

HILBERT COLLEGE

SEXUAL MISCONDUCT POLICY

Hilbert College promotes 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, state, and local 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, Article 129A&B of the New York State Education Law commonly referred to as “Enough Is Enough”, and Section 201-g of the New York State Labor Law. 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 also explain the way in which the College will respond to incidents in the event they do occur.

SUMMARY OF POLICY AND PROCEDURE

This Policy prohibits all forms of sex and gender-related misconduct, referred to here as “Sexual misconduct”. A person who has experienced Sexual misconduct has several options:

- **A report to a Confidential Resource.** A confidential resource provides emotional and/or medical services and maintains confidentiality. A report to a confidential resource does not result in a College investigation or any other action to respond to the incident.
- **A report to a Responsible Administrator.** Certain personnel at the college have the responsibility to receive reports of sexual misconduct and to take action based on those reports. A responsible administrator will forward the information about the incident to the Title IX Coordinator. The Title IX Coordinator will discuss options with the reporting person. The assistance the Title IX Coordinator can facilitate includes the following:
 - **Supportive Measures.** Supportive measures are intended to support the individual who experienced sexual misconduct to continue in their involvement in the college’s program and activities. Supportive measures include no contact orders; academic accommodations; changes in housing assignment; or other academic, residential or work accommodations.
 - **Informal Resolution.** An informal resolution is a resolution that the parties (i.e., the person making the allegations and the accused person) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
 - **Grievance Process.** A grievance process includes an investigation and adjudication process. The outcome of a grievance process is either that the person accused of Sexual Misconduct is found either responsible or not responsible for having committed a violation of this Policy. A violation results in appropriate sanctions

and other remedies to address the violation.

Additionally, the person who experienced a crime has the option to pursue criminal charges:

- A report to Law Enforcement. If an incident involves criminal conduct, the victim may make a complaint to law enforcement.

The options for reporting above are not mutually exclusive, and an individual may pursue one option but not the other. An individual may obtain the services of a confidential resource and decide at that time or a later time to report to the college.

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 community. 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. In compliance with New York State law, this policy protects employees, interns (whether paid or unpaid), and non-employees (including independent contractors) who are (or who are employed by) contractors, companies or organizations contracting to provide services to the College, regardless of immigration status. This Policy applies to all individuals without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, or ex-offender status.

OVERVIEW OF CONSENSUAL RELATIONSHIPS POLICY

As a general 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 more powerful position in such a relationship is required to report it to their supervisor. It is expected that all members of the College community comply with the Consensual Relationship Policy. The Consensual Relationship Policy can be found in the Student Handbook and the Human Resources Manual.

GENERAL POLICY DEFINITIONS

1. Advisor of Choice. An advisor of choice is a person selected by the Complainant or Respondent to advise and accompany the Complainant or Respondent throughout the investigation and adjudication process. An advisor of choice may be any person, including an attorney. The institution does not appoint or pay for an advisor of choice. An advisor of choice's role is limited to the functions further described in this policy.

2. 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, as long as 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, gender expression, or transgender status.

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. Affirmative 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 otherwise cannot 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 they are under the influence of drugs or alcohol. Affirmative consent cannot be given under coercion, force, or threat of physical harm or injury.

3. Coercion – Coercion is a threat, undue pressure, or intimidation to engage in sexual activity. Coercion is more than an effort to persuade, seduce, entice, or attract another person to engage in sexual activity. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity.

4. Complainant –The term Complainant refers to the person who allegedly experienced the sexual misconduct in violation of the policy whether or not a formal complaint is filed. In some cases, the Title IX Coordinator may file a formal complaint and thereby initiate an investigation and adjudication process pursuant to this policy. In that instance, the Title IX Coordinator is not the "Complainant"; the complainant remains the person who allegedly experienced the sexual misconduct.

5. Force - Force is the use of physical violence and/or imposing on someone physically to gain sexual access.

6. Formal Complaint - A formal complaint refers to a written, signed complaint filed in accordance with the grievance process below and requesting initiation of the formal investigation and adjudication process. A formal complaint is necessary to initiate the investigation and adjudication process. Once an individual has made a report of an alleged violation of this Policy to one of the College's Responsible Administrators or any other Responsible Employee, the Title

IX Coordinator will contact the person who allegedly experienced the sexual misconduct to explain options, including the option to file a formal complaint.

7. Institution Advisor. A Complainant or Respondent who does not opt to be accompanied by an advisor of choice at a hearing is entitled to be appointed an advisor by the College at no charge to the party. This advisor is referred to an “institution advisor” who may be, but need not be, an attorney. An institution advisor’s role is limited to asking cross-examination questions of the other party during a hearing. An institution advisor does not represent a party in any legal sense. The party is responsible for formulating the cross-examination questions the institution advisor will pose during the hearing. The Institution Advisor may be a member of the campus community or may be external to the College, as determined by the Title IX Coordinator.

