



SEXUAL MISCONDUCT POLICY

Hilbert College promotes the respect for the dignity and integrity of each person. Hilbert is deeply committed to equal opportunity and a tolerant, supportive learning and working environment. Hilbert College complies fully with all applicable federal and state legislation, including but not limited to, Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Act, the New York Human Rights Law and Article 129A&B of the New York State Education Law commonly referred to as “Enough is Enough”. Pursuant to these statutes and regulations, the College prohibits all acts of sexual harassment, sexual violence, and sexual misconduct. This policy is intended to educate the Hilbert community about these issues and thereby prevent such incidents from occurring and explain the way in which the College will respond to incidents in the event they do occur.

SCOPE OF POLICY

This policy applies to all students, faculty, and employees of Hilbert College. This policy applies to conduct on campus and in connection with any Hilbert College-sponsored program or activity; regardless of where it occurs. Additionally, off-campus conduct may violate this policy if the conduct creates a threatening or hostile environment on Hilbert’s campus or within a Hilbert program, or if the incident causes concern for the safety or security of Hilbert’s campus. Non-community members (e.g., family or friends of students, vendors, visiting athletes, etc.) visiting campus, participating in a Hilbert program or activity, or interacting with Hilbert College community members are expected to abide by the behavioral expectations in this policy.

This Policy applies to all individuals regardless of one’s race, color, national origin, religion, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, veteran status, military status, domestic violence victim status, or ex-offender status.

OVERVIEW OF CONSENSUAL RELATIONSHIPS POLICY

As a rule, the college actively discourages all romantic and/or sexual relationships between faculty and student, supervisor and employee, and staff person and student in cases where the staff person can exert authority because the relationship may pose a conflict of interest and the difference in power can give rise to the appearance of impropriety. If a consensual relationship does exist, it is required that the participants in such a relationship act immediately to remove the conflict of interest. In addition, the person in the most powerful position in such a relationship is required to report it to their supervisor. All College community members must comply with the Consensual Relationship Policy. The Consensual Relationship Policy can be found in the Student Handbook and the Human Resources Manual.

DEFINITIONS

1. Sexual Harassment - Sexual Harassment is a form of harassment with specific distinguishing characteristics, which are described below. Sexual harassment is a type of prohibited sex-based discrimination. Sexual

harassment may be verbal, written, visual or physical. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute *sexual harassment* when:

- a. submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's education/employment;
- b. submission to or rejection of such conduct by an individual is used as the basis for education/employment decisions affecting such individual; or
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive educational/working environment.

Merely by way of illustration, sexual harassment includes, but is not limited to, the following kinds of behavior:

- i) Exposing a person to unwanted insulting, degrading, or oppressive sexual remarks, jokes, innuendoes, or other sexually oriented conduct (including, among other things, graphic or descriptive comments relating to an individual's body or physical appearance; sexually oriented teasing or pranks; improper suggestions, objects, or pictures; unwanted physical contact);
- ii) Repeatedly subjecting a person to unwelcome sexual attention or advances; or
- iii) Making threats, demands, or suggestions that an employee's working conditions, or a student's grade depends in any way upon tolerating or accepting sexual advances or sexual conduct. This is referred to as "quid pro quo" (or "this for that") harassment. "Quid pro quo" harassment can be expressly stated, but it can also be implied by words, actions, or the surrounding circumstances. No person should believe that any other person – regardless of their title with Hilbert College – has the right to pressure another person for sexual activity; they do not.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation of this policy. Instead, the determination is based on a "reasonable person" standard and considers the totality of the circumstances. Hilbert College considers the context of a communication or incident, the relationship of the individuals involved, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, and the seriousness of the incident.

2. Sexual Exploitation – when one takes non-consensual sexual advantage of another. Said behaviors may include, but are not limited to, any audio and/or visual recording of a consensual sexual act without the person's knowledge; distributing, without the prior consent or knowledge of the victim of exploitation, an audio and/or visual recording of a consensual sexual act; voyeurism; forcing or causing another without affirmative consent to touch one's own private body parts, engaging in sexual activity with another while knowingly infected with HIV or another sexually transmitted infection without informing the other person of such infection; attempting to incapacitate someone for the purposes of committing sexual assault or unwanted sexual contact; exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals.

3. Sexual Assault – Consistent with federal law, sexual assault is defined by the College as including:

Non-Consensual Sexual Intercourse – these sexual assaults can be sub-defined by the following:

- **Rape:** 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, forcibly or without affirmative consent or where the victim is incapable of giving affirmative consent due to incapacitation.
- **Statutory rape:** non-forcible sexual intercourse with a person who is under the statutory age of consent.

Non-Consensual Sexual Contact – intentionally having any physical contact, however slight, for purposes of sexual gratification or with sexual intent, with another person's private body parts without his/her affirmative consent. Acts of non-consensual sexual contact may include, but are not limited to, the touching of a person's buttocks, penis, vagina, breasts; and/or touching of another person with said body parts; and/or making another touch you in such a manner.

