HARTWICK COLLEGE
TITLE IX AND SEXUAL MISCONDUCT POLICY
(Revised August 14, 2020)

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I. INTRODUCTION, NOTICE OF NON-DISCRIMINATION AND POLICY STATEMENT

Hartwick College (the “College” or “Hartwick”) seeks to maintain a workplace and educational environment that promotes mutual respect and is free from all forms of discrimination, harassment, and retaliation. In accordance with Title IX of the Education Amendments of 1972 (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Article 129-B of the New York State Education Law, Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and all other applicable law, the College is committed to providing a safe community free from all forms of sexual misconduct, including discrimination on the basis of sex. The College does not discriminate on the basis of sex in its educational programs or activities and it is required by Title IX and its implementing regulations not to discriminate in such a manner, including in admissions and employment. Under Title IX, discrimination on the basis of sex includes sexual harassment, as defined below.

Any inquiries about the application of Title IX, its implementing regulations, and related issues of sex discrimination may be referred to the Title IX Coordinator,¹ the U.S. Department of Education, or both.

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Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
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Email: OCR@ed.gov

The College has developed internal policies and procedures set forth in this Sexual Misconduct Policy (the “Policy”) that provide a prompt, fair and impartial process for reports of sexual misconduct and retaliation as defined below. These prohibited forms of conduct are unlawful or contrary to the culture and expectations of the College, and will not be tolerated at Hartwick. This Policy: (i) defines prohibited conduct; (ii) sets forth available resources and reporting options; (iii) describes the College’s prompt and equitable processes and response procedures; and (iv) describes programs implemented by the College to educate and increase awareness among the College community.

II. APPLICABLE SCOPE

This Policy is effective as of August 14, 2020 and governs all reports and formal complaints of sexual misconduct, including sex discrimination, sex/gender-based harassment, sexual harassment, and retaliation, as defined below, on or after the effective date of this Policy. Any complaints or reports made prior to the effective date of this Policy will be reviewed under the College’s prior sexual misconduct policy. Other forms of discrimination and harassment, including discrimination and harassment based on race, religion, disability and any other protected class are governed by the College’s Non-discrimination and Non-harassment Policy, available here. This Policy supersedes any conflicting information contained in those policies, if applicable, with respect to the definitions or procedures relating to sexual misconduct and related retaliation. An individual who has a question about which Policy applies in a specific instance should contact Hartwick’s Title IX Coordinator.

¹ The College provides the contact information of the Title IX Coordinator to students, faculty, staff, applicants for admission, applicants for employment, and all labor unions or professional organizations holding collective bargaining or professional agreements with the College.
This Policy applies to Hartwick students; Hartwick employees including faculty and visiting faculty, staff, and administrators (“Employees”); contractors, subcontractors, vendors, or other third parties; and visitors or guests affiliated with the College by reason of employment or education and within the College’s control (collectively, the “College community”). Sexual misconduct may occur between members of the same or different sex, or any combination of members of the College community. This Policy applies regardless of an individual’s race, color, national origin, religion, creed, age, disability, sex, sexual orientation, gender, gender identity or expression, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other status protected by law.

When an alleged violation of this Policy is reported, the allegations are subject to resolution under one of two formal grievance processes, Process A or Process B, as determined by the Title IX Coordinator and as detailed below. Process A applies only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) as defined by Title IX. Process B applies to all sexual misconduct and retaliation that does not fall under Process A, as determined by the Title IX Coordinator. Both Process A and Process B contain an informal resolution process.

The procedures below may be applied to any single incident, to patterns of behavior, and/or to the general climate of an education program or activity, all of which may be addressed and investigated in accordance with this Policy. While sexual misconduct can constitute a criminal offense under New York State law or federal law, a person’s conduct may violate this Policy even if it does not violate State or federal law. Each member of the College community is expected to assist in maintaining a working and learning environment that is free of sex discrimination, sexual harassment, and other sexual misconduct.

III. JURISDICTION OF HARTWICK COLLEGE

This Policy applies to the education program and activities of the College, and therefore covers conduct that takes place on campus, on property owned or controlled by the College, at College sponsored events, or in buildings owned or controlled by the College’s recognized student organizations.

This Policy can also apply to off-campus misconduct if it effectively deprives someone of access to Hartwick’s educational program. The Policy may also apply to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest. Regardless of where the conduct occurred, the College will address all reports and formal complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus or in an off-campus program or activity. Any online postings or other electronic communication will be in violation of this Policy the same as any other verbal, written, or physical conduct addressed in this Policy.

A substantial College interest includes but is not limited to:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

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2 Conduct that violates College Policy may also violate New York State laws and subject the Respondent to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State Penal Code, available at http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS.

3 For the purpose of 34 CFR §§ 106.30, 106.44, and 106.45, “education program and activities” includes locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.
• Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual covered by this Policy;
• Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
• Any situation that is detrimental to the educational interests or mission of the College.

The Respondent must be a member of the College’s community in order for its policies to apply. If the Respondent is unknown or is not a member of the Hartwick College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of the College’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, the College may take other actions as appropriate to protect the Complainant against such third parties, such as barring individuals from College property and/or events.

When the Respondent is enrolled in or works at another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual for that institution, as it may be possible to allege violations through that institution’s policies. Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual misconduct in a clinical program, study abroad program, or other environment external to the College where sexual misconduct policies and procedures of the facilitating organization may give recourse to the Complainant.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers and to these policies and procedures when engaging with other members of the College community.

A student or employee determined by Hartwick to have violated this Policy is subject to disciplinary action, up to and including separation from the College. Third-parties may have their relationship with the College terminated and/or their privilege of being on Hartwick premises withdrawn. Hartwick retains conduct jurisdiction over students who choose to take a leave of absence, withdraw, or have graduated for any misconduct that occurred prior to the leave, withdrawal, or graduation.

IV. DEFINITIONS OF TERMS USED IN THIS POLICY

Actual Knowledge: means notice of sexual misconduct or allegations of sexual misconduct to the College’s Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College, also known as any Official with Authority, as defined below. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The mere ability or obligation to report sexual misconduct, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College. Once the College has actual knowledge of Title IX sexual harassment in its education program or activity against a person in the United States, the College will respond promptly in a manner that is not deliberately indifferent, as defined herein. Once the College has actual knowledge of any other sexual misconduct or related retaliation, the College will respond promptly in an equitable manner.

Advisor: means a person chosen by a party to accompany the party to meetings and proceedings related to the formal grievance process or informal resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any, under Process A. If a party does not select an advisor and a hearing pursuant to Process A is required, the College will appoint an advisor for that party for the purposes of, at a minimum, conducting cross-examination.
**Affirmative Consent**: is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

The age of consent in New York State is 17.

**Bystander**: means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the College.

**Coercion**: means unreasonable pressure for sexual activity.

**Complainant**: refers to an individual who is alleged to be the victim of conduct that could constitute sexual misconduct or retaliation for engaging in a protected activity, as defined herein.

**Confidentiality**: may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of College employees who may offer confidentiality. Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

**Covered Non-Employees**: includes all: (i) applicants for employment; (ii) interns, whether paid or unpaid; (iii) persons who are (or are employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to the College; and (iv) persons commonly referred to as independent contractors, “gig” workers, and temporary workers, including, but not limited to, persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with the College.

**Dating Violence**: as defined by VAWA, at 34 U.S.C. § 12291(a)(10), the term “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 victim; and
where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of the relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

**Day:** means a business day when the College is in normal operation.

**Disciplinary Sanction (also called Sanction):** means a consequence imposed by the College on a Respondent who is found responsible for having violated this Policy.

**Domestic Violence:** as defined by VAWA, at 34 U.S.C. § 12291(a)(8), the term “domestic violence” includes felony or misdemeanor crimes 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 cohabiting with or has cohabited 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 jurisdiction receiving grant monies, 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.

**Education program or activity:** for the purpose of 34 CFR §§ 106.30, 106.44, and 106.45, includes locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.

**Final Determination:** means the written determination containing the information required in 34 CFR § 106.45(b)(7), as modified by any appeal by the Parties. A determination regarding responsibility becomes a final determination either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**Force:** the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

**Formal Complaint:** a Process A document filed by a Complainant (meaning a document or electronic submission (such as by electronic mail) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) or signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that the College investigate the allegation(s) of sexual harassment. A Formal Complaint initiates Process A. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.

**Formal Grievance Process:** means Process A and/or Process B, excluding the informal resolution process under each.

**Hearing Officer:** refers to those who have decision-making and sanctioning authority within the College’s Formal Grievance Processes (Process A and Process B).

**Incapacitation:** a state when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. The age of consent in New York State is 17.
**Informal Resolution Process:** an informal grievance process incorporated into Process A and Process B and available at the College’s discretion. Should the College determine that informal resolution is an available avenue to resolve a report or formal complaint, Parties are permitted to enter the informal resolution process at any point prior to a determination of responsibility being reached. Both parties must consent to the informal resolution process. Additional information and restrictions can be found in Process A and Process B.

**Intimidation:** Implied threats that reasonably cause another individual to fear for that individual’s safety or well-being.

**Investigator:** means the person(s) charged by the College with gathering facts about an alleged violation of this Policy and compiling this information into an investigative report and case file of directly related evidence.

**Notice:** means that either the Title IX Coordinator, an Official with Authority (as defined below and who is not the Respondent), or both, has knowledge of allegations of sexual misconduct. Notice includes, but is not limited to, reports and formal complaints of sexual harassment to the Title IX Coordinator. This standard is not met when the only official of the College with actual knowledge is the Respondent.

**Official with Authority (OWA):** means an employee of the College who has the authority to implement corrective measures on behalf of the College. OWAs include: The Title IX Coordinator, Deputy Title IX Coordinators, The Chief Human Resources Officer, The Vice President of Student Experience, and the Provost.

**Parties** include the Complainant(s) and Respondent(s), collectively.

**Preponderance of Evidence:** is the standard to determine responsibility under the College’s Policy. This means that it is more likely than not that a violation of the Policy occurred.

**Privacy:** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws or College Policy, including informing appropriate College officials.

**Process A:** means a formal grievance process designated by the College to address conduct that constitutes Title IX sexual harassment, as defined below, and which complies with the requirements of the Title IX regulations (34 CFR § 106.45). Process A is initiated by the filing of a formal complaint.

**Process B:** means a formal grievance process designated by the College to apply only when Process A does not, as determined by the Title IX Coordinator. Process B applies to all sexual misconduct and related retaliation that does not constitute Title IX sexual harassment. Complaints of sex/gender-based discrimination/harassment that do not involve Title IX sexual harassment are covered by Process B. Process B is initiated when the Complainant confirms in writing that the Complainant wishes that the College pursue an investigation or, if the Complainant does not wish that the College pursues an investigation, when the Title IX Coordinator initiates an investigation by the College.

**Remedies:** means post-determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the College’s educational program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
**Report:** means information brought to the attention of the Title IX Coordinator, whether verbal or written, by any person, and which references sexual misconduct, including sexual harassment, under this Policy. Such a report can be made at any time in person, by mail, by phone, or by electronic mail. A report will not initiate either formal grievance process. A report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint.

**Reporting Party:** refers to the person who made the report of an alleged violation of this Policy to the College. This may or may not be the same as the Complainant, a witness, or a bystander.

