



**Thomas College**  
**Sexual Misconduct Policy**

(6/2018)

## **SEXUAL MISCONDUCT POLICY**

Thomas College is committed to providing a safe environment which promotes the dignity and worth of each member of the community. The College will respond promptly and effectively to complaints and reports of violations of this policy. In responding to all complaints and reports, the College will act to ensure the safety of students, guests, and employees while complying with federal and state laws.

### **I. Overview**

It is important that members of the College community understand that the law does not just prohibit violations of this policy against employees by employers. The law also prohibits violations between members of the College community more generally: for example, between employees and student, between employees, between students, or between a member of the Thomas community and a campus guest. This policy applies to all members of the College community and to third parties, regardless of gender, sexual orientation or gender identity. It applies to all College programs and activities, both on campus and off campus.

This policy does not substitute for or supersede related civil and criminal law. It is the policy of the College to strongly encourage individuals to report all incidents and violations to law enforcement officials or agencies with appropriate jurisdiction and to avail themselves of all the services and rights to which they are entitled.

Any individual may file a complaint under this policy at any time. However, the College strongly encourages individuals to file complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a complaint may compromise the subsequent investigation. Reporting in a timely way also allows the College to provide all persons involved with information regarding their rights, options, and resources available under this policy and federal or state laws.

All members of the College community are expected to cooperate fully in investigations and other proceedings necessary for the effective execution of this policy.

### **II. Title IX Requirements**

As a recipient of federal funds, Thomas College complies with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs and activities. Sexual Misconduct, as defined by this policy, is a form of sex discrimination prohibited by Title IX. All members of our community have a right to be free from sexual harassment, violence and gender based harassment. For purposes of this Policy, "Sexual Misconduct" includes sexual exploitation, sexual harassment, sexual assault, rape, dating violence, domestic violence and stalking. Sexual misconduct is a serious offense that violates College policy, state and federal law and may be subject to criminal prosecution. The

College encourages community members to report any act of Sexual Misconduct promptly to appropriate college officials or local law authority. Please note that the use of alcohol/drugs will not be accepted as a defense or mitigating factor to a violation of this policy.

#### **A. Role of the Title IX Coordinator and Team**

Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R. Part 106, the College's Title IX Team has primary responsibility for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX, which prohibits sex discrimination in all the operations of this College, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX.

Sexual misconduct including sexual harassment, sexual assault, rape, and sexual exploitation, can be a form of sex discrimination under Title IX. The Title IX coordinators oversee the College's response to reports and complaints that involve possible sex discrimination to monitor outcomes, identify and address any patterns, and assess effects on the campus climate, so the College can address issues that affect the wider school community.

Any individual should contact the Title IX Coordinators or Deputy Title IX Coordinator in order to:

- seek information or training about courses of action available to resolve reports or complaints that involve potential sex discrimination, including sexual misconduct,
- file a complaint or make a report of sex discrimination, including sexual misconduct,
- notify the College of an incident or policy or procedure that may raise potential Title IX concerns,
- get information about available resources (including confidential resources) and support services relating to sex discrimination, including sexual misconduct, and
- ask questions about the College's policies and procedures related to sex discrimination, including sexual misconduct.

The **College's Title IX team** includes the Title IX Coordinators and Deputy Coordinators who may also serve as investigators.

##### **Title IX Senior Coordinator:**

Lisa Desautels-Poliquin, Vice President for Student Affairs, Ayotte Center, Room AD-127, (207) 859-1243, [desautelsl@thomas.edu](mailto:desautelsl@thomas.edu)

##### **Title IX Coordinator:**

Michelle Joler-Labbe, Chief Human Resource Officer, Ayotte Center, Room AD-220, (207) 859-1240, [HR@thomas.edu](mailto:HR@thomas.edu)

##### **Title IX Deputy Coordinators:**

Hannah Gladstone, Dean of Students, Ayotte Center, Room AD-127, (207) 859-1216, [gladstoneh@thomas.edu](mailto:gladstoneh@thomas.edu)

Donald Cragen, Associate Professor, Chair, H. Allen Ryan School of Business,  
Alfond Academic Center, Room AL-120, (207) 859-1311, [cragend@thomas.edu](mailto:cragend@thomas.edu)

In the event that the incident, policy, or procedure about which the individual seeks to file a report or complaint creates the appearance of a conflict of interest with one of the members of the Title IX team, individuals may contact any other member of the team.

## **B. Functions and Responsibilities of the Title IX Coordinator**

The Title IX Coordinator's functions and responsibilities include the following:

### **(1) Training for Students, Faculty, and Staff**

The Title IX Coordinators provide and/or facilitate ongoing training on Title IX for all students, faculty and staff, including:

- annual training for faculty and staff, outlining their rights and obligations under Title IX, including the appropriate response to reports of sexual misconduct, the requirement to report sexual misconduct to appropriate College officials, and the extent to which counselors and advocates may maintain confidentiality while reporting the incident, and
- annual training for students outlining their rights under Title IX; with regard to sexual misconduct, this training will include what constitutes sexual misconduct and when it creates a hostile environment, the definition of consent, reporting options (including reports to responsible employees, campus security and local law enforcement, and confidential reporting to counselors or advocates), the grievance procedures used to process complaints, applicable conduct code provisions relating to sexual misconduct and the consequences of violating those provisions, the role of alcohol and drugs in sexual misconduct, strategies and skills for bystander intervention, the offices or individuals with whom students can speak confidentially, the offices or individuals who can provide support services, the employees who must report incidents to the Title IX coordinator, and Title IX's protections against retaliation.