4. Domestic Violence – refers to a felony or misdemeanor crime of violence between spouses, former spouses,

or intimate partners, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common or individuals who are similarly situated to spouses and/or individuals who are protected from the other person's acts under the domestic or family violence laws of the jurisdiction in which the acts of violence occurs.

5. Dating Violence –refers to a pattern of violent behavior (including, but not limited to, sexual or physical abuse or the threat of such abuse) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors:

- the length of the relationship
- the type of relationship
- the frequency of interaction between the persons involved in the relationship

6. Stalking – The term stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Stalking can include, but is not limited to:

- Repeated, unwanted, intrusive, and frightening communications from the perpetrator by phone, mail, and/or email.
- Repeatedly leaving or sending victim unwanted items, presents, or flowers.
- Following or lying in wait for the victim at places such as home, school, work, or recreation place.
- Making direct or indirect threats to harm the victim, the victim's children, relatives, friends, or pets.
- Damaging or threatening to damage the victim's property.
- Harassing victim through the internet.
- Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.
- Obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting victim's friends, family work, or neighbors, etc.

7. Affirmative Consent - 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 if those words or actions create clear permission regarding willingness to engage in 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.

All references to “consent” in this policy will mean affirmative consent as defined in this policy. As stated above, silence, lack of physical resistance, and/or the absence of a verbal “no” should not be construed as consent to any sexual activity. A person can withdraw consent at any time during sexual activity and when consent is withdrawn or can no longer be given the other person must stop all sexual activity immediately.

A prior relationship, existing relationship, prior sexual contact, or prior consent does not, alone, constitute affirmative consent to any continued or future sexual activity. Consent to engage in one sexual act (such as kissing or fondling) does not indicate consent to other sexual acts (such as intercourse).

Certain conditions prevent a person from being able to consent. Effective consent cannot be given if a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation can be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if the individual cannot otherwise consent. An individual's mental disability may cause him/her to be unable to give affirmative consent to sexual activity. In New York, the statutory age of consent is 17 years old. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants (whether consumption was voluntary or otherwise) may be incapacitated and therefore unable to consent. A person initiating sexual activity is still responsible to obtain affirmative consent even if he/she is under the influence of drugs or alcohol. Affirmative consent cannot be given under coercion, force,

or threat of physical harm or injury.

- 8. Force** - Force is the use of physical violence and/or imposing on someone physically to gain sexual access. It includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.
- 9. Coercion** - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes it clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- 10. Sexual Misconduct**- The term “sexual misconduct” is a term used by this policy to refer to any form of sexual harassment, sexual assault, non-consensual sexual activity or contact more conveniently, sexual exploitation, dating violence, domestic violence or stalking as those terms are defined above. Sexual misconduct may occur between members of the same or opposite sex and in heterosexual or homosexual relationships.
- 11. Reporting Party**– The term Reporting Party refers to the person making the allegation or report. That person is usually the person who experienced harassment, sexual misconduct, or other violation of this policy.
- 12. Respondent** – The term Respondent refers to the person alleged to have committed the alleged harassment, sexual misconduct, or other violation of this policy.

APPLICABLE LAWS, ORDINANCES, AND REGULATIONS

All federal, state, and municipal laws apply on campus. This includes the New York State Penal Law, which details the criminal statutes dealing with sex offenses. According to New York State statutes, there are varying degrees of sexual assault. Sexual Assault of any kind is not only a crime, but a violation of this policy.

REPORTING OPTIONS FOR RESPONDING TO INCIDENTS

You 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 Hilbert College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from Hilbert College. A Students’ Bill of Rights for cases involving sexual assault, domestic violence, dating violence, or stalking is attached at the end of this policy. An additional Statement of Rights for any individual reporting a sexual assault, domestic violence, dating violence, or stalking is also attached at the end of this policy.

Reporting to Law Enforcement

Any person may call 911 or Campus Safety for **immediate safety assistance** at **716-479-1233**. Campus Safety can also help the individual report a crime to local law enforcement. A victim of a crime is encouraged to, but not required to, report the incident to local law enforcement and pursue criminal charges. The criminal process and the College’s disciplinary processes are not mutually exclusive, meaning that an individual can either bring a complaint through the College or law enforcement, or both. Any internal investigation and/or hearing process conducted by Hilbert College will be conducted concurrently with any criminal justice investigation and proceeding. However, in some cases the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation. Such delays will not last more than 10 days except when law enforcement authorities specifically request and justify a longer delay.

The Hamburg Police Department, which can be reached at (716) 648-5111, can assist in filing a criminal complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner. The New York State Police Sexual Assault Hotline, which can be reached at 1-(844) 845-7269, may also be of assistance in reporting an incident to law enforcement.

Preservation of Evidence

In criminal cases, the preservation of evidence is critical and must be done properly and promptly.

- Preserve all physical evidence of the assault. Do not shower, bathe, douche, or brush your teeth. Save all the clothing you were wearing at the time of the rape or assault. Place each item of clothing in a

separate paper bag. Do not disturb anything in the area where the assault occurred.