**Respondent:** refers to an individual who has been alleged to be the perpetrator of conduct that could constitute sexual misconduct or retaliation for engaging in a protected activity, as defined herein.

**Responsible Employee:** means an employee of the College who is obligated by this Policy to share knowledge of alleged sexual misconduct and/or retaliation with the Title IX Coordinator. The College does not have notice or actual knowledge of information known only by a Responsible Employee who is not also an Official with Authority.

**Retaliation:** Retaliation has various definitions under state and federal laws. See Section VI.

**Sex:** encompasses sex, gender, sexual orientation, gender identity, and/or gender expression.

**Sexual Activity:** includes any “sexual act” or “sexual contact.”

- A “sexual act” means (a) contact between the penis and the vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight, of the anal or genital opening of another by hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- “Sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

**Sexual Assault:** as defined in 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (“FBI”). These offenses are defined as follows:

- **Sex Offenses:** any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

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4 The definitions herein are from the most recent Uniform Crime Reporting Program National Incident-Based Reporting System (“NIBRS”) User Manual, dated May 7, 2020, with the exception of Rape, which, in accordance with the Clery Act, is defined pursuant to the FBI’s Uniform Crime Reporting Program Summary Reporting System (SRS), dated June 20, 2013. Once SRS is retired, the NIBRS definition of rape shall be used.

5 The 2020 NIBRS User Manual also includes as a sex offense “Failure to Register as a Sex Offender,” which is defined as “to fail to register or keep current a registration as required by state and federal laws.”

6 Under the NIBRS User Manual dated 2011, available here, this definition was used to describe “Sex Offenses, Forcible.” The following acts were classified as “Sex Offenses, Forcible”: Forcible Rape (Except Statutory Rape), Forcible Sodomy, Sexual Assault with An Object, and Forcible Fondling.
- **Rape – Completed [SRS Definition]**: 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. This definition includes either gender of victim or offender. Sexual penetration means 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, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

- **Rape (except statutory rape) [NIBRS Definition – to be used only when SRS is retired]**

- **Sodomy**: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

- **Sexual Assault with an Object**: to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.

- **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

- **Sex Offenses**: Unlawful sexual intercourse

  - **Incest**: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

  - **Statutory Rape**: sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.

**Sex Discrimination**: involves treating someone unfavorably because of that person’s actual sex or perceived sex. It occurs when, on the basis of actual or perceived sex, gender, sexual orientation, gender identity, including transgender status and/or gender expression, an individual or group is excluded from participation in or denied the benefits of any College education program or activity, including admissions and employment. Examples include, but are not limited to, denying a student a research opportunity because of the student’s sex or gender; giving a student a lower grade than she/he/they deserved because of the student’s sex or gender; denying an employee a raise because of the employee’s sex or gender. As noted herein, sex discrimination may also involve sexual harassment.

**Sexual Exploitation**: means abuse or non-consensual use of another person’s sexuality or nudity without consent, for the Respondent’s own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Specific conduct that constitutes sexual exploitation could constitute sexual harassment if it meets the definition herein under Title IX. Examples include but are not limited to:

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7 It is anticipated that the FBI will retire SRS on January 1, 2021.

8 Under the NIBRS User Manual dated 2011, available [here](#), the definition of “(except prostitution offenses) unlawful, nonforcible sexual intercourse” was used to describe “Sex Offenses, Nonforcible.” The following acts were classified as “Sex Offenses, Nonforcible”: Incest, Statutory Rape.
• prostituting another individual
• non-consensual observation, photographing or video or audio recording of sexual activity of another individual or of another individual who is in a state of undress, or in a place and time where such person has a reasonable expectation of privacy, without the individual’s consent
• exceeding the boundaries of consent with another individual (such as permitting others to secretly observe you engaging in consensual sex)
• inducing or attempting to induce the incapacitation in another individual for purposes of compromising that individual’s ability to give Affirmative Consent to sexual activity
• employment of another individual or achievement related inducements
• knowingly exposing another person to a sexually transmitted infection or virus without the other individual knowledge
• disseminating, streaming or posting sexual activity of any form on social media or any other public forum without permission from the other individual
• non-consensual texting of sexual activity or images of another individual
• distributing intimate sexual information about another individual.

**Sex/gender Based Harassment:** Unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassing conduct, however, does not need to be based on anything of a sexual nature.

**Sexual Harassment:** has various definitions under state and federal laws. See Section V.

**Sexual Misconduct:** is a broad term that encompasses a wide range of prohibited behaviors and a term used to refer to any form of discrimination, including harassment, based on actual or perceived sex, gender, sexual orientation, gender identity, and/or gender expression, sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as retaliation in this Policy.

**Stalking:** as defined by 34 U.S.C. § 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual’s property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Complainant.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Supportive Measures:** means non-disciplinary and non-punitive individualized services provided by the College, free of charge, to Complainants and Respondents before or after Process A or Process B is initiated, or where a report is made but neither formal grievance process is initiated. Supportive measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College’s educational environment, or deter sexual harassment. Supportive measures can include various forms of services as set forth in Section IX.
Title IX Coordinator: means the official designated by the College to ensure compliance with Title IX and the College’s Title IX program. References to the Title IX Coordinator in this Policy may also encompass a designee of the Title IX Coordinator (e.g. Deputy Title IX Coordinator) for specific tasks. The Title IX Coordinator may delegate certain responsibilities under this Policy to designees, who will be appropriately trained.

V. SEXUAL HARASSMENT DEFINITIONS

The term “sexual harassment” has various definitions under federal and state laws. The definition of the term under Title IX (“Title IX sexual harassment”), applies to both students and employees of the College. Reports and formal complaints of sexual misconduct that constitute Title IX sexual harassment are addressed under Process A of this Policy. The definitions of the term under Title VII (“Title VII sexual harassment”) and the New York State Human Rights Laws (“NYSHRL sexual harassment”) also apply to all employees of the College. Reports regarding conduct that constitutes only Title VII sexual harassment and/or NYSHRL sexual harassment are addressed under Process B of this Policy. Note, however, that conduct can meet more than one of these definitions; if the conduct constitutes Title IX sexual harassment in addition to Title VII sexual harassment and/or NYSHRL sexual harassment, it will be addressed under Process A. The varying definitions of sexual harassment are as follows:

a. Title IX Sexual Harassment (Students and Employees)

Under Title IX, specifically 34 C.F.R. § 106.30, “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education program or activity;

To fall under Title IX, the sexual harassment must have been in an education program or activity of the College against a person in the United States. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.

b. Title VII Sexual Harassment (Employees Only)

It is unlawful to harass a person (an applicant or employee) because of that person’s sex. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

9 Complaints of sex/gender-based discrimination and harassment that do not involve Title IX sexual harassment will also be covered under Process B.
10 Categories 1 and 3 do not require elements of severity, pervasiveness, and/or objective offensiveness. Severity, pervasiveness and objective offensiveness of Category 2 offenses must be evaluated in light of the known circumstances and depend on the facts of each situation, but must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (e.g. an adverse employment decision such as the individual being fired or demoted); or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a “reasonable person” standard and considers the totality of the circumstances.

c. **NYSHRL Sexual Harassment (Employees Only)**

The New York State Human Rights Laws (“NYSHRL”) applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, and persons conducting business, regardless of immigration status, with the College. This Policy applies to all of the aforementioned individuals. This Policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

Sexual harassment is considered a form of employee misconduct and is offensive, is a violation of College policies, is unlawful, and may subject the College to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct. All employees are encouraged to report any harassment or behaviors that violate this Policy.

Under the NYSHRL, “sexual harassment” is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

I. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
II. Such conduct is made either explicitly or implicitly a term or condition of employment; or
III. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient’s job performance.
Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment. Any employee who feels harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee’s body or poking another employee’s body;
- Unwanted sexual advances or propositions, such as requests for sexual favors accompanied by implied or overt threats concerning the target’s job performance evaluation, a promotion or other job benefits or detriments;
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person’s sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual’s sex, sexual orientation, gender identity and the status of being transgender, such as interfering with, destroying or damaging a person’s workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job; sabotaging their work; or bullying, yelling, name-calling.

Sexual harassment can occur between any individuals, regardless of their sex or gender. NYSHRL protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor. Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Preventing sexual harassment is everyone’s responsibility. The College cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager, or the Title IX Coordinator. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or the Title IX Coordinator.

Reports of sexual harassment may be made verbally or in writing. An online form for submission of a written complaint may be found at www.hartwick.edu/titleix, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee’s behalf. Employees, paid or
unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the Title IX Coordinator. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. All persons involved, including Complainants, witnesses and Respondents will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. The College will not tolerate retaliation against employees who file complaints, support another’s complaint or participate in an investigation regarding a violation of this Policy. NYSHRL sexual harassments claims will be handled as outlined below and in accordance with Process B.

**Legal Protections and External Remedies**

Sexual harassment is not only prohibited by the College but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at the College, employees may also choose to pursue legal remedies with the governmental entities discussed below in Section VIII(e). While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney. In addition to those outlined below, employees in certain industries may have additional legal protections.

**VI. PROHIBITION AGAINST RETALIATION**

The College will not tolerate any form of retaliation for engaging in a protected activity as defined herein. The College will provide a prompt and equitable grievance process to resolve student and employee complaints alleging retaliation. Unless the form of retaliation constitutes Title IX sexual harassment, which would be addressed under Process A, all reports alleging retaliation under this Policy or the laws covered by this Policy will be resolved under Process B. Any such acts of retaliation should be reported promptly to the Title IX Coordinator. Retaliation is subject to disciplinary sanctions, up to and including expulsion/termination. The following constitutes “retaliation”:

a. **Title IX Retaliation (Students and Employees)**

Under Title IX, “Retaliation” means: intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with an individual’s right or privilege secured by Title IX and 34 C.F.R. Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under 34 C.F.R. Part 106. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal
The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this subsection of the Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under 34 C.F.R. Part 106 does not constitute retaliation under this subsection of the Policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

b. **Title VII Retaliation (Employees Only)**

In accordance with Title VII, the College will not discriminate against any of its employees or applicants for employment because of the employee's or applicant's opposition to any practice made an unlawful employment practice by Title VII, or because the employee or applicant made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VII.

c. **NYSHRL Retaliation (Employees Only)**

No employee covered by the NYSHRL Policy shall be subject to adverse action because the employee reports an incident of NYSHRL sexual harassment, provides information, or otherwise assists in any investigation of a NYSHRL sexual harassment complaint. The College will not tolerate such NYSHRL retaliation against anyone who, in good faith, reports or provides information about suspected NYSHRL sexual harassment. Any employee of the College who retaliates against anyone involved in a NYSHRL sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such NYSHRL retaliation should inform a supervisor, manager, or the Title IX Coordinator. All employees, paid or unpaid interns, or non-employees who believe they have been a target of such NYSHRL retaliation may also seek compensation in other available forums, as explained above in the section on Legal Protections.

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a NYSHRL sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours). Such retaliation is unlawful under federal, state, and (where applicable) local law. The NYSHRL protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.
VII. THE ROLE OF THE TITLE IX COORDINATOR

The College’s Title IX Coordinator is responsible for, among other things: (i) overseeing the College’s implementation of this Policy and the College’s response; (ii) coordinating the College’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation under this Policy; (iii) identifying and addressing any patterns or systemic problems of sex discrimination. The Deputy Title IX Coordinators can be designated by the Title IX Coordinator to fulfill the above roles as needed.

