



# **SEXUAL MISCONDUCT POLICY**

**Title IX Coordinator:**

**Ann Spayd**

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**MARION S. WHELAN SCHOOL OF PRACTICAL NURSING**  
**SEXUAL MISCONDUCT POLICY**

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**Marion S. Whelan School of Practical Nursing**  
**Sexual Misconduct Policy**  
**2019-2020**

**I. INTRODUCTION**

Marion S. Whelan School of Practical Nursing (School) is committed to providing a positive emotional and physical environment for all students, faculty, staff, administrators, and guests. The health, safety, and well-being of all members of the School community are the School's primary concerns. In accordance with Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Act/Campus Sexual Violence Act (Campus SaVE Act), and Article 129-B of the New York State Education Law, the School is committed to providing a safe community, free from all forms of sex discrimination, including sexual misconduct.

Sexual misconduct can occur in many forms and will not be tolerated in the School's educational programs or activities. Sexual harassment and sexual violence, including the offenses of sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking are all forms of sexual misconduct and are strictly prohibited by the School and Title IX. The School is committed to creating and maintain an educational environment free from sexual misconduct through coordinated education and training efforts; procedures for the adequate, reliable, prompt, and impartial investigations and resolution of incidents of sexual misconduct; and eliminating, preventing, and addressing the effects of sexual misconduct. Any individual who is found in violation of this policy may face disciplinary action up to and including expulsion or termination of employment.

**II. NOTICE OF NON-DISCRIMINATION**

The School does not permit discrimination or harassment in its programs and activities on the basis of (but not limited to) race, color, ethnic or national origin, religion, creed, age, disability, sex, gender, gender identity or gender expression, sexual orientation, familial status, pregnancy, medical condition, predisposing genetic characteristics, military status, veteran status, domestic violence victim status, or criminal conviction.

Marion S. Whelan School of Practical Nursing is committed to creating and maintaining an educational environment free from all forms of sex discrimination, including sexual harassment, sexual violence, domestic and dating violence and stalking. The school does not discriminate on the basis of sex in its educational, extracurricular, other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The school encourages prompt and accurate reporting of sexual misconduct. The school, as an educational community, will respond promptly and equitably to reports of sexual misconduct in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

### **III. SCOPE OF POLICY**

This policy governs sexual misconduct involving School students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, visiting, conducting business or having any official capacity with the School or organization property.

This policy is intended to protect and guide individuals who have been affected by sexual misconduct, whether as a Complainant, a Respondent, or a third party, and to provide fair and equitable procedures for investigation and resolution of reports. Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed by the Non-Discrimination Policy contained in Student Handbook.

If the respondent is a School employee or other person doing business with the School, the investigation and disciplinary processes described in the Employee Handbook will apply. For information about this policy, please contact the Title IX Coordinator.

This policy applies to any allegation of sexual misconduct that:

- (1) Takes place on School property or on any property on which a School program or activity takes place; or
- (2) Takes place off-campus but that has a continuing adverse effect or reasonably creates a hostile environment on campus.

A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if the School does not have jurisdiction over the Respondent, the School will still take prompt action to provide for the safety and well-being of the Complainant.

### **IV. 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 investigation and hearing process and/or criminal justice process free from pressure from the School;
- 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 School 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 School representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the School, any student, the accused and/or respondent, and/or their friends, family and acquaintances within the jurisdiction of the School;
- 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 or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the School;

## **V. STUDENT CODE OF CONDUCT**

It is the policy of the School to promote a productive learning environment, professionalism and the maintenance of public order and provide an environment conducive to student learning. This policy shall govern the conduct of students, faculty and other staff as well as visitors and guests. This policy applies regardless of whether the violation occurs on or off campus.

Students are held responsible for their conduct at all times. Any student who becomes disorderly is involved in a disturbance, interferes with the rights of others, damages property, brings the name of the School into disrepute, or is individually or as a member of a group involved in unacceptable social behavior on or off campus shall be subject to disciplinary action.

Professional conduct is exhibited in behaviors, which reflect personal accountability, values, integrity, responsibility and ethical practices. Professional behaviors include:

- Adhering to the ethical and legal tenets of educational practices and learning environments.
- Maintaining confidentiality and adhering to the tenets of HIPAA and FERPA.
- Maintaining boundaries within the patient relationship and/or maintaining boundaries in the faculty/student relationship or staff/student relationship.
- Complying with the school, parent organization as well as any partnering agencies' policies.
- Using appropriate language.
- Adhering to established dress code.