8. Party. A Complainant or Respondent may be referred to as a Party, or collectively, the Parties.

9. Reporting Party – The term Reporting Party refers to the person making the report. That person is usually, but is not always, the person who experienced the harassment, sexual misconduct or other violation of this policy.

10. Respondent – The term Respondent refers to the person alleged to have committed the alleged harassment, sexual misconduct or other violation of this policy.

11. Sexual Misconduct- The term “sexual misconduct” is an umbrella term used by this policy to more conveniently refer to any form of conduct prohibited by this policy. Sexual misconduct may occur between members of the same or opposite sex and in heterosexual or homosexual relationships.

DEFINITIONS- CONDUCT VIOLATIONS

This policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged violations. This policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations) and also applies to a broader range of contexts and behaviors inconsistent with the College’s commitment to equal opportunity (i.e., “College Category” violations).

The designation of conduct or allegations as either “Title IX Category” or “College Category” is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the College’s broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

A. Title IX Category Violations

Title IX of the Education Amendments of 1972 provides: “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

In accordance with Title IX as interpreted by the Department of Education, the College recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the

complainant was in the United States at the time of the alleged conduct, that the complainant be participating in or seeking to participate in the College's education program or activity at the time of the complaint, and that the conduct have occurred in the context of the College's education program or activity:

1. **Sexual Harassment** – “Sexual harassment” means conduct on the basis of sex, including gender, sexual orientation, or gender identity or expression, gender-stereotyping or the status of being transgender, that satisfies one or more of the following:
 - a. 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 (commonly referred to as a “quid pro quo”);
 - b. 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 (commonly referred to as a sexually or gender-based “hostile environment”).
2. **Sexual assault.** “Sexual assault” includes any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:
 - a. 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, without the consent of the victim. This offense includes the rape of both males and females.
 - b. Non-Consensual Sexual Contact/Fondling. The touching of the private body parts (including genital area, anus, groin, inner thigh, buttocks or breast)¹, whether contact is under clothing or over clothing, 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 incapacity.
 - c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
3. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) 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 relationship. (iii) The frequency of interaction between the persons involved in the relationship.

4. **Domestic violence.** “Domestic violence” means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the College is located, 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.
5. **Stalking.** “Stalking” is engaging in a course of conduct on the basis of sex 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. Stalking that does not occur on the basis of sex may be addressed under as a College Category Violation as described below.

B. College Category Violations

The College prohibits the following behavior. For purpose of College Category violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the college’s education program or activity, or otherwise in circumstances over which the College does not have influence or control, including but not limited to during college academic breaks. The College retains discretion to not respond to, investigate or adjudicate circumstances in which no College interest is implicated.

1. **Sexual harassment.** “Sexual harassment” means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. Sexual harassment can be verbal, written, visual, electronic or physical. 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 takes into account the totality of the circumstances. The College considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning community.
2. **Sexual assault.** “Sexual assault” includes any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent, but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s

education program or activity). Sexual assault consists of the following specific acts:

- a. 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, without the affirmative consent of the victim. This offense includes the rape of both males and females.
- b. Non-Consensual Sexual Contact/Fondling. The touching of the private body parts (including genitalia, anus, groin, breast, inner thigh, or buttocks), whether contact is under clothing or over clothing, 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 incapacity.
- c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.

3. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where 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; and the frequency of interaction between the persons involved in the relationship; but that does not constitute dating violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example, because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).
4. **Domestic violence.** “Domestic violence” means violence committed by a former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the College is located, 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, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).
5. **Stalking.** “Stalking” is 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, but that does not constitute stalking as a Title IX Category Violation as defined above because of basis on which it occurs

or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College's education program or activity).

- 6. Sexual Exploitation.** Sexual exploitation occurs when, without affirmative consent, a person takes sexual advantage of another in a manner that does not constitute another violation under this Policy. Examples of sexual exploitation include, but are not limited to: prostitution, acts of incest, observing or recording (whether by video, still photo or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing or showering) without the affirmative consent of all involved; taking intimate pictures of another, but then distributing the pictures to others without the photographed person's affirmative consent; engaging in voyeurism, engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; or exposing one's genitals in non-consensual circumstances.
- 7. Retaliation.** Retaliation is an adverse act perpetrated to "get back" at a person because the person reported sexual misconduct, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the College or by an external agency. An act of retaliation may be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. A person who acts in good faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good-faith; a person may provide inaccurate information believing it is accurate, which is still good-faith. If a person who makes a statement knowing that it is false, the person has acted without good faith.