Reporting parties have a right to emergency access to the Title IX Coordinator or other designated individuals trained in interviewing victims of sexual assault upon the first instance of disclosure. These individuals are specially designated by the College and trained to receive reports of sexual misconduct violations and will provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. This individual will also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and will inform the reporting individual of other reporting options.

All reports are acted upon promptly, and every effort is made by the College to preserve the privacy of reports.\textsuperscript{11} A Student’s Bill of Rights is also attached as Appendix A.\textsuperscript{12}

Inquiries about or concerns regarding this Policy and procedure can be directed to either the Title IX Coordinator or the Deputy Title IX Coordinators at the contact information below. The Title IX Coordinator is available to meet with any student, employee, or third party to discuss this Policy, as well as any requests for accommodations of disability needed for any process outlined in this Policy.\textsuperscript{13} The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest to oversee the implementation of this Policy. To raise any concern involving bias or conflict of interest, misconduct, or discrimination by the Title IX Coordinator, please contact the Chief Human Resource Officer at JanitzS@Hartwick.edu or 607-431-4315. Concerns of bias or a potential conflict of interest, misconduct, or discrimination by any other individual involved in the process should be reported to the Title IX Coordinator. Contact information for the Title IX Coordinator and the Deputy Title IX Coordinators is provided in Section VIII(a).

VIII. RESOURCES AND REPORTING OPTIONS

The College encourages individuals who become aware of an incident of sexual misconduct to report the incident to the College by contacting the Title IX Coordinator. A victim has the option to report or decline to report incidents of sexual misconduct to local law enforcement. The College will assist victims in contacting law enforcement. There are various resources and reporting options, both internal and external to the College, available to individuals as needed or desired. The College also provides individuals

\textsuperscript{11} For the purpose of this Policy, privacy and confidentiality have distinct meanings. See Section IV for relevant definitions.

\textsuperscript{12} The rights set forth in the Students’ Bill of Rights as well as the rights set forth in Article 129-B apply regardless of whether the conduct occurs on campus, or off campus, or while studying abroad. New York Education Law 129-B, Enough is Enough, § 6440(6). To the extent applicable, students maintain these rights during resolution of a complaint under Process A and/or Process B.

\textsuperscript{13} Any requests for accommodations of disability will be responded to in accordance with College policy. Such requests can be made at any time.
with the opportunity to discuss the alleged incident with a trained professional on campus and understands that victims of sexual misconduct may wish to discuss the incident with the assurance that the discussion will be confidential. All of these options are provided and explained below.

a. Reporting to the College

The College will respond to reports of prohibited conduct with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects. At the first instance of disclosure by a reporting individual to a College representative, the reporting individual shall be informed that they have the right to make a report to campus safety, local law enforcement, and/or state police or choose not to report, to report the incident to the College, to be protected by the College from retaliation for reporting an incident, and to receive assistance and resources from the College.

The College encourages individuals who become aware of any incident of sexual misconduct to report the incident to the College by contacting the Title IX Coordinator. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), at any time (including during non-business hours) in person, by mail, by telephone, by electronic mail, or online, using the contact information listed for the Title IX Coordinator.

Traci Perrin  
Title IX Coordinator  
College Compliance Officer  
Shineman, Room 104  
P.O. Box 4020  
Oneonta, NY 13820  
(607) 431-4293  
PerrinT@Hartwick.edu

Cary Dresher  
Deputy Title IX Coordinator  
Assistant VP of Student Experience  
Office of Student Experience  
Dewar, 4th floor  
(607) 431-4532  
DresherC@Hartwick.edu

John Czarnecki  
Deputy Title IX Coordinator  
Athletic Director  
Department of Athletics  
Binder, Room 104  
(607) 431-4702  
CzarneckiJ@Hartwick.edu

Individuals may also report online, using the reporting form available at www.Hartwick.edu/TitleIX. The College will keep confidential the identity of sexual misconduct reporters, Complainants, individuals who have been reported to be perpetrators of sexual misconduct, including Respondents, and witnesses, except as permitted by FERPA; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

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14 As noted in Section VIII(b), all employees of Hartwick College, with the exception of those who are designated as confidential resources, are Responsible Employees. With respect to sexual harassment of employees, any College supervisor or manager who receives a complaint or information about workplace sexual harassment is required to take appropriate action. Appropriate action may include immediately intervening if harassment is witnessed by the supervisor or manager, and in all instances includes reporting the situation to the Title IX Coordinator.
Reports shall be investigated in accordance with this Policy. Reports of Title IX Sexual Harassment will be handled pursuant to Process A. Reports of all other sexual misconduct will be handled pursuant to Process B. A report alone will not initiate either formal grievance process. Once a report is received, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, discussed below in Section IX, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the initiation of a formal grievance process, and explain the process for initiating a formal grievance process. The Complainant will be given the opportunity to meet with the Title IX Coordinator to discuss these and other topics, such as a Complainant’s rights, and the Complainant will be provided with a written explanation of their rights and options with respect to their report of sexual harassment, available supportive measures and/or immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals, existing counseling and legal assistance, and crisis centers) and other services available both within the College and in the community.

A reporting party has the right to withdraw a report or formal complaint or involvement from the College process at any time. If the Respondent is an employee of the College, the reporting party has the right to disclose the incident to the College’s human resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate human resources authority.

b. Confidential Resources

Reporting parties have the right to disclose confidentially an incident of sexual misconduct to Hartwick College representatives who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals. Reporting individuals also have the right to disclose confidentially and obtain services from the state or local government. Professional, licensed counselors and pastoral counselors (e.g. clergy/chaplain) who provide mental health counseling to members of the College community (including those who act in that role under the supervision of a licensed counselor) may not report any information about an incident of sexual misconduct disclosed while acting within the scope of that counselor’s license or certification to the Title IX Coordinator without a Complainant’s permission.

The following is the contact information for on-campus confidential resources (for students):

- Perrella Wellness Center Counseling Services, 607-431-4420 or, on nights and weekends 607-431-4111, CounselingCenter@hartwick.edu
- Perrella Wellness Center Health Services, 607-431-4120, healthcenter@hartwick.edu

The following is the contact information for off-campus confidential resources (for any individual):

- Opportunities for Otsego, Inc.’s VIP, 607-432-4855 24-hour hotline
- NYS Domestic Violence Hotline, 1-800-942-6906
- New York State Office of Victim Services, 1-800-247-8035
- A.O Fox Hospital, 1 Norton Drive, Oneonta, NY 13820, 607-432-2000
- Bassett Medical Center, 1 Atwell Drive, Cooperstown, NY 13326, 607-547-3456

These confidential resources can help and provide information regarding medical assistance and treatment (including information about sexually transmitted infections, and sexual assault forensic examinations), and resources available through the New York State Office of Victim Services, and law enforcement options. The on-campus health and counseling services noted as confidential reporting resources are available to students free of charge. Employees are not eligible for on campus services, but
eligible employees may utilize their Employee Assistance Program (“EAP”) benefits. More information regarding EAP benefits is available to employees online in D2L (online intranet). The above-listed hotlines are also available free of charge. All of the confidential reporting resources maintain confidentiality except in extreme cases of immediacy of threat, or danger, or abuse of a minor.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting on and off campus resources. When a report is made to these resources, you are not making a report to the College and it will not result in other supportive measures, an investigation, or other corrective measures. Any person who desires supportive measures (such as a change in housing, academic or work assignments) or wishes to seek formal action in response to their allegations (such as investigation, hearing, and/or sanctions) must proceed as listed in Section XVII or XVIII.

Reporting Parties have the right to disclose the incident to College representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals. Except for those College employees designated as confidential resources, as set forth herein, College employees are Responsible Employees and any incident of sexual misconduct reported to a College employee must be reported by the employee to the Title IX Coordinator. This will include the communication of all relevant details about the alleged sexual misconduct shared by the reporting individual, including but not limited to the names of the Complainant and Respondent, if known, any witnesses, and any other relevant factors, including the date, time, and location of the incident. Failure of any employee, as described in this section, to report an incident of sexual harassment of which they become aware is a violation of the College’s Policy and can be subject to disciplinary action.

The College will generally defer to the Complainant’s wishes regarding whether to pursue formal action in relation to an incident that the College gains actual knowledge of via a Responsible Employee. However, when not pursuing formal action would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, or when not filing a formal complaint would be clearly unreasonable, the College will pursue formal action, even if it is against the Complainant’s wishes.

College offices and employees who cannot guarantee confidentiality will still strive to maintain privacy to the greatest extent possible and information reported will be shared only with those having a need to know such information in order to respond in accordance with the Policy. Every effort is made by the College to preserve the privacy of reports. 15

c. Immediate Medical Assistance

The following resources and reporting options can be utilized independent of or in conjunction with an internal report being made to the College. If you or someone you know is or may be the victim of any form of sexual misconduct, the College strongly urges you to seek immediate assistance. Assistance is available 24 hours a day, 7 days a week, from:

- Call 911
- Opportunities for Otsego, Inc.’s VIP, 607-432-4855 24-hour hotline

15 For the purpose of this Policy, privacy and confidentiality have distinct meanings. Privacy means that information related to a complaint will be shared with a limited number of College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. Confidentiality exists in the context of laws that protect certain relationships, including those who provide services related to medical care, mental health and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses.
The College’s Campus Safety staff is available to respond immediately to any incidents of sexual misconduct and to provide individuals with assistance in obtaining medical treatment. **Contact Campus Safety, Dewar 3rd floor, 607-431-4111.** For your safety and well-being, immediate medical attention is encouraged. Sexual Assault Nurse Examiners (SANE) are specially trained medical professionals and are available locally and regionally at Basset Medical Center and A.O. Fox Hospital. Opportunities for Otsego is available to advocate and assist with medical assistance.

d. **Law Enforcement**

If you are the victim of sexual misconduct, the College strongly encourages you to promptly report the incident to the police. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred or may be helpful in obtaining a protection or restraining order; preservation of such evidence is important. The College’s Campus Safety staff, located in Dewar 3rd floor, is available 24/7 to assist you in notifying law enforcement of an incident and in contacting law enforcement or legal service organizations to learn about these remedies. You may also decline to notify law enforcement. The criminal process and the College’s processes are not mutually exclusive or dependent on each other, meaning that a person may pursue just a criminal complaint, just a College complaint, or both. The contact information for law enforcement resources is:

- **Hartwick Campus Safety, Dewar 3rd floor, 607-431-4111.**
- NYS Police Sexual Assault Hotline, **1-844-845-7269**
- Oneonta Police Department, **607-432-1113**

Orders of protection may be available to individuals who have experienced or are threatened with violence. The College will abide by a lawfully issued order of protection. Campus Safety or other College officials will, upon request, provide reasonable assistance to College students and employees in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order. If an order of protection is granted, the Complainant and the Respondent have the right to receive a copy of the order when the order is received by the College. Both parties will also have the opportunity to have an appropriate College employee explain the order, the consequences for violating the order, and answer any questions about the order. Additionally, if the Respondent violates the order of protection, the Complainant may receive assistance from the College in calling local law enforcement to inform them of the violation.