- Refraining from behaviors which are counterproductive or injurious to others such as gossip, stereotyping, and bullying.
- Adhering to other related policies to include academic integrity, professional standards, bullying, and sexual misconduct.

## **VI. TITLE IX COORDINATOR**

The School has designated the Student Service Coordinator Ann Spayd to serve as the School's Title IX Coordinator. The Title IX Coordinator oversees the School's centralized review, investigation, and resolution of reports of violations of this policy. The Coordinator also oversees the School's overall compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual misconduct involving students, staff, administrators, faculty, vendors, and visitors in an equitable and neutral manner;
- Identifying and addressing any patterns or systemic problems of sexual misconduct that arise during an investigation of sexual misconduct;
- Knowledgeable and trained in School policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the School , both informally and formally, and in the community;
- Available to provide assistance to any School employee regarding how to respond appropriately to a report of sexual misconduct;
- Assessing the effects of sexual misconduct on the campus climate and;
- Responsible for holding records of reports and investigations for a minimum of 5 years.

Title IX violations involve a team approach, members include; the Title IX Coordinator, Dean of the School, and a small committee of individuals who "need to know" in order to implement procedures under this policy and to be responsible for providing training, prevention and education efforts and periodic reviews of climate and culture.

Information about public awareness and advocacy events, including guarantees that if an individual discloses information through a public awareness event such as candlelight vigils, protest, or other public event, the school is not obligated to begin an investigation based on such information. The school may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

Inquires or complaints concerning the application of Title IX, the Campus SaVE Act and/or Article 129 B of the New York Stated Education Law may be referred to the School's Title IX Coordinator or the Assistant Secretary of the Office for Civil Rights (OCR).

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## VII. DEFINITIONS WITHIN THE POLICY

**“Accused”** means a person accused of a violation of this Policy who has not yet entered the School’s judicial or conduct process.

**“Bystander”** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the School.

**“Code of Conduct”** means the written policies adopted by the School governing student behavior, rights, and responsibilities while such student is matriculated at the school.

**“Complainant”** means the individual who reportedly experienced sexual misconduct, regardless of whether such individual reports such sexual misconduct to the School or participates in the School’s conduct process for responding to complaints of sexual misconduct described herein.

**“Confidentiality”** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a). Licensed mental health counselors, medical providers and pastoral counselors are examples of School employees who may offer confidentiality.

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



The following six principles, along with above definition, will be used to evaluate whether sexual activity was consensual;

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- 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, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.
- Consent cannot be given when it is the result of any coercion, intimidation, force, threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**“Dating Violence”** means violence or coercive behavior committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the complainant’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. Dating violence includes, but is not limited to, sexual, physical, or psychological abuse, or the threat of such abuse.

**“Domestic Violence”** means 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 the domestic or family violence laws of New York, 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.

**“Fondling”** means the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will when the complainant is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**“Force”** means the use of physical violence and/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. The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact, and is prohibited.

**“Gender Identity”** refers to an individual’s internal sense of gender. A person’s gender identify may be different from or the same as the person’s sex assigned at birth.

**“Incapacitation”** occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the

degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

**“Intimidation”** means implied threats that reasonably cause another to fear for his/her safety or well-being.

**“No Contact Order”** is a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

- If the accused or respondent and a third party observe each other in a public place it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual.

**“Privacy”** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate School employees.

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

**“Reasonable person”** means a person under similar circumstances and with similar identities to the victim.

**“Reporting Individual”** encompasses the terms victim, survivor, complainant, claimant, witness with victim status, or any other term used by the School to reference an individual who brings forth a report of a violation of this Policy.

**“Respondent”** means a person accused of a violation who has entered the School’s conduct process.

**“Responsible Employee”** is a School employee who has the authority to redress sexual misconduct, who has a duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty. A responsible employee must report all relevant details (obtained directly or indirectly) about the alleged sexual misconduct shared by the reporting individual to the Title IX Coordinator. Such information includes dates, times, locations, and names of parties and witnesses. A responsible employee will strive to maintain privacy, and information reported to the responsible employee will be shared only with those having a need to know such information in order to respond in accordance with School policy.

**“Retaliation”** means taking any adverse action or attempting to take adverse action against a person for making a good faith report of sexual misconduct or participating in any proceeding under this policy. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

**“Sex Assigned at Birth”** means the sex designation recorded on an infant’s birth certificate should such a record be provided at birth.

