

**The College of Westchester**  
**Campus Security Report**  
**October 1, 2022**  
*(based on 2021 statistics)*

**Introduction and Purpose**

The College of Westchester is proud of its excellent record of creating a safe and comfortable environment in which to work and learn and for keeping our campus as crime free as possible. This Annual Campus Security Report is mandated by the United States Department of Education in accordance with the **Student Right-to-Know and Campus Security Act of 1992**. In compliance with this mandate, the College has compiled this report in order to keep our campus community aware of important policies, procedures, and statistics. All colleges in the United States are required to compile and distribute these statistics via publication. This report is updated annually in September and is available on the College's website at <https://www.cw.edu/student-consumer-information> and also at <https://www.cw.edu/studentmenu> on the Student Services page. A paper copy will be provided upon request from the Provost and Vice President of Academic Affairs. The contact number is 914-831-0219.

**Campus Security Procedures**

Security Staff are available at the front entrance of the building and are available during normal business hours until closing. Security personnel also provide escorting services to and from vehicles during late hours and/or upon request, vehicle assistance in times of need (when available) and surveillance monitoring. Security personnel can be reached at 914-831-0292. Visitors to The College of Westchester are required to be signed in at the front security desk. Students are not allowed to bring in guests without first getting prior approval from the Vice President of Student Success & Retention, her designee, or the Director of Security. Students must display their identification cards upon entry to the building at all times; failure to do so may result in disciplinary action.

**Description of Campus Security Programs**

A variety of crime prevention information is available to students and employees. Student information is provided through their Transformative Learning course, new student orientation, and the Student Handbook. Employee information is available in the Employee Handbook and through various publications made available to the employees. Related programs on sexual assault, alcohol and drug abuse are available through various community organizations. These include Victims Assistance Services (VAS), the Bureau of Sex Crimes Analysis, Al-Anon, Alateen, Alcoholics Anonymous, and Daytop Village. The address and phone numbers for these and other community programs are available from the Counseling Center. Students can access information on registered sex offenders in the White Plains vicinity at <http://www.familywatchdog.us/>

**Procedure for Reporting Security Violations**

The safety and well-being of all members of our college community is of great concern. The College of Westchester is devoted to keeping the campus a safe place in which to attend classes. A daily crime

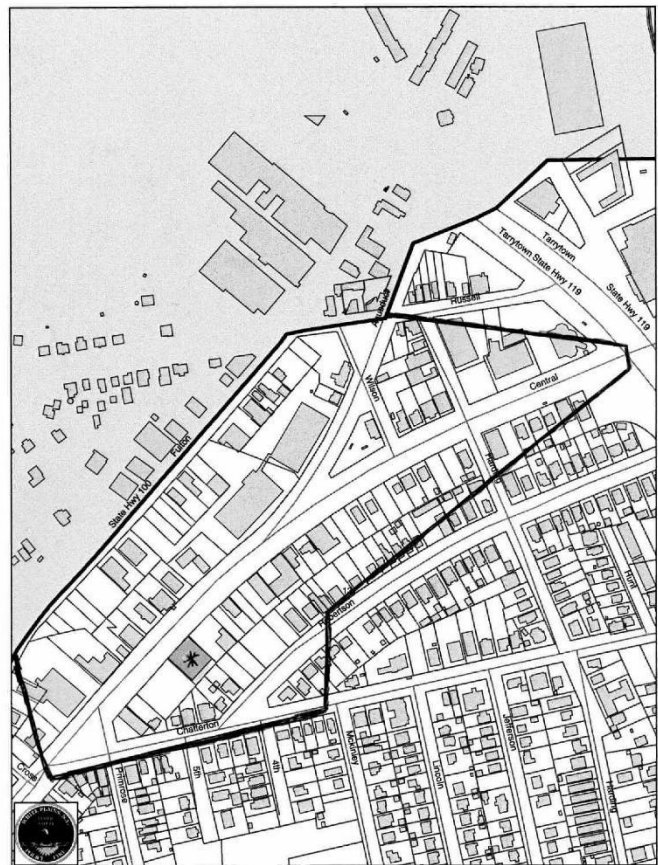
log is maintained by the Director of Security. Potential criminal actions and suspicious activity or other emergencies should be reported in person to the front Security Desk, the fourth floor Concierge Desk, or the Director of Security as soon as possible. When a report of an urgent situation is received, the Provost & Vice President of Academic Affairs, or the Director of Security will, if appropriate, contact White Plains Fire, Emergency Medical, or Police personnel. If a reported situation is less severe, the Vice President of Student Success and Retention will dispatch a designated employee or employees to lend assistance and conduct the necessary follow-up. This procedure has been established in accordance with the Student Right-to-Know and Campus Security Act of 1992.

### **Monitoring of Off Campus Locations**

The College of Westchester does not recognize any off-campus student organizations and therefore does not monitor such off-campus activity.

### **Campus Crime Statistics**

According to the Campus Crime and Security Act, The College of Westchester is required to provide statistics on: occurrences on campus concerning criminal offenses reported to local police agencies and to the Public Safety Office; statistics for drug, alcohol, and weapons arrests on campus as reported to local police agencies and to the Public Safety Office; and data provided by the City of White Plains Police Department regarding criminal offenses in the neighborhood and commercial areas surrounding the campus. The area for which local crime statistics are reported is defined as follows: all of Central Avenue from the municipal parking lot (located on the corner of Central Avenue and Tarrytown Road) to the bus stop which is located on Central Avenue and Chatterton Avenue (up to 376 Central Avenue; all of Fulton Street from Cross Street to Aqueduct Road, Chatterton Avenue (from 139-185) and Robertson Avenue (from 107 to 135).



**CAMPUS CRIME STATISTICS**  
2019-2021

**Table One:** *Criminal Offenses on Campus Property*

<b>Offense</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Murder	0	0	0
Manslaughter	0	0	0
Rape	0	0	0
Fondling	0	0	0
Incest	0	0	0
Statutory Rape	0	0	0
Robbery	0	0	0
Aggravated Assault	0	0	0
Burglary	0	0	0
Motor Vehicle Theft	0	0	0
Arson	0	0	0
Hate Crimes*	0	0	0
Domestic Violence**	1	0	0
Dating Violence**	0	0	0
Stalking**	0	0	0

*\*Includes hate crimes in the following categories of bias: race, religion, sexual orientation, gender, gender identity, disability, ethnicity and national origin)*

*\*\*Crime statistics required for Annual Security Report 2018 resulting from the Violence Against Women Act (VAWA) amendments to the Clery Act. Not collected prior to 2013.*

**Table Two:** *Statistics for Drug, Alcohol, and Weapons Arrests on Campus Property*

<b>Arrests Related To:</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Liquor law violations	0	0	0
Drug abuse violations	0	0	0
Weapons possession	0	0	0

**Table Three:** *Statistics for number of persons referred for disciplinary action for Weapons, Drug Abuse and Liquor Law violations that occurred on Campus Property*

<b>Offense</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Liquor law violations	0	0	0
Drug abuse violations	0	0	0
Weapons possession	0	0	0

**Table Four:** *Incidents as reported by the City of White Plains Police Department on property surrounding the campus defined as: all of Central Avenue from the municipal parking lot (located on the corner of Central Avenue and Tarrytown Road) to the bus stop (located on Central Avenue and Chatterton Avenue (up to 376 Central Avenue), all of Fulton Street from Cross Street to Aqueduct Road, Chatterton Avenue (from 139 – 185), and Robertson Avenue (from 107 – 135).*

<b>Offense</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Murder	0	0	0
Manslaughter	0	0	0
Rape	0	0	0
Fondling	0	0	0
Incest	0	0	0
Statutory Rape	0	0	0
Robbery	1	0	1
Aggravated Assault	0	0	0
Burglary	0	0	0
Motor Vehicle Theft	0	0	1
Arson	0	0	0
Hate Crimes*	0	0	0
Domestic Violence**	0	0	0
Dating Violence**	0	0	0
Stalking**	0	0	0

*\*\*Includes hate crimes in the following categories of bias: race, religion, sexual orientation, gender, gender identity, disability, ethnicity and national origin)*

*\*\*Crime statistics required for Annual Security Report 2018 resulting from the Violence Against Women Act (VAWA) amendments to the Clery Act. Not collected prior to 2013.*

**Table Five:** *Statistics for Drug, Alcohol, and Weapons Arrests on Property Surrounding the Campus.*

<b>Arrests Related To:</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Liquor law violations	0	0	0
Drug abuse violations	2	0	0
Weapons possession	0	0	0

**Table Six:** *Statistics for number of unfounded crimes that occurred on property surrounding the Campus. This includes all criminal offenses, hate crimes, domestic violence, dating violence or stalking that have been unfounded. Arrests and disciplinary actions cannot be unfounded*

<b>Offense</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Total unfounded crimes	0	0	0

### **Anti-Drug and Alcohol Policy**

The College of Westchester has a no tolerance policy regarding the use of drugs and alcohol or being under the influence of drugs or alcohol on its property or surrounding property. The unlawful manufacture, distribution, dispensation, possession, or use of alcohol or an illegal drug by a student or employee on property at The College of Westchester is strictly prohibited. New York and Federal law prohibits the unlawful use, manufacture, possession, control, sale and dispensation of any illegal narcotic or dangerous drugs. Both State and Federal laws carry penalties for violations, including monetary fines and/or imprisonment. Marijuana – including “medical marijuana” – is illegal under federal law and may not be used on the College’s property or surrounding property. All students and employees are prohibited from being under the influence of marijuana while at The College. The health risks associated with the use of illegal drugs and the abuse of alcohol include physical and mental impairment, emotional and psychological deterioration, fine and gross motor degeneration and death. In addition to the health risks to the abuser of illegal drugs and alcohol are the risks to co-workers, students and the public. The College of Westchester’s Counseling Center can provide referral to students with problems related to alcohol and drug use. Information about substance abuse and treatment programs is available in the Counseling Center which has procedures to assure confidentiality. Individuals whose performance is impaired as a result of the use or abuse of drugs or alcohol, who illegally use or abuse drugs or alcohol on campus or at College events, or who have been convicted of violating any criminal drug statute while on The College of Westchester property or at College events will be sanctioned. The sanctions can include required completion of an appropriate rehabilitation program, suspension, dismissal, termination of employment, and referral for prosecution by law enforcement authorities. As a condition of enrollment and employment, each student, faculty member and staff member will abide by the terms of this policy and will notify the Director of Administration no later than five days after any conviction for a criminal drug offense committed on The College of Westchester property. Failure to comply with these conditions will constitute unsatisfactory conduct and will lead to appropriate sanctions.