Any internal College process will be conducted concurrently with any criminal investigation and proceeding that may be pending. Temporary delays in the College’s internal processes may be requested by law enforcement authorities for the purpose of gathering evidence; these temporary delays shall not last more than 10 days, except when law enforcement authorities specifically request and justify a longer delay. Not all sexual misconduct under this Policy is a crime\(^\text{16}\) and the standard applied in criminal cases (beyond a reasonable doubt) is different than the College’s standard (preponderance of evidence) under

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\(^{16}\) Penal codes and definitions vary by state and federal law. These definitions may also differ from the definitions of violations in this Policy. New York Penal law Article 130 addresses sex offenses and can be accessed at [https://www.nysenate.gov/legislation/laws/PEN/P3THA130](https://www.nysenate.gov/legislation/laws/PEN/P3THA130)
this Policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the Otsego County District Attorney.

A Complainant has the right to receive assistance from appropriate College representatives in initiating legal proceedings in family court or civil court. Please contact the Title IX Coordinator for more information.

e. **External Reporting**

An individual who has experienced harassment may file a report and/or formal complaint with the College only, or may also file a complaint with an external enforcement agency. Filing a report and/or formal complaint internally with the College does not extend the time to file with an external enforcement agency or in court. One does not need an attorney and there is no cost to file a complaint.

**U.S. and New York State Departments of Education**

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Telephone: 1-800-421-3481  
Fax: 202-453-6012; TDD: 1-800-877-8339  
Email: OCR@ed.gov

Office for Civil Rights, New York Office  
U. S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
Telephone: (646) 428-3800  
Facsimile: (646) 428-3843  
Email: OCR.NewYork@ed.gov  
https://www2.ed.gov/about/offices/list/ocr/index.html

New York State Education Department  
Office of Higher Education  
89 Washington Avenue  
Albany, NY  12234  
(518) 486-3633  
www.nysed.gov

**U.S. Equal Employment Opportunity Commission (EEOC)**

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.
New York State Division of Human Rights

The Human Rights Law ("HRL"), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights ("DHR") or in New York State Supreme Court.

Complaints with DHR may be filed any time within three years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to the College does not extend your time to file with DHR or in court. The three year period is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines. Adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, www.dhr.ny.gov. Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

Local Protections and the Local Police Department

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

f. Anonymous Reporting

Reports regarding sexual misconduct may be made anonymously, but can give rise to a need to investigate. Anonymous reports will be preliminarily investigated, to the extent possible, both to assess the underlying allegation(s) and to determine supportive measures. However, anonymous reports typically limit the College’s ability to investigate and respond, depending on what information is shared. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report where the Complainant is not identified. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to not to take formal action in response to a report unless doing so would be clearly unreasonable or there is an unmitigated risk of harm to the reporting individual or other members of the College community, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.
g. **Time Limits of Reporting**

There is no time limit on when a report can be provided to the Title IX Coordinator. However, the passage of time may make effective, responsive action difficult. Further, if the Respondent is no longer subject to the College’s jurisdiction and/or significant time has passed, the College’s ability to respond may be even more limited. For sexual misconduct reports, the Title IX Coordinator will discuss supportive measures and the process for pursuing formal College action via a formal grievance process with the Complainant; the Complainant’s wishes regarding pursuing a formal grievance process will control unless the Complainant does not wish to take formal action and refraining from doing so would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community and, in the case of a formal complaint, it would be clearly unreasonable not to file one. Individuals are encouraged to bring complaints forward in a timely manner.

h. **Public Events and Climate Surveys**

Generally, information disclosed at public events and in climate surveys does not obligate the College to begin an investigation. This includes information shared in classroom writing assignments or discussions, human subjects research, or events such as “Take Back the Night” marches or speak-outs. The information may be used to inform educational and prevention efforts. Support measures may also result from such disclosures without formal College action. The College will take steps to ensure that answers to required climate surveys and assessments remain anonymous. No personally identifiable information will be included in any published results. Information discovered or produced as a result of these surveys will not be in any court proceeding except as required by a court action.

i. **False Allegations and Information**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action under either the Code of Student Conduct or the Employee Handbook. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination. Additionally, witnesses and parties providing knowingly false evidence or deliberately misleading an official conducting an investigation will be subject to discipline under Hartwick College Policy as stated in either the Code of Student Conduct or Employee Handbook.

j. **Amnesty**

**Students:** The health and safety of every student at the Hartwick College is of utmost importance. Hartwick College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Hartwick College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Hartwick College’s officials or law enforcement will not be subject to the College’s code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.¹⁷

**Employees:** Hartwick College endeavors to operate in an ethical and lawful manner and expects all employees and volunteers to conduct their activities in accordance with College policies and applicable

¹⁷ New York Education Law Article 129-B, Section 6442(1).
All employees have a responsibility to report alleged violations or suspected violations. Employees who make good-faith reports of violations are also afforded protections under the Whistleblower Protections as outlined in the Employee Handbook.

k. **FERPA**

FERPA permits institutions to share information with parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either parent’s prior year federal income tax return. Generally, the College will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual or Complainant.

l. **Clergy Compliance**

The College will make reports of certain crimes occurring in specific geographic locations that shall be included in the College’s Annual Security Report pursuant to the Clery Act, 20 U.S.C. § 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual, including a Complainant. The College is obligated to and will issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that are reported to campus security or local police agencies and that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts, jeopardize the safety of an individual, cause a suspect to flee or evade detections, result in the destruction of evidence, or when the warning itself could potentially identify the reporting individual or Complainant. A reporting individual or Complainant will not be identified in a timely warning.

**IX. SUPPORTIVE MEASURES AND EMERGENCY REMOVALS**

The College will respond to all alleged incidents of sexual misconduct and/or related retaliation when the College has actual knowledge of such incidents. Before or after Process A or Process B is initiated, or where a report is made but neither formal grievance process is initiated, the College will provide supportive measures to the Complainant and the Respondent, as appropriate and reasonably available, without fee or charge to the parties. Complainants do not need to report the incident to campus safety or law enforcement or proceed with a formal grievance process in order to receive supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services that can range from referral to supportive services such as counseling or medical services to class and housing modifications, withdrawals, or leaves of absence. Examples of supportive measures include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program (EAP)
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no-contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
● Any other actions deemed appropriate by the Title IX Coordinator

At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may initiate a formal grievance process with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The College will maintain the confidentiality of the supportive measures, except as necessary to provide such supportive measures. The College will act to ensure as minimal an academic/workplace impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party. The College will review the facts and circumstances of each case, in deciding whether and what steps are reasonable and appropriate.

Upon a written request to the Title IX Coordinator, an individual may also seek a prompt review of the need for and terms of any supportive measures and accommodations that directly affects them. This request should include the basis for the request and any supporting evidence. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond in writing and to submit evidence relevant to the request if desired.

   a. No-Contact Order Review

All no-contact orders will be mutual – i.e. neither party involved will be permitted to contact the other party -- unless the College determines, in its discretion and after a fact-specific analysis, that a non-mutual order is appropriate. The Title IX Coordinator will issue any no-contact order in writing, specifying the terms of the no-contact order, including the Parties’ responsibilities.

When a no-contact order is issued prior to determination, the parties will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and the terms of the no-contact order, including potential modification, and may submit evidence in support of his or her request. This request shall be made by submitting a written request to the Title IX Coordinator providing the basis for the request; any evidence offered in support of the request should be submitted with the written request. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond in writing and to submit evidence relevant to the request if desired.

Violation of a no-contact order under this Policy will be grounds for discipline, which may include but are not limited to expulsion or termination from the College.

   b. Emergency Removal

A Respondent may be removed from the College’s education program or activity on an emergency basis, including interim suspension, if, after an individualized safety and risk analysis, the Title IX Coordinator or designee, in conjunction with other administrators as needed, determines that there is an immediate threat to the physical health or safety of any student, employee or other individual arising from the allegations of sexual misconduct that justifies removal.

The Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal via written request to the Title IX Coordinator. Upon written request, the Complainant or reporting party and/or the Respondent will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification; parties are permitted to submit evidence in support of the request along with the written
request. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond in writing and to submit evidence relevant to the request if desired.

In determining whether an emergency removal, including interim suspension, is appropriate, the Title IX Coordinator or his or her designee will consider, among other things, the following factors:

- Whether there have been other sexual misconduct reports or complaints about the same Respondent;
- Whether the incident involves a weapon or violence;
- Whether the Respondent has a history of arrests or disciplinary records;
- Whether the incident represents an escalation in and unlawful conduct on behalf of the Respondent from previously noted behavior; and
- Whether there is an increased risk that the Respondent will commit additional acts of violence.

The Title IX Coordinator has sole discretion under this Policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this Policy will be grounds for discipline, which may include but are not limited to expulsion or termination from the College. The College is permitted to place a non-student employee respondent on administrative leave during the pendency of a Process A proceeding.

X. ADVISORS

The Complainant and Respondent may be accompanied during any proceeding or related meeting or proceeding by an advisor of their choice who can be, but is not required to be, an attorney (at the party’s own expense, if the advisor is a paid advisor). An advisor is an individual chosen by a Complainant or a Respondent to provide guidance during the process. While Parties are free to consult with multiple individuals regarding the allegations, Parties are permitted to designate only one (1) individual as an advisor of choice for the purposes of this Policy. The role of the advisor is narrow: they may attend all meetings or interviews at which the party is entitled to be present, and may help the party prepare for each meeting, however, the advisor may not serve as a proxy or representative for the party and is not permitted to participate in the College’s process, with an exception for cross-examination in Process A. Specifically, advisors are permitted to cross examine the other parties and witnesses during the live hearing in Process A only; parties are not permitted to personally conduct cross-examinations. If a party does not have an advisor of choice for a hearing, the College will appoint one (who can be, but is not required to be, an attorney) free of charge to conduct cross-examinations on behalf of that party in Process A. Advisors otherwise may not participate in any interview, meeting, hearing (other than cross-examination) or be disruptive to any part of the process. Although the advisor may not generally speak on behalf of the party, the advisor may consult with the party privately as reasonably needed.

The College has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take steps to ensure compliance with this Policy. If an advisor is not adhering to these rules, then the advisor may be removed from the meeting or proceeding. Investigations and hearings will not be delayed more than 3 business days based on the unavailability of a party’s desired advisor. Repeated delays due to unavailability will also not be tolerated. If needed, a new advisor will be appointed.

XI. PRESUMPTIONS, STANDARDS, AND CONSOLIDATION

a. Presumption and Expectations
There is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this grievance process.

The College expects all members of the College community to cooperate with the College during the various processes outlined in the Policy. This includes responding in a timely manner to requests from the Title IX Coordinator or Investigator and making reasonable adjustments to schedules to participate in meetings, hearings, or other proceedings. Further, individuals are expected to provide information in good faith; as discussed in more detail in Section VIII(i), knowingly providing false information or making false allegations is strictly prohibited and is subject to discipline.

b. **Standard of Evidence**

The standard for decisions determining responsibility under the College Policy is a preponderance of the evidence, meaning that it is more likely than not that a violation occurred. The same standard is applied regardless of whether the Respondent is a student or an employee and is the same for Process A and Process B.

c. **Consolidation of Formal Complaints**

If two or more reports or formal complaints are reported pertaining to the same or related sets of facts and circumstances, the Title IX Coordinator may determine that the cases should be consolidated and investigated and adjudicated by the same investigator(s), hearing officer, and appeals panel, subject to the limits of applicable law including but not limited to FERPA. The College may do this as to allegations of Title IX sexual harassment or any other type of sexual misconduct or retaliation claim against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of sexual harassment, sexual misconduct, or retaliation arise out of the same facts or circumstances.