**“Sexual Activity”** includes any **“sexual act”** or **“sexual contact”** as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246 (3)

- A “sexual act” means (a) contact between the penis and vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight of the anal or genital opening of another by hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- “Sexual contact” means the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

**“Sexual Assault”** includes non-consensual sexual intercourse and non-consensual sexual contact.

“Non-consensual sexual intercourse” means any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any object by an individual upon another individual without consent and/or by force. Intercourse means: vaginal or anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

“Non-consensual sexual contact” means any intentional sexual touching, however slight, with any body part or object by an individual upon another individual without consent. Intentional sexual contact includes contact with the breasts, buttocks, or groin, or touching another with any of these body parts; making another person touch any of these body parts; and any intentional bodily contact in a sexual manner.

**“Sexual Coercion”** is 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.

**“Sex Discrimination”** All forms of sexual harassment, sexual assault, and other sexual violence by employees, students or third parties against employees, students, or third parties.

**“Sexual Exploitation”** means 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. Examples of sexual exploitation include:

- Causing or attempting to cause the incapacitation of another person for purposes of comprising that person’s ability to give Affirmative Consent to the sexual activity;

- Causing the prostitution of another person;
- Electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person without the person's consent;
- Disseminating or posting images of private sexual activity;
- Engaging in voyeurism;
- Distributing intimate or sexual information about another person; and/or
- Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

**“Sexual Harassment”** means unwelcome conduct of a sexual nature, including but not limited to, sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic or physical conduct of a sexual nature, when:

(1) Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education or campus life activities, or used as the basis of any academic, student life or employment decision (quid pro quo); or

(2) Such conduct is sufficiently severe, persistent or pervasive such that it unreasonably interferes with, or limits an individual's ability to participate in, or benefit from, the School's education or work programs or activities (hostile environment). Whether a hostile environment has been created will be evaluated from both a subjective and an objective perspective.

In evaluating whether a hostile environment exists, the School will consider the totality of known circumstances, including, but not limited to:

- The degree to which the conduct affected one or more students;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment;
- The number of individuals involved;
- The age and sex of the alleged harasser and the subject or subjects of the harassment;
- The locations of the incidents, and the context in which they occurred;
- The effect of the conduct on the reporting individual's mental or emotional state;
- Whether the conduct unreasonably interfered with the reporting individual's educational performance or participating in School programs and activities;
- Whether the conduct implicates concerns related to academic freedom or protected speech; and
- Whether the conduct arose in the context of other discriminatory conduct.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Physical conduct:
  - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements

- Unwanted sexual advances within the employment context
- Verbal conduct:
  - Making or using derogatory comments, epithets, slurs or humor
  - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
  - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
  - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum if deemed severe, persistent, or pervasive by a reasonable party
  - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate
- Written conduct:
  - Letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
  - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
  - Offering employment benefits in exchange for sexual favors
  - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters or recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
  - Making or threatening reprisals after a negative response to sexual advances

**“Sexual Misconduct”** is a broad term that encompasses a wide range of prohibited behaviors of a sexual nature that is committed without consent or by intimidation, coercion, threat or force. Sexual Misconduct includes, but is not limited to, sexual assault, sexual coercion, sexual exploitation, sexual harassment, dating violence, domestic violence, and stalking.

**“Sexual Assault Forensic Examiner (SAFE) and Sexual Assault Nurse Examiner (SANE)”** are specially equipped and trained to handle sexual assault and gather evidence. The School has clinical affiliations with local health care agencies to provide this service; please contact the Title IX Coordinator.

**“Sexual Violence”** refers to a sexual act perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

**“Stalking”** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

For purpose of this definition:

**“Course of conduct”** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

**“Substantial emotional distress”** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**“Reasonable person”** means a person under similar circumstances and with similar identities to the victim.

**“Third party”** means any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

**“Transgender”** describes those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth. A transgender female is someone who identifies as female but was assigned the sex of male at birth.

Conduct that violates the School policy may also violate New York State laws and subject the perpetrator to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State penal Code, available at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>.

## **VIII. PROHIBITED RELATIONSHIPS BY PERSONS IN AUTHORITY**

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their professors, advisors, or other School employees.

