



Procedures in Support of Policy S1.14 Sexual and Gender-Based Misconduct and Interpersonal Violence

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Introduction

These Procedures are promulgated under Stonehill College [Policy S1.14 Sexual and Gender-Based Misconduct and Interpersonal Violence](#).¹ They shall at all times be interpreted consistent with Title IX of the Higher Education Amendment of 1972 (“Title IX”), including its implementing regulations at 34 CFR 106, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) as amended by the Reauthorization of the Violence Against Women Act of 2013 (“VAWA”), which are collectively referred to as “the Laws.”

An explanation of how Stonehill College addresses the requirements of both Title IX and VAWA under its investigative procedures can be found at [Appendix B](#) of this document. The College, as detailed below, has determined that it will use the following procedures for complaints of alleged harassment under both Title IX and VAWA.

Generally, a claim of misconduct or interpersonal violence that is not sexual/gender-based in nature but is related to a claim of gender-based misconduct will be investigated and decided under these procedures. The College retains the discretion to simultaneously investigate any conduct that is related to the gender-based misconduct in question using these Procedures or any other appropriate policies or procedures at the College. This may include, but is not limited to, any act of misconduct or interpersonal violence that is not sexual/gender-based in nature that is alleged to have been committed in the same time frame or by the same individual(s) being investigated under these Procedures.

Definitions Used Within These Procedures²

Advisor

An individual who is selected by a party or provided by the College who helps the party prepare for meetings and hearings, accompanies the party in any proceedings, and advises the party during the appeals process. The Advisor can, but is not required to, be an attorney, and may be any person who is not a party, witness, or otherwise involved in the investigation.

¹ In this document, the term “gender-based misconduct” refers to any and all forms of prohibited conduct, including conduct that does not meet specific legal definitions of harassment or assault. The term may have different meanings within this document depending on whether it is being used in connection with Title IX, the Clery Act, VAWA, state law, and/or College policy or procedure.

² The definitions in the Procedures may differ from those used in the civil or criminal laws of the Commonwealth of Massachusetts. In some cases, the definitions include behaviors that, while not torts or crimes under Massachusetts law, still violate the College’s standards of conduct for Employees and Students. In addition, certain conduct may be punishable under Massachusetts or federal criminal statutes, civil law, and College policy. These processes are separate and distinct from one another but can run concurrently. The offense of rape (generally) is codified in Massachusetts General Law c.265, s.22 and may be accessed by visiting <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/rape.html#RapeGenerally>. The offenses of domestic violence, harassment and stalking are codified in various statutes in the criminal code and may be accessed here: <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/domviolence.html#MassachusettsLaw>. In the absence of a College definition, the state definition will inform the College’s application of the Procedures.

Complainant

Title IX regulations define the Complainant as the individual who is alleged to be the victim of conduct that could constitute sexual harassment. The College further expands the definition to include any person who is alleged to be the victim of gender-based misconduct. At times, when referring to a law enforcement process or in other circumstances, the Complainant may also be referred to as a “victim” or “reporting party.” The College may use these words interchangeably, and no weight should be given to the word choice as an indication of the College’s opinion of, or position on, the allegations presented.

Confidential Resource Providers

Trained Employees designated by the College who offer confidential services and information to Students and Employees regarding policies, procedures, and resources related to sexual violence occurring on campus, and who receive training in the awareness and prevention of sexual misconduct and trauma-informed response.

Consent

A person who wishes to engage in sexual activity must ensure that they have the consent of their partner. Consent means informed, freely, and voluntarily given agreement, communicated by clearly understandable words or actions, to participate in each form of sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have demonstrated agreement between them to participate in the sexual activity.

Consent will not be assumed by lack of active resistance, especially with respect to individuals with physical impairments. While a person’s non-verbal actions can constitute consent, consent will not be assumed by silence; verbal communication between two people is the best way to ensure that each person knows the intentions of the other person. In the absence of mutually understandable words or actions, neither party should assume that it is permissible to engage in sexual activity.

Consent to some form(s) of sexual activity does not necessarily mean consent to other forms of sexual activity. Additionally, prior consent to sexual activity or a current or past intimate/romantic relationship between two people does not constitute consent to sexual activity.

Consent to sexual activity may be withdrawn at any time, at which point all sexual activity for which consent has been withdrawn must cease.

Consent may never be given by minors (for example, in Massachusetts, those not yet 16 years of age); mentally disabled persons; those who are unconscious, asleep, unaware, or otherwise physically helpless; those who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary); or those who acquiesce to sexual activity based on the use of fraud or force (actual or implied), whether that force be physical force, threats, or coercion.

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 contact.

Coercion is verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual contact.

Decision Maker

Representative of the College who, in the course of the Grievance Process, issues the final determination of responsibility. This representative has been designated as the Associate Vice President of Student Affairs/Dean of Students and is not the same person as the Hearing Officer, as defined below.

Employee

Anyone who performs services for the College for whom the College controls what work will be done and how it will be done or who the College has otherwise informed is subject to these rules whether or not the College controls what work will be done and

how it will be done, as may be further defined by policy [E3.2 Employee Classification](#) or [A9.1 Faculty Members, Appointment, Separation, and Dismissal](#).

Evidence

Any information in any format obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including information upon which the College does not intend to rely in reaching a determination regarding responsibility and including inculpatory or exculpatory information whether obtained from a party or other source.

Formal Complaint

The Title IX Regulations define a Formal Complaint as a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent, requesting that the College investigate an allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be an Employee, Student, or individual otherwise participating in or attempting to participate in the College's program or activities. In certain limited situations, such as in the case of a guest or affiliate, the Title IX Coordinator may also file the complaint; in such circumstances, the Title IX Coordinator is not a Complainant or otherwise a party. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email. Under the Title IX Regulations, a document means a physical or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

Grievance Process/Procedures

The Title IX Regulations refer to the process set up by the College to address complaints filed by Students or Employees as a Grievance Process or Grievance Procedures. A grievance is an official statement of a complaint over something believed to be wrong or unfair. A process is a series of actions or steps taken in order to achieve a particular end. Within this context, the Grievance Process is the series of steps and actions the College has put in place to address complaints filed by individuals who believe they have been treated in a manner that violates the College's sexual harassment/misconduct policies.

Hearing Officer

Person designated by the General Counsel to oversee the hearing. The Hearing Officer's duties include but are not limited to receiving the Investigative Report, coordinating with the parties to schedule the hearing, delaying the hearing for a legitimate purpose with notice to the parties in writing, judging whether a question posed by a party at the hearing is allowable, and submitting a recommendation of determination to the Decision Maker at the conclusion of the hearing. The Hearing Officer and the Decision Maker are not the same individual.

Incapacitation

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of consuming alcohol or drugs. Incapacitation is a state in which an individual is unable to give consent because they lack the ability for self-care, i.e., the person lacks the capacity to understand the "who, what, when, where, why, or how" of the sexual interaction. The impact of alcohol and other drugs varies from person to person.

Individuals who initiate sexual activity must look for the common and obvious warning signs of incapacitation in their partner. Although every person may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence.

A person who knows or should have reasonably known that another person is incapacitated may not engage in sexual activity with that person.

Use of alcohol or other drugs does not excuse a violation of this Policy.

Preponderance of the Evidence

Preponderance of the Evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Respondent

The Title IX Regulations define Respondent as the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The College has expanded the definition of Respondent to include any person who has been reported to be the perpetrator of conduct that could constitute sexual harassment or was complicit in the act(s) of gender-based misconduct.

