



**TITLE IX POLICY PROHIBITING DISCRIMINATION AND HARASSMENT ON THE BASIS OF SEX**

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 sex discrimination, including sex-based harassment, sexual assault, sexual exploitation, domestic violence, dating violence and stalking. The College does not discriminate in its admissions practices except as permitted by law, in its employment practices, or in its educational programs or activities on the basis of sex.

The protections in this policy apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

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 the CW Code of Conduct, available in the Student Handbook. 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 providing those who disclose harm 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 sex discrimination regardless of their sex, sexual orientation, immigration status, citizenship status or national origin, or any other protected characteristic.

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**Definitions**

We hear and use many words to describe sex discrimination, including sexual violence and other crimes. These definitions are provided so you can understand the College’s definitions of these terms, which it will use in applying the policy. Criminal definitions under state and federal law may differ from the College’s definitions.

**General Definitions:**

***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/Force:** Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion. Sexual activity accompanied by coercion or force is not consensual.

Coercion refers to unreasonable pressure for sexual activity. When someone makes it clear that they do not want to engage in sexual activity or do not want to go beyond a certain point of

sexual interaction, continued pressure beyond that point can be considered coercive. The use of coercion can involve the use of pressure, manipulation, substances, or force. Ignoring objections of another person is a form of coercion.

Force refers to the use of physical violence or imposing on someone physically to engage in sexual contact or intercourse. Force can also include threats, intimidation (implied threats), or coercion used 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.

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

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

### **Definitions: Prohibited Conduct**

The additional definitions below detail prohibited conduct. The College prohibits conduct as defined by this policy.

***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."

***Discrimination on the basis of sex, or sex-based discrimination***, is treating people less favorably because of their actual or perceived sex or as having a policy or practice that adversely impacts the members of one sex more than others. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

***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.

***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.

***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.

***Sex-Based Harassment:***

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex-based harassment includes the following:

- a. Quid pro quo harassment: An employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.
- b. Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - The degree to which the conduct affected the complainant's ability to access the College's education program or activity;
  - The type, frequency, and duration of the conduct;
  - The parties' ages, roles within the College's education program or activity, previous interactions, and other factors about a party that may be relevant to evaluating the effects of the conduct;
  - The location of the conduct and the context in which the conduct occurred; and
  - Other sex-based harassment in the College's education program or activity.
- c. Prohibited Conduct Specific to New York Sexual Harassment
  - New York Sexual Harassment is defined as follows:

NY Sexual harassment is unwelcome non-verbal or physical, verbal, or online conduct where such conduct is based on actual or perceived sex and subjects an individual to inferior terms, conditions, or privileges that unreasonably interfere with an individual's work or academic performance or creates an intimidating, hostile or offensive environment and would have such an effect on a reasonable person. Sex-based harassment need not be severe or pervasive to be unlawful and can be any harassing conduct on the basis of sex that consists of more than petty slights or trivial inconveniences.

NY sexual harassment can take a variety of forms. Examples include, but are not limited to:

- Coercive behavior, unreasonable pressure, or manipulation to compel a person to engage in sexual activity in the workplace;
  - Threats or insinuations that a person's employment, wages, promotional opportunities, work assignments, academic grade, classroom assignments, or other conditions of employment or academic or other collegiate life may be adversely affected by not submitting to sexual advances;
  - Sexually suggestive objects, pictures, videotapes, audio recordings or literature, placed on the work or study area, if not used solely for a legitimate educational purpose;
  - Non-consensual touching, grabbing, groping, pinching, or other physical contact;
  - Spreading sexual rumors; distributing intimate or sexual information about another person;
  - Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person;
  - Electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person.
- d. Sexual assault: An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically, this includes:

*Rape*—The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

*Fondling*—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including

instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

*Incest*—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

*Statutory Rape*—Sexual intercourse with a person who is under the statutory age of consent.

- e. Dating violence: Violence committed by a person:
- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.

Emotional and psychological abuse do not constitute violence for the purposes of this definition.

- f. Domestic violence: Felony or misdemeanor crimes of violence committed by a person who:
- o Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the College, or a person similarly situated to a spouse of the victim;
  - o Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - o Shares a child in common with the victim; or
  - o Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Emotional and psychological abuse do not constitute violence for the purposes of this definition.

