performance or participation in college programs or activities or creates a working, learning, program, or activity environment that a

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reasonable person would find intimidating, hostile or offensive. Sexual Harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence. In evaluating any report of sexual harassment the perceived offensiveness of a particular expression, standing alone, is not sufficient by itself to constitute sexual harassment. The conduct in question must be objectively intimidating, hostile or offensive and interferes with a person's right to equally participate in programs and activities of the College.

Q. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either fear for the person's safety or the safety of others, or suffer substantial emotional distress. For the purpose of this definition—

- "Course of conduct" means two or more acts, including, but not limited to, acts in which the 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.
- "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require or involve medical or other professional treatment or counseling.
- "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Reporting Party.

III. Reporting Sexual Misconduct

General. The College encourages students/employees impacted by Sexual Misconduct to talk promptly to someone about what happened, so that students/employees who have been assaulted can get the support they need, and the College can respond appropriately. Different employees on campus have different abilities to maintain a student's/employee's confidentiality. Some are required to maintain near complete confidentiality. All employees designated as mandatory reporters are required to report all the details of an incident (including the identities of both the Reporting Party and the Respondent) to the Title IX coordinator. A report to these employees (Responsible Employees/Mandatory Reporters) constitutes a report to the College – and generally obligates the College to investigate the incident and take appropriate steps to address the situation. The exceptions to mandatory reporting include members of the clergy, medical professionals, and licensed counselors.

This policy is intended to make students/employees aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they be sexually assaulted.

Sweet Briar works with Horizon Behavioral Health to provide mental health counseling services to our students. Horizon will have counselors on site Monday, Wednesday, and Friday from 9 am-5 pm and Thursdays from 9 am-9 pm at their office number of (434) 946-2316.

- A. *Reporting to a Confidential Resource.* Professional, licensed counselors, pastoral counselors/members of the clergy, and licensed health care professionals who provide mental- health counseling to members of the school community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an alleged incident to the Title IX coordinator without a student's/employee's permission.

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- B. *Reporting to Campus Safety.* A member of the Sweet Briar College Campus Safety Department is always on patrol on campus, and is available to provide assistance to our students/employees. A report of Sexual Misconduct may be made at any time, day or night, by contacting the Campus Safety officer on duty at (434) 381-6111. Campus Safety officers are considered Responsible Employees who will report the incident to a Title IX Coordinator.
- C. *Reporting to a Responsible Employee.* All Responsible Employees must report all experienced or observed alleged incidents of Sexual Misconduct to a Title IX Coordinator, who is required to investigate and take reasonable action. As noted above, the College has defined **all** employees as Responsible Employees/Mandatory Reporters, including Resident Advisors:

Before a Reporting Party reveals any information to a Responsible Employee, the employee should ensure that the Reporting Party understands the employee's reporting obligations – and, if the Reporting Party wants to maintain confidentiality, direct the Reporting Party to confidential resources. If the Reporting Party wants to tell the Responsible Employee what happened but also maintain confidentiality, the employee should tell the Reporting Party that the College will consider the request, but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee will also inform the Coordinator of the Reporting Party's request for confidentiality. Responsible Employees will not pressure a Reporting Party to request confidentiality, but will honor and support the Reporting Party's wishes, including for the College to fully investigate an incident. Still, Responsible Employees will not pressure a Reporting Party to make a full report if the Reporting Party is not ready to do so. To the extent possible, information reported to a Responsible Employee will be shared only with people responsible for handling the College's response to the report.

- D. A report of Sexual Misconduct may be made at any time, day or night, by contacting the following resources:
- a. Campus Safety: (434) 381-6111
 - b. Student Life Professional Staff On Call: (434) 841-7202
 - c. Resident Advisor On Call: (434) 841-4419
- E. A Review Committee is mandated by Virginia law to determine whether reporting an act of alleged Sexual Misconduct to law enforcement is required. The Review Committee (a) consists of three or more persons, including the Title IX Coordinator or designee, a representative of law enforcement/campus safety, and a student life representative; (b) reviews information related to acts of sexual violence; may obtain law-enforcement records, criminal history record information, health records, available institutional conduct or personnel records, and known facts and circumstances of the information reported or information or evidence known to the College or to law enforcement; and (c) conducts its review in compliance with federal privacy law. The Sweet Briar College Threat Assessment Team serves as the institutions Review Committee.