Any individual may file a complaint alleging harassment or discrimination. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

## **IX. PRIVACY VS. CONFIDENTIALITY**

Marion S. Whelan School of Practical Nursing is committed to protecting the privacy of all individual's involved in a report of sexual misconduct. All faculty, and faculty who are involved in the School's Title IX response, including the Title IX Coordinator and hearing officers receive

specific instruction about respecting and safeguarding all private information. The School values the privacy of its students and understands that, for many victims of sexual misconduct, confidentiality is a primary concern. However, certain School employees are required by state and federal laws to share information from a report of sexual misconduct with the School and/or governmental agencies.

Students should be aware of the distinct meanings of privacy and confidentiality under this policy:

**“Privacy”** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate School employees. The use of this information will be limited to school employees in order to assist in the active review, investigation, and/or resolution of the report. School employees also known as a Responsible employee who have an obligation to report and cannot guarantee confidentiality will maintain the privacy of the reporting individual to the greatest extent possible and share information only on a need-to-know basis. The information that the reporting individual provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

**“Confidentiality”** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 168. The information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. Licensed mental health counselors, medical providers and pastoral counselors are examples of School employees who may offer confidentiality.

A student may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is prohibited by the Health Insurance Portability and Accountability Act (HIPPA). In the context of sexual misconduct, however, medical providers are required to notify law enforcement if a patient tells personnel that they have experienced sexual misconduct, and either a weapon was used, or child abuse is suspected. All evidence collected will be kept for up to 30 days, and there is no pressure to file a legal report unless desired. The patient has the right to request that a survivor advocate be present at the hospital or clinic.

**Request for Confidentiality:** The School is obligated by law to investigate all allegations of sexual misconduct regardless of whether the complainant wishes to file a complaint. Therefore, if a complainant reports an incident of sexual misconduct to a responsible employee, but wishes to remain anonymous or requests that no investigation into the incident be conducted, the School will assess whether it can honor the complainant’s request while still providing a safe, nondiscriminatory environment for all members of the School community, including the complainant. The Title IX Coordinator is designated to evaluate requests for confidentiality once a responsible employee is notified of alleged sexual misconduct.

When determining whether the reporting individual's request for confidentiality can be honored the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- Whether there have been other sexual misconduct complaints about the same accused;
- Whether the accused has a history of arrests or records from a prior school indicating a history of violence;
- Whether the incident represents an escalation in and unlawful conduct on behalf of the accused from previously noted behavior;
- Whether there is an increased risk that the accused will commit additional acts of violence;
- Whether the sexual misconduct was committed by multiple perpetrators;
- Whether the reporting individual's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- Whether the alleged sexual misconduct was perpetrated with a weapon;
- The age of the victim; and
- Whether the School has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence).

The presence of one or more of these factors could lead the School to investigate the alleged sexual misconduct and, if appropriate, pursue disciplinary action in a manner that may require the School to disclose the complainant's identity to the respondent. If the School determines that an investigation is required, the School will inform the complainant and take immediate action necessary to protect and assist the complainant. The School will take all reasonable steps to investigate and respond to the complaint while maintaining the complainant's privacy to the greatest extent possible.

If, after considering these factors, the School determines that it can honor the complainant's request for confidentiality, the School will nevertheless take all reasonable steps to respond to the complaint consistent with the complainant's request for confidentiality, and will take immediate action as necessary to protect and assist the complainant. The School will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys. If the School honors the request for confidentiality, the complainant must understand that the School's ability to meaningfully investigate the incident and pursue disciplinary action against the respondent may be limited.

### **Clery Act Reporting and Timely Warnings:**

When reporting crimes for the purposes of Clery Act compliance, the School will not release any personally identifying information about individuals involved in the sexual misconduct. The Clery Act also requires the School to issue timely warnings to the School community about certain crimes that have been reported and may continue to pose a serious or continuing threat to the campus community.



At no time will the School release the name(s) of the Complainant(s) to the general public without the express consent of the Complainant(s). The release of the Respondent's name to the general public is guided by the Family Educational Rights and Privacy Act (FERPA) and the Clery Act. All School proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and state and federal laws. No information shall be released from such proceeds except as required or permitted by law and School policy.

## **X. RESOURCES FOR SUPPORT**

Treating all members of the community with dignity, care, and respect is of the utmost importance to Marion S. Whelan School of Practical Nursing. Any individual who experiences or is affected by sexual misconduct, whether as a Complainant, a Respondent, or a third party will be referred to support and counseling services.