- g. Stalking: Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.
- h. Sexual coercion: The application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.
- i. Sexual exploitation is the abuse or exploitation of another person's sexuality

without consent, for the perpetrators own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

### **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's 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 through the termination of employment.

### **TITLE IX COORDINATORS**

Inquiries regarding the application of this Policy should be referred to the **Title IX Coordinators, Lavada Carruthers**, (914-831-0263, [lcarruthers@cw.edu](mailto:lcarruthers@cw.edu)), **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 sex discrimination, 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.

Obligations in this policy assigned to a particular title, such as the Title IX Coordinator, may be designated as appropriate by the College, including to external professionals.

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

### **Employee Reporting Obligations**

With the exception of licensed Counseling Center staff, all other College staff and faculty who become aware of an incident of sex discrimination involving a student are required to elevate the report to the Title IX Coordinators or Deputy Title IX Coordinator for response. Non-confidential resources on campus include:

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

### **Privacy Versus Confidentiality**

Even The College of Westchester's officers 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  
P.O. Box 262  
50 Broadway  
Hawthorne, NY 10532  
(914)747-0828
- Westchester Jewish Community Services  
845 North Broadway  
White Plains, NY 10603  
(914)761-0600
- Victims Assistance Services  
2 Westchester Plaza  
Elmsford, NY 10523  
(914) 345-3113

### Off-campus healthcare providers:

- Westchester Medical Center SAAVE Program  
100 Woods Rd  
Valhalla, NY 10595  
Main Number: (914) 493-7000 / 24-Hour Crisis Hotline: 1-833-220-2444
- New York State Office of Victims Services  
<https://ovs.ny.gov/>

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:

- Hopes Door Family Justice Center, County Courthouse  
111 Martin Luther King Jr. Blvd  
White Plains, NY 10601  
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, employees in attendance are required to report such information to the Title IX Coordinator. The Title IX Coordinator is not obligated to respond directly to any identified complainant in a report of sex-based harassment disclosed at a public awareness event that takes place on-campus or in a school-sponsored online platform unless there is an imminent and serious threat to someone's health or safety. The Title IX Coordinator must respond to reports of conduct that could constitute sex discrimination other than sex-based harassment if disclosed at public awareness events, wherever they occur. In all cases the College must use the information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

**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:

New York State Police Campus Sexual Assault Hotline

1-844-845-7269

This number is monitored 24/7

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 sex discrimination because it is the only way that responsive action can be taken against perpetrators of sex discrimination. 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 sex-based harassment 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 College investigation while the law-enforcement agency gathers evidence. These temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay.

The College of Westchester can assist students in contacting law enforcement and legal services organizations to learn about additional remedies that may be available.

### **Protective Orders**

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

The College is available to assist members of the campus community in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order from any state or federally recognized tribal court. If the College receives an order of protection of equivalent, an institution representative or other appropriate person will reach out and provide a copy of the order. Upon request they can also provide an explanation of the order, including the consequences for violating these orders, and answer questions about it. Campus security will provide assistance in effecting an arrest when an individual violates an order of protection.

## **REPORTING TO THE COLLEGE**

This section includes how to make a report and the College's response to reports.

### **How to Make a Report to the College**

All complaints of violations of this policy will be taken seriously and in good faith. The Title IX Coordinator will provide information and guidance regarding how to file a complaint with the College and/or local law enforcement, as well as information and assistance about what course of action may best support the individual(s) involved and how best to address the complaint.

Every reasonable effort will be made to maintain the privacy of those making a report to the extent possible. In all cases, the College will give consideration to the party bringing forward a report with respect to how the matter is pursued. The College may, when necessary to protect the community, initiate an investigation or take other responsive actions to a report, even when the person identifying a concern chooses not to participate in a resolution process and/or requests that the College not initiate an investigation.

Employees, students, guests, or visitors who believe that this policy has been violated should promptly contact the Coordinator or another member of the Title IX Office as follows:

### **Title IX Coordinators**

325 Central Avenue  
White Plains, NY 10606

**Lavada Carruthers**, 914-831-0263, [lcarruthers@cw.edu](mailto:lcarruthers@cw.edu)

**Janna Gullery**, 914-831-0401, [jgullery@cw.edu](mailto:jgullery@cw.edu)

**Deputy Title IX Coordinator, Anna Bravo**, 914-831-0353, [abravo@cw.edu](mailto:abravo@cw.edu)

There is no timeline for making a report of sex discrimination, however, the College encourages the prompt reporting of a complaint as the ability of the College to pursue the complaint to conclusion may be hindered by the passage of time.