### **Description of Drug or Alcohol Abuse Education Programs**

A number of counseling and treatment options are available to students of The College of Westchester. A list of these agencies is available in the Office of Student Services and is available to all students and employees. Students and employees are encouraged to seek counseling and/or treatment in dealing with personal issues of substance abuse relating to themselves, their family, or their friends.

## Conviction for Possession or Sale of Drugs

A federal or state drug conviction can disqualify a student for Federal Student Aid (FSA) funds. Convictions count if they were for an offense that occurred during a period of enrollment for which a student was receiving Title IV aid. In addition, a conviction that was reversed, set aside, or removed from a student's record does not count, nor does one received when he/she was a juvenile, unless tried as an adult.

The chart that follows illustrates the period of ineligibility for FSA funds, depending on whether the conviction was for sale or possession and whether a student had previous offenses. A conviction for sale of drugs includes convictions for conspiring to sell drugs.

	<u>Possession of illegal drugs</u>	<u>Sale of illegal drugs</u>
<b>1st offense</b>	1 year from date of conviction	2 years of conviction
<b>2nd offense</b>	2 years from date of conviction	Indefinite period
<b>3+ offenses</b>	Indefinite period	Indefinite period

If a student is convicted of both possessing and selling illegal drugs, and the periods of ineligibility are different, the student will be ineligible for the longer period. A student regains eligibility the day after the period of ineligibility ends or when he or she successfully completes a qualified drug rehabilitation program. Further drug convictions will make him or her ineligible again. Students denied eligibility for an indefinite period can regain it only after successfully completing a rehabilitation program (as described below), or if a conviction is reversed, set aside, or removed from the student's record so that fewer than two convictions for sale or three convictions for possession remain on the record. In these cases, the nature and dates of the remaining convictions will determine when the student regains eligibility. It is the student's responsibility to certify to the College that he or she has successfully completed the rehabilitation program.

### Standards for a qualified drug rehabilitation program

A qualified drug rehabilitation program must include at least two unannounced drug tests and must satisfy at least one of the following requirements:

- Be qualified to receive funds directly or indirectly from a federal, state, or local government program.
- Be qualified to receive payment directly or indirectly from a federally or state-licensed insurance company.
- Be administered or recognized by a federal, state, or local government agency or court.
- Be administered or recognized by a federally or state-licensed hospital, health clinic, or medical doctor.

## **POLICY PROHIBITING SEXUAL HARASSMENT AND SEXUAL MISCONDUCT**

In accordance with Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, New York Education Law Section 129-b, the New York State Human Rights Law and other federal and state laws, the College of Westchester does not discriminate against students or employees on the basis of sex/gender in its educational programs and activities and prohibits students, employees and third parties from engaging in sexual misconduct, including sexual harassment, sexual assault, sexual exploitation, domestic violence, dating violence and stalking.

In May 2020, the United States Department of Education promulgated regulations that the definition of sexual harassment covered under Title IX and mandated certain procedures for investigating and adjudicating such claims.<sup>1</sup> In accordance with those regulations, the College has adopted the Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations (“Title IX Grievance Policy”), which can be accessed here: <https://www.cw.edu/title-ix-policy-prohibiting-sexual-harassment-and-sexual-misconduct>

There are, however, types of sexual harassment and sexual misconduct that are not covered by Title IX pursuant to the 2020 regulations but are prohibited by other federal and state laws. Accordingly, this Policy Prohibiting Sexual Harassment and Sexual Misconduct remains in effect. The Title IX Coordinator or designee will determine whether the allegations fall under the jurisdiction of the Title IX Grievance Policy. Allegations of sexual harassment that are covered by the Title IX Grievance Policy must be adjudicated under the Title IX Grievance Policy. If an allegation is dismissed from the Title IX Grievance Process, it may be referred for investigation and/or adjudication under this Policy. Conduct found not to have violated the Title IX Policy may violate this Policy.

Any attempt to engage in prohibited conduct may itself constitute a violation of this policy. Any actions knowingly taken to aid, facilitate or encourage another to engage in prohibited conduct and any actions taken for the purpose of interfering in the investigation of an allegation of prohibited conduct shall constitute a violation of this policy. Anyone found to have violated this policy will be subject to disciplinary action as set forth in the procedures below. The College is committed to provide those who feel that they have been subjected to conduct in violation of this policy with mechanisms for seeking redress and resources for support. Accordingly, the College of Westchester prohibits retaliation against any person for complaining of a violation of this policy or for participating in any investigation or proceedings related to an alleged violation.

Community members, including students, employees (faculty and staff), interns (paid and unpaid), vendors and contractors, are protected from sexual misconduct regardless of their sex, sexual orientation, immigration status, citizenship status or national origin, or any other protected characteristic.

## **Definitions**

We hear and use many words to describe sexual violence and other crimes. These definitions are provided so you can understand the College’s definitions of these terms. The criminal definitions under state and federal law may differ from the College’s definitions. The College prohibits conduct as defined by this policy.

***Affirmative Consent*** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression. The following are guiding principles for consent:

- Consent to one form of sexual activity does not imply consent to other forms of sexual activity, nor does past consent to intimacy imply consent to future intimacy.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.

- Consent cannot be given when a person is incapacitated.
- In order to give consent, a person must be of the legal age of consent, which is 17 in New York.
- Consent cannot be given and is deemed invalid when it is the result of any coercion, intimidation, force or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**Coercion** is unreasonable pressure. The use of emotional manipulation to persuade someone to do something they may not want to do, such as being sexual or performing certain sexual acts, constitutes coercion. Coercing someone into having sex or performing sexual acts does not constitute obtaining consent and is considered sexual misconduct.

**Complainant** is the person who was allegedly subjected to prohibited conduct.

**Dating Violence** includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship would be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence would include, but would not be limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts that meet the definition of “domestic violence.”

**Domestic Violence** includes the use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards (i) a current or former spouse or intimate partner; (ii) a person with whom one shares a child; or (iii) anyone who is protected from the respondent's acts under the domestic or family violence laws of New York. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

**Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion to overcome resistance.

**Incapacitation** is a state where someone cannot make rational, reasoned decisions. A person may be incapacitated due to mental disability, sleep, unconsciousness, physical restraint, or from the consumption (voluntary or otherwise) of incapacitating drugs or quantities of alcohol. Sexual activity with someone whom you know or, reasonably should know, is mentally or physically incapacitated (i.e., by alcohol or other drug use, unconsciousness or blackout) constitutes a violation of this policy. Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, the odor of alcohol on a person's breath or clothing, inability to maintain balance, vomiting, unusual or irrational behavior, and unconsciousness. Incapacity may be indicated by the quantity of alcohol consumed. The presence of one or more of these cues does not necessarily indicate incapacity, nor does the absence of these cues necessarily indicate capacity.

**Intimidation** means unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**Respondent** is the person who is accused of violating this policy.

**Retaliation** includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's informal or formal complaint of a violation of this policy or participation in a school or government investigation or proceedings related to an alleged violation of this policy or related civil rights law. Federal, state and local civil rights laws, including Title IX, make it unlawful to retaliate against



an individual for the purpose of interfering with any right or privilege secured by these laws.

***Sexual or Sex-based Harassment*** is defined as unwelcome sex-based verbal, visual or physical conduct:

- that has the purpose or effect of creating an intimidating, hostile, or offensive living, learning or working environment;
- that has the purpose or effect of unreasonably interfering with an individual's academic or job performance or limiting or depriving someone of the ability to participate in or benefit from the College of Westchester's educational programs, activities and/or employment; or
- where submission to the conduct is explicitly or implicitly made a term or condition of an individual's education, employment, or participation in other activities sponsored by the College of Westchester; or where submission to or rejection of the conduct is used as the basis for academic or employment decisions.

Conduct that does not amount to more than petty slights or trivial inconveniences does not constitute harassment.

Examples of sex-based harassment that may cause a hostile environment include, but are not limited to:

- subtle or persistent pressure for sexual activity;
- unnecessary touching, or brushing against a person;
- requesting or demanding sexual favors concerning employment, academic activities or other College of Westchester activities;
- unwelcome communications (verbal, written, electronic, etc.) of a sexual nature;
- sexually oriented gestures, noises, remarks, jokes, or comments;
- failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior;
- verbal and/or physical aggression toward another based upon their status as transgender or a perception that the other fails to conform to stereotypical notions of expected characteristics for males or females.

***Sexual Assault*** is divided into two categories of behavior: ***Non-consensual Sexual Contact*** and ***Non-consensual Sexual Intercourse***.

***Sexual Assault--Non-consensual Sexual Contact*** includes any intentional touching of a sexual nature, however slight, whether clothed or unclothed, with any object or body part by a person against another person that is without affirmative consent and/or by force. Consent is required regardless of whether the person initiating the sexual contact is under the influence of drugs and/or alcohol. When consent is withdrawn or can no longer be given due to incapacitation, sexual activity must stop.

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

- intentional contact with the breasts, buttocks, groin, or genitals;
- intentional touching of another with breasts, buttocks, groin, or genitals;
- making another person touch someone or themselves in a sexual manner;
- any intentional bodily contact in a sexual manner.

***Sexual Assault--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 affirmative consent and/or by force. Affirmative consent is required regardless of whether the person initiating the sexual contact is under the influence of drugs and/or alcohol. When consent is withdrawn or can no longer be given due to incapacitation, sexual activity must stop.

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).

