

**2023-2024**

## **Title IX and College-Defined Sexual Misconduct Policy**

### **I. Statement of Intent**

Swarthmore College is committed to establishing and maintaining a community rich in equality and free from all forms of discrimination and harassment. The College seeks to create an environment in which the greatest holistic academic potential of students and professional potential of employees may be realized. In order to create and maintain such an inclusive climate, all who work and learn at the College are partners in the endeavor. A the



Finally, our existing Title IX office and reporting structure remains in place. What has changed is which procedures apply to different types of reports arising from sexual misconduct, but not the support and resources available to our community members. We remain here to help.

### **III. Scope of Policy**

Swarthmore College's ("Policy") applies to all Swarthmore College community members, including students, employees (including administration, faculty, and staff),

#### **IV. Notice of Non-Discrimination**

The College expressly prohibits any

Privacy and confidentiality have distinct meanings under this policy:

- A. generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who “need to know” in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.
  
- B. means that information shared by an individual with designated confidential campus or community professionals cannot be revealed to any other individual without express permission of the disclosing individual. Those campus and community professionals include medical providers, mental health providers, religious / pastoral counselors, and the violence prevention advocate, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others or the disclosure is otherwise legally permitted or required. Non-

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

## **VI. Definitions of Sexual Harassment**

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

A. Title IX sexual harassment means conduct on the basis of sex that involves:

1. An employee of Swarthmore College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
2. An individual engaging in <sup>n</sup> §§

1. : Submission to or rejection of such conduct is an explicit or implicit condition of, or the basis of an individual's employment, evaluation of academic work, or any aspect of a College program or activity.
  
2. : Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive, persistent as to create an intimidating, hostile,

Occur in the classroom, in the workplace, in residential settings, over



D. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of Pennsylvania, or by any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

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

1. A course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

2. A reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

3. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking includes the concept of cyberstalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices, the cell

Any combination of these behaviors directed toward an individual person.

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

Examples of sexual exploitation include:

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

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

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

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

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

Intimidation is any verbal, written, or electronic threats of violence or other threatening behavior directed toward another person or group that reasonably leads the person(s) in



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

Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent should not be inferred solely from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.

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Consent to previous sexual activity and/or in the context of an intimate relationship does not presume consent is given in any subsequent sexual encounter.

Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise their own free will.

Consent cannot be obtained from an individual who is incapacitated. A full discussion of incapacitation follows in Section IX.F below.

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In the Commonwealth of Pennsylvania, the age of majority is 18. Under state law,

persons under the age of 18 cannot be held responsible for sexual activity. 18 Pa.C.S. § 6301. Common

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

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

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

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

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

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

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

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

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

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

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

## **X. Retaliation**

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

## **XI. Role of the Title IX Coordinator**

The Title IX coordinator oversees the College's centralized review, investigation, and resolution of reports of sexual misconduct. The coordinator also coordinates the College's compliance with Title IX. The Title

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

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

Supportive measures are designed to restore or preserve equal access to the

B. . Swarthmore College as a community is committed to the prevention of sexual misconduct through education and awareness programs. Throughout the year, programs designed to promote awareness are presented by a variety of

## **Emergency Response Resources:**

### **Department of Public Safety**

610-328-8333/publicsafety@swarthmore.edu

Benjamin West House

Public Safety officers are available 24/7/365 to respond to emergency/crisis incidents as well as non-emergency reports. Public Safety staff can assist with medical escorts, connecting students to CAPS after hours, the on-call division of student affairs staff, or an on-call nurse. They can provide assistance with contacting Swarthmore Police Department to make a report to law enforcement or obtain a Protection from Abuse order. The Ben West House can provide a safe space that is always open and staffed 24 hours a day.

### **911**

### **Swarthmore Borough Police Department**

610-543-0123

121 Park Ave. Swarthmore, PA 19081

### **Delaware County Victim Assistance Center**

610-566-4342 (24-hour hotline)

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

610-565-6272 or 610-565-4590 (24-hour hotline)

## **D.**

### **1. Confidential Resources**

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

- **Worth Health Center**

610-328-8058

Adjacent to the Benjamin West Parking Lot right off of Rt. 520, the center comprises student health services, counseling & psychological services, and a comprehensive wellness education team.

- **Student Health and Wellness**

610-328-8058 (daytime)

610-328-8548 (after-hours)

Student health and wellness is available 24 hours a day (during the academic year). Our staff assist students as a confidential resource. The student health and wellness confidential staff includes: nurse practitioners, registered nurses, physicians, victim advocate, and alcohol and drug counselor. An after-hours on-call system provides students

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

- **Religious and Spiritual Life**

610-328-8328

Sproul Hall 108

These individuals act as religious

Deputy Title IX Coordinator for Faculty, Tristan Smith, Physics & Astronomy Department, Science Center, 610-328-8259,  
[tsmith2@swarthmore.edu](mailto:tsmith2@swarthmore.edu)

Deputy Title IX Coordinator for Staff, Paula MacDonald, Human Resources, 101 S. Chester Road, 610-690-5667,  
[pmacdon1@swarthmore.edu](mailto:pmacdon1@swarthmore.edu)

Interim Deputy Title IX Coordinator for Students, Rachel Head, Office of Student Affairs, Parrish Hall LL76, 610-328-8362,  
[rhead1@swarthmore.edu](mailto:rhead1@swarthmore.edu)

Deputy Title IX Coordinator for Physical Education and Athletics, Valerie Gomez, Athletics Front Office, Fieldhouse 161B, 610-328-8222, [vgomez1@swarthmore.edu](mailto:vgomez1@swarthmore.edu)

**Division of Student Affairs.** The Swarthmore College division of student affairs oversees the academic support, residential, and social resources available to students at the College. Students are encouraged to reach out to the staff of the division for academic affairs and support, and disability services. A student's dean can help them access all resources in the division of student affairs.

**Department of Public Safety.** Public safety officers are available 24/7/365 to respond to emergency/crisis incidents as well as non-emergency reports. Public -

you may choose to identify yourself. Regardless of your decision, your information will be documented and addressed appropriately.

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1. Community Medical Providers

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

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

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Under Pennsylvania law





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

- **Philadelphia Legal Assistance**  
215-981-3800  
718 Arch St #300N, Philadelphia, Pa. 19106
- **Women Against Abuse Legal Center**  
215-686-6311, ext. 19217
- **Women's Law Project**  
215-928-9801  
125 S 9th St #300, Philadelphia, Pa. 19107
- **Delaware County Victim Assistance Center**  
(see contact information above)

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

### **XIII. Reporting**

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

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

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

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

1. Reports to Authorized and Responsible Employees

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

- i. A disclosure or report of prohibited conduct made to an authorized employee (regardless of whether the disclosure is made by the complainant or

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

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

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

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

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

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

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

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

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

U.S. Department of Education, Office