Supportive Measures

Title IX Regulations define Supportive Measures as non-disciplinary, non-punitive individualized services offered as appropriate, reasonably available, and free of charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the College's employment or education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's employment or educational environment, or designed to deter sexual harassment. Supportive Measures may include counseling, extensions of deadlines or other employment- or course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide them. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

Student

Any person enrolled at the College or as further defined in [Policy S1.3, Community Standards and Student Conduct Process](#).

Prohibited Conduct

The following conduct is prohibited. Any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of any act listed below by another person or group of persons (such as a Student or Employee organization) is also prohibited. In addition, attempts to commit such conduct is also prohibited under these Procedures.

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based on the Complainant'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. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Examples may include, but are not limited to: slapping; pulling hair; punching; damaging one's property; driving recklessly to scare someone; harassment directed toward a current or former partner; threats of abuse such as threatening to hit, harm, or use a weapon on another (whether victim or acquaintance, friend, or family member of the victim); or other forms of verbal threats.

Domestic Violence

A felony or misdemeanor crime of violence committed:

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

- by a person similarly situated to a spouse of the victim 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 victim 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.

Gender-Based Harassment

Acts of verbal, nonverbal, or physical aggression; intimidation; or hostility based on gender or gender-stereotyping. Gender-Based Harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic of their sex or for failing to conform to stereotypical notions of gender expression. In order to constitute harassment, the conduct must be such that it has the purpose or effect of unreasonably interfering with an individual's academic or employment performance or creating an intimidating, hostile, demeaning, or offensive living, learning, or working environment. Sexual assault constitutes an extreme form of Gender-Based Harassment. Based on the specific allegations, Gender-Based Harassment may also constitute Sexual Harassment. The College may determine that an allegation of Gender-Based Harassment, while not actionable under Title IX, may still be actionable under other conduct and grievance policies and procedures maintained by the College.

Retaliation

The College encourages Employees and Students to report all incidents of Gender-Based Harassment or interpersonal violence. Any threat of retaliation against a Complainant, Respondent, or witness, or other attempts to prevent the reporting of an incident of Gender-Based Harassment or interpersonal violence or cooperation with the investigation is itself prohibited and will result in a subsequent and separate investigation. Retaliation includes, but is not limited to, intimidation, threats, coercion, and any adverse action. Adverse action includes, but is not limited to, decisions pertaining to hiring, firing, promotions, demotions, compensation, benefits, grading; pressure to withdraw from a class, work project, or Student or Employee organization; and ignoring or refusing requests for assistance. The exercise of rights protected under the First Amendment do not constitute retaliation.

Sexual Harassment

Consistent with the requirements of federal regulations, Sexual Harassment actionable under Title IX means the following:

1. An Employee conditioning an educational or employment benefit or service upon a person's participation in unwelcome sexual conduct (often called quid pro quo harassment); or
2. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education or employment program or activity; or
3. Sexual Assault as that crime is defined in the Clery Act regulations (34 CFR 668.46).

For more information regarding Sexual Harassment, please see [Policy E3.35 Harassment and Discrimination](#). For more information regarding consensual Employee-Student relations, see [Policy E3.47 Employee-Student Consensual Relations](#). College policy generally prohibits Employees from engaging in romantic or sexual relations with Students who are enrolled at the College, even if the relationship is consensual.

Sexual Misconduct

Stonehill College strictly prohibits sexual misconduct in all forms. Sexual misconduct includes the following:

Non-Consensual Sexual Intercourse, which is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. The College intends for this definition to be interpreted as equivalent to the FBI UCR definition of forcible rape and therefore equivalent to the definition of Sexual Assault under 34 CFR 668.46.

- Non-Consensual Sexual Contact, which includes but is not limited to, the touching of the private parts of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because

of their age or because of their temporary or permanent mental incapacity. The College intends for this definition to be interpreted as equivalent to the FBI UCR definition of fondling and therefore equivalent to the definition of Sexual Assault under 34 CFR 668.46.

- Sexual Exploitation, which occurs when a Student or Employee takes advantage of another individual without that individual's consent for their own advantage or benefit, or for the benefit or advantage of anyone other than the individual being exploited; or behavior that does not otherwise constitute one of the other offenses specifically noted in this Policy. Examples of sexual exploitation include, but are not limited to:
 - Sexual exhibitionism
 - Non-consensual video, photographing, or audio-recording of sexual activity and/or distribution or threat of distribution of these materials without the consent of all parties via mediums such as the internet or cellular technologies
 - Going beyond the boundaries of consent (e.g., allowing people to watch consensual sex without knowledge of the participants)
 - Peeping or other voyeurism, which is the act of observing a person involved in sexual contact/activity, sexual intercourse, or in a state of undress without their knowledge or consent
 - Knowingly transmitting a Sexually Transmitted Infection (STI) to another individual
- Sexual Harassment, which may include, but is not limited to, unwelcome:
 - Sexual advances, whether or not they involve physical touching
 - Requests for sexual favors in exchange for actual or promised job or academic benefits, such as favorable reviews, salary increases, promotions, increased benefits or academic advantages (also known as quid pro quo harassment)
 - Lewd or sexually suggestive comments, including jokes, innuendos, or gestures
 - Displaying sexually suggestive objects, pictures, magazines, or cartoons
 - Commenting about or inappropriately touching an individual's body
 - Inquiries or discussion about an individual's sexual experiences or activities and other written or oral references to sexual conduct
- The use of drugs or alcohol to render another person physically or psychologically Incapacitated as a precursor to or part of sexual activity.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress. For the purposes of this definition:

- "course of conduct" means two or more acts, including, but not limited to, acts 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;
- "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim; and
- "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking behaviors and activities may include, but are not limited to, the following:

- non-consensual communication including face-to-face communication; telephone calls; voice messages; text messages, email messages, and other forms of electronic communication; written letters; gifts; or any other communications that are undesired and/or place another person in fear
- use of online, electronic, or digital technologies including:
 - posting of pictures or information to social media
 - sending unwanted/unsolicited emails, voicemails, or chat requests
 - posting private or public messages on internet sites, social networking sites, and/or bulletin boards that are implicitly or explicitly directed to an individual
 - installing spy-ware on an individual's computer or other electronic device or using Global Positioning Systems (GPS) or other technology to monitor an individual
 - pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by an individual
 - surveillance and other types of observation, whether by physical proximity or electronic means
- trespassing on the property owned or being utilized by the Complainant
- vandalizing the personal property of the Complainant or an individual close to the Complainant
- non-consensual touching
- direct physical and/or verbal threats against an individual or their loved ones
- gathering information about an individual from family, friends, co-workers, and/or classmates
- manipulative and controlling behaviors, such as threats to harm oneself or threats to harm someone close to the individual
- defamation (lying to others about the individual, etc.)

Jurisdiction

These Procedures pertain to acts of gender-based misconduct or interpersonal violence committed by any Student, Employee, or third party against another Student, Employee, or third party. The College may have jurisdiction over a Formal Complaint under Title IX or VAWA, or in certain circumstances under both Title IX and VAWA. The College may also have jurisdiction under its Community Standards Policies. The College maintains jurisdiction over any Student or Employee as those terms are defined herein.

Jurisdiction Under Title IX

The Title IX investigative procedures apply to all investigations of claims where the alleged harassment:

- occurred in the United States; and
- occurred within the College's own program or activity or occurred in a building owned or controlled by the College; and
- if substantiated, the allegations would constitute a violation of Title IX Sexual Harassment.