**Sexual Exploitation** includes but is not limited to:

- invasion of sexual privacy and voyeurism (in-person or through audio or video recording);
- knowingly transmitting a sexually transmitted infection;
- exposing of a person's body or genitals;
- prostituting or soliciting another community member.

**Stalking** is a course of conduct directed at a specific person that would cause a reasonable person to feel fear for her, his, or others' safety, or to suffer substantial emotional distress.

Examples of stalking include but are not limited to:

- constantly appearing at places the victim is known to frequent;
- persistent unwanted communication or contact whether in person, by telephone, text, or email;
- persistent unwanted gifts;
- following or surveillance;
- spreading harmful gossip about victims;
- breaking-and-entering that can include vandalism, theft, or even simply rearranging objects so that victims know the stalker was there.

### **WHEN AND TO WHOM DOES THIS POLICY APPLY**

This policy applies to the conduct of The College of Westchester applicants, students and employees, including faculty and non-faculty, as well as third parties doing business with The College of Westchester (including interns, vendors and contractors) or attending College sponsored programs or activities.

This policy shall apply to conduct that occurs on The College of Westchester's campus, on College technological systems, at College sponsored programs, activities and events, as well as off-campus when the accused is a matriculated College of Westchester student or when the conduct has a continuing adverse impact upon The College of Westchester work or school environment.

Each student shall be responsible for his or her conduct from the time of application for admission through the awarding of a degree, as well as during periods between terms of actual enrollment, study abroad and leaves of absence or suspension. Each employee shall be responsible for his or her conduct from the date of application for employment through the termination of employment.

### **TITLE IX COORDINATORS**

Inquiries regarding the application of this Policy should be referred to the **Title IX Coordinators, Delphine Burton** (914-831-0358, [dburton@cw.edu](mailto:dburton@cw.edu)) and **Janna Gullery**, (914-831-0401, [jgullery@cw.edu](mailto:jgullery@cw.edu)) or the **Deputy Title IX Coordinator, Anna Bravo** (914-831-0353, [abravo@cw.edu](mailto:abravo@cw.edu)), 325 Central Avenue, White Plains, NY 10606. In addition to coordinating compliance with Title IX, the Title IX Coordinators are responsible for coordinating the College of Westchester's efforts to comply with other federal and state laws governing sexual harassment and sexual misconduct, overseeing the College's responses to reports of alleged violations, and identifying and addressing any pattern or systemic problems. The Deputy Title IX Coordinator will oversee compliance with respect to employees and will provide updates to the Title IX Coordinator. Students and employees who file a grievance are hereby assured that no adverse action will be taken against them for filing a complaint.

## **CONFIDENTIALITY, REPORTING REQUIREMENTS, AND SUPPORT RESOURCES**

### *Sexual Harassment and Misconduct Involving Students*

With the exception of licensed Counseling Center staff, all other College staff and faculty who become aware of an incident of sexual misconduct or harassment involving a student are required to elevate the report to the Title IX Coordinators or Deputy Title IX Coordinator for investigation and response.

Non-confidential resources on campus include:

- Faculty
- Success Coaches
- Deans
- Manager of Human Resources
- Security staff
- Career Counselors
- Student Financial Services Counselors
- Veterans Support staff member
- Administrative staff
- Executive Office staff
- Peer Mentors

### **Privacy versus Confidentiality**

Even The College of Westchester 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 to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. The College of Westchester will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **On Campus Confidential Resources for Students**

Individuals who are *confidential* resources will not report policy violations to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. At The College of Westchester this includes:

The Counseling Center: [counseling@cw.edu](mailto:counseling@cw.edu) or 914-831-0441

### **Off-Campus Confidential Resources for Students and Employees**

Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency. Notifying any of these outside agencies does not constitute notice to the College.

- My Sisters' Place White Plains Administrative Office  
One Water Street  
White Plains, NY 10601  
Phone (914) 683-1333
- Hope's Door Main Office  
39 Washington Avenue

Pleasantville, NY 10570  
Phone (914)747-0828

- Westchester Jewish Community Services  
845 N. Broadway, Suite 2  
White Plains, NY  
Phone (914)761-0600
- Victims Assistance Services  
2269 Saw Mill River Road, Bldg. #3  
Elmsford, NY  
Phone (914) 345-3113

Off-campus healthcare providers:

Westchester Medical Center  
100 Woods Rd.  
Valhalla, NY 10595  
Phone: (914) 493-7000

Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: <https://www.ovs.ny.gov/sites/default/files/brochure/ovsrightsofcvbooklet.pdf> or by calling 1-800-247-8035. Options are explained here: <https://www.ovs.ny.gov/help-crime-victims>.

Off-campus legal assistance

Hope's Door Family Justice Center, County Courthouse,  
111 Martin Luther King Jr. Blvd.  
White Plains, NY 10601  
Phone: 914-995-3100

Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

### **Anonymous Disclosure**

- My Sister's Place: 1-800-298-7233 (SAFE)
  - If you need to speak to a crisis counselor immediately, please call the above 24-hour, toll-free hotline. The hotline is for crisis intervention, resources and referrals and is not a reporting mechanism.
- New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906
- Hope's Door Domestic Abuse 24 Hour Hotline: 1-888-438-8700

### **Public Awareness/Advocacy Events:**

If an incident is disclosed through a public awareness event such as "Take Back the Night," candlelight vigils, protests, or other public event, The College of Westchester is not obligated to begin an investigation.

### **Student Requests for Confidentiality after Disclosure: How The College of Westchester Will Weigh the Request and Respond**

If you disclose an incident to a College of Westchester employee who is obligated to report to the Title IX

Coordinator but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

We will seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless The College of Westchester's failure to act does not adequately mitigate the risk of harm to you or other members of The College of Westchester community. Honoring your request may limit the College's ability to meaningfully investigate and pursue conduct action against an accused individual.

In evaluating a request not to investigate or to maintain confidentiality, The College of Westchester will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
- Whether there exists an increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the College possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If The College of Westchester determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and the College will take immediate action as necessary to protect and assist them.

The College cannot honor requests not to investigate or address incidents of sexual harassment in the workplace.

## **Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations**

### **1. INTRODUCTION**

#### **What is the purpose of the Title IX Grievance Policy?**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these

specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

*See*, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, the College of Westchester will implement the following Title IX Grievance Policy, effective August 14, 2020.

### **How does the Title IX Grievance Policy impact other campus disciplinary policies?**

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, the College of Westchester must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. ***Only*** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

The College of Westchester remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has a **Code of Conduct** that defines certain behavior as a violation of campus policy and a separate **Policy Against Sexual Harassment and Sexual Misconduct** that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Policy Against Sexual Misconduct and Sexual Harassment Not Covered by Title IX and Code of Conduct, as applicable, through a separate grievance proceeding.

<https://www.cw.edu/title-ix-policy-prohibiting-sexual-harassment-and-sexual-misconduct#:~:text=The%20College%20of%20Westchester%20further,those%20terms%20are%20defined%20below.>

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

### **How does the Title IX Grievance Policy impact the handling of complaints?**

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

## 2. THE TITLE IX GRIEVANCE

### **POLICY General Rules of Application**

#### **Effective Date**

This Title IX Grievance Policy became effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated in accordance with the Policy Against Sexual Misconduct and Sexual Harassment in effect at the time the harassment occurred.

#### **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Sexual Misconduct Policy.

#### **Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, immigration status, citizenship status, national origin or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness.

Anyone found to have violated this Policy will be subject to disciplinary action.

Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

#### **Non-Binding**

Nothing in this document should be construed to create a contract between any student, employee, staff member, contract worker, vendor, visitor, or any other third party subject to or affected by the contents of this policy. The College of Westchester reserves the right to amend this policy at any time, subject to Federal and state laws and regulations.

### **Covered Sexual Harassment**

**For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:**

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault;
4. Domestic violence;
5. Dating violence;
6. Stalking.

**Sexual assault**, which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. **Sexual Assault** is divided into the following two categories of behavior:

**Sexual Assault–Non-consensual Sexual Contact:** Behavior including any intentional touching of a sexual nature, however slight, whether clothed or unclothed, with any object or body part by a person against another person that is without Affirmative Consent and/or by force. Examples include, but are not limited to:

- Intentional contact with the breasts, buttocks, groin, or genitals;
- Intentional touching of another with breasts, buttocks, groin, or genitals;
- Compelling someone to touch another person or oneself in a sexual manner; and
- Any intentional bodily contact in a sexual manner.

**Sexual Assault–Non-consensual Sexual Intercourse:** Behavior including any sexual intercourse, however slight, with any object or body part by a person against another person that is without Affirmative Consent and/or by force. Examples include, but are not limited to:

- Vaginal penetration by a penis, object, tongue or finger;
- Anal penetration by a penis, object, tongue or finger; and
- Oral copulation (mouth-to-genital contact or genital-to-mouth contact).

**Dating violence** includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship would be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence would include, but would not be limited to, sexual or physical abuse or the threat of such abuse.

**Domestic violence** which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is 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 New York State domestic or family violence laws 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 New York.

**Stalking** is a course of conduct directed at a specific person that would cause a reasonable person to feel fear for her, his, or others' safety, or to suffer substantial emotional distress. Examples of stalking include but are not limited to:

- constantly appearing at places the victim is known to frequent;
- persistent unwanted communication or contact whether in person, by telephone, text, or email;
- persistent unwanted gifts;
- following or surveillance;
- spreading harmful gossip about victims;
- breaking-and-entering that can include vandalism, theft, or even simply rearranging objects so that victims know the stalker was there.



Note that conduct that does not meet one or more of these criteria may still be prohibited under the Code of Conduct or Policy Against Sexual Harassment and Sexual Misconduct.