### **Initial Contact**

Following receipt of a report alleging a potential violation of this policy, the Title IX Coordinator will contact the complainant to meet with the Title IX Coordinator for an initial intake and assessment meeting, and will provide the following:

- An invitation to meet to offer assistance and explain their rights, resources, and options under this policy;
- Access to this policy;
- Information regarding available campus and community resources for counseling, health care, mental health, or victim advocacy. Upon request, information regarding

legal assistance, visa and immigration assistance, student financial aid and other available services may be provided;

- The availability of supportive measures regardless of whether a complaint is filed and/or any resolution is initiated;
- The options for resolution (no action, prevention, agreement, investigation) and how to initiate such resolution processes;
- The right to notify law enforcement as well as the right not to notify law enforcement;
- The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Campus Security or local law enforcement in preserving evidence;
- The right to an advisor of choice, if applicable, during College proceedings under this policy including the initial meeting with the Title IX Coordinator;
- A statement that retaliation for filing a complaint, or participating in the complaint process, is prohibited;
- Information on how to initiate the informal resolution or investigation process.

### **Initial Intake & Assessment**

The Initial Assessment process seeks to gather information about the nature and circumstances of the report to determine whether this policy applies to the report and, if so, which resolution process may be appropriate, as well as which section of the resolution procedures apply based on the conduct and the status of the parties. The Title IX Coordinator may also determine that the provision of supportive measures only is the appropriate response under the policy. The initial assessment is not a finding of fact or responsibility. If the individual bringing forward the complaint is not the actual complainant, the Title IX Coordinator will limit communication to general information on policies and processes.

Should the complainant wish to initiate a resolution process, the Title IX Coordinator will determine whether this policy applies and, if so, the appropriate process under this policy. The Title IX Coordinator will communicate to the complainant this determination.

If the information provided does not suggest a potential violation of this policy, the Title IX Coordinator will provide the complainant written notice that the matter is being closed or referred for handling under a different policy by another office, if applicable.

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

If you disclose an incident to The 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 our 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:

- The complainant's request not to proceed with initiation of a complaint;
- The complainant's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of Prohibited Conduct would occur if a complaint is not initiated;
- The severity of the alleged Prohibited Conduct, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the parties, including whether the respondent is an employee of the College;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decisionmaker in determining whether sex discrimination occurred; and
- Whether the College could end the alleged sex discrimination and prevent its recurrence without initiating its resolution procedures under this policy.
- Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other persons, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its education program or activity.
- 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,
- The 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 we 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.

### **Supportive Measures**

Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- Restore or preserve that party's access to the College's education program or activity, including measures that are designed to protect the safety of the parties or the College's educational environment; or
- Provide support during the College's resolution procedures or during an alternative resolution process.

Supportive measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; no-contact directives (which may be mutual or unilateral at the discretion of the Title IX Coordinator); and training and education programs related to sex-based harassment. Supportive measures are non-disciplinary and non-punitive. Supportive measures will also be offered to respondents when they are notified of the allegations.

Any supportive measures put in place will be kept confidential, except when doing so impairs the ability of the institution to provide the supportive measures.

The College will offer and coordinate supportive measures as appropriate for the parties as applicable to restore or preserve their access to the College's program or activity or provide support during the College's alternative resolution process or resolution procedures. Prohibited Conduct under this policy have the right to request supportive measures from the College regardless of whether they desire to make a complaint or seek alternative resolution.

A party may challenge the College's decision to provide, deny, modify, or terminate supportive measures when such measures are applicable to them. An impartial employee will be designated to consider modification or reversal of the College's decision to provide, deny, modify, or terminate supportive measures. When the individual providing supportive measures is a Deputy

Title IX Coordinator or other individual identified by the Title IX Coordinator to provide supportive measures, the Title IX Coordinator will be designated to consider the challenge regarding supportive measures. The impartial employee will typically respond to the challenge within five (5) days.