Jurisdiction Under VAWA

VAWA does not require that the alleged gender-based misconduct, interpersonal violence, or harassment occurred within the United States, nor does it require that the Complainant be participating in a College program or be under the College's control. Therefore, the College may have jurisdiction over a Formal Complaint where the alleged harassment occurred overseas or outside of a College program or activity. The College will follow the Title IX investigative procedures as outlined below in circumstances where the alleged harassment may constitute a violation of VAWA.

Jurisdiction Under the College's Community Standards Policy

When the conduct occurs outside the context of Title IX and VAWA, but the College determines that the allegations constitute an issue that may have a continuing adverse effect on College property, programs, or activities (including programs abroad), the College may investigate and take action consistent with those policies that pertain to Community Standards, personal conduct, and/or Employee, faculty, or Student grievances.

Determination of Jurisdiction

The Title IX Coordinator shall make a determination of jurisdiction and include this determination in the Notice of Allegations.

Notice of Non-Discrimination and Notice of Coordination with Harassment & Discrimination Policy

Stonehill College is committed to providing and promoting a learning and working environment that is free from sexual harassment and other forms of unlawful harassment and discrimination for everyone and does not discriminate on the basis of race, gender, disability, age, marital status, religion, color, sexual orientation, gender identity, national origin, genetics, veteran's status, or other legally protected status in any of its education or employment programs and activities. This policy prohibits specific forms of behavior that may violate Title IX; relevant provisions of the VAWA; Title VII of the Civil Rights Act of 1964 ("Title VII"); the Clery Act; and M.G.L. ch. 151B - Unlawful Discrimination Because of Race, Color, Religious Creed, National Origin, Ancestry or Sex.

The College recognizes that it is important to coordinate these Procedures with other existing policies and processes related to harassment and discrimination, knowing that harassment related to an individual's sex, sexual orientation, gender identity, or gender expression can occur in conjunction with misconduct and harassment related to a person's race, ethnicity, national origin, religion, age, pregnancy or parenting status, disability, or other protected status. Therefore, when a report is made of harassment or discrimination based on sex as well as harassment or discrimination based on some other protected status, the College's response will be governed by these Procedures. Questions about which policy or process applies in a specific instance should be directed to the Title IX Coordinator.

Employees should seek further information regarding equal opportunity, disability, harassment, discrimination, and retaliation that is not based on sex or gender with the Title IX Coordinator (see [Appendix A](#)).

The Role of Title IX Coordinator, Deputies, and Investigators

The College has designated a Title IX Coordinator who is responsible for the oversight of these Procedures. The Title IX Coordinator is responsible for overseeing and resolving all Title IX reports and identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The Coordinator's responsibilities include oversight of a prompt, fair, equitable investigation and resolution process for reports of violations of applicable College policies. The Title IX Coordinator also evaluates trends on campus based on information that has been reported and makes recommendations for campus-wide training and education programs, as well as other remedial actions, designed to prevent and/or eliminate gender-based misconduct, address its effects, and prevent its recurrence.

The Title IX Coordinator may designate Deputy Title IX Coordinators to fulfill any role or activity set forth in these Procedures. In this document, the term "Title IX Coordinator" also refers to the Title IX Deputy when functioning in the Coordinator role or functioning in any other role related to their duties and responsibilities under the Law.

The list of Title IX Coordinator and Deputies can be found in [Appendix A](#).

Title IX Investigators conduct thorough and impartial investigations into the facts of a case including interviewing the Complainant, Respondent, witnesses, or others who may have relevant information; and collecting any other Evidence deemed relevant to a case.

Reporting Sexual/Gender-Based Misconduct or Interpersonal Violence

Stonehill College encourages individuals to report incidents of gender-based misconduct to the College or to law enforcement authorities. The College respects that it is the individual's decision whether or not to report the incident and that an individual can change their mind at any time. An investigation under this Policy will only commence when a Formal Complaint is submitted.

Reporting Options

Report to the College

Individuals can report gender-based misconduct to a College official with authority to take corrective measures. For the purposes of this Policy, the College affirmatively states that the Title IX Coordinator, Deputy Title IX Coordinator, Vice President for Student Affairs, the Associate Vice President for Student Affairs/Dean of Students, a Campus Police Officer, the General Counsel, and any Associate or Assistant General Counsel, are College officials with authority to take corrective measures consistent with 34 CFR 106.44(e)(6). If safety is an immediate concern, individuals should contact Campus Police at 508-565-5555, or dial 911 for assistance from law enforcement.

Report to Law Enforcement

Individuals can contact the Easton Police Department at 508-230-3322 or by dialing 911 from a cell phone. If the alleged criminal behavior did not occur in Easton, individuals should contact law enforcement in the appropriate jurisdiction. Campus Police can assist in contacting Easton Police or any other law enforcement agency (gender-based misconduct cases adjudicated by the College are governed in accordance with the College's policies and these Procedures and therefore the specific definitions of crimes stated in Massachusetts law do not necessarily always apply as the definitions under the policies and procedures may vary from the state definitions. However, individuals who believe they have been the victim of a crime may choose to pursue a criminal investigation through law enforcement in addition to the adjudication of the case by the College and in those instances, Massachusetts law would apply. ([Appendix C](#) provides definitions of Massachusetts crimes related to gender-based misconduct).

Report to Both the College and Law Enforcement

Where a criminal investigation is initiated by law enforcement, the College will take reasonable steps to coordinate its investigation with law enforcement authorities and will endeavor to have the College's investigation/proceeding run concurrently with any criminal justice investigation and proceeding. In limited circumstances, the College may delay the start of its investigation in order to avoid interfering with an ongoing investigation by law enforcement officers.

The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, as appropriate, will take immediate steps to provide Supportive Measures.

Make an Anonymous Report

An individual can make an anonymous report through the College's Sexual Assault and Title IX Resources web page. The information provided to the College in this manner will be used for Clery Act data collection and will be kept confidential. While the College will respond to anonymous reports in accordance with federal law, anonymous reports may significantly limit the College's ability to address the alleged misconduct.

Take No Action

Individuals have the right not to file a report, yet they are highly encouraged to seek medical attention and counseling. Individuals who wish to report at a later date may do so by utilizing any of the options above. However, please note that a delay in reporting could create obstacles to the College's process for stopping harassment/discrimination, remedying its effects, and preventing recurrence as well as potentially weakening Evidence that could be useful in determining whether prohibited conduct occurred.

Amnesty

The College encourages reporting and seeks to remove barriers to reporting. The College generally will not hold an individual who reports conduct, or is a witness during an investigation, accountable for violations of College policy related to the incident, as the need to address instances of alleged gender-based misconduct will take precedent. However, the College does reserve the right to pursue possible policy violations in which an individual placed the health and safety of any person at risk or created a danger to the community.

Accordingly, in these cases, the College will not pursue disciplinary action against an individual who reports, in good faith, to be the victim of, or witness to, gender-based misconduct.

Privacy and Confidentiality

The College is committed to protecting the privacy of all individuals involved in the reporting, investigation, and resolution of a report under these Procedures. The College also is committed to providing assistance to help Students, Employees, and third parties make informed choices. With respect to any report under this Policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate conduct that violates this Policy, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under these Procedures.