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 also 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, which can be reached at 716-479-1233, for immediate safety assistance. Campus Safety can also assist the individual in making a report of 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 report 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. Decisions rendered in a court of law have no impact on the College's obligation to respond to allegations of sexual misconduct within our community. 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 of 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 other 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 allegations 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 their emotional and physical needs. A person seeking confidential emotional or medical care may contact the following on-campus resources:

- Counseling Center – Director Christopher Siuta, Ph.D, LMHC, 716-926-8930, St. Joe's Residence Hall 1st Floor, or csiuta@hilbert.edu
- Health & Wellness Center – St. Joe's Residence Hall 1st Floor, or csiuta@hilbert.edu
 - Hilbert College is partnering with Inspired Health Group, a Fully Integrated Medical Practice located at 3671 Southwestern Blvd. Suite 101 Orchard Park, NY 14127, for primary medical care for all Hilbert students. Students can "walk-in" at any time during normal business hours at this practice.

These counseling and health services are confidential and free for all Hilbert College 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 numerous off-campus resources available. These confidential off-campus 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 & 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 Hilbert 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 infections, 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 and contact a Crisis Services Advocate to meet you there, 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 individuals:

- Title IX Coordinator / VP for Student Life and Dean of Students– Gregory Roberts, 716-926-8935, Franciscan Hall 107, or groberts@hilbert.edu
- Deputy Title IX Coordinator, International Student Coordinator, Lee Coletti, 716-926-8786, Franciscan Hall 102, or lcoletti@hilbert.edu
- Director of Residence Life & Community Standards, Jill Cole-Splawski, 716-926-8933 or 649-7900 (ext. 362), Trinity Hall, 1st Floor, or jillcole@hilbert.edu
- Director of Campus Safety, Vito Czyz – 716-926-8925, 716-479-1233 (24-hour number), or 716-649-7900 (ext. 224), Campus Center - Lower Level, or vczyz@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. Even 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.

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 any and all incidents.

Mandated Reporting Authority

All Hilbert College employees, with the exception of the College's Confidential Resources noted above, are designated as Responsible Employees and are therefore obligated to report any allegation of sexual misconduct to the Title IX Coordinator. If a report 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.

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, resident assistants, etc.), the College's Title IX Coordinator will promptly notify the individual who allegedly experienced the sexual

misconduct, and inform them of the available resources, options and assistance. Hilbert will accept anonymous reports. However, due to the nature of 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 and/or Action Taken Confidentially

Hilbert College endeavors to comply with 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) and does not file a formal complaint, the Title IX Coordinator will consult with appropriate administrators in order to consider Reporting Party's request. The Title IX Coordinator will consider a range of factors related to pattern, pervasion, threats, and violence which include but are not limited to, the following:

- The seriousness of the offense;
- Whether there have been other sexual misconduct reports 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. Where the only parties to the situation are employees, the College will be less inclined to honor a request for confidentiality. If, after considering these factors, the College determines that it is able to 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, will offer supportive measures and 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. If the College determines that it must take action in the absence of a formal complaint by the Reporting Party, the Title IX Coordinator will file a formal complaint.

Similarly, a Reporting Party may desire to have investigatory and/or disciplinary action taken, but may wish to have their identity as the Reporting Party kept confidential. Depending on the

circumstances, this may or may not be possible. If a Reporting Individual declines to participate and answer questions in the disciplinary proceeding in cases involving sexual misconduct, the College may not consider the Reporting Party's statements in determining whether the accused committed a violation. As a result, if the Reporting Party requests that their name be kept confidential, 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 action to be taken confidentially. If the College determines that it must disclose the Reporting Party's identity to the Respondent, the College will promptly inform the Reporting Party. Ultimately, 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 that 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 GRIEVANCE PROCESS FOR RESPONDING TO REPORTS OF SEXUAL MISCONDUCT

Filing a Formal Complaint

A formal complaint is necessary to initiate the College's grievance process, meaning an investigation and adjudication process. A formal complaint must be in written form and must be signed by the complainant. A third-party or anyone other than the victim of the misconduct may not file a formal complaint. However, a formal complaint may be filed by a parent or guardian of a minor person.