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- F. **False Reporting.** All College community members are expected to provide truthful information in any report or proceeding under this Policy. Submitting or providing information that the person knew or reasonably should have known was false or misleading, or was submitted or provided with a view to personal gain or with the intent to harm another in connection with an alleged incident is prohibited and subjects the one submitting or providing the information to disciplinary action and possible sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.
- G. *Other Campus Reporting.* Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which students/employees disclose incidents of sexual violence, are not considered notice to the College of sexual violence for purposes of triggering its obligation to investigate any particular incident(s).

Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about students’/employees’ Title IX rights at these events.

- H. *Reporting to Local Law Enforcement.* As noted earlier, Sexual Misconduct may constitute both a violation of college policy and criminal activity. The College encourages students/employees to report alleged Sexual Misconduct promptly to Campus Safety as well as the Amherst County Sheriff’s Department. The Campus Safety Department can assist in contacting the County Sheriff.

Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations or reports are not determinative of whether Sexual Misconduct, for purposes of this policy, has occurred. In other words, conduct may constitute Sexual Misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and therefore, decline to prosecute. The filing of a report of Sexual Misconduct under this policy is independent of any criminal investigation or proceeding, and (except that the College’s investigation may be delayed temporarily while police criminal investigators are gathering evidence) the College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and take interim measures to protect the Reporting Party and the College community.

The Amherst County Sheriff Office may be contacted by calling (434) 946-9600 or 9-1-1.

- I. *Reporting to Off-Campus Resources.* Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the College unless the Reporting Party requests the disclosure and signs a consent or waiver form. The following is contact information for these off-campus resources:
- a. Sexual Assault Response Program (Lynchburg)- (434) 947-7422 or (888) 947-7273
 - b. Lynchburg General Hospital- 1901 Tate Springs Road, Lynchburg (434) 947-3000
 - c. Crime Victim Assistance Info-Line (888) 887-3418

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- J. *Reporting to Office for Civil Rights.* A student/employee also has the option of contacting the Office for Civil Rights regarding sex discrimination issues at: Washington D.C. (Metro), Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-1475, Telephone: (202) 453-6020, FAX: (202) 453-6021; TDD: 800-877-8339, e-mail: OCR.DC@ed.gov.

IV. Initial Process

A. *Meeting with Reporting Party.* As soon as possible after a report is made alleging Sexual Misconduct, a Title IX coordinator will schedule a meeting with the Reporting Party to

- Determine the name of the Respondent, and the date, location and nature of the alleged sexual misconduct,
- Identify forms of support or immediate interventions available to the Reporting Party (e.g., referrals to appropriate law enforcement agencies or the Office of the Commonwealth's Attorney; referrals for medical treatment; and referrals for counseling at the College's Counseling Center, Student Health Services, or off-campus resources described in this Policy), and
- Inform the reporting party of the duty to investigate. The meeting may also involve a discussion of any accommodations that may be appropriate concerning the Reporting Party's academic, College housing, and/or College employment arrangements.

B. *Reporting Party Requests Confidentiality.* If the Reporting Party does not wish to pursue a report and/or requests that his or her report remain confidential, the College may nevertheless be required to investigate and take reasonable action in response to the Reporting Party's request to the extent it can do so within the restrictions imposed by the Reporting Party. The Title IX Coordinator will inform the Reporting Party that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent(s) may be limited. The College has designated the Title IX Coordinator(s) as the person(s) to evaluate whether the Reporting Party's request for confidentiality can be honored. When weighing a Reporting Party's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator managing the case will consider a range of factors, to include, but not limited to:

The increased risk that the Respondent will commit additional acts of sexual or other violence, such as:

- Whether there have been other sexual violence reports about the same respondent
- Whether the Respondent has a history of arrests or records from a prior school indicating a history of violence
- Whether the Respondent threatened further sexual violence or other violence against the Reporting Party or others;
- Whether the sexual violence was committed by multiple Respondents;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the Reporting Party is a minor;
- Whether the College possesses other means to obtain relevant evidence of the sexual violence (i.e. security cameras or personnel, physical evidence, etc.)
- If the Reporting Party's report reveals a pattern of perpetration (e.g., via illicit drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the College to investigate, and if

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appropriate, pursue disciplinary action. Even if the College cannot take disciplinary action against the Respondent because the Reporting Party insists on confidentiality or that the report not be adjudicated, the College nonetheless is required to take prompt and effective action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence, such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate surveys; and/or revisiting its policies and practices.

If the College determines that it cannot maintain a Reporting Party's confidentiality, the College will

- Inform the Reporting Party of the duty to investigate
- To the extent possible, only share information with people responsible for handling the College's response, and
- If requested by the Reporting Party, inform the Respondent that the Reporting Party asked the College not to investigate or seek discipline.