### **(2) Investigations**

The College is responsible for conducting adequate, reliable, and impartial investigations of reports and complaints of sexual misconduct. The Title IX Coordinators oversee many aspects of this response, including:

- determining whether the report or complaint alleges conduct that may, upon investigation, constitute prohibited sexual misconduct,
  - appointing an investigator(s) upon such determination,
  - making certain that individual reports and complaints are handled properly and in a prompt and timely manner,
  - informing all parties regarding the incident review process,
  - confirming that all parties have been notified of the right to, and procedures for an appeal,

- assure information and documentation related to the investigation is maintained in a secure manner, and
  - monitoring compliance with timeframes specified in the incident review process.
- The Title IX Coordinators evaluate requests for confidentiality by those who report or complain about sexual misconduct in the context of the College's responsibility to provide a safe and nondiscriminatory environment for all members. In order to make such an evaluation, the Title IX team may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh the Complainant's request(s) against the following factors: the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, threat, violence, predation, weapons, or when a minor is involved.
  - Ensures that appropriate policies and procedures are in place for working with local law enforcement and coordinating with local victim advocacy organizations and service providers, including rape crisis centers.

### **(3) Remedies, Including Interim Measures**

Upon learning of a report or complaint of sexual misconduct, the Title IX Coordinators promptly take steps to ensure the complainant's equal access to the College's programs and activities and protect the complainant as necessary. Such steps include taking interim measures before the final outcome of any investigation, providing remedial measures after the final outcome of investigation, and making the complainant aware of all available resources.

Upon a finding of prohibited sexual misconduct, the Title IX Coordinator determines whether campus-wide remedies should be adopted in response, including review and revision of the College's sexual misconduct policies, increased monitoring, supervision or security at locations where sexual misconduct was reported to have occurred, and increased education and prevention efforts, including to targeted populations.

### **III. Mandatory Reporting**

All College employees (except as provided within section VII) are required to promptly report incidents of sexual misconduct, sexual discrimination, sexual harassment and sexual assault. Because domestic violence, dating violence, stalking and sexual misconduct can also constitute sex discrimination, information received by College employees about such incidents must also be reported. Student employees and volunteers who learn of a violation of this policy in the course of their employment, programming or volunteer responsibilities are also required to report.

When a person tells an employee of the College about a violation of this policy, the College employee is encouraged to promptly report to the Title IX Coordinator all relevant details about the alleged incident shared by the complainant that the College will need to determine what happened – including the names of the complainant and accused(s), any witnesses, and any

other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported will be shared only with people responsible for handling the College's response to the report. If the College determines that there is a continuing threat to the safety of members of the College community, it may have to issue a timely warning regarding the incident. A timely warning does not include identifying information about a victim.

Reports of violations of this policy that occur off campus and/or off-duty can be the subject of a complaint. Reports of off-campus and/or off-duty sexual misconduct, domestic violence, dating violence and stalking should be brought to the College's attention as soon as possible. The College will evaluate the incident to determine whether it violates this policy by resulting in continuing effects that create a hostile environment on campus or otherwise has a connection to the College.

#### **IV. Getting Help: Students—What to do if you are Sexually Assaulted or Experience Domestic Violence, Dating Violence or Stalking (\*\*Employees refer to Employee Handbook)**

- Get to a safe location. On campus, please consider calling Public Safety at (207) 859-1399, residential life staff and/or local law enforcement at 911. Campus Residence Life or Student Affairs staff can assist with community resources as well.
- Consider asking a trusted friend or relative to be with you for support.
- Seek medical care as soon as possible. You may need basic medical treatment for injuries, and you may have injuries of which you are unaware. You also may be at risk of acquiring a sexually transmitted infection, and women may be at risk for pregnancy. Trained staff at the campus Health Center or the local emergency room can speak with you about all of the medical options available and provide information about a sexual assault forensic examination.
- You may choose to file a report on or off campus or both. Your report puts in place support systems that you may choose to use. The College will provide someone to assist you in filing a report with Law Enforcement if you wish.
- Preserve all evidence of the incident. If you choose to file a report with the police, it is important, if possible, that you:
  - Do not bathe, wash your hands, brush your teeth, drink, eat, or even use the restroom—all these things can destroy evidence that may be helpful in a criminal investigation; however, if you have done any of these things since the incident, evidence can still be collected;
  - Avoid cleaning or removing anything from the location where the incident occurred;
  - Write down as much as you can recall about the incident and the people

involved.