A formal complaint is a document filed by a complainant or signed by the College's Title IX Coordinator alleging sexual misconduct against a respondent and requesting that the College investigate the allegation. The respondent may be either a student or an employee or a visitor, independent contractor, intern, or volunteer of the College. A formal complaint may be filed with

the Title IX Coordinator in person, by mail, or by electronic mail to: Title IX Coordinator / VP for Student Life and Dean of Students– Gregory Roberts, 716-926-8935, Franciscan Hall 107, or groberts@hilbert.edu. In order to qualify as a formal complaint, the document must contain the complainant’s physical or electronic signature, or otherwise indicate that the complainant is the person filing the formal complaint.

If a complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, or the complainant’s identity is unknown, and the Title IX Coordinator determines there is sufficient cause to file a formal complaint, the Title IX Coordinator may file a formal complaint. In such cases, the Title IX Coordinator is not considered to be a complainant or other party under this Policy.

The Title IX Coordinator will consider the wishes of the complainant not to proceed with the investigation and adjudication process. However, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that the allegations are such that it would be unreasonable not to proceed despite the wishes of the complainant.

In making this determination, the Title IX Coordinator will consider, among other factors: the risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, which may be assessed by evaluating; whether there have been other complaints about the same alleged perpetrator; whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others; whether the sexual violence was committed by multiple perpetrators; whether the sexual violence was perpetrated with a weapon; whether the victim is a minor; whether the College possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence); whether the victim’s report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group. Additionally, where the respondent is not enrolled at the College and is not employed by the College, the College may decline to process the complaint through the Grievance Process. The College may take the steps it deems appropriate under the circumstances.

Mandatory Dismissal of Title IX Category Charges

In order to comply with the Title IX regulations, the Title IX Coordinator will review a formal complaint filed by a Complainant. In order to comply with Title IX regulations, the Title IX Coordinator must “dismiss” the Title IX Category violation(s) if it is apparent that the allegations are not within the scope of Title IX, including that the conduct alleged:

- would not constitute sexual harassment, sexual assault, dating violence, domestic violence or stalking as defined in the Title IX category violations above, even if proved,
- did not occur in the College’s education program or activity, or
- did not occur against a person in the United States.

Notice of dismissal of the Title IX Category violation(s) will be in writing and issued to both the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the dismissal of a Title IX Category violation. Any decision to dismiss a complaint or allegation pursuant to this section is immediately appealable pursuant to the appeal procedure set forth below. Even if Title IX Category violations are subject to dismissal, the College may continue to process the allegations as College Category violations. assuming that the allegations, if true, would constitute College category violations.

Discretionary Dismissal of Title IX Category Charges

The Title IX Coordinator may (but is not required to) dismiss a formal complaint in the following circumstances:

- the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint or any specific allegations;
- when the respondent is no longer enrolled in or employed by the College; and
- where specific circumstances prevent the College from gathering evidence (such as where a complainant refuses to cooperate but does not withdraw a formal complaint).

The decision to dismiss or not to dismiss a charge under these circumstances will depend on the totality of the situation.

Supportive Measures

Once a report is made under this Policy, the complainant will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. A report that triggers supportive measures need not be a formal complaint, and it may be made by a third-party (i.e., someone other than the complainant himself/herself). Once the respondent is informed of a report or a formal complaint, the respondent will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the College's educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties.

Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course-related adjustments or allowing a withdrawal from a course without penalty;
- Changes to housing, transportation and campus working situations if those changes are requested by a party and reasonably available;
- Mutual "No Contact" orders and, in limited circumstances, such as when legal restraining orders or orders of protection have been issued, one-way no contact orders.
- Access to campus escorts or other reasonable security or monitoring measures; and
- Counseling services.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various College departments and offices that may be involved. Supportive measures will be offered free of charge. If a party's request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, each party will, upon request, be afforded the opportunity for a prompt review of the need for supportive measures that have been implemented, including the potential modification of these measures, to the extent that the party is affected by the measure(s) being reviewed. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affects that party. Information about how to request a review will be included in a written communication that will outline the supportive measures offered and any that were requested by the party but denied.

Emergency Removal of Student Respondents

In some cases, the College may undertake an emergency removal of a student respondent in order to protect the safety of the College community, which may include contacting local law enforcement to address imminent safety concerns. Emergency removal is not a substitute for reaching a determination as to a respondent's responsibility for the sexual misconduct allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual harassment allegations.

Prior to removing a student respondent through the emergency removal process, the College will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student, including the student respondent, or other individual justifies removal, then a student respondent will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed.

After determining a student respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the complainant and respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision. If a student respondent disagrees with the decision to be removed from campus, the respondent may appeal the decision. The respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Title IX Coordinator within 10 days of receiving the notice of removal. The burden of proof is on the student respondent to show that the removal decision was incorrect.

This section applies only to student respondents. Employee respondents are not subject to this section and may be placed on administrative leave pursuant to the College's policies during the pendency of a Title IX grievance process.