The College may not require a Reporting Party to participate in any investigation or disciplinary proceeding. If requested by the Reporting Party, the College will inform the Respondent that the Reporting Party asked the College not to investigate or seek discipline, but that the College made the decision to go forward.

C. Other Related Misconduct. In accordance with its policies, the College is empowered to hear allegations of, and to impose sanctions for, Sexual Misconduct and any other violations of the College's code of conduct directly related to the circumstances involved in the alleged Sexual Misconduct or any alleged violations of this Policy. It is not, however, the practice of the College to pursue disciplinary action against a Reporting Party or witness for her or his improper use of alcohol or drugs that occur during the events involved in the alleged Sexual Misconduct, provided that such student/employee is acting in good faith as a Reporting Party or witness to the events. Students/employees, whether as parties to the proceedings or as witnesses, are expected to provide truthful testimony in accordance with the College's Honor Code and Employee Code of Conduct.

D. Interim Measures. The Title IX Coordinator will notify the Reporting Party of his or her options to avoid contact with the Respondent and allow the Reporting Party to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The College will also ensure that the Reporting Party is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. Even when a school has determined that it can respect a Reporting Party's request for confidentiality and therefore may not be able to respond fully to an allegation of Sexual Misconduct and initiate formal action against an alleged Respondent, the College will take immediate action to protect the Reporting Party while keeping the identity of the Reporting Party confidential. These actions may include: providing support services to the Reporting Party; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred. The College should provide the Reporting Party with periodic updates on the status of the investigation. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The College will consider a number of factors in determining what interim

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measures to take, including, for example, the specific need expressed by the Reporting Party; the severity or pervasiveness of the allegations; any continuing effects on the Reporting Party; whether the Reporting Party and alleged Respondent share the same residence hall, dining hall, class, transportation, or job location; and whether judicial measures have been taken to protect the Reporting Party (e.g., civil protection orders). In general, when taking interim measures, the College will seek to minimize the burden on the Reporting Party.

E. *Retaliation*. It is a violation of College policy for anyone to retaliate against any person making a good faith report of Sexual Misconduct or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of Sexual Misconduct. For these purposes, “retaliation” includes intimidation, threats, or harassment against any Reporting Party or third party. Retaliation should be reported promptly to Campus Safety, a Title IX Coordinator, or to Student Life and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of Sexual Misconduct.

V. Resolution

A. *Investigation*. The Title IX coordinator will assign a Title IX investigator to conduct the investigation as applicable. Ordinarily, this investigation will include interviews with and obtaining statements from both parties, interviews with witnesses, and a review of documentary evidence. The College may be obligated to conduct this investigation regardless of the Reporting Party’s requests. Typically, an investigation will aim to be completed within sixty (60) days following receipt of the report. A written conclusion of the investigation will be distributed, concurrently, to both of the parties.

B. *Determination to Charge*. Following the conclusion of the investigation, the Title IX Coordinator will determine, based on the information obtained from the investigation, whether there is sufficient information available to charge the Respondent with an alleged violation of the policy. The Title IX Coordinator will provide written notification of the determination of the administrative review to the Reporting Party and Respondent concurrently. Should the Title IX Investigator determine that there is sufficient information to charge the Respondent, the Title IX Investigator will refer the case to the Title IX Coordinator, along with the investigator’s recommendation for outcome. The determination to charge the Respondent does not mean that the Respondent will be found responsible for a violation of the Code. Instead, it means that the Title IX Coordinator has determined that based upon the available information obtained from the investigation, the case warrants the rendering of a decision of Responsible for the sexual misconduct. The Respondent will only be found in violation if the Title IX Coordinator determines, by a preponderance of the evidence, that the Respondent has committed a violation of the policy.

Should the Title IX Coordinator determine that there is not sufficient information to charge the Respondent, the Title IX Coordinator will document the matter as closed. Determinations from the Title IX Coordinator are considered final.

C. *Advisors*. After a formal charge of conduct that violates this policy, the Reporting Party and Respondent may seek the advice and assistance of an Advisor of their choice, at their own expense. The role of the Advisor is to advise the Reporting Party or Respondent of applicable procedures. Advisors are also available to offer support and to provide information on additional resources. While Advisors may accompany the Reporting Party and Respondent at meetings,

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they may not present evidence, question witnesses, or otherwise participate. Either party may request a brief recess to consult with their Advisor, which will be granted at the discretion of the Title IX Coordinator or Investigator.