Privacy

Privacy means that information related to a report of violations of this Policy will be shared with a limited circle of College Employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in the College’s response to reports of violations of this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

Further, the College will maintain as confidential any Supportive Measures provided to any individual to the extent that doing so would not impair the College’s ability to provide the Supportive Measures.

The privacy of student education records will also be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”). All documentation related to a Student’s report, investigation, and resolution are protected by FERPA and will not be released, except as required by law. Non-identifying information about a report may be shared with the Chief of Campus Police or designee to comply with the Clery Act (statistical information only). A Complainant’s name will never be published in connection with the College’s obligations under the Clery Act.

In compliance with MGL, chapter 41 sec. 98F, the College does not publish identifiable information regarding victims of gender-based and interpersonal violence in the College’s Daily Crime Log. The College also does not publish such information online. In addition, individuals may request that their directory information on file at the College be removed from public sources by contacting the Title IX Coordinator or the Office of the Registrar.

Confidentiality

Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers, mental health providers, counselors, and ordained clergy serving as pastoral counselors, all of whom may engage in confidential communications under Massachusetts law. The College has designated individuals who have the ability to have privileged communications as “Confidential Employees.”

When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there appears to be a risk of immediate harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

The following classifications of individuals are Confidential Employees under College policy. These individuals are not required by Title IX to report any information regarding an incident of gender-based misconduct to the Title IX Coordinator or other College officials. Please note, however, that if you disclose information that you wish to remain confidential to para-professional staff, such as administrative assistants, they may be required by law to pass along the report to Campus Police or a Title IX Coordinator.

- Licensed Professional Counselors with the Commonwealth of Massachusetts whose official College responsibilities include providing mental health counseling to members of the campus community
- Licensed Medical Professionals who are registered with the Commonwealth of Massachusetts and whose official College responsibilities include providing health services to members of the campus community
- Athletic Trainers with NATABOC certification and who are licensed by the Commonwealth of Massachusetts and whose official College responsibilities include the evaluation and treatment of Student-athletes; determining the appropriate application of emergency procedures; and providing first aid as needed
- Pastoral Counselors who are ordained clergy and whose responsibilities include providing spiritual counseling to members of the campus community
- Confidential Resource Providers, who are Employees designated by the College to offer confidential services and information to Students and Employees regarding policies, procedures, and resources related to sexual violence occurring on campus; additionally, they receive training in the awareness and prevention of gender-based misconduct and trauma-informed response

In order to identify patterns or systemic issues related to violations of this policy, the College will collect non-identifying aggregate data from the College's Licensed Professional Counselors, pastoral counselors, athletic trainers, health care providers, and Confidential Resource Providers, as well as the local advocacy center. All personally identifiable information will remain confidential.

Employee Reporting Responsibilities

Every person identified as a Campus Security Authority (CSA) under the Clery Act must immediately report to the Title IX Coordinator or a Deputy Title IX Coordinator any violations of the Policy reported to them or observed by them, including the name of the Complainant and Respondent, if known, and all known details.

Faculty, staff, and volunteers on campus may report to the Title IX Coordinator or a Deputy Title IX Coordinator any violations of the College's Sexual and Gender-Based Misconduct and Interpersonal Violence Policy reported to them or observed by them, including the name of the Complainant and Respondent, if known, and all known details.

The only College members that are exempt from reporting violations of the Policy are licensed counselors, licensed medical professionals, pastoral counselors, athletic trainers, and Confidential Resource Providers employed in such capacities (collectively "Confidential Employees").

In accordance with Massachusetts law, the College requires everyone in the campus community, including Confidential Employees, to report the suspected abuse of children (those under the age of 18).

Disclosures of violations of the Policy that are made at public awareness events such as Take Back the Night, the Clothesline Project, candlelight vigils, protests, "Survivor Speak Outs," or other forums are not, under applicable laws, considered a report or notice to the College for purposes of triggering the College's 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 Title IX and Clery rights at these events. Similarly, information disclosed during a Student's participation as a subject in an Institutional Review Board-approved human subjects research protocol ("IRB Research") is not considered a report of a violation of this Policy or notice to the College of a violation of the Policy for purposes of triggering the College's obligation to investigate any particular incident(s). Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all Student subjects of IRB Research.

Response to Reports

The College must have actual knowledge of alleged gender-based misconduct in order to respond to the allegations under Title IX. Actual knowledge means that notice has been given to the Title IX Coordinator, a Deputy Title IX Coordinator, or any College official who has the authority to take corrective measures. The College will respond to all reports of prohibited conduct in a prompt, equitable, and effective manner.

After receiving notice of conduct that could constitute prohibited conduct, the Title IX Coordinator or designee will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the College to assess the need to take any immediate action to address the health and safety needs of the parties and the College community. These initial steps include, but are not limited to, the following:

Initial Intake

Upon receipt of an initial report, the College's Title IX Coordinator or Deputy will contact the reporting individual to request a meeting to gather supplemental information (if needed), offer resources, and explain the College's processes. If the reporting individual is a potential Complainant, the outreach will also cover reasonably available Supportive Measures, the process for filing a Formal Complaint, the Complainant's right to report the alleged conduct to law enforcement (if the individual has not already done so), the difference between Privacy and Confidentiality, and the right to be protected from Retaliation.

Preliminary Assessment

The Title IX Coordinator, Deputy, or designee, when necessary, will conduct a preliminary assessment of the facts to determine whether the College has jurisdiction over the alleged conduct and must take any other action beyond those described in the initial intake to determine, among other things, whether the Title IX Coordinator must initiate a Formal Complaint and investigation. The Title IX Coordinator will first determine whether the reported conduct falls within the scope and jurisdiction of the Policy, and more specifically, within the jurisdiction of Title IX and/or VAWA. Based upon this assessment, the Title IX Coordinator will determine the appropriate next steps.

Protective Measures and Threat Assessment

Consistent with a Complainant's right to report incidents to local law enforcement agencies or with the District Attorney's Office, in some circumstances, a Complainant may wish to seek an order of protection from a court of appropriate jurisdiction against the Respondent. College officials are available to assist individuals with this process. Complainants may also seek to restrict the Respondent's access to College property when appropriate. For assistance, individuals may contact the Title IX Coordinator or Deputy.

At times, it may be necessary for the College to take immediate action in order to protect the health, safety, wellbeing, or educational or working experience of Students, Employees, or the broader Stonehill community; to maintain academic integrity; or to uphold College values and community standards. To that end, the College reserves the right to take any interim administrative action that it deems necessary and appropriate under the particular circumstances. Such action may include removing a Respondent from a College educational or employment program or activity on an emergency basis, provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any Student, Employee, or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

The College may also place an Employee Respondent on administrative leave during the pendency of an investigation. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Timely Warning

When the College, through a report to a College official, becomes aware of an ongoing threat to the health or safety of members of the campus community, College staff will issue a timely warning to the campus, pursuant to the Clery Act and consistent with Stonehill [Timely Warning Policy F8.13](#). While the College will provide enough information to safeguard the campus community, a Student's or Employee's name or other personally identifying information will not be disclosed. With all reports that involve gender-based misconduct, aggregate data will be provided to Campus Police so a statistic can be included in Stonehill's Annual Security Report in compliance with the Clery Act.

Duty to Report to Outside Agencies

In certain circumstances where there may be an imminent threat of harm, the College may need to report an incident to law enforcement authorities, including law enforcement agencies at other colleges and universities or their equivalent campus safety departments, even when a victim may not wish to report. Additionally, if the College has reason to believe that an individual under the age of 18 has been the victim of violence, the College may be required to report the information to the Massachusetts Department of Children and Families, as well as law enforcement.