Investigation

If a complaint appears to allege a plausible violation of this policy, Hilbert will conduct an investigation. An investigation may occur because the Complainant files a formal complaint and wishes to proceed with the formal investigation and adjudication process or because the Title IX Coordinator has filed a formal complaint. The Title IX Coordinator may determine that cases where the allegations arise out of the same set of facts should be consolidated for purposes of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single complainant against a respondent or multiple complaints by a single complainant against multiple respondents. The College will endeavor to complete the investigation within forty-five (45) calendar days, but this time may be extended for good cause, such as witness unavailability, breaks in academic schedule, or other similar circumstances.

The investigation 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 or may not be attorneys, to conduct the investigation. Similarly, in certain cases, the Title IX Coordinator may deem it appropriate to assign a team of two investigators to conduct the investigation.

2. The Complainant and Respondent will be permitted an equal opportunity to present information in the context of the investigation and to request that witnesses having relevant information be included in the investigation process. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the College. 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. The investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the complainant with a person other than the respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.).
3. The investigation usually involves interviews of the parties and/or any witnesses and reviewing any relevant documentation.
4. No unauthorized recordings will be allowed in any meetings, interviews, or disciplinary proceedings associated with the Sexual Misconduct Policy.
5. The Complainant and Respondent shall receive a notice of investigation referencing the violation(s) of this policy alleged to have been committed and the range of possible disciplinary sanctions and remedies following any determination of responsibility. The notice of investigation will include, to the extent known: the date, time, location and factual allegations concerning the alleged violation; the policy provisions allegedly violated; a description of the investigation and adjudication process; potential sanctions; the right to an advisor of their choice, who may be, but is not required to be, an attorney; their right to inspect and review evidence in accordance with this policy; notice that knowingly making false statements or knowingly submitting false information is prohibited under the Code of Student Conduct; and that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process. The parties will receive the Notice of Investigation with sufficient time to prepare a response before any initial interview. If, in the course of the investigation, the College decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator or designee will provide notice of the additional allegations to the parties.
6. The Complainant and Respondent will be provided with notice of the name of the appointed investigator(s) and an opportunity of not more than two (2) days after the notice to raise an objection to the investigator(s) based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator(s).
7. The Complainant and Respondent will be provided with advance written notice of the date, time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate. The Complainant and Respondent have a right to be accompanied by an advisor of their choice, who may be an attorney. The College does not appoint an advisor for a party during the investigation phase of the process.

Opportunity for Inspection and Review of Evidence

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to the conclusion of the investigative report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The parties and their advisors may not make photocopies or take photographs of the materials and are prohibited from disseminating any of the materials subject to inspection and review to any individuals outside of those engaged in the grievance process. The Complainant and Respondent will be provided with at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

Final Investigative Report

At the conclusion of the investigation, the investigator will complete a written investigative report that fairly summarizes the relevant evidence. The investigative report shall contain, among other things, a copy of any written statement submitted by the Complainant, Respondent, and/or witnesses as well as a written summary of the statements or reports provided to the investigator. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator. At least ten (10) calendar days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

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. One objective of the Informal Resolution is to provide to the parties an opportunity to hear each other's concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator. The informal resolution process is not available if the respondent in a sexual misconduct complaint is a faculty or staff member of College and the complainant is a student.

The Title IX Coordinator will offer the Informal Resolution Process to the parties after a formal complaint is filed by a complainant. Both parties must consent to use the Informal Resolution process. No party should feel intimidated, coerced or threatened to participate in an Informal Resolution Process, or to withdraw from an Informal Resolution Process. The facilitator of the informal resolution process will also be screened to ensure that such person is free from conflicts

of interest and bias. The facilitator's role is to conduct the Informal Resolution process in a way that is impartial and does not favor one party over the other. The College encourages terms of resolution that meet the parties' needs, and those may include a disciplinary sanction.

The parties may, but will not be required to, meet together as part of any informal resolution. The facilitator may meet separately with each party to explore the party's views about the allegations and desired outcome from the process. Either party can elect to have any meeting occur so that the parties are in different rooms and the facilitator "shuttles" between the parties. For the Informal Resolution process to have the best chance for success, the parties should be free to express themselves. As a result, the information received from both parties during the Informal Resolution process will be kept confidential by the facilitator. In addition, the facilitator will not be available as a witness in any hearing that may occur should either party terminate the Informal Resolution process before a resolution. Should the Formal Complaint be returned to the formal grievance and hearing process of this policy, the parties may not disclose information shared by the other party during the process in the hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise.