### **Other Definitions**

**Affirmative Consent** (“Consent”) is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or genderexpression.

The following are guiding principles for consent:

- Consent to one form of sexual activity does not imply consent to other forms of sexual activity, nor does past consent to intimacy imply consent to future intimacy.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated. A person may be incapacitated due to mental disability, sleep, unconsciousness, physical restraint, or from the consumption (voluntary or otherwise) of incapacitating drugs or quantities of alcohol.
- Sexual activity with someone whom you know or, reasonably should know, is mentally or physically incapacitated (i.e., by alcohol or other drug use, unconsciousness or blackout) constitutes a violation of this policy. Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, the odor of alcohol on a person’s breath or clothing, inability to maintain balance, vomiting, unusual or irrational behavior, and unconsciousness.
- Incapacity may be indicated by the quantity of alcohol consumed. The presence of one or more of these cues does not necessarily indicate incapacity, nor does the absence of these cues necessarily indicate capacity.
- In order to give consent, a person must be of the legal age of consent, which is 17 in New York.
- Consent cannot be given and is deemed invalid when it is the result of any coercion, intimidation, force or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

### **Complainant**

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

### **Education Program or Activity**

For the purposes of this Title IX Grievance Policy, The College of Westchester’s “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that The College of Westchester has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.

Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the College’ programs and activities over which the College has substantial control.

### **Formal Complaint**

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within the College’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

### **Relevant evidence and questions**

For the purposes of this Title IX Grievance Policy, “relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions **do not** include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege, unless the person holding such privilege has waived the privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

### **Respondent**

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

### **Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### **Making a Report Regarding Covered Sexual Harassment to the Institution**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

Contact Information for the Title IX Coordinator:

Delphine Burton  
325 Central Ave  
White Plains, NY 10606  
[dburton@cw.edu](mailto:dburton@cw.edu)

Janna Gullery  
325 Central Ave  
White Plains, NY 10606  
[jgullery@cw.edu](mailto:jgullery@cw.edu)

The Title IX Coordinator is responsible for coordinating The College of Westchester's efforts to comply with Title IX, overseeing the College's responses to reports of Title IX violations, and identifying and addressing any pattern or systemic problems.

The Deputy Title IX Coordinator is:  
Anna Bravo, Manager of Administrative Services/Human  
Resources 325 Central Avenue  
White Plains, NY 10606 914-831-0353  
[abravo@cw.edu](mailto:abravo@cw.edu)

The Deputy Title IX Coordinator will oversee compliance involving employees and will provide updates to the Title IX Coordinator.

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

### **Confidential Reporting**

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee
- Deans
- Manager of Human Resources
- Security staff
- Career Counselors
- Veterans Support staff member
- Executive Office staff
- Managers and supervisors
- Faculty

### **The following Officials may provide confidentiality:**

The Counseling Center: [counseling@cw.edu](mailto:counseling@cw.edu) or 914-831-0441

### **Sexual Harassment and Misconduct that Does Not Involve Students**

All employees have a duty to report any instances of sexual harassment and sexual misconduct, whether the harassment is directed toward you or another employee and whether committed by a supervisor, fellow employee, or non-employee. If you feel that you have been subjected to harassment or other forms of sexual misconduct, or if you witness conduct that you believe violates this policy, report the matter immediately to your immediate supervisor or the Human Resources Manager. If you are not sure to whom you should speak about an issue of sexual harassment, or if you have not received a satisfactory response from your supervisor within five business days after reporting any incident of what you perceive to be sexual harassment, immediately contact the Human Resources Manager at extension 353. The Human Resources Manager will ensure that an investigation is immediately conducted. Every report of perceived sexual harassment or misconduct will be fully investigated and corrective action will be taken where appropriate. Supervisors and

managers who knowingly allow sexually harassing behavior to continue will be subject to disciplinary action.

### **Privacy vs. Confidentiality**

Consistent with the Policy Against Sexual Misconduct and Sexual Harassment, references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean the College of Westchester offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The College of Westchester will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **Non-Investigatory Measures Available Under the Title IX Grievance Policy**

#### **Supportive Measures**

Supportive measures are neither disciplinary, nor punitive. They are intended to provide support and facilitate access to the College's education program and activity. Complainants who report allegations that could constitute Sexual Harassment Prohibited by Title IX are entitled to receive supportive measures from the College regardless of whether they choose to file a formal complaint. These supportive measures may include, as appropriate:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus
- No Contact orders, only when applicable to both parties
- Supportive measures are non-disciplinary and non-punitive.

**Request for Review and Modification:** Student Complainants and Respondents may request review and modification of any supportive measure(s) that directly impact them, including review of the need for and terms of the measure(s), by submitting a request in writing to the Title IX Coordinator along with any evidence they wish to present. In the event the measure impacts the other party, they will be given an opportunity to state their position and present evidence as appropriate. The Title IX Coordinator or designee will review the submissions and make a determination. The individual who hears the challenge to the removal determination will not be involved in any decision regarding responsibility or appeal of that decision regarding responsibility.

#### **Emergency Removal of Student-Respondent**

The College of Westchester retains the authority to remove a respondent from the College of Westchester's program or activity on an emergency basis, where the College of Westchester (1)

undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If the College determines such removal is necessary, the respondent will be provided notice and an opportunity to request review and modification of the decision immediately following the removal.

### **Administrative Leave**

The College retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with the Staff & Faculty Handbook.

## **3. THE TITLE IX GRIEVANCE PROCESS**

### **Filing a Formal Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) school days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the College, including as an employee. The College reserves the right, at its sole discretion, to utilize the Policy Against Sexual Harassment and Sexual Misconduct Not Covered by Title IX to address complaints from complainants who are not currently participating or attempting to participate in the education programs or activities of the College.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The College will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or the Policy Against Sexual Harassment and Sexual Misconduct Not Covered by Title IX prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **Informal Resolution**

A complainant who files a Formal Complaint may elect, at any time, to address the matter through the Institution's Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. Information about this Process is available through contacting your Title IX Coordinators or Title IX Advisor.

## **Multi-Party Situations**

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

## **Determining Jurisdiction**

The Title IX Coordinator or designee will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in the College's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, the College will investigate the allegations according to the Grievance Process.

If a complaint is dismissed from the Title IX Grievance Process, the Title IX Coordinator may refer the complaint to be addressed under the Policy Against Sexual Harassment and Sexual Misconduct Not Covered by Title IX or any other relevant College of Westchester policy.

## **Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the College may elect to investigate and adjudicate the conduct that would not constitute covered sexual harassment in accordance with the Title IX Grievance Process or another applicable policy, at the College's discretion. The College will notify the parties as to which procedure will be applied in the investigation and adjudication of each of the allegations.

## **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

## **Notice of Removal**

Upon dismissal for the purposes of Title IX, the College retains discretion to utilize the Code of Conduct and the Policy Against Sexual Harassment and Sexual Misconduct Not Covered by Title IX (<https://www.cw.edu/title-ix-policy-prohibiting-sexual-harassment-and-sexual-misconduct#:~:text=The%20College%20of%20Westchester%20further,those%20terms%20are>)

[%20defined%20below.\)](#) to determine if a violation of the Code of Conduct or Non-Title IX Sexual Misconduct Policy has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

### **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to the Complainant(s) and Respondent(s) as soon as practicable after receiving a Formal Complaint of the allegations, absent extenuating circumstances. The notifications will be sent to the parties' institutional email accounts if they are students or employees or by other reasonable means if they are neither students nor employees. If a response is not received within three (3) business days, additional attempts will be made to reach the parties.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the College's Title IX Grievance Procedure and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, including sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting Title IX sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.
- A statement that the College prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Additionally, the College will provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party expected to attend, with sufficient time for the party to prepare to participate.

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response

before any initial interview regarding those additional charges.

### **Advisor of Choice and Participation of Advisor of Choice**

The College will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The College has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the College.

The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College.

### **Notice of Meetings and Interviews**

The College will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

### **Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further pauses in the Process.

### **Process Free from Bias or Conflict of Interest**

Both the Complainant and the Respondent have the right to have a fair and impartial investigation, determination and appeal. If either party has any reason to believe that the Investigator, the Title IX Coordinator, or any of the Hearing or Appeals Officers has a conflict of interest or would otherwise be unable to be fair and impartial, the concerned party should submit a letter explaining the basis for their concern.



- Regarding the Investigator or the Hearing Officer, to the Title IX Coordinator; and
- Regarding the Title IX Coordinator, to Human Resources.

The other party will be provided with a copy of the letter and will have an opportunity to respond. Based upon those submissions and any independent inquiry the decision-maker may choose to make, if it is determined that a conflict of interest exists, another individual will be appointed to take on the role of the conflicted person. If it is found that no conflict of interest exists, the individual will continue in their role. Concerns regarding conflicts of interest should be raised as soon as they are identified and whenever possible before the allegedly conflicted person renders a determination, for example, prior to the submission of the investigative report, the Hearing Officer's determination, or the appeal decision.

### **Investigation**

The Title IX Coordinator will assign an Investigator. The Investigator will direct the investigative process and confer with the Title IX Coordinator as appropriate. The investigation will be prompt, thorough, and impartial.

There will be no Retaliation against any individual for filing a Complaint and/or for assisting, testifying, or participating in the investigation of a Complaint.

All Complaints will be kept private and disclosed only to the extent necessary for a thorough investigation.

Each party will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

The Investigator will take the following steps:

- Thoroughly review the Complaint and all supporting documentation and evidence.
- Interview both the Complainant(s) and the Respondent(s).
- Give both parties the opportunity to identify witnesses and provide relevant documentary and physical evidence. (This may include, but is not limited to, texts, emails, photos, social media posts, voicemail messages, etc.)
- The Investigator will contact witnesses who may have relevant information and engage in good faith efforts to meet with the witnesses. If a witness is not cooperative, the Investigator will not unreasonably delay the investigation.
- The Investigator has the discretion to identify and interview witnesses who were not identified by any party.
- The Investigator has the discretion not to interview a suggested witness where none of the information the party indicates that the witness can share would be relevant in the Investigator's judgment.
- Exclude from consideration information about the romantic or sexual history of either the Complainant or the Respondent, except as to prove that someone other than the respondent committed the conduct alleged by the complainant or with respect to the parties' shared sexual history when offered to prove consent. If either party offers such information, the other will have the right to respond.
- Exclude from consideration medical records and information, including mental health history or treatment, absent a waiver from the individual who is the subject of the medical record.
- Exclude from consideration information protected under a legally recognized privilege such as the attorney-client privilege unless the person holding such privilege has waived the privilege.