- Seek some form of emotional support. While taking care of your physical needs may be the first step in taking care of yourself, it is important not to neglect the emotions you may be experiencing as a result of the assault, violence or stalking. On and off campus resources are available.
- It is your choice to determine when and in what manner you recover from your trauma. Give yourself the time you need and know that it is never too late to get help.
- KNOW THAT WHAT HAPPENED WAS NOT YOUR FAULT AND YOU ARE NOT ALONE.

### **On-Campus Resources**

On-campus professional staff within Student Affairs, including an on-campus counselor and the Director of the Health Center, are available to assist with seeking medical treatment, answering questions and offer emotional support.

Student Affairs Office (Room AD-127)	207-859-1243
Health Services (Grant Hall, 1 <sup>st</sup> floor)	207-859-1401
Counseling Services (Room AD-127A)	207-859-1245

### **Off-Campus Resources**

Any member of the campus community, regardless of gender, may elect to contact *Sexual Assault Crisis and Support Center* at 1-800-871-7741.

Trained advocates are available 24 hours/day to answer your questions, provide support, and, if you wish, accompany you to the hospital immediately after an assault whether or not you choose to involve the police. (The Vice President for Student Affairs, the Dean of Students, the campus counselor, or the Director of Health Services can also answer questions and offer support).

### **Local Resources**

24-hr. Sexual Assault Crisis & Support Line	1-800-871-7741
Family Violence Project	1-877-890-7788
Inland Hospital	(207) 861-3000 or 1-800-491-8600
Kennebec County District Attorney's Office	(207) 623-1156
Kennebec County Sheriff's Department	1-800-498-1930
Maine General Medical Center	(207) 872-1000
Sexual Assault Crisis & Support Center	<a href="http://www.silentnomore.org">www.silentnomore.org</a>
Waterville Police Department	(207) 680-4700

### **V. Definitions/Policies**

Sexual misconduct is a broad term encompassing any sexual behavior that was committed without effective consent. Sexual misconduct may vary in its severity and consists of a range of

behaviors. These behaviors are prohibited by Thomas College policy, federal and state law. Thomas College does not tolerate sexual misconduct in any form. Thomas College will regard freedom from sexual misconduct as an individual student or employee right, which will be safeguarded as a matter of policy. Violators of this policy will be subject to disciplinary action, up to and including dismissal from the College.

Sexual misconduct includes, but is not limited to: sexual harassment, sexual exploitation, non-consensual sexual contact, non-consensual sexual intercourse, dating violence, domestic violence and stalking. The following conduct will be considered a violation of the Thomas Sexual Misconduct Policy if it is of a sex or gender-based or relates to sexual behavior. Conduct not sex or gender-based in nature or relating to sexual behavior may be separately addressed through Thomas' Code of Conduct or Employee Handbook unless it is being reviewed in conjunction with the Sexual Misconduct policy.

**Sexual Harassment** is subjecting an individual to unwelcome sexual conduct/behavior. The sex-based and/or gender-based harassment may be verbal, written, electronic (online), physical or via third party.

The following is a partial listing of examples of sexual harassment:

- Comments about your body, sexual remarks, jokes or suggestions
- Pornographic pictures or stories
- Obscene gestures, looks, leers, noises or gestures
- Pressure for dates or sexual favors
- Failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior
- Indecent exposure
- Unnecessary and/or deliberately touching, leaning over, cornering, pinching, or brushing against a person

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational and/or employment, social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature

- By a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

**Sexual Exploitation** is when one takes non-consensual, unfair or abusive advantage of another for their own advantage or benefit even if that behavior doesn't constitute one of the other sexual misconduct offenses.

The following is a partial list of examples of sexual exploitation:

- Non-consensual video or audio taping of sexual activity
- Engaging in Peeping Tommerery
- Going beyond the boundaries of consent (such as allowing others to surreptitiously watch you have consensual sex)
- knowingly transmitting a sexually transmitted infection
- exposing of a person's body or genitals
- prostituting or soliciting another community member
- sharing nude or partially nude photos without the person's consent

**Non-consensual sexual contact** includes touching, however slight, of a person's sexual or intimate parts or the clothing covering the immediate area of those parts, whether clothed or unclothed, without consent and/or by force.

Examples of non-consensual sexual contact include, but are not limited to:

- intentional contact with the breasts, buttocks, groin or genitals with one's body part or object
- intentional touching of another with breasts, buttocks, groin or genitals
- Fondling, grabbing, or touching a person's sexual or intimate parts or the clothing covering those parts
- making another person touch someone or themselves in a sexual manner
- any intentional bodily contact in a sexual manner

**Non-consensual sexual intercourse** includes any sexual intercourse, however slight, with any object or body part by a person against other person that is without consent and/or by force.

Examples of non-consensual sexual intercourse include, but are not limited to:

- vaginal penetration by a penis, object, tongue or finger
- anal penetration by a penis, object, tongue or finger
- oral copulation (mouth to genital contact or genital to mouth contact)

**Dating violence** is physical violence or emotional abuse between those in an intimate or romantic relationship to each other.