Option to Not Participate by Complainant

Students, Employees, and all members of the College community have the right under Title IX to expect that reports of gender-based misconduct will be taken seriously by the College. In accordance with federal law, the College has a duty to respond to all reports of gender-based misconduct made to any College official.

Consistent with Title IX Regulations, the College will respect a Complainant's decision not to file a Formal Complaint and/or request that the College not pursue an investigation unless the Title IX Coordinator determines that to do so would subject the College community to an unsafe or unhealthy environment. Specifically, in balancing the Complainant's request not to proceed against its responsibility to provide a safe and non-discriminatory environment for all community members, the College will consider the following factors:

- the seriousness of the alleged conduct;
- the respective ages and roles of the Complainant and the Respondent;
- whether there have been other reports of violations of this Policy involving the Respondent;
- whether the information contained in the report suggests there is a risk of the Respondent committing additional violations of this Policy;
- whether the Respondent has a history of arrests or records indicating a history of violence;
- whether the reported conduct included threats of further sexual violence or other violence against the Complainant or other individuals;
- whether the reported conduct was committed by multiple individuals;
- whether the reported conduct was perpetrated with a weapon or drugs; and
- whether the College possesses other means to obtain relevant evidence (e.g., security cameras, other witnesses, or physical evidence).

Where the College is unable to act consistent with the decision by the Complainant to not file a Formal Complaint and/or participate in an investigation, the Title IX Coordinator will inform the Complainant about the College's chosen course of action. In cases when the College determines the need to move forward with an investigation, the Complainant will not be required to participate in the process. An informal course of action may include steps to eliminate the effects of violations of this policy and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

Dismissal and Consolidation of Formal Complaints

The College may be required or permitted to dismiss Formal Complaints upon their filing or during the course of the Grievance Process. Additionally, the College maintains discretion to consolidate Formal Complaints.

Dismissal

If the conduct alleged in a Formal Complaint would not constitute Prohibited Conduct, even if proved; did not occur in the College's education program or activity; did not, with respect to Title IX, occur against a person in the United States, or, with respect to VAWA, did not constitute an act of interpersonal violence, then the College, in accordance with Title IX and/or VAWA, must dismiss the Formal Complaint with regard to that reported conduct. The Title IX Coordinator will, if appropriate, refer the reported conduct to the appropriate administrator for handling consistent with any other pertinent College policy. If new information is subsequently provided, the decision whether or not to proceed under the Policy will be reevaluated.

The College may dismiss a Formal Complaint or any allegations therein, if at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; the Respondent is no longer enrolled or employed at the College; or specific circumstances prevent the College from gathering Evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon a dismissal required or permitted pursuant this section, the College will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

Consolidation

The College may consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

The Grievance Process

The College will only initiate the investigative process³ once a Formal Complaint is filed. When a Formal Complaint is made, the Title IX Coordinator or Deputy will assess the complaint to determine whether or not the complaint falls under the jurisdiction of this Policy. If so, it will be assigned for investigation to a Title IX Investigator or Investigators, depending upon the complaint and/or as determined by the Title IX Coordinator.

The College will take appropriate actions to ensure that investigations of gender-based misconduct complaints are completed in a prompt and equitable manner, with a dedication to impartial fact finding. In the event of any significant or unusual delay of process, all parties will be notified in writing.

Major steps of the Grievance Process are normally as follows:

1. Upon approval by the Title IX Coordinator, the Deputy Title IX Coordinator will send notice of allegations to the parties. The notice of allegations will include the following information:
 - a. the allegations, including reference to specific sections of the College's policies which are alleged to have been violated, as well as the conduct that constitutes gender-based misconduct;
 - b. the identities of the parties alleged to be involved in the incident, if known;
 - c. the date and location of the alleged incident, if known;
 - d. a statement of determination of jurisdiction;

³ If the Respondent is a College employee, all references to the Associate Vice President for Student Affairs/Dean of Students are replaced by the Director of Human Resources. Additionally, a Deputy Title IX Coordinator will serve as the Title IX Coordinator in those cases.

- e. a statement, as required under federal regulations, that there is a presumption that the Respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process;
 - f. a copy of the College's Grievance Process, which may be included as an attachment or link;
 - g. notice that the parties may request to inspect and review Evidence, including Evidence the College does not intend to rely on in reaching a determination and the right to refer to and use such evidence during the investigation and hearing;
 - h. notice that informs the parties that knowingly making false statements or knowingly submitting false information during the Grievance Process is a violation of College policy;
 - i. notice that informs the parties that if the College decides later to investigate allegations not included in the notice provided, the College will provide notice of the new allegations;
 - j. notice that the standard of proof and the burden of gathering Evidence sufficient to reach a determination regarding responsibility rests with the College and not with the parties;
 - k. notice that the parties shall have an equal opportunity to present witnesses and other Evidence and to have an Advisor present; and
 - l. notice that the parties can mutually agree to engage in voluntary, informal resolution at any time prior to a determination being reached.
 - m. invitation to meet and discuss the informal and formal resolution processes.
2. If an informal resolution process is selected, the formal process will pause and the informal resolution process will proceed.
 3. If a formal process is selected, the Investigator will contact the parties and identified witnesses after issuance of the notice of allegations to schedule initial investigative meetings.
 4. Prior to completion of the investigative report, the Investigator will send to each party and Advisor, if any, the Evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the Investigator will consider prior to the completion of the investigative report.
 5. The Investigator will create an investigative report that fairly summarizes relevant Evidence and, at least 10 days prior to a hearing, send to each party and Advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
 6. The General Counsel will designate an individual to oversee the hearing (the "Hearing Officer").
 7. The Investigator will submit to the Hearing Officer the investigative report.
 8. The Hearing Officer will schedule the hearing and set the approximate schedule of witness examinations. All such examinations shall for the sake of efficiency be scheduled on the least number of days possible. The Hearing Officer shall have the ability, for good cause, to postpone or delay the hearing by giving notice in writing to the parties and their Advisors, if any, and any witnesses.
 9. The parties may submit to the Hearing Officer requests that additional relevant witnesses or Evidence be presented at the hearing. Any such requests shall be submitted in writing no later than 3 business days before the start of the hearing. During the hearing, the parties will have the opportunity to offer clarifications regarding the final investigative report.
 10. The Hearing Officer will conduct a live hearing that occurs in "real-time" and allows for both parties to see and hear questioning of the parties and witnesses by the Investigator. The originally scheduled hearing and any subsequent hearings due to postponements or the need for additional time for the Hearing Officer to hear all relevant Evidence shall collectively be considered the live hearing. The College will provide a virtual hearing if requested by either party. The Hearing Officer will ensure an equal opportunity for the parties to present witnesses, including fact and expert witnesses. A recording of the hearing will be made available for the parties' inspection and review.