### **Parties' Inspection and Review of Evidence**

Once the investigation has concluded, the Investigator, in conjunction with the Title IX Coordinator or designee, shall gather all evidence that is directly related to the allegations. Unless otherwise prohibited by law, the Title IX Coordinator or designee shall make electronic copies of the evidence available to the parties and their advisors. Given the confidential nature of the materials and proceeding, the parties and their advisors will be required to sign a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review and not to use the evidence for any purpose other than the Title IX Grievance Process. Any violation of the non-disclosure agreement may result in additional misconduct charges against a party, a report to an attorney's professional licensing board, or other legal action. The parties may then review the information gathered. Both will have an opportunity to respond in writing to this information within ten business days.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

### **Inclusion of Evidence Not Directly Related to the Allegations:**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log", which may be reviewed by the parties and their advisors, if any.

### **Investigative Report**

The Investigator will consider the parties' responses in completing the final investigative report, which will compile all relevant evidence. The report will be provided to the parties no later than ten business days before any hearing on the formal complaint and before any pre-hearing meeting. The final investigative report will be redacted for information that is irrelevant or privileged. Unless otherwise prohibited by law, the Title IX Coordinator or designee shall make electronic copies of the evidence available to the parties and their advisors. The parties shall have the opportunity to provide any written response to the investigative report to the Title IX Coordinator prior to the start of the hearing. The parties may request to review the other party's written response statements once they have been submitted.

If at any stage following the submission of the parties' responses new evidence directly related to the allegations is gathered, it will be shared with the parties and their advisors in line with the parameters set forth above. The parties will have an opportunity to submit an additional written response within a time frame determined by the Title IX Coordinator or designee. The parties may request to review the other party's written response statements once they have been submitted, but they will not be permitted to submit any further written response.

### **Hearing**

Prior to taking any disciplinary action with respect to Title IX Sexual Harassment, the College will hold a live hearing. The parties cannot waive the right to a live hearing. The live hearing may be conducted with

all parties physically present in the same physical location, or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and/or other participants may appear at the live hearing virtually through a remote conferencing platform. This technology will enable participants simultaneously to see and hear each other. In the event of technological difficulties outside the parties' control, the College may delay or adjourn a hearing. Any party who wishes to participate remotely may submit such a request to the Title IX Coordinator with an explanation for the request.

The College may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

The hearing will be recorded through audio recording or audiovisual recording and a written transcript. That recording or transcript will be made available to the parties for inspection and review, provided that they and their advisors have signed a non-disclosure agreement not to disseminate the hearing [recording/transcript] or use it for any purpose other than the Title IX grievance process. Any violation of the non-disclosure agreement may result in additional misconduct charges against a party, a report to an attorney's professional licensing board, or other legal action.

The deliberations of the Hearing Officer will not be recorded.

### **Continuances or Granting Extensions**

The College may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **Evidence Not Previously Disclosed**

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Hearing Officer will consider this request and determine (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly- discovered evidence or witness has the burden of proving (1) and (2) by the preponderance of the evidence.

If the Hearing Officer determines that this standard is met, then the parties will be granted a reasonable period of time to review the evidence or prepare for questioning of the witness.

### **Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

- Complainant(s) and advisor(s)
- Respondent(s) and advisor(s)

- Hearing Officer
- Decision-Maker
- Title IX Coordinator or designee
- Witnesses (only while they are being questioned)
- College employees needed to provide technological support/assistance
- Stenographer (if the hearing is being transcribed)

#### *Complainant and Respondent (The Parties)*

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party.  
 For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- The College will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.

#### *The Hearing Officer/Decision-Maker*

- The Hearing Officer may also serve as the Decision-Maker.
- The Hearing Officer will be an individual who has received training on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The Hearing Officer will not have any bias for or against either party or any other conflict of interest. Neither the Title IX Coordinator, the Investigator, nor any parties’ advisor can serve as the Hearing Officer.
- The Hearing Officer is responsible for presiding over the hearing in accordance with the hearing procedures set forth below.
- The Hearing Officer will determine the order of the witnesses.
- The Hearing Officer will determine whether each question asked by one of the parties’ advisors seeks relevant information and will provide an explanation for any determination to exclude a question.
- The Hearing Officer will not consider any statement made by a witness who is not available for cross-examination.
- The Hearing Officer will prepare a written determination as set forth below.

### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party.

### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

## **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Hearing Officer will begin the hearing by establishing the rules and expectations for the hearing;
- Each party will have an opportunity to give an opening statement. The statement will be presented by the party, not the party's advisor;
- The Hearing Officer will ask questions of the Parties;
- After the Hearing Officer questions a party, the other party's advisor will have an opportunity to cross-examine;
- The Hearing Officer will ask questions of each witness;
- After the Hearing Officer questions each witness, the parties' advisors will be given the opportunity to cross-examine that witness. The advisor of the party who suggested the witness will cross-examine that witness last.
- The Hearing Officer will have the authority to stop the proceedings at any time, including to ask additional follow-up questions during cross-examination, to enforce the rules of decorum, or for any other reason.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Officer to use statements made by the Party.
- The Hearing Officer may not consider the statements of any witness, including a party, who does not submit to cross-examination, even where such statements are contained in other evidence (i.e. emails, text messages, social media postings, etc.). Evidence that does not constitute a "statement" may be considered regardless of whether the witness is subjected to cross-examination. A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to

- cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.
- The College will not threaten, coerce, intimidate or discriminate against any party in an attempt to secure the party's participation.
- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.
- Prior to the conclusion of the hearing, the parties may each make an impact statement.

### **Live Cross-Examination Procedure**

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, Hearing Officer will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Officer may be deemed irrelevant if they have been asked and answered.

### **Review of Transcript**

The transcript of the hearing will be available for review by the parties within seven (7) business days, unless there are any extenuating circumstances. The transcript of the hearing will not be provided to parties or advisors of choice.

### **Determination Regarding Responsibility**

#### **Standard of Proof**

The College uses the preponderance of the evidence standard. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

#### **General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

The weight given to any evidence will not vary based upon whether it is inculpatory or exculpatory (i.e. tending to prove or disprove the allegations).

Unless barred by the cross-examination requirements, a witness's testimony regarding indirect knowledge of the facts at issue will be considered but will generally be accorded less weight than testimony regarding direct knowledge of specific facts that occurred.

Title IX regulations require that the College allow parties to call "expert witnesses" for direct and cross examination. The College does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross-examined, the Hearing Officer will afford greater weight to the testimony of fact witnesses than to the non-factual testimony of the expert or to the expert's testimony that is not directed to the specific facts of the case.

Where a party or witness's conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer may draw an adverse inference as to that party or witness's credibility.

### **Components of the Determination Regarding Responsibility**

The Hearing Officer will issue a written determination simultaneously to all parties through their institutional email account, or other reasonable means as necessary. Absent extenuating circumstances, the Determination will be issued within ten business days of the completion of the Hearing. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of this policy, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeals").

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the College within ten (10) business days of the completion of the hearing.

### **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the

opportunity to appeal expires.

## **Appeals**

If a Respondent or Complainant does not accept the findings of the Hearing Officer, the party may request an appeal through the following procedures. The request for appeal must be submitted within five (5) Business Days of receipt of the Hearing Officer's decision.

Appeals are not intended to be full re-hearings or the basis for a new investigation of the Complaint. The Appeals Officer may accept or modify the original decision. Appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. The Appeal Officer's decision to deny a requested outcome on appeal is final.

The ONLY grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal that could have affected the outcome of the matter;
- The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

Any party who files an appeal must do so in writing to the Title IX Coordinator. The request for appeal will then be forwarded to an appointed Appeals Officer for review. The non-appealing party will be given an opportunity to review the written appeal and submit a written response not to exceed ten (10) pages within five (5) business days. In cases of alleged Sexual Assault, Domestic Violence, Dating Violence or Stalking involving a Student in New York, the appeal will be reviewed by a panel of three (3) persons. The appeal panel's determination need not be unanimous but, at least two of the panel members must agree on the outcome.

If the Appeals Officer determines that a procedural error occurred, they may return the original Complainant to the Hearing Officer with instructions to reconvene to remedy the error. The results of a reconvened hearing cannot be appealed.

In rare cases, where the error cannot be remedied by the original Hearing Officer (as in cases of bias), the Appeals Officer may order a new Hearing with a new Hearing Officer appointed by the Title IX Coordinator as appropriate. The results of a new hearing with a new Hearing Officer can be appealed once on the grounds for appeal listed above.

The Appeals Officer may in their discretion suspend any sanctions imposed by the Hearing Officer during the pendency of the appeal and/or any new Hearing of the original Complaint.

The Appeals Officer will render a written decision on the appeal to all parties within twenty-one (21) Business Days from receipt of the request for appeal. The decision on appeal, which will include the rationale for the decision, will be delivered to the parties simultaneously via their institutional email account or other reasonable means.

In cases of Sexual Assault, Domestic Violence, Dating Violence or Stalking, if neither party submits a written appeal within five (5) Business Days of receipt of the Hearing Officer's decisions, the Title IX Coordinator, as appropriate, will provide the parties with written notification that the Hearing Officer's decision is final. In cases involving all other kinds of alleged Title IX Sexual Harassment, the decision will be deemed final upon expiration of the period of time to appeal and no written notice will be provided.



## **Retaliation**

The College will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed according to the Policy Against Sexual Harassment and Sexual Misconduct.

## **External Remedies for Employees**

The College of Westchester is committed to responding quickly and effectively to any internal report of harassment and encourages employees and nonemployee workers to come forward and allow the institution to pursue an internal investigation of the matter.

In addition to the College's internal complaint procedure, an employee or nonemployee worker may also choose to pursue legal remedies with the following governmental entities at any time.