Orders of Protection

Orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a college community member or another person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter the College's property, and Hilbert will abide by a lawfully issued order of protection. Campus Safety, or other College officials, will, upon request, provide reasonable assistance to any member of the campus community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order, including providing that person with:

- a copy of an order of protection or equivalent when received by the College and providing that person with an opportunity to meet or speak with a college representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement to effect an arrest for violating such an order of protection.

Reporting individuals should understand that not all sexual misconduct under this policy is a crime and that the standard law enforcement employs in processing complaints is different than the College's standard under this policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the local district attorney's office.

Reporting to Confidential Resources

On-Campus Confidential Resources

A victim is encouraged to seek support for his/her emotional and physical needs. A person seeking confidential emotional or medical care may contact the following resources:

- Wellness Center – 716-649-7900 (ext. 406) or 716-926-8908
- Director of Counseling- Christopher Siuta, PhD, 649-7900 (ext. 232) or 716-926-8930 or csiuta@hilbert.edu

These counseling and health services are confidential and free for Hilbert students. Immediate contact with a counselor can be arranged through Campus Safety if a situation occurs after hours or on weekends. Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of the College community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without your permission.

Off Campus Confidential Resources

In addition, there are off-campus resources available. These confidential resources, which may or may not charge services fees, include:

Mercy Ambulatory Care Center – 716-662-0500

Mercy Hospital – 716-822-3800

Crisis Services (24 Hour Hotline) – 716-834-3131

NYS Domestic Violence Hotline – 1-800-942-6906

NYS Police Sexual Assault Hotline – 1-844-845-7269

Additional Sexual Assault and Violence Response (SUNY SAVR) Resources can be found online at <https://www.suny.edu/violence-response/>. This website can provide you with information you can use to seek resources and support, and to report the crime to law enforcement.

Contacting any of the confidential resources listed above does not constitute notifying the College. Individuals

who have been the victims of sexual assault are encouraged to seek medical attention immediately. Whether or not you report the assault to the College or the police, you should have a medical examination immediately. The exam is confidential. Medical personnel will test for sexually transmitted diseases, look for physical injuries, and collect physical evidence. If you report the assault, Campus Safety or the police can provide transportation to the hospital and arrange for a Crisis Services sexual assault advocate to meet you there. If you choose to go to the hospital without notifying Campus Safety or the police, the hospital can still collect physical evidence, while protecting your anonymity, in case you later decide to prosecute. If you suspect that you may have been given a rape drug, such as Rohypnol and GHB, ask the hospital to take a urine sample which will be preserved as evidence.

Reporting to the College's Non-Confidential Resources

All reports of sexual misconduct should be made to any of the following specially trained offices and individuals:

- Title IX Coordinator; Associate Athletic Director –Laura Edholm, 926-8843 or 649-7900 (ext. 164) or ledholm@hilbert.edu
- Director of Residence Life & Community Standards, Grace Adams, 649-7900 (ext. 253), 716-926-8928 or gadams@hilbert.edu
- Director of Campus Safety, Joseph LaRosa– 716-926-8925, 716-479-1233 (24-hour number), 716-649-7900 (ext. 224), Campus Center Lower Level or jlrosa@hilbert.edu

These individuals have been trained to receive and respond to allegations of violations of this policy. The College's main concern is that victims of sexual misconduct receive the help and guidance essential for beginning the process of healing, while giving special consideration to the welfare of the campus community. Campus Safety is available, upon request, to escort students during day or evening hours.

There is no time limit for making a report of a violation of this policy. However, the passage of time may make effective responsive action difficult. Further, if the Respondent is no longer a member of the College community, the College's ability to respond may be limited. Individuals are encouraged to promptly report all incidents.

Mandated Reporting Authority

All Hilbert employees, except for the College's Confidential Resources noted above, are designated as Responsible Employees, and are therefore legally required to report any complaint of sexual misconduct to the Title IX Coordinator. Responsible Employees are those employees who have the authority to take action to redress harassment, have the duty to report harassment or other types of misconduct to appropriate officials, and those employees a student could believe has authority or responsibility. Nevertheless, if a complaint is made to anyone other than the non-confidential resources listed above, the Reporting Party risks the possibility that it will not come to the attention of the proper College officials and may, therefore, not be acted upon.

Privacy Statement

Hilbert 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.

Reports from Others or Anonymous Sources

If the College receives a report of alleged sexual misconduct by someone other than the alleged victim (e.g., by a friend or roommate, the resident assistants, etc.), the College's Title IX Coordinator will promptly notify the subject, and inform the subject of the available resources and assistance. Hilbert will accept anonymous reports. However, due to anonymous reports, Hilbert's ability to take responsive action may be limited.

Reporting Party Options

If a Reporting Party reports an incident of sexual misconduct to a non-confidential College employee, but requests that no investigation into the incident be conducted or disciplinary action taken, the College will weigh that request against Hilbert's obligation to provide a safe, nondiscriminatory environment for all members of the

campus community, including the Reporting Party.