At any time during the informal resolution process the Complainant or the Respondent has the right to terminate the process before the final written resolution is signed. If the process is terminated, the complaint will proceed to the formal investigation and adjudication process. If the informal resolution results in an agreement, and if this agreement is acceptable to the Title IX Coordinator, the informal resolution will be considered successful and the complaint will be deemed resolved. The facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. Once both parties have signed a statement agreeing that the informal resolution was successful, the matter will be considered resolved without the need for further investigation or to pursue the formal grievance and hearing process. After a written resolution has been finalized, the College will keep a record of the parties' written consent to the Informal Resolution process and the written resolution. If the informal resolution does not result in a mutual agreement, the formal complaint process will proceed to the formal investigation and adjudication process.

Hearing Procedures

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

General Hearing Process

A hearing before a Hearing Officer designated by the Title IX Coordinator will be convened not less than ten calendar days after the parties have been provided access to the final investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s). The Hearing Officer may be a member of the campus community or may be external to the College, as determined by the Title IX Coordinator.

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the name of the Hearing Officer, and how to challenge participation by the Hearing Officer for bias or conflict of interest. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the decision maker is biased).

Participants in the hearing will include the Hearing Officer, the Complainant and the Respondent, their respective advisors, the investigator who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Hearing Officer and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

Procedural Matters

The Hearing Officer is in charge of organizing the presentation of information to be considered at the hearing. Generally, the hearing will proceed in the following order:

1. Opportunity for Opening Statement by the Complainant
2. Opportunity for Opening Statement by the Respondent
3. Summary of the results of the investigation by the investigator
4. Questions for the investigator by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
5. Questions for the Complainant by the Hearing Officer and, if desired, on behalf of the Respondent (as described below)
6. Questions for the Respondent by the Hearing Officer and, if desired, on behalf of the Complainant (as described below)
7. Questions for each witness by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
8. Opportunity for Closing Statement by the Respondent
9. Opportunity for Closing Statement by the Complainant

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the investigative report as described above will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. Absent extraordinary circumstances as determined by the Hearing Officer, no party may seek to introduce at the hearing any evidence not previously made available in accordance with the preceding sentence, other than the investigative report itself and any responses to the investigative report submitted by the parties as described above.

The Hearing Officer will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. A question not directly related to the allegations will generally be irrelevant. Subject to the terms of this Policy, the Hearing Officer will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, and/or to recall parties or witnesses for additional questions as the Hearing Officer deems necessary or appropriate. The Hearing Officer may impose additional ground rules as the Hearing Officer may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

The hearing will be recorded through either an audio recording or transcript. That recording or transcript will be made available to the parties, upon request, for inspection and review. Prior to obtaining access to the recording or transcript, the parties and their advisors must acknowledge in writing that they will not disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the grievance process.

Advisors

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an advisor present at the hearing, the College will provide, without fee or charge to that party, an Institution Advisor of the College's choice for the limited purpose of conducting questioning on behalf of that party as provided in this Policy.

Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Hearing Officer during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating and non-abusive manner. If the Hearing Officer determines that an advisor is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the College will assign an Institution Advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below. Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation. The

Hearing Officer may be advised by and/or consult with the College's legal counsel as the Hearing Officer deems necessary or appropriate.

Questioning Procedures

The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questions that call for information about any party's medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent. Questioning must be conducted by the party's advisor in a respectful, nonintimidating and non-abusive manner, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the College to provide, without fee or charge to that party, an Institution Advisor of the College's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Questions that repeat, in sum or substance, questions already asked by the Hearing Officer prior to cross-examination, or by a party's advisor during cross-examination, may be ruled duplicative, and therefore irrelevant. Before the party or witness answers a question posed by an advisor, the Hearing Officer will first determine whether the question is relevant and provide a brief explanation for any decision to exclude a question as not relevant. For example, the Hearing Officer may determine that a question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true. As another example, a Hearing Officer may determine that a question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections. Such decisions by the Hearing Officer are final and not subject to objection or reconsideration during the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the hearing by a party's advisor as described above, the Hearing Officer may not rely on any statement of that party or witness, during the hearing or otherwise, in reaching a determination regarding responsibility. The Hearing Officer will not draw an inference as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination questions.

Hearing Determinations

Following conclusion of the hearing, the Hearing Officer will deliberate and render a determination as to whether the Respondent is responsible or not responsible for the alleged violation(s). The Hearing Officer will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "Preponderance of the evidence" means that the Hearing Officer must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

Each party may submit a written personal impact statement to the Title IX Coordinator for consideration by the Hearing Officer in determining an appropriate sanction if there is a finding of responsibility on one or more of the charges. The parties must submit their statements to the Title IX Coordinator within 24 hours after the conclusion of the hearing. The Title IX Coordinator will provide each of the parties an opportunity to review any statement submitted by the other party.