XII. **ACADEMIC FREEDOM**

Hartwick College is an academic institution at which academic freedom possessed by those who are teaching/conducting research and their students is necessary and valued. The College will not construe this Policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

XIII. **COORDINATION WITH OTHER POLICIES**

A particular situation may potentially invoke one or more College policies or processes. These situations will be addressed on a case by case basis. The College reserves the right to determine the most applicable Policy or process and to utilize that Policy or process. If an individual is charged with Policy violations under both the Sexual Misconduct Policy and another Policy, the alleged violations may be handled through one hearing process, engaging both the Title IX Coordinator and the other presiding College Official or designee. In that event, a Hearing Officer trained in necessary areas for all applicable policies will preside over the hearing. In circumstances where there is a conflict between the procedures and/or processes set forth in the Code of Student Conduct, Employee Handbook, or Faculty Manual and this Policy, the procedures or process in this Policy govern. Alternatively, a situation that invokes more than one College policy may have allegations divided on the basis of which policy was allegedly violated, with each grouping addressed separately using the grievance process in the pertaining policy.

XIV. **REVISION, DESIGNATION OF AUTHORITY AND RECORD KEEPING**
The most current revision of this Policy supersedes all previously issued revisions and inconsistent verbal or written policy statements. The College reserves the right at any time to change, modify, delete, or add to any of the provisions of this Policy.

The College may, at its discretion, designate a trained and experienced individual(s) to act in the place of the investigators, adjudications/decision-makers, and/or facilitators in this Policy. If there is such a designation, the Parties involved will be promptly informed.

Records generated in connection with reports, investigations, grievance processes, and appeals are maintained in confidential files for at least seven years by an appropriate office, which may be the Title IX Coordinator, the Assistant Vice President for Student Experience, Chief Human Resource Officer, and/or the Registrar (for records concerning disciplinary outcomes). Only those with a right and need to know are permitted access. The Parties will have access to a full and fair record of the hearing in which they were involved and have the right to have all information obtained during the course of the grievance process be protected from public release until the appeals panel makes a final determination unless otherwise required by law. For additional information about maintenance and accessibility to student records, please see the College’s Policy governing Student Privacy Rights and Confidentiality.

Records required to be kept are:

1. Each sexual misconduct investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of the hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the College’s education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These training materials will be publicly available on the College website.

Additionally, the College must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report of sexual misconduct, including sexual harassment, or formal complaint. In each instance, the College must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College’s education program or activity. If the College does not provide a Complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

**XV. TRAINING**

Title IX Coordinators, investigators, decision makers, and anyone who facilitates an informal resolution process will be trained in the definition of Title IX sexual harassment, the scope of the College’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision makers will receive training on technology to be used at a live hearing and on issues of relevance of questions and evidence. Investigators will also receive training on issues of relevance. Any training materials used to train any of these individuals will be available on the College’s public website.
Administrative contacts, persons assigned as investigators and individuals appointed to disciplinary hearing proceedings to hear alleged violations of this Policy (e.g., hearing officers and appellate officers) will receive annual training on relevant topics, including discrimination, harassment, sexual misconduct, sexual assault, stalking, domestic violence and dating violence, the effects of trauma, impartiality, the rights of the Respondent, including the presumption of “not responsible,” and how to conduct investigations of sexual violence and disciplinary proceedings pursuant to the College’s policies and procedures and that protect the safety and respectful treatment of all parties and promote accountability.

In addition, annual workplace harassment training is required for all employees, including all administrators and all faculty, whether full-time or part-time. The objective of this training is to enable individuals to understand and recognize the nature of harassment, its impacts and when it occurs in their own behavior and that of others. All new employees are required to complete this training within 30 calendar days of hire, and every year thereafter. The College may, at its discretion, terminate an employee who does not complete the required training(s).

All training materials used pursuant to the Policy to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process are posted on the webpage of the Hartwick College Title IX Coordinator, www.hartwick.edu/titleix.

XVI. PREVENTION AND AWARENESS EDUCATION PROGRAMS

Creating a safe and respectful environment is the responsibility of all members of the College’s community. To promote and maintain this environment, the College engages in comprehensive educational programming in an effort to reduce the frequency of all forms of sex or gender-based discrimination and sexual misconduct, including sexual harassment. The College provides mandatory primary prevention and awareness programs for all incoming students and employees and ongoing prevention and awareness campaigns for all students and employees to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. Certain students must complete training on domestic violence, dating violence, stalking, or sexual assault prevention. These students include student leaders and officers of student organizations recognized by or registered with the College and those seeking recognition by the College, as well as student-athletes. These students must complete such training prior to receiving recognition or participating in intercollegiate athletic competition. For additional information about the College’s sexual misconduct prevention and awareness programming, please contact the Title IX Coordinator.
XVII. PROCESS A: FORMAL GRIEVANCE PROCESS FOR ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT

Process A applies only to qualifying allegations of sexual harassment. Qualifying allegations of sexual harassment are allegations of Title IX Sexual Harassment (as defined above), of which the College has actual knowledge, and which occur during the College’s education programs or activities against a person in the United States.

If a dismissal occurs under Process A, please see Process B for a description of the processes applicable to the resolution of such offenses, if applicable. Process B may also apply to sexual harassment when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

a. Timeframe

Unless there is good cause for temporary delay(s) or limited extension(s), the College will promptly conclude aspects of the formal grievance process within the following timeframes:

1) The formal grievance process, excluding time spent on informal processes or appeal, will be concluded within 90 business days of the filing of a formal complaint.
2) Appeals will be concluded within 30 business days of the filing of an appeal.
3) Informal Resolutions will be concluded within 20-30 business days of receiving both parties’ voluntary, written consent to the informal resolution process.

Good cause may include, but is not limited to, absence of a party, advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.18 In the case of a temporary delay of the grievance process or a limited extension of time frames for good cause, the College will provide the Complainant and Respondent with written notice of such delay or extension and the reasons for the action.

b. Progression from Report to Formal Complaints

Reports of Title IX sexual harassment may be made using any of the following options as set forth in the Section VIII(a).

i. Formal Complaints

If a Complainant chooses to file a formal complaint, the College will initiate Process A, including investigation into the Complainant’s allegations as further described in this Policy. The College must investigate the allegations in a formal complaint.

A formal complaint means a document filed by the Complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment by a Respondent and requesting that the College investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator at any time (including during

18 Please discuss any requests for language assistance and accommodation of disabilities with the Title IX Coordinator, who will respond to such requests pursuant to College policy. Such requests can be made at any time.
non-business hours) in person, by mail, by telephone, by electronic mail, or online, using the contact information listed for the Title IX Coordinator in Section VIII(a).

A Complainant also has the right to withdraw a formal complaint or report from the College at any time. If the Complainant reports Title IX sexual harassment and elects to take no formal action, the Complainant can change that decision and decide to pursue a formal process at a later date by filing a formal complaint.

ii. When a Complainant Does Not Wish to Proceed

The College will seek consent from Complainants prior to conducting an investigation; the Title IX Coordinator will weigh any request for confidentiality against Hartwick’s obligation to provide a safe, non-discriminatory environment for all members of its community. If a Complainant wants a report to remain confidential, such that the Complainant’s identity will not be disclosed to the Respondent, and chooses not to file a formal complaint, the Complainant may receive supportive measures without an investigation being conducted, unless the Title IX Coordinator, after having considered the Complainant’s wishes, determines, in light of the known circumstances, that it would be clearly unreasonable for the College not to investigate the Complainant’s allegations (e.g. would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community) or does not comply with state or federal law. Honoring such a request may limit the College’s ability to meaningfully investigate and pursue action against a Respondent. Factors used to determine whether to honor such a request include but are not limited to:

- Whether the Respondent has a history of violent behavior, a pattern of misconduct or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon, violence or force;
- Whether the Complainant is a minor; and
- Whether the College possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so. This Policy provides the Complainant with as much control over the process as possible, while respecting the College’s obligation to protect its community and follow the law. If the Title IX Coordinator determines that not filing a formal complaint would be clearly unreasonable, then the Title IX Coordinator will sign the formal complaint, inform the Complainant or reporting party that it has been signed, and take action as necessary to protect and assist them.

iii. Anonymous Complaints

A Complainant may desire to have corrective measures taken, but may wish to have their identity as the Complainant kept confidential. However, disciplinary sanctions or other actions that are not supportive measures may not be imposed on the Respondent prior to completion of a Formal Grievance Process and a finding of responsibility, and a known Complainant cannot remain anonymous during the Process A Formal Grievance Process regardless of who, Complainant or the Title IX Coordinator, files the formal complaint. If a report is filed anonymously and the Complainant is not identified, the Title IX Coordinator may still proceed with filing a formal complaint, should circumstances warrant. However, the College’s ability to respond to the formal complaint may be limited.
If the report is made by someone other than the Complainant, the Title IX Coordinator will reach out to the Complainant and Respondent and offer supportive measures. However, a third-party’s report will not trigger an investigation.

c. Notice of Allegations

The Complainant and the Respondent shall receive notice referencing the provision(s) of this Policy alleged to have been violated and in what manner and the possible sanctions that may be imposed. Both parties will be provided with the date, time, location, and factual allegations concerning the alleged violation and a copy of this Policy. Additionally, once the College has received a formal complaint, written notice of the following will be sent by the Title IX Coordinator to parties who are known:

- Information about the applicable grievance processes, including any informal resolution process.
- The allegations of sexual harassment potentially constituting Title IX sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX sexual harassment, and the date and location of the alleged incident, if known.
- The Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- A statement about the College’s prohibition on retaliation.
- Any provision in the College’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the original notice described above, the College will provide notice of the additional allegations to the parties whose identities are known.

d. Dismissal of a Formal Complaint

There are certain circumstances where a formal complaint must or may be dismissed from the Process A grievance process. This decision may be made at any stage of the process. Dismissal of a formal complaint from the Process A grievance process does not preclude action under Process B or other College policy.

The College must dismiss a formal complaint from the Process A grievance process when the conduct alleged in the formal complaint:

1) Would not constitute Title IX sexual harassment, even if proved;
2) Did not occur in the College’s education program or activity;
3) Did not occur against a person in the United States; or
4) The Complainant is not participating in or attempting to participate in the College’s education program or activity at the time of filing a formal complaint.

The College may dismiss the formal complaint or any allegations therein if, at any time during the investigation or hearing:

1) The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2) The Respondent is no longer enrolled at or employed by the College; or
3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reasons therefore to the parties. The dismissal decision is appealable by any party under the procedures for an appeal below.

e. **Informal Resolution**

In some cases, an informal resolution may be appropriate. An informal resolution process cannot be offered unless a formal complaint is filed; an informal resolution process is not permitted when the formal complaint involves a student Complainant and an employee Respondent. The College cannot require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, the College cannot require the parties to participate in an informal resolution process under this section.

If a Title IX formal complaint has been filed, at any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. To do so, the College must:

1) Provide to the parties a written notice disclosing:
   a. the allegations;
   b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
   c. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
2) Obtain the parties’ voluntary, written consent to the informal resolution process.

An informal resolution does not necessarily require the parties to meet together. An informal resolution may involve a College employee and/or a third-party facilitator, to be selected by the College. Anyone designated to facilitate an informal resolution process will not have a conflict of interest or bias. The results of Informal Resolution are not appealable. At any time during the process, the Complainant or the Respondent has the right to resume the formal processing of the complaint.