**Domestic violence** is intentionally, knowingly or recklessly causing bodily injury or offensive physical contact to a family or household member. "Family or household members" are current or former spouses or domestic partners, individuals presently or formerly living together as spouses, biological parents of the same child, adult household members related by consanguinity (by blood) or affinity or minor children of a household member when the violence is committed by an adult household member, individuals presently or formerly living together, and individuals who are or were sexual partners.

**Stalking** is a course of conduct directed at a specific person, on the basis of actual or perceived membership in a protected class that would cause a reasonable person to feel fear or suffer serious emotional distress. Course of conduct is defined as "a pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct."

Examples of stalking behaviors include:

- Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are undesired and place another person in fear.
- Use of online, electronic, or digital technologies, including: - Posting of pictures or information in chat rooms or on Web sites - Sending unwanted/unsolicited email or talk requests - Posting private or public messages on Internet sites, social networking sites, and/or school bulletin boards - Installing spyware on a victim's computer - Using Global Positioning Systems (GPS) to monitor a victim
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the victim
- Surveillance or other types of observation including staring, "peeping"
- Trespassing
- Vandalism
- Non-consensual touching
- Direct verbal or physical threats
- Gathering information about an individual from friends, family, and/or co-workers

**Retaliation** is adverse action taken by the College or any individual or group against any person for opposing any practices forbidden under this policy or for filing a complaint, testifying, assisting, or participating in an investigation or review proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop a violation of this policy. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action

as appropriate.

**Consent** is clear permission to engage in sexual contact. Consent must be informed, freely and actively given, and consist of a mutually agreeable and understandable exchange of words or actions. Consent is clear, knowing and voluntary. Consent is active, not passive. Consent may be withdrawn at any time. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and conditions of) sexual activity. Past consent does not imply future consent. Consent to engage in one form of sexual activity does not imply consent to engage in any other sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with any other person.

It is not consent when the exchange involves unwelcomed physical force, coercion, intimidation, and/or threats. If an individual is mentally or physically incapacitated or impaired such that one cannot understand the fact, nature or extent of the sexual situation, and the incapacitation or impairment is known or should be known to a reasonable person, there is no consent. This includes conditions resulting from alcohol or drug consumption, or being asleep or unconscious. Consent is not valid if the person is too young to consent to sexual activity under federal and state law.

**Interim Measures** In all complaints of alleged Sexual Misconduct, regardless of whether the Complainant wishes to pursue resolution of any kind, the College will undertake an appropriate inquiry and may take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the Complainant and protect the College community. This may include taking appropriate interim measures before the final outcome of the investigation and hearing, if any. Such measures may include, but are not limited to the following: interim suspension, temporary exclusion from areas of campus, removal from or relocation to another residence hall, changes in academic/course/work schedules, limiting access to technology/files, limiting participation in certain events, gatherings, or activities, issue of “no contact order” which typically will include a directive that the Respondent refrain from having contact with the Complainant, directly or indirectly, or through electronic or 3<sup>rd</sup>/other party, pending the investigation and, if applicable, the hearing. [note: additional parties can also be held accountable for their actions under the Harassment or other Student Conduct Code policies]. Among other measures, interim measures should not be construed to suggest that any decision has been made about the merits or outcome of the case.

The Title IX Coordinators, or designee, for purposes of this Policy, also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, if any, including, without limitation, ordering interim suspensions, and directing appropriate College officials to alter the students’ academic, College housing and/or College employment arrangements. When taking steps to separate the Complainant and the Respondent, the Vice President for Student Affairs or Chief HR Officer will seek to minimize unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allow the Complainant to continue in his or her academic,

College housing and/or College employment arrangements. Violations of these interim measures will constitute related offenses that may lead to additional disciplinary action.

**Student Amnesty** The College strongly encourages students to report instances of sexual misconduct, sex discrimination, sexual harassment, retaliation, sexual assault, domestic violence, dating violence or stalking. Students who report information about a violation of this policy will not be disciplined by the College for any minor violation of alcohol possession or consumption policies or other minor violations of the Student Conduct Code in which they might have engaged in connection with the reported incident.

**Other Misconduct Offenses** (Will fall under Title IX when sex or gender based)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as:
  - a. Repeated and/or severe
  - b. Aggressive behavior
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally

## **VI. Jurisdiction**

This policy applies to behaviors that take place on the campus, at Thomas College sponsored events, and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
2. Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
3. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or

4. Any situation that is detrimental to the educational interests of the College.

## **VII. Reporting on Campus**

Any reports or concerns regarding incidents of sexual misconduct should be reported immediately to a Public Safety Officer, a member of the Residential Life professional staff, the Dean of Students, the Vice President for Student Affairs, Chief Human Resources Officer or a member of the Title IX team. The primary concern is for the safety and well-being of the victim. If the victim chooses to report, options are available to use the campus Disciplinary Process and/or contact local law enforcement. Individuals accused of sexual misconduct may be subject to disciplinary action; if found to be in violation the individual(s) may be sanctioned to include suspension, dismissal or termination from the College. The College's actions will be independent on the outcome or initiation of criminal charges. Depending upon the seriousness of the potential violation(s) (ie: threat to campus safety or incidents involving a minor) local, state, and federal authorities may also be asked to assist with any investigation of the facts. If the Vice President for Student Affairs, Title IX Coordinators, or designee determines that a threat is posed to the victim by the close proximity or the threat of interaction with the respondent, then a "campus restriction" may be issued.