In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- the nature and severity of, and circumstances surrounding, the violation(s);
- the Respondent's state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- the Respondent's previous disciplinary history;
- the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;
- the need to remedy the effects of the conduct on the Complainant and/or the community;
- the impact of potential sanctions on the Respondent;
- sanctions imposed by the College in other matters involving comparable conduct; and
- any other lawful factors deemed relevant by the Hearing Officer.

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and that further infractions of any College policy, procedure, or directive may result in more severe disciplinary action.
- **Probation:** A written reprimand for violation of the Policy, providing for more severe disciplinary sanctions in the event that the Respondent is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified privileges, exclusion from extracurricular activities, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Cessation of student status for a definite period of time and/or until specific criteria are met.
- **Expulsion:** Permanent termination of student status.
- **Withholding Degree and/or Diploma:** The College may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities.
- **Other Actions:** In addition to or in place of the above sanctions, the Hearing Officer may assign any other sanctions as deemed appropriate, including but not limited to the following:
 - **Mandated counseling** so the Respondent has the opportunity to gain more insight into their behavior.

- A “no contact” directive (including but not limited to continuation of a no contact directive imposed as a supportive measure) prohibiting contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact directive may include additional restrictions and terms.
- Requiring the Respondent to write a letter of apology.
- Requiring unpaid service to the campus or local community stated in terms of type and hours of service.
- Restitution for damage to or misappropriation of property, or for personal injury, and other related costs.
- Loss, revocation or restriction of housing privileges (e.g., exclusion from specified locations or alteration of status in the housing lottery or other selection system).
- Monetary fines.

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 suspensions may be removed at the discretion of the College, but no earlier than one year after the conclusion of the suspension. To request the removal of a transcript notation for suspension one year after the conclusion of the suspension the request must be made in writing to the Dean of Students. Transcript notations for expulsion shall not be removed. The Director of Community Standards will notify the Office of Student Records to place the appropriate notation on the Respondent’s transcript.

Notification of Decision

The Hearing Officer will issue a written determination including the following information: a description of the charges that were adjudicated; a description of the procedural steps taken from the submission of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; findings of fact supporting the determination; conclusions regarding the application of the Policy to the facts; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College’s educational programs or activities will be provided to the Complainant; and the procedures and permissible bases for the Complainant and Respondent to appeal. The Hearing Officer will provide the written determination to the parties simultaneously.

APPEALS

A respondent or complainant may appeal: (1) a determination resulting from a formal hearing, and (2) the College’s dismissal of a formal complaint or any allegations therein.

If a party wishes to appeal a determination of the Hearing Officer or the dismissal of a formal complaint, the party must submit written notice to the Title IX Coordinator of the party’s intent to appeal within seven (7) calendar days of receiving the written notification of the appealable decision. In any case where the Respondent is a college employee the appeal shall be submitted to

single Appeal Officer designated by the Title IX Coordinator, and the Appeal Officer's decision shall be final. Appeals in cases in which the respondent is a student shall be submitted to an appellate panel comprised of two appeal panel members designated by the Title IX Coordinator. Any party may appeal on the bases of one or more of the following grounds:

- Procedural irregularity that affected the determination regarding responsibility or dismissal 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 determination regarding responsibility or dismissal of the matter;
- The Title IX Coordinator, investigator(s), or 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 determination regarding responsibility or dismissal of the matter. The professional experience of an individual need not disqualify the person from the ability to serve impartially. Furthermore, bias is not demonstrated by working in complainants' or respondents' rights organization. And
- Any sanction imposed is disproportionate to the nature or severity of the violation(s) or otherwise inappropriate.

When a party submits a written notice of its intent to appeal to the Title IX Coordinator within 7 calendar days of the appealable decision, the College will notify the other party in writing and implement appeal procedures equally for both parties. If no written notice of either party's intent to appeal is sent, then the written determination becomes final after the time period to file an appeal (7 days) has expired. The appeal process does not rehear complaints but ensures that rights are protected, appropriate procedures are followed, and sanctions are reasonable.

Each party will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Each party will have at least three (3) days to submit its written statement. If a party needs additional time, it can request such additional time from the decision-maker for the appeal. Such requests will be granted on a case-by-case basis. If the decision-maker for the appeal grants a request for additional time to submit a written statement, all parties will be granted the additional time. The decision-maker for the appeal will not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.

The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result. This decision will be provided to both parties simultaneously and in writing. Once the appeal decision has been sent to the parties, the appeal decision is final.