Informal resolution may involve mediation or restorative practices, by which the parties reach a mutually agreed upon resolution of an allegation. The Title IX Coordinator or designee may also, with the consent of the parties, negotiate and implement an agreement to resolve the allegations that satisfies all parties. If an informal resolution results in an agreement, then the informal resolution is considered successful. Both parties will sign a statement agreeing that the matter will be considered resolved. If attempts at informal resolution are unsuccessful, then the formal process will resume.

The Respondent may also accept responsibility for all or part of the alleged Policy violations at any point in the resolution process. An informal resolution may include an acceptance of responsibility. When a resolution is accomplished, the appropriate sanctions or responsive actions are promptly implemented in
order to effectively stop the sexual harassment, prevent its occurrence, and remedy the effects of the conduct.

f. **Investigation of Formal Complaint**

An investigation may occur because a Complainant wished to proceed with a formal complaint, or because the Title IX Coordinator signed a formal complaint. The College strives to ensure that formal complaints are responded to in a prompt, fair, timely, thorough, and impartial manner.

The investigation will be performed by appropriate trained persons. Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint a trained investigator(s) to conduct the investigation (the “Investigator”). A party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the party’s objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator. No investigator will have a conflict of interest or bias.

Formal complaints of Title IX sexual harassment will be investigated normally within 45 to 60 business days of the filing of a formal complaint, though some investigations may take more time depending on the nature and specific circumstances of the case, involvement of law enforcement, and/or availability of witnesses. The College will make a good faith effort to complete investigations as promptly as possible and will communicate regularly with the parties to update them on progress, timing of the investigation and delay for good cause, if necessary.

During the investigation, the College has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility. While the Complainant and the Respondent are not restricted from gathering and presenting relevant evidence, the Investigator is responsible for gathering relevant evidence to the extent reasonably possible. The College cannot access, consider, disclose, or otherwise use in the formal grievance process a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains voluntary, written consent from that party (or, if the party is not an eligible student, that party’s parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not permitted in the grievance process unless the person holding such privilege has waived that privilege.

An investigation usually involves interviews of the persons involved (e.g. Complainant, Respondent), including witnesses, and gathering and reviewing relevant evidence. The Complainant and the Respondent will be given an equal opportunity to present information in the context of the investigation, such as documents, communications, photographs, and other evidence, and the opportunity to suggest fact and expert witnesses and other inculpatory or exculpatory evidence. Parties and witnesses are expected to provide all available relevant evidence to the Investigator during the investigation. The Investigator retains discretion to determine the order and method of investigation and witnesses as unnecessary or inappropriate. Information will be obtained from each party separately.

Parties whose participation is invited or expected at a hearing, investigative interview, or other meeting will be provided written notice of the date, time, location, participants, and purpose of said event. As noted above in Section X, both parties can be accompanied during any proceeding or related meeting or proceeding by an advisor, subject to restrictions.
No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording. Neither party is restricted from discussing the allegations or gathering and presenting evidence. If relevant evidence is destroyed by a party, the decision-maker can take that into account in assessing the credibility of the parties, and the weight of evidence in the case. Both parties will have an equal opportunity to inspect and review any evidence as part of the investigation that is directly related to the allegations in the formal complaint, including the evidence upon which the College does not intend to rely on reaching a determination regarding responsibility, and inculpatory or exculpatory evidence.

At the conclusion of the investigation, the Investigator will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The Investigator will also complete a written investigative report. Prior to completing the investigation report, each party and their advisor, if any, will be provided with access to the evidence, subject to inspection and review, in an electronic format and will be provided 10 business days to submit a response. The Investigator will consider each party’s response, if any, prior to completing the final investigative report.

The final investigative report must fairly summarize relevant evidence and an electronic or hard copy of the final investigative report must be provided to each party and their advisor, if any, 10 business days prior to the hearing for their review and written response. The parties’ written responses must be submitted during this 10 day period, at least 5 business days prior to the start of the hearing. The response may consist of a written statement not to exceed 3 pages. The parties and their advisors will be provided with the other party’s written response to the investigative report, if any, in electronic format. The investigative report and all relevant evidence will be provided to the Hearing Officer and will be available for the parties to inspect, review, and refer to during the hearing, including for the purposes of cross examination.

g. Hearing

A live hearing is required as part of the formal grievance process. The Title IX Coordinator will appoint a Hearing Officer from a pool of specially trained College personnel. Where circumstances warrant, the Title IX Coordinator may determine that a Hearing Officer external to the College will be assigned. The Hearing Officer will not have a conflict of interest or bias. Neither the Title IX Coordinator nor the Investigator(s) may serve as the Hearing Officer. After the investigative report is shared with and reviewed by the parties, the Title IX Coordinator will assign the matter to be heard by the Hearing Officer. The Hearing Officer will review the final investigatory report and supporting evidence as well as any written response to the final report submitted by the parties. The parties are free to reference the investigative report and any evidence during the hearing.

The Title IX Coordinator or designee will provide the parties with a written notice of the hearing at least 5 business days in advance. The written notice will include:

- The date, time, and place of the hearing;
- The name and contact information of the Hearing Officer. A party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the party’s
objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Hearing Officer at any time.

- Any technology that will be used to facilitate the hearing.
- A statement that if the party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party’s or witness’s testimony and any statements given prior to the hearing will not be considered by the Hearing Officer.
- A reminder that the parties may have the assistance of an advisor of their choosing at the hearing and will be required to have one present to conduct cross-examination of the other party and any witnesses.
- A list of those who will attend the hearing (including but not limited to the parties, witnesses, etc.), along with the invitation to object on the basis of bias or conflict of interest.

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide the parties with written notice explaining the reason for such change. The live hearing may be in person, virtual, or a combination of both, as long as participants can simultaneously see and hear each other. Either party may request that the live hearing occur with parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.

The rules of decorum will be read to the parties at the beginning of the hearing. Any evidence that the Hearing Officer determines is relevant and credible may be considered. The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor. During the hearing, the parties may: speak on their own behalf, including providing an opening and closing statement; be accompanied by an advisor, who may be, but is not required to be, an attorney; have an advisor cross-examine the other party and any witnesses; and have the opportunity to attend the entire hearing or proceeding, except for the deliberation phase. The Hearing Officer will determine the order of witnesses and answer any procedural questions. At the hearing, each party’s advisor is permitted to ask the other party(ies) and any witnesses all relevant questions and follow up questions, including those challenging credibility, as part of cross-examination. Thus, both the Complainant and Respondent must be accompanied by an advisor for at least this portion of the live hearing, though advisors are permitted to be present for the entire hearing. If a party does not have an advisor present at the hearing, then an advisor will be provided by the College, free of charge, for the purposes of conducting cross-examination. While the hearing is not intended to be a repeat of the investigation, cross-examination must be conducted directly, orally, and in real time by the advisor; parties are not permitted to personally conduct cross-examination.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer shall determine whether the question is relevant, verbally state a finding of relevance for the record, instruct the witness that they may or may not answer, and explain any decision to exclude a question as not relevant. The Hearing Officer may invite explanations regarding relevance with the advisors if he/she so chooses. The Hearing Officer will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. Only relevant cross-examination and other questions may be asked of a party or a witness; thus, the Hearing Officer may decline to allow any question that is duplicative of information already gathered or asked, irrelevant, or otherwise determined to be unnecessary or inappropriate. The Hearing Officer will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Officer and the parties and they will then be excused.
Both parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. In addition to psychological records, medical records are also excluded unless a party voluntarily waives that privilege and consents to the records being used. Both parties also have the right to exclude their own prior sexual history with persons other than the other party in the judicial or conduct process, subject to the exceptions in 34 CFR § 106.45(6)(i), which states that questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence about the Complainant’s prior sexual behavior are (1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or (2) if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. Both the Complainant and Respondent will be provided with the same opportunity to submit information and evidence, including evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

If a party or witness does not attend the live hearing and submit to cross-examination at the live hearing, the Hearing Officer cannot rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Officer is not permitted to draw any inference regarding the determination of responsibility based solely on a party or witness’s absence from the live hearing or refusal to answer cross-examination or other questions. An audio or audiovisual recording/transcript of any live hearing will be created and made available to the parties for inspection and review.

h. Impact Statements

The parties will be offered an opportunity to provide impact statements to the Hearing Officer while they are deliberating on appropriate sanctions. The impact statement may be up to 3 pages single spaced. The Title IX Coordinator will provide the impact statements to the Hearing Officer only once the Hearing Officer is deliberating on appropriate sanctions. Impact Statements cannot and will not be considered by the Hearing Officer when reaching a determination of responsibility.

i. Determination of Responsibility

The Hearing Officer must issue a written determination regarding responsibility. In reaching this decision, all relevant evidence must be objectively evaluated, and credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness. The Hearing Officer cannot defer to any conclusions in the investigative report and must make an independent determination of responsibility.

If the Hearing Officer concludes that the Respondent is responsible for a violation of this Policy, then the Hearing Officer shall receive the Respondent’s disciplinary record (i.e., any previous disciplinary action or other violation of College Policy, including this Policy, for which the Respondent was found responsible), and the party’s impact statements to consider, as appropriate, in determining sanctions. The disciplinary sanction(s) for a violation of this Policy will be based on a consideration of all of the circumstances, including but not limited to: the nature and severity of the conduct, the Respondent’s disciplinary history, and any other information deemed relevant by the Hearing Officer.

Within 10 business days of the conclusion of the hearing process, the Hearing Officer will issue a written decision to the Title IX Coordinator outlining relevant factual findings and whether a violation of this Policy has occurred and, if relevant, the appropriate sanctions. The Hearing Officer must issue a written determination that must include:

1) Identification of the allegations potentially constituting Title IX sexual harassment
2) 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;
3) Findings of fact supporting the determination;
4) Conclusions regarding the application of the College’s policy to the facts;
5) As to each allegation, a statement of, and rationale for, both the determination regarding
responsibility and any disciplinary sanctions the College imposes on the Respondent, and
whether remedies designed to restore or preserve equal access to the College’s education
program or activity will be provided by the College to the Complainant;
6) The College’s procedures and permissible grounds for the Complainant and Respondent to
appeal; and
7) When the determination becomes final.

The College will provide the written determination to the parties simultaneously. The Title IX Coordinator
is responsible for effective implementation of any remedies. The College must wait to act on the
determination regarding responsibility, including implementing disciplinary sanctions or remedies, until
the determination becomes final. The determination regarding responsibility becomes final either on the
date that the College provides the parties with the written determination of the result of the appeal, if an
appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered
timely. Both parties have the right to choose whether to disclose or discuss the outcome of the formal
grievance process.

j. Disciplinary Sanctions and Remedies

Disciplinary sanctions are imposed on a Respondent who has been found responsible and range from a
warning up to and including expulsion/termination from the College or revocation of a degree. The
disciplinary sanction(s) for a violation of this Policy will be based on a consideration of all of the
circumstances, including but not limited to: the nature and severity of the conduct, the Respondent’s
disciplinary history, previous allegations involving similar conduct, and any other information deemed
relevant by the Hearing Officer. The following is a non-exhaustive list of sanction(s) that may be imposed:

- Behavioral requirement
- Change of class/job assignment and/or housing/work location
- Required training and/or counseling
- Disciplinary probation
- Educational requirements and/or community services
- Expulsion/termination
- Housing probation or removal from housing
- Removal from office/position, demotion, and/or reduction in pay
- Removal of privileges/eligibility restriction
- Suspension/leave with or without pay
- Written warning/letter of reprimand or censure
- Withholding diploma
- Revocation of degree
- Other sanctions as deemed appropriate

If a Respondent takes a leave of absence or withdraws while the grievance process is pending, the College
in its discretion may continue processing a report or formal complaint pursuant to this Policy. In the event
a former student is found responsible of sexual misconduct, Hartwick may revoke that student’s degree
or impose a ban from campus for any length of time. If the conclusion reached is that there has been no violation of this Policy, but other inappropriate conduct has occurred, the College retains the right to address that inappropriate behavior in accordance with College Policy and practice.