Request for No Action

Hilbert College endeavors to comply with the Reporting Party's wishes with respect to whether responsive action is taken. However, that is not always possible. If a Reporting Party requests that no action be taken against the accused, (i.e., no investigation or disciplinary action), the Title IX Coordinator will consult with appropriate administrators and employees to consider the Reporting Party's request. The Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- The seriousness of the offense;
- Whether there have been other sexual misconduct complaints about the same Respondent;
- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the Respondent threatened further sexual misconduct or other violence against the Reporting Party or others;
- Whether the sexual misconduct was committed by multiple perpetrators;
- Whether the alleged sexual misconduct was perpetrated with a weapon;
- Whether the Reporting Party is under the statutory age of consent in New York State. The statutory age of consent in New York State is 17 years old;
- Whether the College has other means to obtain relevant evidence (e.g., security cameras or physical evidence);
- Whether circumstances otherwise suggest an ongoing or future risk to the campus community or the Reporting Party.

A decision will be made and shared with the Reporting Party. If, after considering these factors, the College determines that it can respect the Reporting Party's request that no responsive action be taken, the College will nevertheless take all reasonable steps to respond to the report consistent with the Reporting Party's confidentiality request and will determine whether interim measures are appropriate or necessary. Hilbert College will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education, and prevention efforts, and conducting climate surveys.

Request for Action taken Confidentially

Similarly, a Reporting Party may desire to have investigatory and/or disciplinary action taken but may wish to have his/her identity as the Reporting Party kept confidential. Depending on the circumstances, this may or may not be possible. If any number of people could have reported the incident or if Hilbert possesses other means to obtain evidence (such as security footage), it may be possible for the Reporting Party's identity to remain confidential and not shared with the Respondent. However, in other cases, it may not be possible to proceed with investigatory or disciplinary action without revealing the identity of the Reporting Party.

If Hilbert honors such a request, the Reporting Party must understand that the College's ability to effectively investigate the incident and pursue disciplinary action against the accused may be limited.

The College may not be able to honor a Reporting Party's request for confidentiality when doing so would jeopardize the College's responsibility to provide a safe, non-discriminatory environment.

Hilbert has designated the Title IX Coordinator to evaluate requests for confidentiality. If the College determines that it must disclose the Reporting Party's identity to the Respondent, the College will promptly

inform the Reporting Party. Hilbert College retains the right to act upon any information that comes to its attention.

AMNESTY FOR STUDENTS

The health and safety of every student at Hilbert College is of utmost importance. Hilbert College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time of the 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.

Hilbert College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to college officials. A bystander acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to Hilbert College officials or Campus Safety will not be subject to Hilbert College's code of conduct action for violations of alcohol or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Hilbert College will provide amnesty to the Reporting Party, Respondent, and bystanders acting in good faith. Amnesty does not apply to college employees.

COLLEGE'S PROCEDURES FOR RESPONDING TO REPORTS OF SEXUAL MISCONDUCT

Hilbert College is committed to providing a prompt, fair and impartial investigation, and resolution to all allegations of sexual harassment, sexual assault, domestic/dating violence, stalking and any other form of sexual misconduct. The College reserves the right to investigate and potentially discipline any violation of this policy that comes to its attention. If the individual who was subjected to the violation (i.e., the victim) does not wish to act in the role of the Reporting Party, the College may continue nevertheless to investigate and refer the case for discipline. In such a situation, the College will appoint an appropriate administrator to act in the role of the Reporting Party in any disciplinary proceeding.

No unauthorized recordings will be allowed in any meetings, interviews, or disciplinary proceedings associated with the Sexual Misconduct Policy.

Investigation

If a report alleges a plausible violation of this policy, Hilbert will investigate. An investigation may occur because the Reporting Party wishes to proceed with responsive action or because the College determines that this is necessary despite the wishes of the Reporting Party. Investigations normally take no longer than 30 days, and will be handled in the following ways:

1. Any report of sexual harassment, sexual assault, domestic/dating violence, stalking, any other form of sexual misconduct or other alleged violation of this policy will be investigated by an Investigator appointed by the Title IX Coordinator. In certain cases, the College may engage trained individuals from outside the College, who may be attorneys, to conduct the investigation.
2. The Reporting Party and Respondent will be permitted an equal opportunity to present information in the investigation's context and request that witnesses having relevant information be included in the investigation process. The Investigator retains discretion to determine the order and method of investigation and what, if any, witnesses will be interviewed as part of the investigatory process.
3. The investigation usually involves interviews with the parties and/or any witnesses and reviewing any relevant documentation.
4. The Reporting Party and Respondent will have the right to have their own prior sexual history with persons other than the other party and their own mental health diagnosis and/or treatment excluded from the investigatory and disciplinary proceedings held under this policy. If either party offers information relating to the parties' sexual history with one another, the other will have the right to respond.
5. At the conclusion of the investigation, the Investigator will prepare a draft written investigation report that

summarizes the information gathered and any supporting information or accounts. Before the draft investigation report is finalized, the Reporting Party and Respondent will be given the opportunity to review the investigation report including all appendices and incident reports, subject to redaction permitted and/or required by law and consistent with College Policy and applicable federal and state law, including the Family Education Rights and Privacy Act (FERPA). A Reporting Party and Respondent may submit any additional comment or evidence to the Investigators within five (5) business days of the opportunity to review the relevant portions of the report.