### **How and Where to File a Complaint**

#### **A. Complaints or Reports of Employees' Conduct**

All complaints or reports relating to violations of this policy by a College employee should be made to the Chief Human Resource Officer/Title IX Coordinator, Michelle Joler-Labbe. If there is a conflict of interest, the individual may report to another member of the Title IX team. Upon receiving a complaint or report of a violation of this policy by a College employee, the Title IX Coordinator will assess the complaint or report and will provide the complainant with information about options for informally resolving a complaint and formal investigation of a complaint. Mediation is never appropriate in sexual assault cases. When a complaint is investigated, the College will use a preponderance of the evidence standard – whether it is more likely than not that the alleged violation occurred.

#### **B. Complaints or Reports of Students' Conduct**

All complaints or reports relating to violations of this policy by a College student should be made to Vice President for Student Affairs/Title IX Coordinator, Lisa Desautels-Poliquin, or Dean of Students/Deputy Title IX Coordinator, Hannah Gladstone.

Upon receiving a complaint or report of a violation of this policy by a College student, the Title IX Coordinator will assess the complaint or report and will provide the complainant with information about options for informally resolving a complaint and formal investigation of a complaint. Mediation is never appropriate in sexual assault cases. When a complaint is investigated, the College will use a preponderance of the evidence standard – whether it is more likely than not that the alleged violation occurred.

### **C. Complaints or Reports of Third Parties' Conduct (Campus Guests, Vendors, Contractors, etc.)**

All concerns regarding violations of this policy by third parties such as vendors, contractors and campus guests should be made to either Title IX Coordinators. Upon receipt of a report or complaint, the College will respond appropriately.

## **VIII. Reporting Off-Campus**

### **Options Regarding Law Enforcement**

Any individual has the option to report to the police and has choices regarding how to report or if to report. There are resources on or off campus available to discuss these options, as well as provide contacts and emotional support. An individual who has experienced sexual assault, domestic violence, dating violence or stalking, or any other conduct which may violate criminal laws, has a right, at their own discretion, to:

- Notify law enforcement authorities,
- Be assisted by campus staff in notifying law enforcement; or
- Decline to notify law enforcement.

College officials may, however, provide law enforcement with details about an incident under some circumstances if a determination has been made that such disclosure is required by law and/or is necessary to secure campus safety.

## **IX. Resolution Procedures for Sexual Misconduct Allegations**

The College offers options to address cases of alleged Sexual Misconduct within the framework of the College's administrative processes. The options are designed to provide an opportunity for parties to present their versions of the incident and to understand the nature of the incident and its effects on each party and the College community. The options differ in their procedures, degree of formality, and potential results.

When reporting a violation of this policy, individuals may report the alleged violation and wish to maintain his/her confidentiality and privacy. Our on-campus staff that may provide confidential advice, options, and assistance includes our counseling and health services personnel. However, these employees may, consistent with their ethical, campus and legal obligations, be required to report anonymous statistical information about incidents without revealing the identities of the individuals involved, to the Title IX Coordinator.

Excluding confidential reports as listed above (counseling and health services), any reports received by a Thomas College Responsible Employee of sexual harassment and discrimination, including sexual assault, must be reported to the Thomas College Title IX Coordinators or Title IX Deputy Coordinators.

Title IX Senior Coordinator: Lisa Desautels-Poliquin, Vice President for Student Affairs, [desautsls@thomas.edu](mailto:desautsls@thomas.edu), (207) 859-1243

Title IX Coordinator: Michelle Joler-Labbe, Chief HR Officer, [HR@thomas.edu](mailto:HR@thomas.edu), (207) 859-1240

Title IX Deputy Coordinator: Hannah Gladstone, Dean of Students, [gladstoneh@thomas.edu](mailto:gladstoneh@thomas.edu), (207) 859-1216

Title IX Deputy Coordinator: Donald Cragen, Associate Professor, Chair, H. Allen Ryan School of Business, [cragend@thomas.edu](mailto:cragend@thomas.edu), (207) 859-1311

Community members who are aware of an incident involving sexual misconduct, sexual harassment, dating violence, domestic violence and/or stalking are encouraged to speak to the College Title IX coordinators, a deputy coordinator, Dean of Students, area coordinator, or Public Safety. Reported incidents will be reviewed.

Only people who have a need to know about the incident will be informed, and information will be shared only as necessary with investigators, witnesses and the accused person. Reports that are made anonymously or by third parties may not initiate an incident review process; however, Title IX requires the College to investigate all incidents about which the College knows or has reason to know to protect the health and safety of the community. The College will undertake an investigation even in cases where the alleged victim and/or complainant chooses not to cooperate.