11. At the hearing (which can take place over several days, sessions, or other increment), the Investigator shall ask questions of the parties and witnesses called. The parties and their Advisors may not participate or speak during the Investigator's direct questioning of parties or witnesses. The parties may take notes, or, at their own expense, have a transcriber present, but are not allowed to audio or video tape the interviews on their own (as a recording will be provided by the College). At the conclusion of the Investigator's direct examination of a party or witness, either party's Advisor may request an opportunity for direct and/or cross-examination of a party or witness (as the case may be). The Investigator shall have the opportunity to cross-examine any witness or party. The Hearing Officer shall be the final arbitrator on the permissibility of any question asked. Parties may not conduct direct or cross examination themselves; all such examinations must be conducted by their Advisor.
12. During the hearing, the Hearing Officer may, at the request of a party or the Investigator, allow additional witnesses not previously identified, including witnesses not initially interviewed by the Investigator, to offer information that becomes known after the commencement of the hearing, becomes relevant as a result of information discovered at the hearing, or rebuts or supports information provided at the hearing. The Hearing Officer shall use usual and standard determinations of relevance in deciding whether to allow additional witnesses. If such witnesses are allowed, they shall be questioned in the same manner as detailed in paragraph 12 above.
13. If a party or witness did not submit to cross-examination at the live hearing, the Hearing Officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility. Additionally, the Hearing Officer will not draw an inference about the recommended determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
14. Consistent with the rape shield law, the Hearing Officer shall determine the permissibility of Evidence or questions regarding sexual behavior under the following process: the Hearing Officer shall only allow questions or Evidence of a Complainant's sexual behavior in the following circumstances: (1) the Evidence is offered to prove that someone other than the Respondent was the source of the injury/harassment to the Complainant, (2) the Evidence is offered to prove that the Complainant Consented to the reported conduct, (3) the probative value of the Evidence outweighs the danger of harm to the Complainant, or (4) the Complainant has placed their sexual behavior or sexual predisposition into controversy and the Respondent is introducing Evidence to dispute the Complainant's claims. If the Respondent intends to offer such Evidence, the Respondent must provide notice to the Hearing Officer and the Complainant's Advisor at least 14 days before the scheduled direct or cross-examination and the Hearing Officer shall conduct a hearing with the Advisors for the parties to argue the matter and for the Hearing Officer to decide as to the permissibility of the Evidence.
15. The Hearing Officer will submit to the Associate Vice President for Student Affairs/Dean of Students (the Decision Maker) a written recommended determination that contains, at a minimum, the following:
 - a. Identification of the section(s) of Title IX, VAWA, or the College's Community Standards and/or other policies alleged to have been violated, if any;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the recommended determination;
 - d. Conclusions regarding the application of the College's policy to the facts of the conduct allegedly constituting gender-based misconduct or a violation of VAWA;
 - e. A recommended determination regarding responsibility using the appropriate standard of evidence as to each allegation and/or any lesser offense (for example, if a Complainant alleges that the Respondent committed sexual assault, the Hearing Officer could conclude that the Respondent is not responsible for sexual assault but is responsible for sexual harassment), and the rationale for each recommended determination;

- f. A recommendation regarding disciplinary sanctions and/or remedies;
 - g. Any remediation efforts designed to restore or preserve access to the College's education program or activity; and
 - h. A statement explaining the College's appeal procedures and permissible bases for the Complainant and Respondent to appeal.
16. The Associate Vice President for Student Affairs/Dean of Students, as the Decision Maker, will review the Hearing Officer's recommended determination to ensure that the findings and recommended sanctions are supported by the facts. The Associate Vice President for Student Affairs/Dean of Students will then issue to the parties a determination regarding responsibility and offer to meet with each of the parties separately.
 17. The College will disclose, in writing, to the Respondent and the Complainant (or if the individual is deceased as a result of such crime or offense, to the next of kin), the final results of any institutional adjudication of any violent crime or non-forcible sex offense. Additionally, the results of the initial outcome and the appeal outcome (if an appeal is sought) will be provided in writing and simultaneously to both the Complainant and Respondent in every Formal Complaint of sexual assault, dating violence, domestic violence, or stalking. The notice of outcome will include the outcome, the reason for the outcome, and the sanction associated with the outcome.

Due Process Affirmation

Consistent with the requirements of the Law, the College affirms that:

- There is a presumption of innocence for the Respondent throughout the Grievance Process.
- The College will objectively evaluate all evidence including inculpatory and exculpatory evidence.
- All Title IX Coordinators, investigators, and decision-makers will be free of conflicts of interest or bias for or against Complainants or Respondents.
- No party will be denied due process protections.
- Nothing under these Procedures or the Law diminishes rights available to any individual under Title VII, which prohibits sex discrimination in an employment context.
- The obligation to comply with Title IX is not obviated or alleviated by any state or local law.
- All records of proceedings shall be maintained for seven years.

Statement of Rights

It is the goal of Stonehill College to ensure that individuals have access to needed resources, services, and information. The College assures that all those involved in incidents of gender-based misconduct will:

1. Be notified of available spiritual and personal counseling, mental health, medical, or other resource, both on campus and in the community, as appropriate.
2. Receive notification of options for and available assistance in changing academic, living, and working situations after an alleged incident of gender-based misconduct, if so requested and if such changes are reasonably available (no charges or investigation, campus or criminal, need to occur before this option is available).
3. Have the opportunity to challenge and request the removal of any College official from participation in the process based on bias or prejudice.
4. Have the matter investigated in a prompt manner by appropriately trained investigators.
5. Have the matter handled in accordance with College policy.
6. Be able to access a Confidential Resource Provider.
7. Be accompanied by an Advisor, who may be an attorney, to any meeting or disciplinary proceeding in which the Complainant or Respondent is required to be present. Individuals who are witnesses to the incident or are otherwise

involved in the matter cannot serve as Advisors. An Advisor may not directly address the Title IX Investigators or otherwise participate actively in the investigation except during cross-examination. The College will not unreasonably delay the investigation or determination of the outcome based on the availability of an Advisor.

8. Be allowed to submit potential witness names for consideration and be informed of all witnesses being interviewed by an investigator and be present during such interviews.
9. Be allowed to submit questions for the Investigator to ask during the investigation or to engage in cross-examination. Cross-examination will be allowed as follows:
 - a. Cross-examination will be conducted during a live hearing with all parties in the same room or connected via closed circuit television or similar technology;
 - b. Cross-examination must be conducted by an Advisor present at the hearing. If the party does not have their own Advisor, the College shall provide the party an Advisor aligned with that party to conduct cross-examination;
 - c. Each party shall be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including challenges to credibility.
 - d. Cross-examination will be subject to the rape shield protections found in Federal Rules of Evidence, Rule 412, which are intended to safeguard Complainants against invasion of privacy, potential embarrassment, and stereotyping apply.
 - e. Cross-examination will be monitored by the Hearing Officer, who shall determine the permissibility of each question. If a question is excluded, the Hearing Officer must explain to the party's Advisor the basis for the exclusion.
10. Be allowed to review and respond to pertinent Evidence received.
11. Be allowed to review and respond to the investigative report prior to the hearing.
12. Not have irrelevant prior sexual history admitted into the investigation.
13. Be notified in writing within 10 business days of the formal decision of the Associate Vice President for Student Affairs/Dean of Students.
14. Be allowed to appeal the decision in accordance with the standards for appeal.
15. Be free from any behavior that may be construed by the College to be intimidating, harassing, or retaliatory and have the College respond promptly to any such report to stop it and appropriately discipline any party who engaged in retaliatory conduct.

Rights Specific to a Complainant

The College assures that all Students and Employees making a complaint of gender-based misconduct will have the option of choosing to whom the complaint is made (the College, local law enforcement, or both). The Complainant can also choose not to participate in an investigation; however, the College will investigate any report it deems necessary to protect the safety of the College community or in compliance with applicable law.