Application to Faculty and Staff

One or more of the College's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies to any situation where a student is the complainant or respondent. In all other situations, the College reserves the right to apply this policy or another applicable College policy or process. The sanctions that may be imposed upon faculty and staff for violations of this policy include, but are not limited to, written warning, a period of unpaid suspension, and termination of employment. The College will apply this policy to any situation where the College determines that Title IX requires the application of this policy.

Academic Freedom

The 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.

TIME FRAME FOR RESOLUTION

Hilbert College seeks to resolve every report of sexual misconduct within a timely manner of the initial report. The College will endeavor to conclude all reports of Sexual Misconduct within ninety (90) calendar days (exclusive of any appeal). Any time frames included in this policy may vary depending on the details of the reported situation 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. In the event that the investigation and resolution is delayed, Hilbert will notify the Complainant and Respondent of the reason(s) for the delay and the expected adjustment in the time frame.

SEXUAL VIOLENCE PREVENTION PROGRAMS

Hilbert College officials, including the Dean of Students, the Director of Counseling, the Director of Residence Life, and the Director of Campus Safety, amongst other designated officials, work together to develop educational programs related to promoting awareness of personal safety and campus security specifically focused on 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 possible 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 in the area of 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.

REPORTING WORKPLACE SEXUAL HARASSMENT

In compliance with New York State law, sexual harassment, when committed by an employee, is considered a form of employee misconduct. 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. In addition to being subject to discipline if they themselves engage in sexually harassing conduct or retaliation, individuals with supervisory authority over other College employees will be subject to discipline for knowingly allowing sexual harassment to continue. A reporting form is available online on the College's website that employees may use, if they wish, to submit a report of workplace sexual harassment.

CLERY ACT COMPLIANCE

Hilbert College is required to include for statistical reporting purposes the occurrence of 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 community. 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 located 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 to ensure compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, Gregory Roberts, Franciscan Hall 107, 716-926-8935, or groberts@hilbert.edu.

In addition to or as an alternative to the College's internal process, or if dissatisfied with the outcome of the College's process, a person may make a complaint to a governmental agency. These governmental agencies include:

The U.S. Department of Education, Office for Civil Rights is a federal agency responsible for ensuring compliance with Title IX and other federal laws, including Section 504 of the Rehabilitation Act. OCR may be contacted at 400 Maryland Avenue, SW, Washington, DC 20202-1100, (800) 421-3481. As a general rule, a complaint must be filed with OCR 180 days after the complained of event. OCR will investigate the complaint and determine if the College is in compliance with federal laws within OCR's jurisdiction. If

OCR finds non-compliance, OCR will ensure that the College returns to compliance. OCR may require individual remedy for the individual complainant, where appropriate.

The New York State Division of Human Rights (DHR) enforces the Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., which prohibits sexual harassment in employment in New York State, and protects employees, and other individuals working in an employer's workplace. A complaint alleging a violation of the Human Rights Law may be filed either with DHR, subject to a one year statute of limitations, or in New York State Supreme Court, subject to a three year statute of limitations.

The DHR will investigate the complaint to determine if unlawful harassment occurred and if the circumstances amount to a violation of the law. If unlawful discrimination is found after a hearing, the DHR or the court may award relief, which varies, but may include requiring the employer to take action to stop the harassment, or redress the damage caused, including reversing an unlawful employment action, paying monetary damages, attorneys' fees and civil fines. 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. The DHR can be contacted at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form and contact information for DHR's regional offices across New York State.

The United States Equal Employment Opportunity Commission (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 employee must file a complaint with the EEOC within 300 days from the conduct giving rise to the complaint. The EEOC also investigates complaints, but does not hold hearings or award relief. The EEOC may take other action including pursuing cases in federal court on behalf of complaining parties, or issuing a Right to Sue Letter that allows an individual to pursue his/her claims in federal court. Federal courts may award remedies if discrimination is found to have occurred.

The EEOC can be contacted by calling 1-800-669-4000 (1-800-669-6820 (TTY)), or visiting their website at www.eeoc.gov or via email at info@eeoc.gov. If an individual files an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the individual's right to proceed in federal court.

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. Make a decision about whether or not to disclose a crime or violation and participate in the 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 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 conduct process of Hilbert College.

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 Safety, 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 Safety (reports to Campus Safety 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 confidentiality or privacy;
 - 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 to 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 not the same as 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 another employee assist in reporting to Human Resources;
- 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; and
- Withdraw a report or involvement from the College's processes at any time.

Sexual Misconduct Policy Updated: August 14, 2020

This Policy will become effective on August 14, 2020,