### **New York State Division of Human Rights**

<https://dhr.ny.gov/>

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

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to CW does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that

discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

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](http://www.dhr.ny.gov)

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

### **U.S. Equal Employment Opportunity Commission**

<http://www.eeoc.gov/contact>

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

If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov)

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **The Westchester County Human Rights Commission**

<https://humanrights.westchestergov.com/> 112

East Post Road, 3<sup>rd</sup> Floor

White Plains, NY 10601

Phone: (914) 995-7710

**Employee Complaint Form**

If you believe that you have been subjected to sexual misconduct, you are encouraged to complete this form and submit it to Anna Bravo Human Resources Manager, 325 Central Avenue, White Plains, NY 10606, 914-831-0353, [abravo@cw.edu](mailto:abravo@cw.edu). You may also submit a complaint orally.

**COMPLAINANT INFORMATION**

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Job Title: \_\_\_\_\_ Email: \_\_\_\_\_

**SUPERVISOR INFORMATION**

Immediate Supervisor's Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMPLAINT INFORMATION**

1. Your complaint of Sexual Misconduct is made against: Name: \_

Title: \_\_\_\_\_

Relationship to you: Supervisor/ Subordinate/ Co-Worker/ Student/ Other

2. Please describe the conduct or incident(s) that is the basis of this complaint and your reasons for concluding that the conduct is sexual misconduct. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual misconduct occurred: \_\_\_\_\_

Is the sexual misconduct continuing? Yes/No

4. Please list the name and contact information of any witnesses or individuals that may have information related to your complaint:

5. Have you previously complained or provided information about sexual harassment at the College? If yes, when and to whom did you complain or provide information?

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **REPORTING TO LAW ENFORCEMENT**

**If you are in immediate danger, dial 911 and attempt to get to a safe place.**

Acts of violence, including sexual assault, domestic violence, dating violence, and stalking, are against the law. If you are not in immediate danger and would like to report an incident to the police, you can do so by contacting:

Kevin E. Hoverman  
Senior Investigator  
Campus Sexual Assault Victims Unit  
New York State Police, Hawthorne N.Y.  
(845) 677-7300

If you would like someone to assist you in contacting the police or go with you to the police department, any of the following individuals at The College of Westchester can assist you:

- Title IX Coordinator
- Deputy Title IX Coordinator
- Director of Security

The College strongly encourages individuals to report incidents of sexual misconduct because it is the only way that responsive action can be taken against perpetrators of sexual misconduct. In the event a sex offense, domestic violence, dating violence, sexual assault, or stalking incident has occurred, victims are strongly encouraged to preserve evidence as may be necessary to the proof of a crime. The College of Westchester campus authorities will assist in notifying law enforcement if the victim chooses. Victims may report an incident to law enforcement regardless of whether they choose to report the incident to The College of Westchester. Conversely, reporting an incident to The College of Westchester does not require the Complainant to report the incident to law enforcement. The College of Westchester reserves the right to report any crime to law enforcement, but, as a general rule, will not alert law enforcement to an incident of sexual misconduct without the Complainant's permission, except where there is a serious and immediate threat to the campus community, when a minor is involved, or as otherwise required by law.

If the complainant files a criminal complaint with a local law enforcement agency, the College will comply with law enforcement agency requests for cooperation, which may require the College to temporarily suspend the fact-finding aspect of a Title IX investigation while the law-enforcement agency gathers evidence. Absent extraordinary circumstances, the College will suspend an active Title IX investigation for a maximum of 10 days.

In addition to the protective measures that The College of Westchester may take, law enforcement may be able to provide additional protections, such as a restraining order. The College of Westchester can assist students in contacting law enforcement and legal services organizations to learn about additional remedies that may be available.

### **Institutional Crime Reporting**

Reports of certain crimes occurring in certain geographic locations will be included in The College of Westchester's Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the victim/survivor.

For a copy of The College's Annual Security Report, please contact:

Dr. Warren Rosenberg  
Provost & Vice President of Academic Affairs, Student and Academic Services  
325 Central Avenue  
White Plains, NY 10606  
914-831-0219, [wrosenberg@cw.edu](mailto:wrosenberg@cw.edu)

Charles Boklan  
Director of Security  
325 Central Avenue  
White Plains, NY 10606  
914-831-0409, [cboklan@cw.edu](mailto:cboklan@cw.edu)

The College of Westchester is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual). A victim/survivor will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents' prior year federal income tax return. Generally, The College of Westchester will not share information about a report of sexual violence with parents without the permission of the reporting individual. No employee should notify a student's parents without first consulting with the Title IX Coordinator.

### **INTERNAL COMPLAINT PROCEDURES**

Although students, faculty, staff and third parties are expected to meet the College's expectations for conduct, there are different procedures for investigating and adjudicating complaints depending upon the identity of the parties.

#### **STUDENT COMPLAINANT AND STUDENT RESPONDENT**

This procedure is used when both the person alleging a violation of the policy and the accused are students.

##### **Amnesty Policy**

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

##### **Informal Resolution Option**

Once a complaint is made, the complainant has the option to proceed with informal resolution or to proceed with a formal investigation. The complainant may initially choose informal resolution and later decide to proceed formally. The informal procedures (mediation) are designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Where circumstances allow, and both parties agree to participate, informal procedures will be initiated as soon as possible and within five school days, absent any unusual circumstances. A complainant may elect to terminate a formal complaint process and enter into mediation at any point, including after the commencement of the formal process.

Mediation is a voluntary process intended to allow the parties involved in an alleged complaint of discrimination or harassment to discuss their respective understandings of the incident with each other through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Mediation is only offered as an option if both the complainant and the respondent are members of The College of Westchester community and agree to participate. Informal mediation is not appropriate for certain cases, such as alleged sexual assaults, even on a voluntary basis.

### **Formal Investigation Process**

Notice of a formal complaint may be in person, or orally to an appropriate official. The College encourages complainants to submit a written grievance (in writing, by email attachment, etc.) to the Title IX Coordinator or designee. The formal grievance should be clear and concise and describe the alleged incident(s) in detail including location and time the incident occurred, details about the incident, and desired remedy sought. The grievance should be signed by the complainant or in the case of an email submission, sent as an email attachment, in letter format and should contain the name and all contact information of the initiator filing the complaint. Any and all supporting documentation and evidence should be referenced within the body of the formal grievance, whenever possible.

Upon receipt of a formal grievance, the Title IX Coordinator or designee will:

- Open a formal case file and determine any necessary interim remedial measures (as described below) for the alleged victim, and any other necessary remedial short-term actions.
- Determine the identity and contact information of the complainant (whether that be the initiator, the alleged victim, university representative, or thirdparty).
- Assess whether the facts as alleged by the complainant, if true, would constitute a violation of the policy. If the alleged facts do not state a violation, the grievance will be closed with no further action. If the alleged facts could state a violation, then the Title IX Coordinator or designee will begin the investigation

### **Interim Protective Measures**

If necessary, The College may take interim protective measures to protect the complainant during the investigation. These remedial measures include the following:

- No contact order;
- A change in academic situations as appropriate with the minimum burden on the complainant;
- Counseling;
- Health and mental health services;
- Escort services;
- Academic services
- Retake course or withdraw without penalty

The College of Westchester determines which protective measures are appropriate for a particular situation on a case-by-case basis. Not all of the measures listed above will be necessary in every case to keep victims safe and ensure their equal access to educational programs and activities. If the complainant identifies an interim measure that is not already provided, The College of Westchester will consider whether the request can be granted. These interim measures will be taken promptly at no cost to the complainant. Depending upon the circumstances, some or all of the protective measures may be lifted once the process is complete and a decision is rendered or they may be continued to assist the complainant after a determination has been made, even if it is determined that some or all of the allegations have not been substantiated. Additional remedies and sanctions may be rendered after a violation is found.

Failure to comply with a directive relating to a protective measure may lead to further disciplinary action. Remedial measures will be kept confidential to the extent possible. Only those individuals who need to be informed in order to effectuate the measures will be informed.

The complainant or the respondent may request review and modification of any interim remedial measure(s) that directly impacts him or her, including review of the need for and terms of the protective measure(s), by submitting a letter to the Title IX Coordinator along with any evidence he or she wishes to present. In the event the measure impacts the other party, he or she will be given an opportunity to state his or her position and present evidence as appropriate. The Title IX Coordinator or her designee will review the submissions and make a determination.

In addition to the measures that The College of Westchester may take, law enforcement may be able to provide

additional protections, such as a restraining order. The College of Westchester can assist students in contacting law enforcement and legal services organizations to learn about additional remedies that may be available.

### **Investigation**

The investigator will conduct a prompt, fair, impartial, and thorough investigation. During the investigation, the appointed investigator will:

- interview the complainant, the respondent, and any material witnesses (the investigator will not interview witnesses whose sole purpose is to provide character information);
- gather all relevant documentary and/or physical evidence from the complainant, respondent, and witnesses; (This may include, but is not limited to, texts, emails, photos, Facebook posts, voicemail messages, etc.
- give the respondent proper notice of the complaint, the date, time, location and factual allegations concerning the alleged violation as well as the specific policy provisions he or she is alleged to have violated and provide an opportunity for the respondent to provide information;
- complete the investigation in a timely manner, without unnecessary deviation from the intended timeline; and
- maintain communication with the complainant and the respondent on the status of the investigation and overall process.

### Information re Romantic and Sexual History

The investigator will not consider information concerning the romantic or sexual history of either the complainant or the respondent, except as provided by the complainant or respondent relating to their shared sexual history. If either offers such information, the other will have the right to respond.

### Information re Mental Health Diagnosis or Treatment History

Each party shall have the right to object to the investigator's consideration of his or her own mental health history or treatment. In the event such an objection is raised, the investigator will neither gather nor consider information regarding mental health diagnosis or treatment.

### Prior Conduct Violations

The investigator will not consider prior alleged misconduct. If an individual has previously been found responsible for a violation of this policy, that information may be considered in the context of determining an appropriate disciplinary sanction.

### **Determination and Sanctions**

At the conclusion of the investigation, the investigator will prepare a written investigation report. The report will clearly set forth the prohibited conduct alleged and will include summaries of all witness interviews and any documentary or physical evidence identified. The report will further provide the investigator's assessment of whether it is more likely than not that the prohibited conduct occurred and the evidentiary basis for that assessment.