### **Complainant Does Not Wish to Pursue Resolution or Requests Confidentiality**

If an individual files a complaint but does not wish to pursue official resolution and/or requests that his/ her complaint remain confidential, Title IX nevertheless requires the College to investigate preliminarily and take reasonable action in response to the Complainant's complaint. If the Complainant requests that his/ her name or other identifiable information not be disclosed to the Respondent the Title IX coordinator will inform the Complainant that the College's ability to respond may be limited and that Title IX prohibits retaliation. If the Complainant requests that his or her complaint not be resolved, the College will evaluate the Complainant's request(s) for confidentiality or no action in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment for all individuals. In order to make such an evaluation, the Title IX team may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh the Complainant's request(s) against the following factors: the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, threat, violence, predation, weapons, or when a minor is involved. The Title IX Coordinator or investigator will inform the Complainant if the College cannot ensure confidentiality. Even if the College cannot take disciplinary action with respect to the Respondent because the Complainant insists on confidentiality or that the Complaint not be resolved, the Title IX Coordinator reserves the authority to undertake an appropriate inquiry,

issue a “no-contact” order, and take other reasonably necessary measures, including the interim measures described below. Please note that there are on-campus resources an individual can utilize that can maintain confidentiality without the need to inform other campus personnel. These resources include health services personnel and counseling services staff.

## **X. Sexual Misconduct Incident Review**

The Thomas College Sexual Misconduct Incident Review is designed to provide a fair, prompt, and effective means of responding to allegations of sexual misconduct (see Sexual Misconduct Policy for definition of sexual misconduct) involving members of the Thomas community.

This Sexual Misconduct Incident Review Process is the mechanism through which reports of sexual misconduct are investigated and resolved when a complainant or the College chooses to pursue action formally through the College. The purpose of this review process is to bring an end to any discriminatory conduct, to act reasonably to prevent future reoccurrence, and to remedy the effects of the discrimination on the victim and the College community.

### **INTAKE, INVESTIGATION AND CORRECTIVE ACTION**

The disciplinary process for responding to allegations of sexual misconduct at Thomas College involves up to three phases: intake, investigation, and corrective action. The process will be conducted and completed in as prompt a manner as is reasonable under the circumstances, with a target of 60 days, but recognizing that periods when individuals are not on campus due to breaks, or in more complex cases, may have an impact in the investigation timeline.

The filing of a sexual misconduct complaint under this policy is independent of any criminal investigation or proceeding, except in cases where it is determined that a conduct proceeding might impede a criminal investigation or otherwise not be in the best interests of the law enforcement agency or a complainant. A short delay may be undertaken in those circumstances to allow evidence gathering in the criminal proceeding. The Thomas College Sexual Misconduct process will not typically wait for the conclusion of any criminal proceedings to commence its own investigation and take needed interim measures.

**Adviser:** The complainant and respondent may be accompanied by an adviser of their choice throughout the process, except that the adviser may not be a witness or otherwise involved in the incident being reviewed. The adviser’s role is for support. Individuals are responsible for presenting their own information and therefore, advisors are not permitted to speak or to participate directly in the process. Additionally, the advisor is not permitted to advocate on behalf of the individual.

#### ***Standard: Preponderance of Evidence***

A finding of responsibility must be supported by a preponderance of evidence. A preponderance of the evidence means that the information shows that it is “more likely than

not” that the accused individual violated the policies in question. (often referred to as “50% plus a feather”)

### **Integrity of Meetings/Hearing**

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither the complainant or respondent may audio or video record meetings/hearing. Any attempt to hinder the investigation or otherwise tamper with information or witnesses may be cause for disciplinary action.

### **Preliminary Meeting**

Upon receiving notice of a complaint of an alleged violation of the Thomas Sexual Misconduct Policy, the Title IX Coordinator will request that the Deputy Coordinator, Investigator or appropriate designee begin the process to follow up with the complaint.

The Deputy Coordinator, Investigator or designee will:

1. determine the identity and contact information of the complainant
2. identify what policies, if any, were allegedly violated and explain the resolution process options
3. meet with the complainant to:
  - a) Determine if immediate attention is needed (safety, medical, etc)
  - b) Inquire about the complaint and how the complainant wants to resolve the incident and provide options
    - I. No Action: Request confidentiality and that no action be taken
    - II. Informal: request an informal resolution whereby the complainant places a statement on file and/or requests the Deputy Coordinator (or designee) would meet with the respondent to discuss the concern
    - III. Formal: Request the College conduct a formal review of the incident through the disciplinary process [note: the incident would move to the Sexual Misconduct Incident Review process]
    - IV. Need time to decide
  - c) Make the complainant aware of the ability and a process to file a report with the Waterville or other appropriate Police department (filing with PD is independent of any campus action)
  - d) Offer information on support and resources available, on and off campus
4. Determine campus impact regarding safety and need for any immediate response

### **Sexual Misconduct Incident Review Process**

#### **INTAKE**

Intake will be conducted by a trained designee appointed by the Title IX Coordinators. Intake involves:

1. meeting with the person filing the report (it may also involve a meeting with the complainant, if the individual is not the person filing the report)
  - a) The complainant will be given the option to provide a written statement of their complaint
  - b) The complainant will be given information regarding the incident review, hearing and appeal process
  - c) The complainant will be given information regarding support and resources available
  
2. when appropriate, meeting with the respondent to provide notice of the sexual misconduct report. The respondent will be made aware of the allegations and allowed to view the complainant's statement (if available)
  - a) If the respondent accepts responsibility for having violated this policy, an appropriate sanction will be imposed within 5 business days. The respondent will be given written notification of the sanction imposed and the appeal process to the complainant and respondent.
  - b) If the respondent does not accept responsibility an investigation will be conducted.
    - I. The respondent will be given the option to write a statement with their account of the incident under review
    - II. The respondent will be informed of any interim restrictions/actions
    - III. The respondent will be given information regarding
      - i. the incident review, hearing and appeal process
      - ii. support and resources available

NOTE: individuals will be informed of their ability to have an adviser of their choice [as described above] accompany them to any meetings related to the incident.

### **INVESTIGATION**

Upon completion of the intake process, and unless the respondent accepts responsibility or the report is otherwise resolved an investigation will be conducted. The Deputy Coordinator or trained designee appointed by the Title IX Coordinators will serve as an investigator. Depending on the circumstances, the Title IX Coordinators may determine to utilize more than one investigator and/or an external investigator. Investigator(s) will conduct a prompt, thorough, and impartial investigation of the complaint. The complainant and respondent will be notified, and the complainant will be able to review the statement written by the respondent.

The investigation may lead to disciplinary charges of sexual misconduct and any other violations of Thomas policies.

The investigation may include but is not limited to:

- Interviews with the complainant(s)
- Interviews with the respondent(s)

- Interviews with any relevant witnesses, including witnesses named by the complainant and respondent – as deemed relevant by the Investigator
- Relevant information from Campus Security, the Student Affairs Office, HR Office, and/or any other College official
- Relevant correspondence (e.g. voice messages, text messages, emails, social media posts, letters, etc.)
- Available and relevant external information/documents (e.g. police reports, hospital report)
- Expert sources

The investigator may choose to interview the complainant, respondent or any witness on more than one occasion based upon information obtained during the investigation. Individuals who are interviewed during the investigation will be advised that the matter is confidential and that retaliation is prohibited by this Policy.

The investigation will be complete when the investigator determines that all available relevant information has been collected and questions explored. Upon conclusion of the investigation the investigator will prepare a confidential investigation report consisting of information gathered. The report is an internal document and will be delivered to the chair of the Sexual Misconduct Board. Both the complainant and respondent will be provided an Executive Summary of this report prior to the Hearing for review.

### **CORRECTIVE ACTION**

**Sexual Misconduct Board:** The Board is comprised of a total of three voting members representing staff and faculty. The members should receive annual training on Title IX issues and investigations. The Title IX Coordinator or his/her designee serves as the Chair at the hearing, in addition to the three members, but does not vote.

**Hearing Decorum:** If any individual should become disruptive during the hearing, including witnesses and advisers, the chair maintains the discretion to remove that individual from the hearing. Electronic devices including: computers, cell phones, audio or video recording devices are not permitted at hearings by the complainant, respondent, witnesses or advisers.

### **Hearing Review**

The Deputy Coordinator/designee will meet with both the complainant and the respondent prior to the hearing to outline the hearing process and answer questions. Prior to the hearing, the deputy coordinator will:

- Issue formal letters to complainant, respondent and witnesses with scheduled hearing date/time and location
- be available to both the complainant and respondent to answer questions and address concerns with the process
- schedule the Sexual Misconduct Board

- arrange accommodations intended to limit contact between hearing participants (i.e., arranging accommodations in different rooms, setting up physical barriers in the hearing room)
- prepare copies of all reports and information to be disseminated to the Board before the hearing

Hearings are closed meetings and only the following individuals may be present:

- three board members and Title IX Coordinator (Chair)
- complainant
- adviser for complainant (optional)
- respondent(s)
- adviser for respondent (optional)
- Deputy Title IX Coordinator/investigator(s)
- witnesses (typically only one at any one time) as requested by the Board

The chair will conduct the hearing:

- all parties are introduced
- all conduct code/policy violations are read
- the Deputy Coordinator will present a summary of the results and findings of the investigation
- the Board can ask questions of the Deputy Coordinator/investigator, parties and witnesses, if necessary
- both complainant and respondent are given the chance to speak on their behalf
- complainant and respondent may question each other or any witnesses, however all questioning should be directed to the Chair and not the individual person
- after all information is presented, members of the Sexual Misconduct Board and Chair will deliberate in private.

At the conclusion of the hearing the Board will deliberate privately to determine, using the standard of preponderance, whether the respondent violated the policies in question. If the respondent is found in violation, appropriate sanctions will be determined. All decisions require a majority vote of the Board.