Remedies will be provided to a Complainant where a Respondent has been found responsible, through Process A or informal resolution, for Title IX sexual harassment against the Complainant. Supportive remedies, which can include the supportive measures discussed in Section IX above, range from referral to supportive services such as counseling or medical services to class and housing modifications, withdrawals, or leaves of absence; punitive or corrective sanctions or remedies range from a warning up to and including expulsion/termination from the College or revocation of a degree.

The College must wait to act on a determination regarding responsibility, including implementing disciplinary sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

k. Transcript Notations

For those crimes of violence that Hartwick College is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation: “Suspended after a finding of responsibility for a code of conduct violation” or “Expelled after a finding of responsibility for a code of conduct violation.” For the Respondent who withdraws from the College while such charges are pending and declines to complete the disciplinary process, the transcript shall include the following notation: “withdrew with conduct charges pending.”

A student has the right to appeal such transcript notation to request its removal in the event of a suspension. Transcript notations for suspensions may be removed at the discretion of the College, but no earlier than one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

l. Appeals

Following issuance of a written determination from the Hearing Officer regarding a determination of responsibility or the College’s dismissal of a formal complaint or any included allegations, the Complainant and/or Respondent, may file an appeal with the Title IX Coordinator. A written appeal, based on one or more of the grounds listed below, must be made within 5 business days of the receipt of the written decision or notification of dismissal and must clearly and fully set forth the evidence to support each identified ground of appeal which the appealing party is asserting. The grounds for appeal are limited to:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator(s), or decision-maker(s) (i.e., the Hearing Officer) had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

The Title IX Coordinator, or designee, will determine if the written appeal clearly identifies one or more of the grounds for appeal. The Title IX Coordinator will not assess the merit of the appeal, but will review
the documentation to confirm that grounds for an appeal have been asserted in the appeal. If a request for appeal is accepted, both parties will be notified in writing that an appeal is filed. The non-appealing party will be provided the opportunity to review the appeal and will be permitted 5 business days from the date of review of the appeal to submit a written statement in support of, or challenging, the appeal.

The Title IX Coordinator will appoint an Appeals Panel, which shall be made up of 3 members from the pool of available Hearing Officers, or where appropriate, individuals trained in Title IX who are external to the College, to review the appeal. No member of the Appeals Panel shall have a conflict of interest or bias. Anyone who made the determination regarding responsibility (i.e. who served as the Hearing Officer at the hearing) or dismissal on a formal complaint, investigated the formal complaint, or who is a Title IX Coordinator cannot serve on the Appeals Panel regarding that same formal complaint.

Appeals are not intended to be full re-hearings of the formal complaint and generally will be considered upon a review of the written documentation of the parties and any pertinent documentation regarding the grounds for appeal.

A preponderance of the evidence standard will be applied on appeal. Unless there is good cause for temporary delay(s) or limited extension(s), the decision of the Appeals Panel will be communicated within 8 business days to both parties, simultaneously and in writing; the written decision will describe the result of the appeal and the rationale for the result. The Appeals Panel’s decision will be final and binding. Both parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.
XVIII. **PROCESS B: RESOLUTION PROCESSES FOR ALL OTHER ALLEGATIONS OF SEXUAL MISCONDUCT**

Process B applies to all allegations of sexual misconduct and retaliation that do not constitute Title IX sexual harassment, and therefore do not qualify for Process A. If Process A is applicable to the alleged conduct, Process A must be applied instead of Process B. Process B applies to all allegations of sexual misconduct that do not constitute Title IX sexual harassment, including sex/gender-based discrimination or harassment that does not qualify as Title IX sexual harassment, involving students, employees, or third parties and other related misconduct prohibited by this Policy.

a. **Timeframe**

Unless there is good cause for temporary delay(s) or limited extension(s), the College will promptly conclude aspects of the formal Process B grievance process within the following timeframes:

1) The formal Process B grievance process, excluding time spent on informal processes or appeal, will be concluded within 90 business days of the decision to pursue formal actions.
2) Appeals will be concluded within 30 business days of the filing of an appeal.
3) Informal Resolutions will be concluded within 20-30 business days of receiving both parties' voluntary, written consent to the informal resolution process.

Good cause may include, but is not limited to, absence of a party, advisor, or witness; concurrent law enforcement activity; or the need for language assistance of accommodation of disabilities.\(^\text{19}\) In the case of a temporary delay of the grievance process or a limited extension of time frames for good cause, the College will provide the Complainant and Respondent with written notice of such delay or extension and the reasons for the action.

b. **Reports of Sexual Misconduct and/or Retaliation**

Reports of sexual misconduct and/or retaliation may be made using any of the options as set forth in the Section VIII(a). Reports may be filed with the Title IX Coordinator at any time (including during non-business hours) in person, by mail, by telephone, by electronic mail, or online, using the contact information listed for the Title IX Coordinator in Section VIII(a).

i. **When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for her/his/their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, she/he/they may make such a request to the Title IX Coordinator; the Title IX Coordinator will weigh that request for confidentiality against Hartwick’s obligation to provide a safe, non-discriminatory environment for all members of its community. If a Complainant wants a report to remain confidential, such that the Complainant’s identity will not be disclosed to the Respondent, and chooses not to proceed with Process B, the Complainant may receive supportive measures without an investigation being conducted, unless the Title IX Coordinator, after having considered the Complainant’s wishes, determines, in light of the known circumstances, that a failure to investigate would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. Where the only parties to the situation are employees, the College will be less inclined to honor a request for confidentiality. Note that the College’s ability to remedy and respond to a reported incident may be limited if the Complainant does not want the College to proceed.

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\(^{19}\) Please discuss any requests for language assistance and accommodation of disabilities with the Title IX Coordinator, who will respond to such requests pursuant to College policy. Such requests can be made at any time.
with an investigation and/or the Process B grievance process. This Policy provides the Complainant with as much control over the process as possible, while respecting the College’s obligation to protect its community.

Factors used to determine whether a Complainant’s request for confidentiality can and will be honored include, but are not limited to:

- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- Whether the reporting individual is a minor;
- Whether the College possess other means to obtain evidence such a security footage; and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so. If the Title IX Coordinator determines that not conducting an investigation would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, then the Title IX Coordinator will initiate an investigation. The Title IX Coordinator will then inform the reporting party and/or the Complainant and take action as necessary to protect and assist them. If the Complainant reports sexual misconduct and elects to take no formal action, the Complainant can change that decision and decide to pursue a formal process at a later date by informing the Title IX Coordinator in writing that the Complainant wishes the College to do so and proceed with an investigation.

If a Complainant chooses to have the College take action, the Complainant must communicate this decision in writing to the Title IX Coordinator; this can be done during the initial meeting with the Title IX Coordinator or at a later time. The College will then initiate an investigation into the Complainant’s allegations as further described in this Policy. Disciplinary sanctions or other actions that are not supportive measures may not be imposed on the Respondent prior to completion of Process B and a finding of responsibility.

A known Complainant may not be able to remain anonymous throughout Process B depending on the circumstances. If a report is filed anonymously and the Complainant is not identified, the Title IX Coordinator may still proceed with Process B, should circumstances warrant. However, the College’s ability to respond to that report may be limited. If the report is made by someone other than the Complainant, the Title IX Coordinator will reach out to the Complainant and Respondent and offer supportive measures.

c. Notice of Allegations

If either the Complainant or the Title IX Coordinator elects to pursue formal action in response to a report, the Complainant and the Respondent shall receive notice referencing the provision(s) of this Policy alleged to have been violated and in what manner and the possible sanctions that may be imposed. Both parties will be provided with the date, time, location and factual allegations concerning the alleged violation and a link to or copy of this Policy. Additionally, written notice of the following will be sent by the Title IX Coordinator or her designee to parties who are known:

- Information about the Process B grievance process, including any informal resolution process.
• The allegations of conduct potentially constituting sexual misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting the sexual misconduct, and the date and location of the alleged incident, if known.
• The Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Process B grievance process.
• The parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
• Any provision in the College’s code of conduct or handbook that prohibits knowingly making false statements or knowingly submitting false information during the Process B grievance process.
• Prohibition against retaliation.

If, during the investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the original notice described above, the College will provide notice of the additional allegations to the parties whose identities are known.

d. Dismissal of a Report

The College will investigate the allegations in a report if either the Complainant wishes to move forward with formal action under Process B or the Title IX Coordinator feels it is necessary in light of the circumstances. However, some incidents may be more appropriately handled under another College Policy or procedure. The Title IX Coordinator will decide if an incident will not be pursued or will be handled under a different Policy for this reason. This decision may be made at any stage of the process. Dismissal from the Process B grievance process does not preclude action under another provision of College policy or code of conduct. If a report and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reasons therefore to the parties. The dismissal decision is appealable by any party under the procedures for an appeal below.

e. Informal Resolution

In some cases, an informal resolution may be appropriate. At any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process that does not involve a full investigation and adjudication. The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of reports of sexual misconduct. Similarly, the College will not require the parties to participate in an informal resolution process under this section.

An informal resolution process can also be utilized in a Complainant-initiated Process B if that is agreeable to the College and both parties’ consent. Prior to beginning the informal process, the College will:

1) Provide to the parties a written notice disclosing:
   a. the allegations;
   b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a matter arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the matter; and
c. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and

2) Obtain the parties’ voluntary, written consent to the informal resolution process.

At any time during the process, the Complainant or the Respondent has the right to resume the formal processing of the report (i.e., investigation, hearing, appeal). An informal resolution does not necessarily require the parties to meet together. An informal resolution may involve a College employee and/or a third-party facilitator, to be selected by the College. Anyone designated to facilitate an informal resolution process will not have a conflict of interest or bias. An informal resolution must be agreed upon by both parties, and the Title IX Coordinator. The results of an Informal Resolution are not appealable.

An informal resolution may involve mediation or restorative practices, by which the parties reach a mutually agreed upon resolution of an allegation. The Title IX Coordinator or her designee may also, with the consent of the parties, negotiate and implement an agreement to resolve the allegations that satisfies all parties. If an informal resolution results in an agreement, then the informal resolution is considered successful. Both parties will sign a statement agreeing that the matter will be considered resolved. If attempts at informal resolution are unsuccessful, then the formal process will resume.

The Respondent may also accept responsibility for all or part of the alleged Policy violations at any point in the resolution process. An informal resolution may include an acceptance of responsibility and sanctions. When a resolution is accomplished, the appropriate sanctions or responsive actions are promptly implemented in order to effectively stop the misconduct, prevent its occurrence, and remedy the effects of the misconduct.