The Title IX Coordinator has the discretion to implement or modify supportive measures. Violation of the parameters of supportive measures may violate existing codes or handbooks.

### **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:

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.

### **Coordination Among Multiple Institutions**

When such conduct involves students or employees from two or more institutions, such institutions may work collaboratively to address the conduct provided that such collaboration complies with the Family Educational Rights and Privacy Act.

### **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.

## **INTERNAL RESOLUTION PROCEDURES**

There are multiple ways to resolve a complaint or report of sex discrimination. Whenever possible, the College will utilize the resolution method chosen by the complainant. During the resolution of a complaint, the Title IX Coordinator will determine whether to implement reasonable supportive measures designed to assist all parties (complainants and respondents) and community members in maintaining access to and participation in College programs, services and activities during the resolution of the complaint.

The options for resolution include support-based only, informal resolution, and the grievance procedures (investigation and hearing).

### **A. Support-Only Resolution**

A support-based resolution is an option for a complainant who does not wish the College to take any further steps to address their concern, and when the Title IX Coordinator determines that another form of resolution, or further action, is not required. Some types of support that may be appropriate include: adjustments or changes to class schedules; moving from one residence hall room to another; adjusted deadlines for projects or assignments; adjustments to work schedule or arrangements; escorts to and around campus; or counseling.

A support-based resolution does not preclude later use of another form of resolution, for example if new information becomes available to the College and the Title IX Coordinator determines there is need for additional steps to be taken, or the complainant later decides to pursue an informal resolution or investigation and hearing.

### **B. Informal Resolution**

Once a report is made, an impacted individual has the option to proceed with informal resolution or to make a complaint, which is a request to initiate an investigation. The complainant may initially choose informal resolution and later decide to request the initiation of an investigation. A complainant may also request an investigation initially and, before a determination is made, the parties may mutually agree, with approval of the Title IX Coordinator, to exit the grievance process to attempt informal resolution. The informal

resolution process is designed to resolve reports 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 exit the formal process and enter into the informal process at any point, including after the commencement of the formal process.

The informal resolution process 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. The informal resolution process is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. The informal resolution process 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. The informal resolution process is not appropriate for certain cases, such as alleged sexual assaults, even on a voluntary basis.

Prior to the initiation of informal resolution, the Title IX Coordinator will provide the Parties written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the informal resolution process;
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared, and whether College could disclose such information for use in a future College resolution process, including an investigation and resolution process arising from the same or different allegations, as may be appropriate.
- Notice that an agreement resulting from the informal resolution process is binding only on the parties and is not subject to appeal.
- Notice that once the Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations.
- A statement indicating that the decision to participate in the informal resolution process does not presume that the conduct at issue has occurred.
- A statement that the respondent is presumed not responsible for violating this policy, unless respondent admits to violations of this policy;
- An explanation that all parties may be accompanied by an advisor of their choice, who may be a parent, colleague, friend, or attorney;
- A statement that any party has the right to withdraw from the informal resolution process and initiate or resume resolution procedures at any time before agreeing to a resolution;
- If known, the date and time of the initial meeting with staff or the Title IX Coordinator, with a minimum of 3 days' notice;
- Information regarding Supportive Measures, which are available equally to the parties; and
- The potential terms that may be requested or offered in an informal resolution agreement.

### Facilitating an Agreement

If all Parties are willing to explore informal resolution, the Title IX Coordinator will then meet separately with each party to discuss the informal resolution process and facilitate an agreement. If parties agree to the Informal Resolution Process, parties will be asked to sign an Agreement to Enter the Informal Resolution Process. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the informal resolution process, or the Title IX Coordinator does not believe that the terms of the agreement or continuing the informal resolution process is appropriate, the Title IX Coordinator may decide that the reported conduct will instead be addressed through the investigation and hearing process. The Title IX Coordinator will inform the parties of such decision, in writing.

Informal resolution processes are managed by facilitators who do not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions. The investigator or Decisionmaker for the matter may not facilitate an informal resolution in that same matter.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

- An agreement that the respondent will change classes or housing assignments;
- An agreement that the Parties will not communicate or otherwise engage with one another;
- An agreement that the Parties will not contact one another;
- Completion of a training or educational project by the respondent;
- Completion of a community service project by the respondent;
- An agreement to engage in a restorative justice process or facilitated dialogue; and/or
- Discipline agreed upon by all parties.