Rights Specific to a Respondent

The College assures that all Students and Employees accused of gender-based misconduct will be notified in accordance with College policy. Such notice will include sufficient details and allow for sufficient time to allow the Respondent to prepare a response before any interview.

Informal Resolution Process

Where appropriate, the College, upon the recommendation by the Title IX Coordinator and with agreement from the parties, may attempt to resolve allegations of violations of the Policy by taking immediate and corrective measures to stop the conduct, address its effects, and prevent recurrence without a formal investigation and determination that a violation of the Policy has occurred. The informal resolution process may include mediation, restorative justice, or other models of informal resolution. The particular form of the informal resolution process will be discussed with the parties to determine the best way to proceed. An informal resolution process may only take place when a Formal Complaint is on file with the College. As detailed above, a notice disclosing the allegations will be sent to the parties after the filing of a Formal Complaint. Participation in the informal resolution process is voluntary and either party can request to end the informal resolution process at any time and request a formal investigation. Both parties must provide written consent to participate in an informal resolution process. In some instances, and at any time, the College, on its own, may determine that an informal resolution process is not appropriate, in which case, the College will notify the parties that it is ending the informal resolution process and initiating a formal investigation. The informal resolution process will conclude with both parties consenting in writing to an agreed-upon outcome, which is final and not subject to appeal.

The College does not require participation in an informal resolution process as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

Once the parties agree to begin an informal resolution process, the College will work with the parties to develop a written plan, which will provide the requirements of the informal resolution process including any circumstances under which it will preclude the parties from resuming a Formal Complaint arising from the same allegations, and informing the parties that at any time prior to agreeing to a resolution, either party has the right to withdraw from the informal resolution process and resume the Grievance Process.

The College does not offer an informal resolution process to resolve allegations that an Employee violated a Student's rights under this Policy.

Appeals

A Respondent or Complainant may appeal from a determination regarding responsibility or from the College's dismissal of a Formal Complaint or any allegations contained therein no later than five business days after receiving the decision in writing. The appeal is to be submitted in writing to the Vice President for Student Affairs, who will consider the matter based on the following criteria:

1. an alleged procedural irregularity that materially affected the outcome;
2. new Evidence that was not reasonably available at the time the determination or dismissal was made and if not considered, could materially affect the outcome;
3. an allegation that the Title IX Coordinator, Investigator, Hearing Officer, or Decision Maker had a conflict of interest or bias that affected the outcome of the matter that was not previously known or raised and that the party was not provided an opportunity to either challenge or assent prior to the issue being raised on appeal.

Appeals Process

Once an appeal is received, the other party will be notified in writing and provided with an opportunity to review the submitted appeal and submit a written response within five business days. Deadlines may be extended at the discretion of the Vice President for Student Affairs under exceptional circumstances. A deadline extension request must be submitted in writing. Upon receipt of all documents, the Vice President for Student Affairs will review the file limited to the grounds identified on appeal. On appeal, the burden is on the appellant to prove that the appeal has merit. Appeals are reviews of the record only and are not a new investigation of the Formal Complaint. There are no additional meetings with the involved parties unless the Vice President for Student Affairs wishes to seek clarification about a party's written appeal or written response to an appeal.

The Vice President for Student Affairs will typically decide the appeal within 10 business days. The parties will be notified in writing if the process will take longer. The Vice President for Student Affairs will provide a written statement simultaneously to both parties that states one of the following appeal determinations and the rationale for the result:

1. The appeal does not meet one of the appeal criteria and is denied.
2. The appeal meets the appeal criteria, and the case is remanded back to the Investigator, Hearing Officer, and/or Associate Vice President for Student Affairs/Dean of Students with specific corrective action instructions.
3. The appeal meets the appeal criteria with respect to bias, and, the matter is remanded to a new Investigator, Hearing Officer, and/or Decision Maker with specific corrective action instructions.

Appellate decisions are final.

Education and Prevention

The College is committed to providing annual intentional and comprehensive primary and ongoing education and awareness programs, initiatives, strategies, and campaigns aimed at the eradication of gender-based misconduct, including dating violence, domestic violence, stalking, and sexual assault. The College will work to ensure that all programs are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome. The College will also consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels. The programs shall include both primary prevention and awareness programs directed at incoming Students and ongoing prevention and awareness campaigns directed at current Students.

Risk reduction means options designed to decrease misconduct and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

In addition, the College will evaluate on an ongoing basis, all policies and procedures related to gender-based misconduct.

Training

All Title IX Coordinators, Investigators, Decision Makers, and those involved in any informal resolution process shall receive annual training, which at a minimum includes:

- The definition of sexual harassment for Title IX purposes;
- The scope of the College's education "program or activity" under Title IX;
- How to conduct an investigation and Grievance Process including hearings, appeals, and informal resolution process, as applicable;
- How to serve impartially including avoiding prejudgment of facts at issue, conflicts of interest, and bias;
- Technology to be used at a live hearing;
- Issues of relevance of questions and Evidence, including rape-shield limitations; and
- Issues of relevance to create an investigative report that fairly summarizes relevant Evidence. All training materials must be posted on the College's website.

Compliance Questions

Questions or complaints about the College's compliance with Title IX may be addressed to the College's Title IX Coordinator listed in Appendix A or the U.S. Department of Education, Office for Civil Rights, 5 Post Office Square, Boston, MA 02109. Telephone: 617-289-0111.

Appendix A: Title IX Coordinator and Deputies

Lily Krentzman – Director of Human Resources/Title IX Coordinator

320 Washington Street

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Ali Hicks – Director of Community Standards/Title IX Deputy

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Appendix B Statement on Title IX and VAWA

Process Differences for Title IX and VAWA

Introduction

Statement on the Use of the College's Investigative Procedures to Comply with the Title IX Investigation Requirements under 34 CFR 106.44 et seq and Section 304 of the Violence Against Women Reauthorization Act of 2013 and the Clery Act mandates procedures by which colleges and universities must respond to sexual violence, separate and in addition to the requirements of the 2020 Title IX Regulations.

Stonehill College interprets the applicable laws – specifically Title IX and VAWA to include under the umbrella of the term “sexual harassment,” quid pro quo and hostile environment sexual harassment and the crimes addressed by the 2013 Violence Against Women Act amendments to The Clery Act: sexual assault, domestic violence, dating violence, and stalking.

Stonehill recognizes that the Clery Act mandates that the College not only publish a report each year that aggregates data on certain crimes that are reported to occur on-campus, but §304 specifically mandates certain procedural elements with respect to the investigation and adjudication of certain sexual crimes.

Stonehill has therefore incorporated the requirements of both §304 and 34 CFR 106.44 into the Procedures contained hereon and shall use these Procedures to conduct investigations.

The College shall, as required under §304, include the protections and procedural safeguards mandated as the College believes they are compatible with the protections and procedural safeguards required under 34 CFR 106.44. These include providing a victim's bill of rights; making supportive and remedial measures available; allowing an advisor-of-choice throughout any resolution process; and providing contemporaneous, written notice of the outcome to all parties. While these protections exist outside of the Title IX requirements, they are compatible with the Title IX process.