The parties will have an opportunity to review the report but will not be provided with a copy of the report. Within 3 business days of reviewing the report, the parties may submit in writing any additional information or clarifications that they believe are relevant to the determination and sanctions. This may include a statement regarding the impact the alleged events have had on them.

Upon completion of the investigation, the Title IX Coordinator or their designee will review all of the evidence and determine whether the evidence establishes that it is more likely than not that the policy was violated. In other words, whether a violation has been established based upon a preponderance of the evidence. If a violation is found, the College of Westchester will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university campus community.

### **Remedies and Sanctions**

Potential remedies and/or sanctions may include one or more of the following:

- A no contact order.
- Revisions to class schedules to maintain separation of parties.
- Transfer of respondent to different division of the College (Adult/Day/Online).
- Temporary suspension from The College pending program completion of victim(s).
- Loss of privileges (including but not limited to use of facilities and participation in campus organizations and activities),
- Community service.
- Mandated training and education.
- Revocation of honors or awards.
- Warning or reprimand.
- Disciplinary probation.
- Permanent dismissal from The College.
- Transcript notation.

The Title IX Coordinator will provide both the complainant and the respondent with written notice of the determination and the rationale for such determination. In cases of sexual assault, dating violence, domestic violence and/or stalking, the complainant and the respondent will be informed simultaneously and in writing of any sanctions imposed and the rationale for such sanction. In other cases of sexual misconduct, the complainant will only be informed of discipline to the extent such sanctions relate to the complainant.

#### Declining to Participate

If the student respondent chooses not to cooperate in the investigation, the investigator will still complete the investigation and prepare a report based solely upon the information available. No adverse inference will be made as a result of a party's decision not to participate in the investigation, but a determination will be made based upon the information available.

If the complainant chooses to withdraw the complaint prior to the completion of the investigation, the Title IX Coordinator will determine whether to continue to pursue the complaint employing the factors outlined on previously.

#### **Appeal Procedure**

Both the complainant and the respondent have the option to appeal the final determination of an investigation by submitting a letter of appeal to the Appeals Officer:

Dr. Warren Rosenberg, Provost & Vice President of Academic Affairs, Student and Academic Services, 325 Central Avenue, White Plains, NY 10606, 914-831-0219 or [wrosenberg@cw.edu](mailto:wrosenberg@cw.edu).

Requirements for appeal:

1. The appeal is made within 14 days of the original sanction, and
2. The appeal articulates one of the following grounds:
  - a) A procedural error occurred that significantly impacted the outcome of the Informal or Formal Resolution (e.g. substantiated bias, material deviation from established procedures, etc.)
  - b) To consider new evidence, unavailable during the original hearing, Informal or Formal Resolution or Investigation, that could substantially impact the finding or sanction
  - c) The sanctions fall outside the range typically imposed for this offense, or for the cumulative conduct record of the Accused

If the Appeal Officer determines that the request for appeal sets forth a legitimate ground for appeal, he/she will notify the non-appealing party and give them the opportunity to review the letter of appeal and submit a written response within 7 days of notification.

The Appeal Officer will render a decision applying the following principles:



1. Decisions by the Appeal Officer are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/remedial action only if there is a compelling justification to do so.
2. Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the rationale for the original sanction, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the Title IX Coordinator for additional investigation.
3. Sanctions imposed are implemented immediately unless the Title IX Coordinator or designee stays their implementation pending the outcome of the appeal.
4. The Appeal Officer will normally render a written decision on the appeal to all parties within 7 business days from receipt of the non-appealing party's submission.
5. All parties will be informed in writing of the results of the appeal decision.
6. Once an appeal is decided, the outcome is final: further appeals are not permitted.

If neither party files an appeal within two weeks of the determination's rendering, the Title IX Coordinator will provide both parties with written notice that the determination is final.

### **Transcript Notations**

Any student who is found responsible for domestic violence, dating violence, sexual assault or stalking (or any other crime of violence) and suspended will have a notation on his or her transcript indicating, "suspended after a finding of responsibility for a policy violation."

Any student who is found responsible for domestic violence, dating violence, sexual assault or stalking (or any other crime of violence) and expelled will have a notation on his or her transcript indicating, "expelled after a finding of responsibility for a policy violation."

Any student who withdraws from the College of Westchester while a complaint of sexual assault, domestic violence, dating violence, or stalking (or any other crime of violence) is pending against him or her and declines to complete the investigatory and disciplinary process will have a notation on his or transcript indicating, "withdrew with conduct charges pending."

If a finding of responsibility is vacated for any reason, the transcript notation will be removed. Students shall have the right to seek the removal of a notation of suspension after one year has elapsed since the end of the suspension. Students wishing to request removal should submit a letter to the Title IX Coordinator setting forth the justification for removal. Notations of expulsion cannot be removed.

### **Advisors**

Student complainants and respondents have a right to be accompanied by an advisor of his or her choice at all meetings and interviews related to an allegation of sexual misconduct. In cases involving allegations of domestic violence, dating violence, sexual assault or stalking, the advisor may be an attorney.

Advisors are not permitted to advocate on behalf of the individual or to address the investigator, the Title IX Coordinator or the Appeal Officer directly. The party may confer with the advisor, and the advisor may pass notes to the party. If the advisor is disruptive or otherwise fails to comply with these parameters, he or she may be asked to leave.

### **Conflict of Interest**

Both the complainant and the respondent have the right to have a fair and impartial investigation, determination and appeal. If either the complainant or respondent has any reason to believe that the investigator, the Title IX Coordinator or any of the Appeal Officer members has a conflict of interest or would otherwise be unable to be fair and impartial, the concerned party should submit a letter explaining the basis for his or her concern. Concerns regarding the investigator or the Appeal Officer should be submitted to the Title IX Coordinator. Concerns regarding the Title IX Coordinator should be submitted to the Appeal Officer. The other party will be provided with a copy of the letter and will have an opportunity to respond. If based upon those submissions and any independent inquiry the decision-maker may choose to make, the decision-maker determines that there is a conflict of interest, another individual will be appointed to take on the role. If it is found that there is no such conflict, the individual will continue in his or her role. Concerns regarding conflicts of interest should be raised as soon as they are identified and prior

to the individual with the alleged conflict's rendering of his or her determination, e.g. prior to the submission of the investigation report, the determination, or the appeal decision

### **Notice**

Each party will receive reasonable and advance written or electronic notice of any meeting he or she is required or eligible to attend. In cases of domestic violence, dating violence, or stalking, each party will be given prompt notice of any meeting relating to the proceeding at which either the complainant or the respondent will be present, except that the respondent will not be notified of meetings with the complainant relating solely to interim protective measures and other supportive accommodations.

### **STUDENT COMPLAINANT AND EMPLOYEE RESPONDENT OR EMPLOYEE COMPLAINANT AND STUDENT RESPONDENT**

This procedure is used when one of the parties is a student and one of the parties is an employee (faculty or staff), an intern, or a non-employee working on campus (e.g. a vendor or contractor).

### **Amnesty Policy**

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

### **Informal Resolution Option**

Once a complaint is made, the complainant has the option to proceed with informal resolution or to proceed with a formal investigation. The complainant may initially choose informal resolution and later decide to proceed formally. The informal procedures (mediation) are designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Where circumstances allow, and both parties agree to participate, informal procedures will be initiated as soon as possible and within five school days, absent any unusual circumstances. A complainant may elect to terminate a formal complaint process and enter into mediation at any point, including after the commencement of the formal process.

Mediation is a voluntary process intended to allow the parties involved in an alleged complaint of discrimination or harassment to discuss their respective understandings of the incident with each other through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Mediation is only offered as an option if both the complainant and the respondent are members of The College of Westchester community and agree to participate. Informal mediation is not appropriate for certain cases, such as alleged sexual assaults, even on a voluntary basis.

### **Formal Investigation Process**

Notice of a formal complaint may be in person, or orally to an appropriate official. The College encourages complainants to submit a written grievance (in writing, by email attachment, etc.) to the Title IX Coordinator or designee. The formal grievance should be clear and concise and describe the alleged incident(s) in detail including location and time the incident occurred, details about the incident, and desired remedy sought. The grievance should be signed by the complainant or in the case of an email submission, sent as an email attachment, in letter format and should contain the name and all contact information of the initiator filing the complaint. Any and all supporting documentation and evidence should be referenced within the body of the formal grievance, whenever possible.

Upon receipt of a formal grievance, the Title IX Coordinator or designee will:

- Open a formal case file and determine any necessary interim remedial measures (as described below) for the alleged victim, and any other necessary remedial short-term actions.
- Determine the identity and contact information of the complainant (whether that be the initiator, the alleged victim, university representative, or third party).
- Assess whether the facts as alleged by the complainant, if true, would constitute a violation of the policy. If the alleged facts do not state a violation, the grievance will be closed with no further action. If the alleged facts could state a violation, then the Title IX Coordinator or her designee will begin the investigation.

### **Interim Protective Measures**

If necessary, The College may take interim protective measures to protect the complainant during the investigation. These remedial measures include the following:

- No contact order;
- A change in academic situations as appropriate with the minimum burden on the complainant;
- Counseling;
- Health and mental health services;
- Escort services;
- Academic services; and/or
- Retake course or withdraw without penalty.

The College of Westchester determines which protective measures are appropriate for a particular situation on a case-by-case basis. Not all of the measures listed above will be necessary in every case to keep victims safe and ensure their equal access to educational programs and activities. If the complainant identifies an interim measure that is not already provided, The College of Westchester will consider whether the request can be granted. These interim measures will be taken promptly at no cost to the complainant. Depending upon the circumstances, some or all of the protective measures may be lifted once the process is complete and a decision is rendered or they may be continued to assist the complainant after a determination has been made, even if it is determined that some or all of the allegations have not been substantiated. Additional remedies and sanctions may be rendered after a violation is found.