In order to facilitate informal resolution, information shared by any party will not be used in any related resolution process of the same complaint under this policy. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any outside person, provided that any party to the informal resolution process may generally discuss the allegations under investigation with a parent, advisor, or other source of emotional support, or with an advocacy organization. An admission of responsibility made during an informal resolution process, however, may not be incorporated into the investigation and adjudication proceeding.

### Finalizing the Resolution Agreement

Once the final terms of the Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The informal resolution process is generally expected to be completed within thirty (30) days and may be extended

by the Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

Records of an informal resolution process can be shared with other offices as appropriate.

Any violations of the terms of the Resolution Agreement may result in disciplinary action.

### **C. Grievance Procedures: Investigation and Hearing Process**

Complainants may request that the College initiate an investigation into their report. This request may be made in person, orally to an appropriate official, or in writing.

Upon receipt of this request, the Title IX Coordinator or designee will:

- Open a formal case file and determine any necessary interim 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.

Additional information about reporting matters involving conduct by an employee may be found by contacting Human Resources: Anna Bravo, [ABravo@cw.edu](mailto:ABravo@cw.edu) or 914-831-0353.

#### Interim Protective Measures

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

- Interim suspension pending the outcome of an investigation (so long as the interim suspension is used not as a disciplinary sanction, but rather, as an interim tool to protect the safety of campus community members, such as in the event that the presence of the respondent presents a continued threat to the health and safety of the community)
- Temporary designation as a persona non grata and deemed unauthorized to enter the campus premises (only in the event that the accused is not an active student and also presents a continuing threat to the safety of the campus community)

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 complainants 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 the protective measures 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 student or employee complainant or the student or employee respondent may request review and modification of any interim protective measure(s) that directly impacts him or her, including review of the need for and terms of the interim 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 their 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.

## Notice of Investigation

Prior to the start of an investigation, the Parties will be provided a written Notice of Investigation communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Investigation shall be provided to all parties.

The Notice shall include, at a minimum:

1. The College's investigation procedures, including the applicable determination procedure that will be used in this investigation and resolution, and a link to the relevant policies;
2. Information about the informal resolution, with a link to the full procedures.
3. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the specific type of Prohibited Conduct, and the date(s), time(s), and location(s) of the alleged incident(s);
4. A statement that retaliation is prohibited;
5. Whether the investigator, or another individual, shall serve as the Decisionmaker.
7. Expected length of the major stages of the resolution process, as well as any applicable deadlines.
8. The Notice will inform the parties that the investigator will establish and communicate, in writing, all investigation deadlines, including the final deadlines for submitting names of witnesses, evidence, and relevant questions to ask a party or witness. These deadlines may be extended by the Title IX Coordinator for good cause, and any changes will be provided, in writing, to the parties, along with the rationale for the revised deadline(s).
9. The process for raising a challenge to the appointed resolution officer or Title IX Coordinator, and the deadline for doing so.
10. A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
11. A statement that the parties may have an advisor of their choice who may be a friend, parent, therapist, colleague, or attorney;
12. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence; and
13. The College's Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the resolution procedures.
14. If known, the date and time of the initial interview with the Investigator, with a minimum of five (5) days' notice.

## Impermissible Evidence

### *Information Regarding Romantic and Sexual History*

Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.

Under New York state law, in matters of sexual assault, domestic violence, dating violence, and stalking, all parties have the right to exclude their own prior sexual history with persons other than the other party in the investigation and decision-making process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. The limit does not cover evidence of prior sexual history with the other party in the investigation that is relevant to an allegation or defense of an allegation.

#### *Information regarding 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.

#### Evidence Review

At the conclusion of all fact-gathering, the investigator will provide each party and their advisor, if any, the opportunity to review all relevant and not otherwise impermissible evidence gathered.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation and to submit any additional relevant evidence, questions for parties or witnesses, or the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence or names of witnesses. Given the sensitive nature of the information provided, the College will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have a minimum of five (5) days to inspect and review the evidence and submit a written response in writing to the investigator. The College will provide access to copies of the parties' written responses to the investigator to all parties and their advisors, if any. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors. The parties shall have 5 days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The investigator will consider the parties' written responses before finalizing the investigation report.