A case will not be resolved via informal resolution if:

- Either party does not give consent to participate in the informal resolution process
- Either party withdraws consent to participate in the informal resolution process before the process is concluded
- The parties cannot agree on an appropriate resolution
- The College administrator determines that the resolution agreed upon by the parties (with or without the assistance of a mediator) is not in the best interests of the College

If any of these scenarios occur, the case will be referred to a Hearing Officer for a hearing to be conducted.

f. Investigation

The College strives to ensure that reports are responded to in a prompt, fair, timely, thorough, and impartial manner. The investigation will be performed by appropriate trained persons. Where circumstances warrant, the Title IX Coordinator or designee may determine that they will utilize investigators who are external to the College. No investigator will have a conflict of interest or bias.

During the investigation, the College has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility. While the Complainant and the Respondent are not restricted from gathering and presenting relevant evidence, the Investigator is responsible for gathering relevant evidence to the extent reasonably possible. The College cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains voluntary, written
consent from that party (or, if the party is not an eligible student, that party’s parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not permitted unless the person holding such privilege has waived that privilege.

An investigation usually involves interviews of the persons involved (e.g. Complainant, Respondent), including witnesses, and gathering and reviewing relevant evidence. The Complainant and the Respondent will be given an equal opportunity to present information in the context of the investigation and the opportunity to suggest witnesses, and other relevant information, such as documents, communications, photographs, and other evidence. Parties and witnesses are expected to provide all available relevant evidence to the Investigator during the investigation. The Complainant and Respondent may also present to the Investigator proposed questions they wish for the investigators to ask of the other party and/or witnesses. The investigator retains discretion to determine the order and method of investigation and witnesses as unnecessary or inappropriate. Information will be obtained from each party separately.

Parties whose participation is invited or expected at a hearing, investigative interview, or other meeting will be provided written notice of the date, time, location, participants, and purpose of said event. As noted above in Section X, both parties can be accompanied during any Process B proceeding or related meeting by an advisor of their choice, subject to restrictions.

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording. Neither party is restricted from discussing the allegations or gathering and presenting evidence. If relevant evidence is destroyed by a party, the decision-maker can take that into account in assessing the credibility of the parties, and the weight of evidence in the case. Both parties will have an equal opportunity to review any evidence as part of the investigation that is directly related to the allegations in the report.

At the conclusion of the investigation, the Investigator will prepare a case file. The case file will include all collected evidence in the College’s possession that is directly related to the case. The Investigator will also complete a written investigative report to be given to the Title IX Coordinator. The parties will be provided an opportunity to review the report and case file subject to redaction permitted and/or required by law, and to respond in writing to the investigative report. The parties will be allowed 5 business days to review and submit a written response to the investigative report.

g. Hearing

After the investigative report is shared with and reviewed by the parties, the Title IX Coordinator will assign the matter to be heard by a Hearing Officer. The Title IX Coordinator will appoint a Hearing Officer from a pool of specially trained College personnel. Where circumstances warrant, the Title IX Coordinator or designee may determine that a Hearing Officer external to the College will be assigned. The Hearing Officers will not have a conflict of interest or bias. Neither the Title IX Coordinator nor the Investigator(s) may serve as the Hearing Officer.

The Hearing Officer will review the final investigatory report and supporting evidence as well as any written response to the final report submitted by the parties. The Hearing Officer is not bound by the investigative report and should objectively evaluate relevant evidence. The Hearing Officer will hold a hearing to include interviews with both parties, and may, if deemed necessary, interview witnesses as part of the hearing process. A tape recording of any hearing interview will be created and made available to the parties for inspection and review.
The Title IX Coordinator or designee will provide written notice at least 5 business days before the hearing date to the parties. The written notice will include:

- The date, time, and place of the hearing;
- The name and contact information of the Hearing Officer. A party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the party’s objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Hearing Officer at any time.
- Any technology that will be used to facilitate the hearing.
- A statement that if the party or witness does not appear at the scheduled hearing, the hearing may be held in their absence.
- A reminder that the parties may have the assistance of an advisor of their choosing at the hearing.
- A list of those who will participate in the hearing (including but not limited to the parties, witnesses, etc.), along with the invitation to object on the basis of bias or conflict of interest.

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide the parties with written notice explaining the reason for such change.

The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor. The Hearing Officer will determine the order of witnesses and answer any procedural questions.

Both parties have the right to exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the hearing. Both the Complainant and Respondent will be provided with the same opportunity to submit information and evidence, including evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case. Parties may submit questions before the hearing that they wish to have asked of the other party. The Hearing Officer will ask all questions at the hearing and may decline to ask any submitted question that is duplicative of information already gathered or asked, irrelevant, or otherwise determined to be unnecessary or inappropriate.

**h. Impact Statements**

The parties will be offered an opportunity to provide impact statements to be presented to the Hearing Officer after a determination of responsibility and prior to the determination of appropriate sanctions. The impact statement may be up to 3 pages single spaced. The Title IX Coordinator will provide the impact statements to the Hearing Officer only once the Hearing Officer is deliberating on appropriate sanctions. Impact Statements cannot and will not be considered by the Hearing Officer when reaching a determination of responsibility.

**i. Determination of Responsibility**

The Hearing Officer will issue a written determination regarding responsibility. In reaching this decision, all relevant evidence must be objectively evaluated, and credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness. The Hearing Officer cannot defer to any conclusions in the investigative report and must make an independent determination of responsibility.
If the Hearing Officer concludes that the Respondent is responsible for a violation of this Policy, then the Hearing Officer shall receive the Respondent’s disciplinary record (i.e., any previous disciplinary action or other violation of College Policy, including this Policy, for which the Respondent was found responsible), and the party impact statements to consider, as appropriate, in determining sanctions. The disciplinary sanction(s) for a violation of this Policy will be based on a consideration of all of the circumstances, including but not limited to: the nature and severity of the conduct, the Respondent’s disciplinary history, and any other information deemed relevant by the Hearing Officer.

Within 10 business days of the conclusion of the hearing process, the Hearing Officer will issue a written decision to the Title IX Coordinator outlining relevant factual findings and whether a violation of this Policy has occurred and, if relevant, the appropriate sanctions. The Hearing Officer will issue a written determination that must include:

1) Identification of the allegations potentially constituting sexual misconduct;
2) Findings of fact supporting the determination;
3) Conclusions regarding the application of the College’s policy to the facts;
4) As to each allegation, a statement of, and rationale for, both the determination regarding responsibility and any disciplinary sanctions the College imposes on the Respondent and whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided by the College to the Complainant;
5) The College’s procedures and permissible bases for the Complainant and Respondent to appeal; and
6) When the determination becomes final.

The College will provide the written determination to the parties simultaneously. The College must wait to act on the determination regarding responsibility, including implementing disciplinary sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Both parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.

j. Disciplinary Sanctions and Remedies

Disciplinary sanctions range from a warning up to and including expulsion/termination from the College or revocation of a degree. The disciplinary sanction(s) for a violation of this Policy will be based on a consideration of all of the circumstances, including but not limited to: the nature and severity of the conduct, the Respondent’s disciplinary history, previous allegations involving similar conduct, and any other information deemed relevant by the Hearing Officer. The following is a non-exhaustive list of sanction(s) that may be imposed:

- Behavioral requirement
- Change of class/job assignment and/or housing/work location
- Required training and/or counseling
- Disciplinary probation
- Educational requirements and/or community services
- Expulsion/termination
- Housing probation or removal from housing
- Removal from office/position, demotion, and/or reduction in pay
- Removal of privileges/eligibility restriction
- Suspension/leave with or without pay
- Written warning/letter of reprimand or censure
- Withholding diploma
- Revocation of degree
- Other sanctions as deemed appropriate

If a Respondent student takes a leave of absence or withdraws while the grievance process is pending, the College in its discretion may continue processing a report pursuant to this Policy. If a former student is found responsible, Hartwick may revoke that student’s degree or impose a ban from campus of any length of time. If the conclusion reached is that there has been no violation of this Policy, but other inappropriate conduct has occurred, the College retains the right to address that inappropriate behavior in accordance with College Policy and practice. Remedies will be provided to a Complainant where a Respondent has been found responsible, through Process B or informal resolution, for sexual misconduct against the Complainant. Supportive remedies, which can include the supportive measures discussed in Section IX above, range from referral to supportive services such as counseling or medical services to class and housing modifications, withdrawals, or leaves of absence; punitive remedies range from a warning up to and including expulsion/termination from the College or revocation of a degree.

The College must wait to act on a determination regarding responsibility, including implementing disciplinary sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

k. Transcript Notations

For those crimes of violence that Hartwick College is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation: “Suspended after a finding of responsibility for a code of conduct violation” or “Expelled after a finding of responsibility for a code of conduct violation.” For the Respondent who withdraws from the College while such charges are pending and declines to complete the disciplinary process, the transcript shall include the following notation: “withdrew with conduct charges pending.”

A student has the right to appeal such transcript notation to request its removal in the event of a suspension. Transcript notations for suspensions may be removed at the discretion of the College, but no earlier than one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

l. Appeals

Following issuance of a written determination from the Hearing Officer regarding a determination of responsibility or the College’s dismissal of a report or any allegations therein, the Complainant and/or Respondent, may file an appeal with the Title IX Coordinator. A written appeal, based on one or more of the grounds listed below, must be made within 5 business days of the receipt of the written decision or notification of dismissal and must clearly and fully set forth the evidence to support each identified ground of appeal which the appealing party is asserting. The grounds for appeal are limited to:

- Procedural irregularity that affected the outcome of the matter;
• New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
• The Title IX Coordinator, investigator(s), or decision-maker(s) (i.e., the Hearing Officer) had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter

The Title IX Coordinator, or designee, will determine if the written appeal clearly identifies one or more of the grounds for appeal. The Title IX Coordinator will not assess the merit of the appeal, but will review the documentation to confirm that grounds for an appeal have been asserted in the appeal. If a request for appeal is accepted, both parties will be notified in writing that an appeal is filed. The non-appealing party will be provided the opportunity to review the appeal and will be permitted 5 business days from the date of review of the appeal to submit a written statement in support of, or challenging, the appeal.

The Title IX Coordinator will appoint an Appeals Panel, which shall be made up of 3 members from the pool of available Hearing Officers, or where appropriate, individuals trained in Title IX and other pertinent areas who are external to the College, to review the appeal. No member of the Appeals Panel shall have a conflict of interest or bias. Anyone who made the determination regarding responsibility (i.e. who served as the Hearing Officer at the hearing) or dismissal of a report, investigated a report, or who is a Title IX Coordinator cannot serve on the Appeals Panel regarding that same report.

Appeals are not intended to be full re-hearings of the report and generally will be considered upon a review of the written documentation of the parties and any pertinent documentation regarding the grounds for appeal. A preponderance of the evidence standard will be applied on appeal. Unless there is good cause for temporary delay(s) or limited extension(s), the decision of the Appeals Panel will be communicated within 8 business days to both parties, simultaneously and in writing; the written decision will describe the result of the appeal and the rationale for the result. The Appeals Panel’s decision will be final and binding. Both parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.
Appendix A

Bill of Rights for Incidents of Sexual Misconduct

Members of the Hartwick community who report an incident of sexual assault, domestic or dating violence or stalking have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.