6. After the five (5) business day comment period has lapsed, the Investigator will submit the final written investigatory report to the Title IX Coordinator that sets forth a summary of the facts discovered during the investigation and an assessment of the credibility of the Reporting Party, Respondent and/or witnesses (as relevant). The investigatory report shall contain a copy of any written statement by the Reporting Party, Respondent and/or witnesses or, if no written statements were submitted, a written summary of the statements or reports provided to the Investigator. The investigatory report may also contain any documentation submitted as evidence during the investigation including e-mails, text messages, social media posts, notes, letters, photographs, videos, etc.
7. The Title IX Coordinator will either pursue an Informal Resolution or refer the case to the appropriate Hilbert College formal disciplinary process.

Informal Resolution

In some cases, an informal resolution may be appropriate. An informal resolution may take the form of mediation in which a designated third-party explores whether the parties can agree on a resolution of an incident. Informal resolution must be agreed upon by both parties, and the Title IX Coordinator must agree that informal resolution is appropriate. Mediation is not appropriate in cases of sexual assault or violence of any kind. When informal resolution is appropriate, the Title IX Coordinator will select the mediator. The parties may, but will not be required to, meet as part of the mediation.

At any time during the mediation process, the Reporting Party or the Respondent can resume the formal processing of the reported situation (i.e., investigation, disciplinary proceedings, etc.). A mediated resolution may include sanctions. If the mediation results in an agreement, and if this agreement is acceptable to the Title IX Coordinator, the mediation will be considered successful. Both parties will sign a statement agreeing that the mediation was successful, and the matter will be considered resolved. If the mediation is unsuccessful, the formal process will resume.

Disciplinary Proceedings

This policy applies campus-wide and sets forth behavioral expectations for all. However, the applicable disciplinary procedure that will be applied in a particular case depends on whether the accused is a student, faculty member, employee, or a non-community member. The following disciplinary procedures will apply:

- A report by anyone against a college employee will be processed in accordance with the Employee Disciplinary Procedures below, subject to additional provisions set forth below.
- A report by anyone against a student will be processed in accordance with the procedures set forth in the Student Code of Rights and Responsibilities contained in the Student Handbook, subject to the additional provisions set forth below.
- A report by anyone against a non-community member (e.g., a visitor, vendor, etc.) will be investigated but no formal policy or procedure applies. The College may opt to ban the non-community member from college property or take other appropriate responsive measures.

Disciplinary proceedings shall provide a prompt, fair and impartial resolution and are conducted by officials who receive annual training on the matters covered by this policy, including domestic violence, dating violence, sexual assault, and stalking.

At any disciplinary proceeding held under this policy, both the Reporting Party and the Respondent shall receive notice referencing the specific provision of this policy alleged to have been violated and the possible sanctions.

This notice shall also include the date, time, location, and factual allegations concerning the alleged violation. In addition to charges being filed, in cases involving a student Respondent, the Student Conduct Administrator will also enclose an explanation of the Judicial Process, student's rights in the process, and the formal process for appeal.

Notwithstanding anything to the contrary in the Student Code, the Human Resources Manual or any other policy or procedure, in any disciplinary proceeding regarding an alleged violation of this policy, the following shall apply:

- The Reporting Party and Respondent have the right to be accompanied by one advisor of their choosing. In cases involving sexual assault, domestic violence, dating violence or stalking, the advisor may be an attorney.
- The Reporting Party and Respondent will have an equal opportunity to present relevant evidence and information subject to the terms and conditions set forth in this policy. While the College encourages Reporting Parties to put their allegation or report in writing, Hilbert College will proceed with an investigation and resolution of allegation, regardless of whether it is provided in writing.
- The Reporting Party and Respondent have the right to raise any issues of conflict of interest related to individuals serving in official roles under this Policy, including, but not limited to those serving as decision-makers. The Title IX Coordinator will determine whether any such conflict of interest exists and, if so, the appropriate official to appoint as a replacement. If the perceived conflict of interest is with the Title IX Coordinator, the Provost/Vice President of Academic Affairs will appoint an appropriate official as a replacement.
- Both the Reporting Party and Respondent will be permitted to submit a written impact statement to the Title IX Coordinator after a finding of responsibility for violation of this policy and prior to the determination of an appropriate sanction(s).
- Both parties will receive simultaneous written notice of outcomes of all disciplinary proceedings, to the extent permitted by law. The outcome letter shall include factual findings supporting the decision and sanction, if any, as well as the rationale for the decision and sanction.
- The standard for decisions in any disciplinary proceedings held under this policy is a preponderance of the evidence; meaning that it is more likely than not a violation of this policy occurred.