The parties may each submit a written impact statement prior to the conclusion of the resolution process. The impact statement is not evidence and will be reviewed only after a determination of responsibility is reached.

#### Investigation Report

The investigator will prepare a written report summarizing all of the relevant evidence gathered and all steps taken during the investigation process. The investigator will also include as an attachment all relevant evidence gathered during the investigation, as well as all interview notes.

#### Conclusion of Investigation, Notice of Hearing

Once the investigation report is final, the report together with all attachments shall be provided to each party and to their advisor, if any, in a secure manner (e.g., by providing digital copies of the materials through a protected, "read-only" web portal). Each party shall have ten (10) days to provide a response. The response, if any, shall be provided to the Hearing Officer.

Following conclusion of the investigation, each party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Officer, the process to be used at the hearing, deadlines for submission of evidence, names of witnesses, or questions to be reviewed by the Hearing Officer to ensure they are relevant to the allegations. The hearing shall be scheduled no less than ten (10) days from the date of the Notice of Hearing.

Within three (3) days of receipt of the Notice of Hearing, either party may object to the Hearing Officer on the basis of a demonstrated bias or actual conflict of interest. Any objection is to be in writing and sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator shall remove the Hearing Officer and appoint another.



### Hearing Procedures

The purpose of a hearing is for a Hearing Officer to determine whether the conduct occurred as alleged, and if so, whether that conduct violates this policy. The College expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via videoconferencing. The Title IX Coordinator may determine that the hearing will continue in the absence of any party or any witness.

The College will appoint a Hearing Officer, who may be the same person as the Title IX Coordinator or investigator, who will determine whether a violation of College policy has occurred. Depending on the allegations, the College may appoint a panel of Hearing Officers, in which case it will also select a Hearing Chair. The Hearing Officer shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a party's absence from the hearing or refusal to answer questions posed.

Each hearing shall be recorded by the College and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the College but shall be available for listening until the conclusion of the appeals process to complainant, respondent, their respective advisors, Hearing Officer, and Appeal Officer by contacting the Title IX Coordinator.

#### *Prior to the Hearing*

The parties and the Hearing Officer all have the right to call witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Parties who wish to call witnesses must submit the name of the witness at least five (5) days in advance of the hearing.

Only witnesses who participated in the investigation will be permitted to participate in the hearing, unless the witness was otherwise unknown or not known to have relevant information during the course of the investigation. If the witness did not participate in the investigation, the party must also provide the reason the witness was not interviewed by the investigator, and what information the witness has that is relevant to the allegations. The Hearing Officer will then determine whether the witness has relevant information and if there is sufficient justification for permitting the witness to participate. The Hearing Officer may instead send the case back to the investigator to interview the newly proffered witness prior to the hearing taking place.

A list of witnesses approved by the Hearing Officer will be provided to the parties at least three (3) days prior to the hearing.

Three (3) days prior to the hearing, each party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other party, or to a witness. If the

Hearing Officer determines that any questions are not relevant or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Hearing Officer must give a party an opportunity to clarify or revise any question that the Hearing Officer has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, and the question is relevant, the question will be asked.

#### *Advisor*

Each party is entitled to be accompanied by one advisor at the hearing. The role of the advisor is to assist the party with understanding and navigating the proceedings. The advisor may not advocate for, respond for, or otherwise speak on behalf of, a party during the hearing. In the event that a party does not appear for the Hearing, the advisor for that party may not participate in the hearing or submit questions to be asked on behalf of the party.

#### *Hearing Participation Guidelines*

The Hearing Officer shall have the authority to maintain order and decorum at the hearing, including responding to disruptive or harassing conduct, and when necessary to adjourn the hearing or exclude the disruptive person. In the event the Hearing Officer removes an advisor, the Hearing Officer will have the discretion to appoint another advisor for the remainder of the hearing. The Hearing Officer also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing.

#### *Statements, Questioning and Presentation of Evidence*

During the hearing, each party will be permitted to provide an introductory statement. Following introductory statements, the Hearing Officer will call parties and witnesses for questioning. The order of questioning shall be determined by the Hearing Officer. The Hearing Officer will pose questions to the parties and witnesses including the questions the Hearing Officer approved to be asked that were submitted by each party prior to the hearing. Each party will then be provided an opportunity to submit follow-up written questions to the Hearing Officer for the Hearing Officer to pose to the other party or witnesses. If the Hearing Officer determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing and offer an opportunity to the party to reframe or resubmit the question. Questions that are unclear or harassing of the party or witness being questioned will not be permitted.