The student complainant or the student respondent may request review and modification of any interim remedial measure(s) that directly impacts him or her, including review of the need for and terms of the protective measure(s), by submitting a letter to the Title IX Coordinator along with any evidence he or she wishes to present. In the event the measure impacts the other party, he or she will be given an opportunity to state his or her position and present evidence as appropriate. The Title IX Coordinator or designee will review the submissions and make a determination.

Failure to comply with a directive relating to a protective measure may lead to further disciplinary action. Remedial measures will be kept confidential to the extent possible. Only those individuals who need to be informed in order to effectuate the measures will be informed.

### **Investigation**

The investigator will conduct a prompt, fair, impartial, and thorough investigation. During the investigation, the appointed investigator will:

- interview the complainant, the respondent, and any material witnesses (the investigator will not interview witnesses whose sole purpose is to provide character information);
- gather all relevant documentary and/or physical evidence from the complainant, respondent, and witnesses; (This may include, but is not limited to, texts, emails, photos, Facebook posts, voicemail messages, etc.)
- give the respondent proper notice of the complaint, the date, time, location and factual allegations concerning the alleged violation as well as the specific policy provisions he or she is alleged to have violated and provide an opportunity for the respondent to provide information;

- complete the investigation in a timely manner, without unnecessary deviation from the intended timeline; and
- maintain communication with the complainant and the respondent on the status of the investigation and overall process.
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#### Information re Romantic and Sexual History

The investigator will not consider information concerning the romantic or sexual history of either the complainant or the respondent, except as provided by the complainant or respondent relating to their shared sexual history. If either offers such information, the other will have the right to respond.

#### Information re Mental Health Diagnosis or Treatment History

Each party shall have the right to object to the investigator's consideration of his or her own mental health history or treatment. In the event such an objection is raised, the investigator will neither gather nor consider information regarding mental health diagnosis or treatment.

#### **Determination and Sanctions**

At the conclusion of the investigation, the investigator will prepare a written investigation report. The report will clearly set forth the prohibited conduct alleged and will include summaries of all witness interviews and any documentary or physical evidence identified. The report will further provide the investigator's assessment of whether it is more likely than not that the prohibited conduct occurred and the evidentiary basis for that assessment.

The parties will have an opportunity to review the report but will not be provided with a copy of the report. Within 3 business days of reviewing the report, the parties may submit in writing any additional information or clarifications that they believe are relevant to the determination and sanctions. This may include a statement regarding the impact the alleged events have had on them.

Upon completion of the investigation, the Title IX Coordinator or her designee will review all of the evidence and determine whether the evidence establishes that it is more likely than not that the policy was violated. In other words, whether a violation has been established based upon a preponderance of the evidence. If a violation is found, the College of Westchester will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university campus community.

#### **Remedies and Sanctions**

Potential remedies and/or sanctions may include one or more of the following:

- A no contact order.
- Mandated training and education.
- Revocation of honors or awards.
- Revisions to class schedules to maintain separation of parties.
- Transfer of student respondent to different division of the College (Adult/Day/Online).
- Loss of privileges (including but not limited to use of facilities and participation in campus organizations and activities),
- Community service.
- Warning or reprimand.
- Disciplinary probation.
- Suspension.
- Termination of Employment.
- Permanent dismissal from The College.
- Transcript notation.

The Title IX Coordinator will provide both the complainant and the respondent with written notice of the determination and the rationale for such determination. In cases of sexual assault, dating violence, domestic violence and/or stalking, the complainant and the respondent will be informed simultaneously and in writing of any sanctions imposed and the rationale for such sanction. In other cases of sexual misconduct, the complainant

will only be informed of discipline to the extent such sanctions relate directly to the complainant.

### Declining to Participate

If a student respondent chooses not to cooperate in the investigation, the investigator will still complete the investigation and prepare a report based solely upon the information available. No adverse inference will be made as a result of a student's decision not to participate in the investigation, but a determination will be made based upon the information available. Employee respondents who refuse to cooperate in the investigation may be subject to disciplinary action, up to and including dismissal.

If the complainant chooses to withdraw the complaint prior to the completion of the investigation, the Title IX Coordinator will determine whether to continue to pursue the complaint employing the factors described above.

### **Advisors**

Student complainants have a right to be accompanied by an advisor of their choice at all meetings and interviews related to an allegation of sexual misconduct. In cases involving allegations of domestic violence, dating violence, sexual assault or stalking, the advisor may be an attorney.

Employees are entitled to be accompanied by an advisor of their choice, who may be an attorney, in cases involving allegations of dating violence, domestic violence, sexual assault or stalking.

Advisors are not permitted to advocate on behalf of the individual or to address the investigator, the Title IX Coordinator or the Appeal Panel directly. The party may confer with the advisor, and the advisor may pass notes to the party. If the advisor is disruptive or otherwise fails to comply with these parameters, he or she may be asked to leave.

### **Conflict of Interest**

Both the complainant and the respondent have the right to have a fair and impartial investigation, determination and appeal. If either the complainant or respondent has any reason to believe that the investigator, the Title IX Coordinator or any of the Appeal Panel members has a conflict of interest or would otherwise be unable to be fair and impartial, the concerned party should submit a letter explaining the basis for his or her concern. Concerns regarding the investigator or the Appeal Panel should be submitted to the Title IX Coordinator. Concerns regarding the Title IX Coordinator should be submitted to the Appeal Officer. The other party will be provided with a copy of the letter and will have an opportunity to respond. If based upon those submissions and any independent inquiry the decision-maker may choose to make, the decision-maker determines that there is a conflict of interest, another individual will be appointed to take on the role. If it is found that there is no such conflict, the individual will continue in his or her role. Concerns regarding conflicts of interest should be raised as soon as they are identified and prior to the individual with the alleged conflict's rendering of his or her determination, e.g. prior to the submission of the investigation report, the determination, or the appeal decision.

### **Notice**

Each party will receive reasonable and advance written or electronic notice of any meeting he or she is required or eligible to attend. In cases of domestic violence, dating violence, or stalking, each party will be given prompt notice of any meeting relating to the proceeding at which either the complainant or the respondent will be present, except that the respondent will not be notified of meetings with the complainant relating solely to interim protective measures and other supportive accommodations.

### **Student Appeal Procedure—Only Applies in Cases of Sexual Assault, Domestic Violence, Dating Violence and Stalking**

Both the complainant and the respondent have the option to appeal the final determination of a Title IX investigation by submitting a letter of appeal to Dr. Warren Rosenberg, Provost & Vice-President of Academic Affairs, 325 Central Avenue, White Plains, NY 10606, 914-831-0219 or [wrosenberg@cw.edu](mailto:wrosenberg@cw.edu).

Requirements for appeal:

1. The appeal is made within 14 days of the original sanction, and
2. The appeal articulates one of the following grounds:

- a) A procedural error occurred that significantly impacted the outcome of the Informal or Formal Resolution (e.g. substantiated bias, material deviation from established procedures, etc.)
- b) To consider new evidence, unavailable during the original hearing, Informal or Formal Resolution or Investigation, that could substantially impact the finding or sanction
- c) The sanctions fall outside the range typically imposed for this offense, or for the cumulative conduct record of the Accused

If the Appeal Officer determines that the request for appeal sets forth a legitimate ground for appeal, she will notify the non-appealing party and give them the opportunity to review the letter of appeal and submit a written response within 7 days of notification.

The Appeal Officer will render a decision applying the following principles:

1. Decisions by the Title IX Appeal Officer are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/remedial action only if there is a compelling justification to do so.
2. Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the rationale for the original sanction, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the Title IX Coordinator for additional investigation.
3. Sanctions imposed are implemented immediately unless the Title IX Coordinator or her designee stays their implementation pending the outcome of the appeal.
4. The Appeal Officer will normally render a written decision on the appeal to all parties within 7 business days from receipt of the non-appealing party's submission.
5. All parties will be informed simultaneously in writing of the results of the appeal decision.
6. Once an appeal is decided, the outcome is final: further appeals are not permitted.

If neither party files an appeal within two weeks of the determination's rendering, the Title IX Coordinator will provide both parties with written notice that the determination is final.

### **Student Bill of Rights**

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful healthcare and counseling services, where available;
- 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;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and

- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.
- Response to Reports: Notify university police or campus security, local law enforcement and/or the State Police;
- Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon first instance of disclosure by reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination, and detailing that the criminal justice process utilizes different standards of proof and evidence. The official shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy and shall inform the reporting individual of other reporting options;
- Confidentially disclose the incident to institution representatives, who may offer confidentiality and can assist in obtaining services;
- Disclose confidentially the incident and obtain services from the state or local government;
- File a report of sexual assault, domestic violence, dating violence and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance. Reports shall be investigated in accordance with the institution policy and a reporting individual's identity shall remain private at all time if said reporting individual wishes to maintain privacy;
- Disclose the incident, if the accused is an employee of the institution, to the institution's human resources authority;
- Receive assistance from appropriate institution initiating legal proceedings in family or civil court; and
- Withdraw a complaint or involvement from the institution process at anytime.

### **The College of Westchester's Statement on Annual Training of Personnel**

The Violence Against Women Act amendments to the Clery Act require that certain college officials charged with responding to sexual assault, domestic violence, dating violence, and stalking be trained annually in a number of areas. This college/university is a member of the SUNY Student Conduct Institute. As part of that membership, covered officials who investigate or conduct proceedings to address allegations of dating violence, domestic violence, sexual assault and stalking receive at least eight hours of training annually through attendance at the SUNY Student Conduct Institute's Basic Compliance Training and/or live Advanced Trainings and/or digital Basic or Advanced Trainings. These in-person and digital courses address topics including how to determine the relevancy of evidence and use it during the proceeding, proper techniques for questioning witnesses, basic procedural rules for conducting a proceeding, and avoiding actual and perceived conflicts of interest. These trainings also address how to conduct an investigation and hearing process that protects the safety of victims, properly employs trauma-informed practice, and promotes accountability, while protecting the due process rights of the respondent. Finally, these trainings provide comprehensive reviews of federal and state laws and regulations on point as well as relevant court and administrative opinions.