D. *Evidentiary Standard.* The evidence of alleged Sexual Misconduct will be evaluated under a “preponderance of the evidence” standard, meaning that the evidence must show that it is “more likely than not” that the Respondent violated the policy. The Respondent will be found to be responsible for the alleged Sexual Misconduct if the Title IX Coordinator concludes that such Sexual Misconduct more likely than not occurred based upon a review of all the evidence presented.

E. *Sanction.* If the Title IX Coordinator concludes that the alleged Sexual Misconduct occurred, the Title IX Coordinator may impose any sanction that he or she finds to be fair and proportionate to the violation. In determining an appropriate sanction, the Title IX Coordinator may consider any record of past violations of the standards of conduct, as well as the nature and severity of such past violation(s). The Title IX Coordinator will consider as part of deliberations whether the sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation on the Reporting Party and the Sweet Briar College community. Any sanction imposed will be described in the written decision of the Title IX Coordinator.

The Title IX Coordinator may impose any one or more of the following sanctions on a Respondent determined to have violated the Policy:

- A. Reprimand/warning
- B. Restitution and/or fines
- C. Changing the Respondent’s academic schedule
- D. Disciplinary probation
- E. Revocation of honors or awards
- F. Restricting access to College facilities or activities (including student/employee activities and campus organizations)
- G. Community service
- H. Issuing a “no trespass/no contact” order to the Respondent or requiring that such an order remain in place
- I. Moving the Respondent’s residence
- J. Dismissal or restriction from College employment
- K. Removal from student or on campus housing
- L. Suspension (limited time or indefinite)
- M. Expulsion
- N. Revocation of degree

In addition to any other sanction (except where the sanction is expulsion or revocation of a degree), the College may require any Respondent determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the misconduct violation at issue. The College may also require counseling or other support services for the Respondent.

F. *Decision.* Following the investigation, the Title IX Coordinator will issue a written decision letter, delivered concurrently to both the Respondent and the Reporting Party. The Title IX Coordinator will generally render a decision within five (5) to seven (7) business days after the

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conclusion of an investigation. The decision letter will set forth the name of the Respondent; the violation(s) of the policy for which the Respondent was found responsible/not responsible, if any; any essential findings supporting the Title IX Coordinator's decision on the issue of responsibility; and the sanction imposed, if any. The Respondent shall not be notified of any individual remedies offered or provided to the Reporting Party.

- G. *Preliminary Investigation Report.* At the conclusion of the investigation, the Investigator will prepare a Preliminary Investigation Report summarizing the information gathered and outlining the contested and uncontested information. The Preliminary Investigation Report will not include any factual findings, credibility determinations, or determinations of responsibility. The Reporting Party and the Responding Party will have an opportunity to review the Preliminary Investigation Report; meet with the Investigator; submit additional written comments and information to the Investigator; and identify any additional witnesses or evidence for the Investigator to pursue. The Investigator will designate a reasonable time for this review and response by the parties, not to exceed five (5) working days. Once the parties have had the opportunity to provide feedback on the Preliminary Investigation Report and the Investigator has completed any additional investigative steps, the Title IX Coordinator will review the Report for thoroughness and make further investigative recommendations as deemed appropriate. The Preliminary Investigation Report is not complete until the Title IX Coordinator is satisfied that all appropriate investigative steps have been taken.
- H. *Effective Date of Sanction.* Sanctions imposed by the Title IX Coordinator are considered effective immediately, unless otherwise indicated in the findings and notice of outcome, if advisable to protect the welfare of the Reporting party or the campus community. The Title IX Coordinator may notify other campus officials to implement a decision that includes sanctions to protect the welfare of the Reporting Party or the campus community.

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Appendix: § 23.1-806. Reporting of acts of sexual violence.

A. For purposes of this section:

"Campus" means (i) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner relating to, the institution's educational purposes, including residence halls, and (ii) any building or property that is within or reasonably contiguous to the area described in clause (i) that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes, such as a food or other retail vendor.

"Non-campus building or property" means (i) any building or property owned or controlled by a student organization officially recognized by an institution of higher education or (ii) any building or property owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

"Public property" means all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

"Responsible employee" means a person employed by a public institution of higher education or nonprofit private institution of higher education who has the authority to take action to redress sexual violence, who has been given the duty of reporting acts of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate institution designee, or whom a student could reasonably believe has this authority or duty.

"Sexual violence" means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

"Title IX coordinator" means an employee designated by a public institution of higher education or nonprofit private institution of higher education to coordinate the institution's efforts to comply with and carry out the institution's responsibilities under Title IX (20 U.S.C. § 1681 et seq.). If no such employee has been designated by the institution, the institution shall designate an employee who will be responsible for receiving information of alleged acts of sexual violence from responsible employees in accordance with subsection B.