Employee Disciplinary Procedures

In disciplinary proceedings where the Respondent is an employee, the President will assign a Vice President to be the decision maker. In matters where the Respondent is a Vice President or higher, the decision maker will be the President or the Audit and Compliance Committee of the Board of Trustees. In addition to the specific provisions above, in all disciplinary proceedings regarding an alleged violation of this policy, the following shall apply:

- Prior to the commencement of the employee disciplinary process, both the Reporting Party and the Respondent shall receive notice from the appropriate Vice President referencing the specific provision of this policy alleged to have been violated and the possible disciplinary action. This notice shall also include the date, time location and factual allegations concerning the alleged violation.
- The appropriate Vice President will thoroughly review the investigatory report, including all appendices and incident reports, with the Director of Human Resources and the Title IX Coordinator. During the review, the Investigators may be asked for clarification and factual understanding of the report.
- Once the review is complete, the appropriate Vice President shall issue a written determination of whether the Respondent is found responsible for the alleged violation and what, if any disciplinary action will be taken. The standard for decisions in any disciplinary proceedings held under this policy is a preponderance of the evidence; meaning it is more likely than not that a violation occurred.
- Both the Reporting Party and Respondent will be permitted to make a written impact statement to the Title

IX Coordinator after a finding of responsibility for violation of this policy and prior to the determination of appropriate disciplinary action.

- In determining the appropriate disciplinary action, the appropriate Vice President will take into consideration the complete investigatory report, any impact statements submitted by the parties, in addition to consulting with appropriate college officials. The Vice President will also consider any past findings of violations of this policy or other previous disciplinary action of the Respondent.
- The appropriate Vice President will simultaneously notify both parties in writing of the outcome. The outcome letter shall include factual findings supporting the determination, the decision and disciplinary action, if any, and the rationale for it.

Appeals Process

In any case where the Respondent is a student, the following appeals process will apply:

- For an appeal where the Respondent is found responsible for sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the college's Code of Rights and Responsibilities, the case must be heard by the Campus Standards Board where the Dean of Students or their designee is the chair. The Campus Standards Board will operate in the same entity it would for a hearing, except members of the Campus Standards Board may question the Reporting Party and/or Respondent for the sole purpose of fact finding and clarification of the reason for the appeal.
- Except as required to explain the basis of new evidence, an appeal shall be limited to review of the record of the disciplinary hearing and supporting documents for one or more of the following purposes:
 - To determine whether the hearing was conducted fairly considering the charges and evidence presented, and in conformity with prescribed procedures giving the Reporting Party a reasonable opportunity to prepare and present evidence that college policy was violated and giving the Respondent a reasonable opportunity to prepare and present a rebuttal of those allegations. Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.
 - To determine whether the decision reached regarding the Respondent was based on substantial information, that is, whether there were facts in the case that if believed by the fact finder, were sufficient to find that a violation of college policy occurred.
 - To determine whether the sanctions imposed were appropriate for the violation.
 - To consider added information, sufficient to alter a decision or other relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the hearing.

If an appeal is upheld the Campus Standards Board may reduce or uphold the sanctions or remand the case to the original disciplinary body for reopening of the hearing to allow reconsideration of the original determination and/or sanctions. If an appeal is not upheld, the matter shall be considered final and binding upon all involved, except when the sanction of expulsion is involved. This sanction may be appealed to the President of the College. However, such an appeal shall be entertained solely at the discretion of the President.

In any case where the Respondent is a college employee the following appeals process will apply:

- Within 10 calendar days either party may request review by the College President, in writing, of the recommendations and/or the action of the respective Vice President. Within 10 calendar days after receipt of the appeal, the President shall render a decision in writing. The decision of the President is final.
- If the Respondent is a Vice President or higher, within ten calendar days either party may request review by the Audit and Compliance Committee of the Board of Trustees or Executive Committee of the Board of Trustees, in writing, of the recommendations and/or the action of the decision maker. Within 10 calendar days after receipt of the appeal, the Audit and Compliance Committee of the Board of Trustees

or Executive Committee of the Board of Trustees shall render a decision in writing. The decision of the Audit and Compliance Committee of the Board of Trustees or Executive Committee of the Board of Trustees is final.

- Except as required to explain the basis of new evidence, an appeal shall be limited to review of the record of the disciplinary hearing and supporting documents for one or more of the following purposes:
 - To determine whether the hearing was conducted fairly considering the charges and evidence presented, and in conformity with prescribed procedures giving the Reporting Party a reasonable opportunity to prepare and present evidence that college policy was violated and giving the Respondent a reasonable opportunity to prepare and present a rebuttal of those allegations. Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.
 - To determine whether the decision reached regarding the Respondent was based on substantial information, that is, whether there were facts in the case that if believed by the fact finder, were sufficient to find that a violation of college policy occurred.
 - To determine whether the sanctions imposed were appropriate for the violation.
 - To consider added information, sufficient to alter a decision or other relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the hearing.