Only the Hearing Officer is permitted to ask questions of parties and witnesses. Neither party may directly question the other party or witness. Advisors are not permitted to directly or indirectly question the other party or witness.

Following the questioning of parties and witnesses, each party will be permitted to provide a closing statement. An advisor is not permitted to provide a closing statement on behalf of their party.

### Hearing Officer's Report

Following the hearing, the Hearing Officer shall prepare a determination report. All findings shall be made by a preponderance of the evidence, meaning more likely than not. To the extent credibility determinations need to be made, such determinations shall not be based on a person's status as complainant, respondent, or witness.

The Hearing Officer's report shall be provided to the Title IX Coordinator. If the Hearing Officer determines that there is no finding of responsibility, the Title IX Coordinator shall communicate the findings to each party, and their advisor should the party wish the advisor to receive it, a written Notice of Outcome along with a copy of the Hearing Officer's report, to the parties, together with procedures for appeal.

The determination report and notice of outcome will include:

- A description of the sex-based discrimination or harassment and other allegations if applicable;
- A reference to the policies and procedures used to evaluate the allegations;
- Description of all procedural steps taken to date;
- The Hearing Officer's evaluation of the relevant and not otherwise impermissible evidence along with the finding of facts;
- Determinations for each allegation, with the rationale;
- Determination of sanction(s)
- Whether remedies will be provided;
- The procedures for an appeal.

The Title IX Coordinator will then provide each party, and their advisor should the party wish the advisor to receive it, a written Notice of Outcome regarding the Hearing Officer's decision, including the Hearing Officer's report. The Title IX Coordinator will also provide written communication to the complainant regarding any appropriate remedies.

Past findings of responsibility relating to this policy or any other College policy are admissible in the sanctioning stage only.

### 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.

### 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 a dismissal of a complaint and/or the determination by submitting a letter of appeal to the Title IX Coordinator, who will forward it to an appointed Appeals Officer or Appeals Panel for review. 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. All other appeals will be reviewed the appointed Appeals Officer. In the event that the appeal is heard by an Appeals Panel, the appeal determination need not be unanimous but, at least two of the panel members must agree on the outcome. 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) days.

Requirements for appeal:

1. The appeal is made within ten (10) days of the original determination, 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 Title IX Coordinator, investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome. Any evidence supporting the

alleged conflict of interest or demonstrated bias must be included in the written appeal.

d) The sanctions fall outside the range typically imposed for this offense, or for the cumulative conduct record of the Accused

If the Appeal Officer/Panel determines that the request for appeal sets forth a legitimate ground for appeal, they will notify the non-appealing party and give them the opportunity to review the letter of appeal and submit a written response within five (5) days of notification.

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

1. Decisions by the Appeal Officer/Panel 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/Panel will normally render a written decision on the appeal to all parties within seven (7) 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 ten (10) days of the determination's rendering, the Title IX Coordinator will provide both parties with written notice that the determination is final.

### **Privacy During and After the Resolution Process**

Parties have the right to choose whether to disclose or discuss the outcome of a conduct or judicial process. However, parties are prohibited from unreasonably sharing private information in a manner intended to harm or embarrass another individual, or in a manner that would recklessly do so regardless of intention.

Parties have a right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

### **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 sex discrimination. In cases involving allegations of sex-based harassment, , 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 measures.

### **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 health care 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 any time.

## **EXTERNAL REMEDIES**

The College of Westchester is committed to responding quickly and effectively to any internal report of harassment and encourages employees and non-employee 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 non-employee 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, including students, 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 against employers, 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.

### **Office for Civil Rights**

U.S. Department of Education

32 Old Slip, 26th Floor

New York, NY 10005-2500

Telephone: 646-428-3800\*

Fax: 646-428-3843

Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

### **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 sex discrimination, 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 sex discrimination 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 sex discrimination. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sex discrimination occurred: \_\_\_\_\_

Is the sex discrimination continuing? Yes/No