The College recognizes that there are different and distinct jurisdictional limitations set by Title IX and VAWA as detailed above in Jurisdiction. For example, the jurisdictional limitations outlined by the Title IX regulations are not shared by VAWA §304 as there is no requirement for the Complainant to be “participating” in the program or for the conduct to have occurred “in the United States” or on-campus. To be clear, while the Clery Act does have four geographic coverage zones, those zones apply only to statistical reporting of crimes, not to the procedural and substantive protections of VAWA §304. As such, when Stonehill receives allegations of sexual assault, domestic violence, dating violence, or stalking, the College will use this investigative process as its response in order to satisfy the VAWA regulations as required. The College acknowledges that it is not required to use the process outlined under 34 CFR 106.44 in these cases, but there is also nothing preventing it from doing so; therefore, to eliminate confusion, the College will maintain one set of procedures with the exceptions provided for and explained herein.

Furthermore, it is the College's position that there are no limitations under FERPA for disclosure of the outcome of a disciplinary proceeding, under the requirements under Title IX or VAWA and, as such, the College will provide the outcome to both parties accordingly.

The College believes this is the most reasonable position to take presently and until such time as a revision is made to the current Title IX regulations, which the current administration has stated is forthcoming.

The College bases its position on the following information:

Title IX, which was enacted in 1972 as part of larger educational reform program requires that no person, 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. The 2011 “Dear Colleague Letter” (DCL) specifically stated that the requirements of Title IX cover sexual violence and reminded schools of their responsibilities to take immediate and effective steps to respond. While the 2011 DCL was substantially negated, this position statement has not changed.

The Clery Act, which was enacted in 1990 requires all schools receiving federal monies to collect and publish information about crimes occurring on campus. Schools must publish an annual report must immediately notify students of any reported assaults when they occur on campus.

The Violence Against Women Act (VAWA), which was enacted in 1994 was designed to raise awareness of domestic violence and assault crimes against women. Its provisions mandated that states create separate criminal statutes for domestic violence and provided additional protections to victims, for example efficient access to restraining orders.

A specific update was made to VAWA in 2013 which became effective in 2014 which created the Campus SAVE Act which further modified the Clery Act by adding reporting requirements. Additionally, the SAVE Act provisions required schools to provide educational training on sexual assaults to all incoming students, to employees, and create internal reporting procedures for on-campus sex crimes.

In totality these laws create a web of statutory guidance which informs Stonehill's response to these matters.

Additional Information for Advisors

(with respect to applying this process to sexual harassment allegations within the context of Title IX and VAWA)

The most recent revisions to the Title IX regulations issued by the Department of Education (DOE) modified the definition of sexual harassment. Prior to the revision the definition within DOE guidance substantively mirrored the guidance within Title VII (employment) guidance.

Under prior guidance, the DOE defined sexual harassment as "[c]onduct of a sexual nature [that] is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment." This definition broadly included a variety of conduct that could interfere in a student's ability to participate in the education process.

Relevant to this discussion, in 1998, subsequent to issuing this original guidance the United States Supreme Court issued its decision in *Davis v. Monroe County Board of Ed.* which held that monetary damages cannot be sought by a plaintiff unless an official who has authority to address the harassment had actual knowledge of the harassment and was deliberately indifferent in responding. Specifically, under *Davis* schools can only be liable for monetary damages if "harassment [] is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."

Despite the Court's narrowing of the harassment standard in *Davis* as applied to peer-to-peer harassment in cases involving money damages, the DOE maintained a broad definition of sexual harassment which followed Title VII guidance which defined harassment as "unwelcome conduct of a sexual nature [which includes the following:] unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature." The conduct was to be considered from both a subjective and objective perspective and the "the severity and pervasiveness" of the conduct was to be based on a "constellation of surrounding circumstances, expectations, and relationships... [including] the degree to which the conduct affected [a student's] education,... the type, frequency, and duration of the conduct... the identity of and relationship between the alleged harasser and the subject or subjects of the harassment,... the number of individuals involved,... the age and sex of the alleged harasser and the subject or subjects of the harassment,... [and] the size of the school, location of the incidents, and context in which they occurred."

Under the current regulations sexual harassment is defined as conduct on the basis of sex that satisfies one more of the following:

1. Quid pro quo sexual harassment
2. Hostile environment (unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity)
3. Clery Act (VAWA, Campus SAVE Act) violations which constitute sexual assault, specifically, rape and fondling, as those terms are defined under applicable federal law.

Difference in the College's Analysis

Under the prior definition of sexual harassment all alleged conduct, even rape was analyzed under the "severe or pervasive" standard and a school was required to determine whether the alleged harassment limited the Complainant's ability to participate or benefit from an education program.

Under the current definition, if a Complainant alleges quid pro sexual harassment or interpersonal violence the College will not seek to determine if the conduct was severe or pervasive, or that it limited the Complainant's access to education. Instead, the College will use the factual allegations of quid pro quo sexual harassment to make a determination if there is a claim of tangible adverse action resulting from a student or subordinate individual's refusal to submit to a higher-up's sexual demands.

With respect to interpersonal violence under Clery, VAWA, Campus SAVE Act, the College will make an initial determination of whether the Complainant's allegations satisfy the definitions set forth in the cited statutory law. The analysis will not include a determination of whether the conduct was severe or pervasive or limited access to education as the interpersonal violence violations in and of themselves constitute sexual harassment.

In analyzing a claim of hostile environment, the College will make a determination of whether the conduct was: unwelcome and whether the conduct was severe, pervasive, and objectively offensive such that it effectively denied the Complainant equal access to the educational program. Current DOE guidance states that college, in determining whether conduct is unwelcome must consider that it is a subjective standard looked at from point of view of the Complainant only, but to determine severity, the conduct must also be viewed from the perspective of a reasonable person in the Complainant's position.

In considering this information, it is the College's position that, until such time as additional clarification is provided by the DOE, current DOE guidance concerning the existing Title IX regulations requires the College to align its analysis of a hostile environment complaint with the standard articulated in *Davis*.

Appendix C Related Massachusetts Legal Definitions

Domestic Violence: Massachusetts General Law chapter 209A, section 1 defines domestic abuse as “the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat or duress.” <http://www.malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter209A>

Dating Violence: Massachusetts does not have a law pertaining to violence that occurs between people in a dating relationship. Instead, Massachusetts General Law chapter 265, section 13A would apply: “an assault or an assault and battery: (i) upon another and [the perpetrator] by such assault and battery causes serious bodily injury; (ii) upon another who is pregnant at the time of such assault and battery, [the perpetrator] knowing or having reason to know that the person is pregnant; or (iii) upon another who [the perpetrator] knows has an outstanding temporary or permanent vacate, restraining or no- contact order or judgment issued pursuant to [applicable law], in effect against him at the time of such assault or assault and battery.” <http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13a>

Sexual Assault: Massachusetts defines rape as (1) the penetration of any orifice by any body part or object (2) by force and (3) without consent. Rape also includes instances where the victim is incapacitated (“wholly insensible so as to be incapable of consenting”) and the perpetrator is aware of the incapacitation. <http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section22>; <http://masscases.com/cases/sjc/450/450mass583.html>

Consent: The voluntary agreement, demonstrated by words or actions, by a person with sufficient mental capacity to make a conscious choice to do something proposed by another, free of duress. Commonwealth v. Lopez, 433 Mass. 722 (2001), Commonwealth v. Lefkowitz, 20 Mass. App. Ct. 513 (1985); see also: <http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section22>

Stalking: Massachusetts General Law chapter 265, section 43 defines “Stalking” as “(1) willfully and maliciously engag[ing] in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) mak[ing] a threat with the intent to place the person in imminent fear of death or bodily injury.” <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section43>