ADVISORS

In any investigatory meeting or disciplinary hearing held under this policy, the Reporting Party and Respondent have the right to be accompanied by an advisor of their own choosing. In cases involving sexual assault, domestic violence, dating violence or stalking, the advisor may be an attorney. If an advisor is a paid advisor, the advisor will be at the party's own expense.

The advisor's role is to support the Reporting Party or Respondent throughout the process and aid in his/her understanding of the investigatory and/or disciplinary hearing process.

The advisor cannot be a witness in the proceedings nor is the advisor permitted to cross-examine the other party or any witnesses. The advisor may talk quietly with the party they are accompanying but may not participate in the interview or be disruptive to the meeting. The parties are required to speak on their own behalf. The College always has the right to determine what constitutes appropriate behavior on the part of an advisor and violators of these expectations will be asked to leave the proceeding.

Investigations and/or disciplinary proceedings will not be delayed based on the availability of a party's desired advisor. Absent extenuating circumstances, witnesses and others involved in the investigation or hearing are not entitled to have an advisor. An individual may be precluded from serving as an advisor if the Title IX Coordinator determines that a conflict of interest exists.

INTERIM MEASURES AND ACCOMMODATIONS

Interim actions and/or accommodation may be taken by the College to immediately respond to a situation. These interim measures and/or accommodations could include, but are not limited to: summary suspension; changes in class schedules, class assignments, residence hall/ room assignments and/or restrictions from living on campus; adjustments to academic deadlines and course schedules; "No Contact" orders; attendant restrictions; all other restrictions outlined in the Student Code of Conduct under "Interim Sanctions"; altering work assignments for employees; any other interim restriction or sanction deemed appropriate by the College.

A “no contact order” prohibits both direct contact and indirect contact (passing messages through friends or social media). When a “no contact order” is issued against an individual as a result of a sexual misconduct complaint, if that individual and the person protected by the no contact order observe each other in a public space, unless otherwise provided in the order, it shall be the responsibility of that individual subject to the no contact order to leave the area immediately and without directly contacting the person protected.

Any party directly affected by a no contact order or other interim measure may, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of the no contact order or other interim measure, including potential modification or elimination of those measures. This request may be made by submitting a written request to the Title IX Coordinator or, if the party is a student, to the Dean of Students, providing the basis for the request and submitting any evidence in support of the request. Upon receipt of such a request, the Title IX Coordinator or Dean of Students, whichever is applicable, will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. This review process will occur as soon as possible, but generally no later than five (5) business days of the request and the parties’ submission of any evidence.

RETALIATION

Both the Reporting Party and Respondent have the right to continue their educational endeavors free from retaliation or further harassment because of filing a report or participating in a judicial process until the final disciplinary sanction(s), if any is/are imposed. Retaliation includes harassment and intimidation, including violence, threats of violence, property destruction, adverse educational or employment consequences, and bullying. Any evidence of retaliatory behavior from the alleged perpetrator, or on behalf of the alleged perpetrator, could warrant immediate summary suspension from the college pending disciplinary proceedings.

Retaliation exists when action is taken against a Reporting Party or participant in the Title IX process that

- Adversely affects the individual’s opportunity to benefit from the College’s programs or activities, and
- Is motivated in whole or in part by the individual’s participation in the Title IX process

SANCTIONS

The potential sanctions for violations of this policy include written warning, disciplinary fines, community service, mandatory counseling, written assignments, access and/or activity restrictions, disciplinary probation, loss of campus residency or other privileges, suspension, expulsion, change in a job assignment or work location, demotion or reduction in pay, or termination of employment.

For those crimes of violence that Hilbert 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;
- Expelled after a finding of responsibility for a code of conduct violation; or
- Withdrew with conduct charges pending

Transcript notations for suspension may be removed at the discretion of the College, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed. The Director of Residence Life and Community Standards will notify the Office of Student Records to place the appropriate notation on the Respondents transcript.

TIME FRAME FOR RESOLUTION

Hilbert College seeks to resolve every report of sexual misconduct within a timely manner of the initial complaint, excluding any appeal. Any times included in this policy may vary depending on the complaint’s details and, in

some cases, extenuating circumstances that may require an extension of the time frames. Extenuating circumstances may include the time of the academic year (e.g., during college breaks or final exams), the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation by local law enforcement, or other unforeseen circumstances. If the investigation and resolution is delayed, Hilbert will notify the Reporting Party and Respondent of the reason(s) for the delay and the expected adjustment in the time.

TITLE IX COORDINATOR

In accordance with the Office of Civil Rights legislation pertaining to Title IX of the Education Amendments of 1972, the College is required to appoint and maintain a coordinator for Title IX Compliance on campus. Hilbert College's Title IX Coordinator is Laura Edholm, Associate Athletic Director. All reported incidents of sexual misconduct and subsequent documentation of investigations, findings, and judicial hearing outcomes will be kept on record with the Title IX Coordinator in accordance with College policies regarding records management.