B. Any responsible employee who in the course of his employment obtains information that an act of sexual violence may have been committed against a student, faculty, or staff member that may have occurred on campus, in or on a noncampus building or property, or on public property shall report such information to the Title IX coordinator as soon as practicable after addressing the immediate needs of the victim.

C. Upon receipt of information pursuant to subsection B, the Title IX coordinator or his designee shall promptly report the information, including any personally identifiable information, to a review committee established pursuant to subsection D. Nothing in this section shall prevent the

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Title IX coordinator or any other responsible employee from providing any information to law enforcement with the consent of the victim.

D. Each public institution of higher education and nonprofit private institution of higher education shall establish a review committee for the purposes of reviewing information relating to acts of sexual violence, including information reported pursuant to subsection C. Such review committee shall consist of three or more persons and shall include the Title IX coordinator or his designee, a representative of law enforcement, and a student affairs representative. If the institution has established a campus police department pursuant to Article 3 (§ 23.1-809 et seq.), the representative of law enforcement shall be a member of such department; otherwise, the representative of law enforcement shall be a representative of campus security. The review committee may be the threat assessment team established under § 23.1-805 or a separate body. The review committee may obtain law-enforcement records, criminal history record information as provided in §§ 19.2-389 and 19.2-389.1, health records as provided in § 32.1-127.1:03, available institutional conduct or personnel records, and known facts and circumstances of the information reported pursuant to subsection C or information or evidence known to the institution or to law enforcement. The review committee shall be considered to be a threat assessment team established pursuant to § 23.1-805 for purposes of (i) obtaining criminal history record information and health records and (ii) the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The review committee shall conduct its review in compliance with federal privacy law.

E. Upon receipt of information of an alleged act of sexual violence reported pursuant to subsection C, the review committee shall meet within 72 hours to review the information and shall meet again as necessary as new information becomes available.

F. If, based on consideration of all factors, the review committee, or if the committee cannot reach a consensus, the representative of law enforcement on the review committee, determines that the disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals as set forth in 34 C.F.R. § 99.36, the representative of law enforcement on the review committee shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of sexual violence. Such disclosure shall be for the purposes of investigation and other actions by law enforcement. Upon such disclosure, the Title IX coordinator or his designee shall notify the victim that such disclosure is being made. The provisions of this subsection shall not apply if the law-enforcement agency responsible for investigating the alleged act of sexual violence is located outside the United States.

G. In cases in which the alleged act of sexual violence would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, the representative of law enforcement on the review committee shall inform the other members of the review committee and shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and provide to him the information received by the review committee without disclosing personally identifiable information, unless such information was disclosed pursuant to subsection F. In addition, if such consultation does not occur and any other member of the review committee individually concludes that the alleged act of sexual violence would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, that member shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and provide to him the information received by the review committee without disclosing personally identifiable information, unless such information was disclosed pursuant to subsection F.

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H. At the conclusion of the review, the Title IX coordinator and the law-enforcement representative shall each retain (i) the authority to proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the review team's considerations, which shall be maintained under applicable state and federal law.

I. No responsible employee shall be required to make a report pursuant to subsection B if:

1. The responsible employee obtained the information through any communication considered privileged under state or federal law or the responsible employee obtained the information in the course of providing services as a licensed health care professional, an employee providing administrative support for such health care professionals, a professional counselor, an accredited rape crisis or domestic violence counselor, a campus victim support personnel, a member of clergy, or an attorney; or
2. The responsible employee has actual knowledge that the same matter has already been reported to the Title IX coordinator or to the attorney for the Commonwealth or the law-enforcement agency responsible for investigating the alleged act of sexual violence.

J. Any responsible employee who makes a report required by this section or testifies in a judicial or administrative proceeding as a result of such report is immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

K. The provisions of this section shall not require a person who is the victim of an alleged act of sexual violence to report such violation.

L. The institution shall ensure that a victim of an alleged act of sexual violence is informed of (i) the available law-enforcement options for investigation and prosecution; (ii) the importance of collection and preservation of evidence; (iii) the available options for a protective order; (iv) the available campus options for investigation and adjudication under the institution's policies; (v) the victim's rights to participate or decline to participate in any investigation to the extent permitted under state or federal law; (vi) the applicable federal or state confidentiality provisions that govern information provided by a victim; (vii) the available on-campus resources and any unaffiliated community resources, including sexual assault crisis centers, domestic violence crisis centers, or other victim support services; and (viii) the importance of seeking appropriate medical attention.

2015, cc. 737, 745, § 23-9.2:15; 2016, c. 588.