The Chair will communicate the decision of the Board along with rationale and appeals process to the complainant and respondent(s) in writing, usually within two (2) business days from the conclusion of the hearing. The notification of all parties should occur at or near the same time. In addition, the respondent(s) will be fully informed of any sanctions. For reports involving sexual misconduct, the complainant will be fully informed of any related sanctions.

The imposition of sanctions will take effect immediately and will not be stayed should either party elect to appeal.

## Sanctions

When a respondent is found to be responsible for a violation of this policy the Sexual Misconduct Board will impose appropriate sanctions and/or other corrective actions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed.

Individuals found in violation of the Sexual Misconduct Policy will be sanctioned accordingly. In addition to the violation, the Sexual Misconduct Board may consider the following factors when sanctioning: the nature and violence of the conduct at issue; the respondent's prior discipline history; how the College has sanctioned similar incidents in the past; the impact of the conduct on the complainant; the impact of the conduct on the community, its members, or its property; whether the respondent has accepted responsibility for his/her actions; and any other mitigating or aggravating circumstances, including the College's mission and values.

In appropriate cases, a panel may determine that the conduct was motivated by bias, insofar as a complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, sexual orientation, gender identity, age, disability or other protected class. Where the panel determines that the incident was motivated by bias, the panel may elect to increase the sanction imposed as a result of this motivation.

Thomas may impose a range of sanctions and protective measures following a final determination of a violation of the sexual misconduct code. A failure to comply with the imposed sanctions will be reviewed by the Title IX Team and additional disciplinary action may be taken by the Title IX Team.

### The broad range of sanctions includes:

- ***Expulsion/Termination:*** Permanent termination of student or employment status and exclusion from College premises, privileges, and activities.
- ***Suspension:*** Exclusion from College premises, attending classes, and other privileges or activities, as set forth in the suspension notice. Conditions for readmission/return may be specified in the suspension notice.
- ***Disciplinary Probation:*** Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, athletics, campus events/activities). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.
- ***Disciplinary Warning:*** Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- ***Educational program:*** programs that focus on rehabilitation of the mindset and/or awareness training
- ***Housing Removal/Relocation or other campus restrictions:*** measures that support campus restrictions and/or limit an individuals' campus involvement/privileges

- **Successful completion** of alcohol and other drug awareness and abuse prevention program; of sexual or relationship sensitivity training/awareness education program/bystander intervention training; etc
- **Delays** in obtaining administrative services and benefits from the college (i.e. holding transcripts, delaying registration, graduation, diplomas);
- **Financial restitution** (payments) for any damages to college goods/property; and
- **Any other discretionary sanctions** that are directly related to the violation or conduct and that are aimed at eliminating sexual misconduct

### **APPEAL PROCESS**

After receiving notification of the board’s decision, both the complainant and the respondent student have three (3) business days to appeal. A formal letter of appeal specifying the grounds upon which the appeal is based and supporting information must be submitted to the Title IX Coordinator not involved in the original process: Vice President for Student Affairs (students) or Chief HR Officer (employees), or their respective designees. Sanction(s) imposed by the Board will typically remain in effect while the appeal is pending. The letter of appeal specifies the grounds upon which the appeal is based, and how those grounds materially affected the outcome (responsibility or sanctions) of the original meeting. The letter of appeal must be completed and signed by the individual or submitted directly from the individual’s Thomas College email account. Once an appeal is filed the opposing party will be notified.

Appeals may be made on any of the following grounds:

1. To consider new information, sufficient to alter the decision or other relevant facts not brought out in the original investigation, because such information was not known or knowable to the person appealing during the time of the hearing.
2. To allege a procedural error within the process that may have substantially impacted the fairness of the outcome.
3. To determine whether the sanction(s) imposed was (were) appropriate for the violation of the Sexual Misconduct Policy which the individual was (were) found to have committed. NOTE: Dissatisfaction with the sanctions, alone, is not a sufficient cause for appeal.

The Title IX Coordinator or designee determines whether or not there are grounds for consideration of an appeal meeting. If the appeal letter(s) does not bring forward sufficient grounds for appeal, the appeal will be denied and the matter will be closed. If the Title IX Coordinator determines that an appeal should be considered, he/she may look further into the appeal, request an investigator conduct a review of the appeal information, and/or appoint a Sexual Misconduct Appellate Review Panel (review panel) consisting of 3 members from a pool of trained faculty and staff.

The review panel will examine all documentation to determine if there is a reasonable basis for changing the outcome, and in its discretion, can meet with or question any parties involved, meet with the Chair present at the hearing, or request a new hearing with the review panel.

Once the review panel has reviewed all information the members will render a decision as soon as possible to the Title IX Coordinator/Chair. The review panel may request that the Title IX Coordinator take appropriate steps in the appeal, which may include: affirm the original finding and sanction; affirm the original finding but issue a new sanction, which may be of greater or lesser severity; or, dismiss the case if there was a procedural or factual defect that cannot be remedied. All parties shall receive simultaneous written notice of the outcome of the appeal. The decision of the review panel is final. All parties shall receive simultaneous written notice of any change to the results that occurs prior to the time that such results become final; and when such results become final.