Laura Edholm

Associate Athletic Director/ Title IX Coordinator

Franciscan Hall 107

716-649-7900 ext. 164 or 716-926-8843

Ledholm@hilbert.edu

SEXUAL VIOLENCE PREVENTION PROGRAMS

Hilbert College officials, including the Dean of Students, the Director of Counseling, the Director of Residence Life and Community Standards, and the Director of Campus Safety, work together to develop educational programs related to promoting awareness of personal safety and campus security specifically focused rape, sexual assault, domestic violence, dating violence, and stalking.

The campus education programs are intended to address the following:

1. Providing information during student orientation about rape and sexual assault, domestic and dating violence and stalking, including primary prevention.
2. Distributing educational information on definitions of sexual assault and penalties for assailants, including guidelines on how to avoid sexual assault.
3. Providing educational programs as part of curricular and co-curricular activities.
4. Providing information for on-campus and off-campus support services.

The Campus Safety and Security Committee, which is comprised of students, faculty, and administrative staff, is charged with the responsibility for reviewing and drafting appropriate policies around personal safety, including rape and sexual assault.

If a victim discloses actions constituting a violation of this policy through a public awareness event, such as "Take Back the Night" or a candlelight vigil, the College is not obligated to begin an investigation. The College may, however, use the information to inform the need for additional education and prevention efforts.

CLERY ACT COMPLIANCE

Hilbert College must include for statistical reporting purposes certain incidents in its Annual Security Report (ASR). Names of individuals involved in incidents are not reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, Hilbert will issue a timely warning to the campus. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the Reporting Party will not be disclosed.

CAMPUS SEX CRIMES PREVENTION ACT

In accordance with federal law Hilbert College maintains a registry of sex offenders living or working on campus which is available to students, faculty, and staff. The registry is in the Office of Campus Safety.

DESIGNATION OF AUTHORITY AND COLLEGE COUNSEL

Any person assigned a role pursuant to this policy may designate their authority to another appropriate person to avoid conflicts of interest or in other circumstances, as deemed necessary.

Any College administrator or official involved in implementing this policy may seek the advice of the College's legal counsel, to be coordinated through the Title IX Coordinator.

COORDINATION WITH OTHER POLICIES

A particular situation may potentially invoke one or more College policies or processes. Hilbert College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

ADMINISTRATION OF THIS POLICY

The College's Title IX Coordinator is responsible for ensuring compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, Laura Edholm, (716) 649-7900, ext. 164 or ledholm@hilbert.edu. Inquiries and complaints may be made externally to the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

Students' Bill of Rights in Cases Involving Sexual Assault, Domestic/Dating Violence, and Stalking

All students 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. Decide about whether to disclose a crime or violation and participate in the judicial or conduct process and or criminal justice process free from pressure by Hilbert College;
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 College 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 College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by Hilbert College, any student, the accused and/or the respondent, and/or their friends, family, and acquaintances within the jurisdiction of Hilbert;
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; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of Hilbert College.

**STATEMENT OF RIGHTS IN CASES INVOLVING SEXUAL
ASSAULT, DOMESTIC/DATING VIOLENCE AND STALKING**

Anyone reporting an incident of sexual assault, domestic or dating violence or stalking has the right to:

- Notify Campus Security, Local Law Enforcement, or the New York State Police.
- Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
 - Options to proceed, including the right to make a report to Campus Security (reports to Campus Security are reported to the Title IX Coordinator), Local Law Enforcement, and/or the New York 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, as set out in Hilbert College's Sexual Misconduct Policy.
 - Where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
 - That the criminal justice process utilizes different standards of proof and evidence than the College's misconduct procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
 - Whether the person they are reporting to is authorized to offer the confidentiality or privacy; and
 - Any other reporting options.
- If they are a student, to contact the College's Wellness Center and/or Counseling Center, where they may be offered confidential resources pursuant to applicable laws and can be assisted in obtaining services for reporting individuals; or to contact non-College confidential resources, including the New York State Office of Victim Services at 1-800-247-8035 or <https://ovs.ny.gov>.
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to the College's Responsible Employees who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, subject the College's Sexual Misconduct Policy, and can assist in obtaining resources for reporting individuals;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and consult the Title IX Coordinator and other appropriate College personnel for information and assistance. Reports shall be investigated in accordance with college policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is different from confidentiality and private information can be shared as necessary to implement and fulfill the College's obligations under the law and its policies and procedures;
- Disclose, if the accused is a college employee, the incident to Human Resources or to request that a confidential or private employee assist in reporting to Human Resources; and
- Receive assistance from appropriate College representatives if interested in initiating legal proceedings in family court or civil court, such assistance to consist of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings.

- Withdraw a complaint or involvement from the College's processes at any time, with the understanding that in appropriate cases, Hilbert College may nonetheless be required to proceed even if the reporting individual does not wish to do so.

UPDATED 1/10/24