The School encourages all prompt reporting of any incident of sexual harassment, sexual violence, stalking, domestic violence, or dating violence to the School and to local law enforcement. The School recognizes that deciding whether or not to make a report to the School or law enforcement can be a difficult decision. All individuals are encouraged to seek the support of the School and community resources regardless of where the incident occurred. These trained professionals can provide guidance to either party in the event that a report and/or resolution under this policy is pursued.

As detailed below there are a number of resources available. There are confidential resources, which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of resources that will be discreet and private but are not considered confidential. 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 and confidentiality may be obtained directly from the agency.

### **Immediate Medical Assistance and Counseling:**

If you or someone you know is or may be the victim of any form of sexual misconduct, the School strongly urges you to seek immediate assistance. This is the best way to ensure that the victim receives appropriate medical care and emotional support. Assistance is available 24 hours a day, 7 days a week, from:

- Local Police and Emergency Assistance - Call 911
- Local hospitals – Call 911 to obtain contact information
- New York State Office of Victim Services Toll Free Number – (800) 247-8035
- New York State Domestic Violence Hotline - (800) 942-6906
- National Sexual Assault Telephone Hotline - (800) 656 - HOPE (4673)

### Onsite School Resources:

- Marion S. Whelan School of Practical Nursing: Ann Spayd AS, Title IX Coordinator (315)-787-4008
- Finger Lakes Health: 196 North Street Geneva, NY 14456 (315)-787-4000
  - Security (315) 787-4070
  - Medical provider- A medical provider can provide emergency and/or follow up medical services. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the steps to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution.  
**Finger Lakes Health does not have Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE) services.** However all hospitals in the state of New York are required to provide care for victims of sexual assault in the Emergency Department.

### Offsite School Recourses:

- New York State Domestic Violence Hotline - (800) 942-6906 more resources can also be found at <http://nyscasa.org/>.
- Employee Assistance Program (EAP) Family Counseling Service locations: Ontario, Seneca, Wayne, and Yates County (315) 789-2613, TTY 1 (800) 662-1220. Free to students and Employees of the School.
- Safe Harbors of the Finger Lakes Hotlines: Seneca and Ontario Counties: (800) 247-7273, Yates County: (800) 536-2897
- Victim Resource Center of the Finger Lakes Hotline: (866) 343-8808 Ontario, Wayne, Seneca and Yates County or call (315) 331-1171
- FF Thompson Hospital emergency room – SANE available 24 hours/day. 350 Parish St. Canandaigua, NY 14424 (585) 396-6000
- Newark-Wayne Community Hospital emergency room – SANE nurse on call (not always in the hospital). 1200 Driving Park Ave., Newark, NY 14513 (315) 332-2022

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 at <https://ovs.ny.gov/> or by calling (800) 247-8035.

## **XI. REPORTING SEXUAL MISCONDUCT**

There are multiple avenues for reporting sexual misconduct. A victim may choose to report to law enforcement, to the School, to both, or to neither. A report of sexual misconduct may come from an anonymous source as well. These reporting options are not exclusive and the victim may simultaneously pursue criminal and disciplinary action. The School will work with students to understand these options, how they differ, and provide assistance in notifying law enforcement authorities as needed.

Any individual who reports sexual misconduct and wished to move forward with an investigation can be assured that the report will be investigated and resolved in a fair and impartial manner. A Complainant, a Respondent and all individuals involved can expect to be treated with dignity and respect. In every report under this policy, the School will make an immediate assessment of any risk of harm to the Complainant or the broader community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the community.

Marion S. Whelan School of Practical Nursing encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to ensure the preservation of evidence and to begin a timely investigative and remedial response.

### **Law Enforcement Notification:**

If you are the victim of sexual misconduct, the School strongly encourages you to promptly report the incident to the police. Contacting law enforcement will ensure the preservation of evidence and facilitate a timely investigation and response. School representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. Except in instances where the victim is under the age of 18, the School will respect a victim's decision regarding whether or not to report an incident to local law enforcement. Where an incident involves the suspected abuse of a minor certain individuals, at the School may have an obligation to report to law enforcement under New York State Law.

### **School Notification:**

The School also urges victims and anyone who becomes aware of an incident of sexual misconduct to report the incident immediately to the School. The School is committed to providing an adequate, reliable, prompt, and impartial investigation and resolution to all allegations of sexual misconduct. Incidents of sexual misconduct should be reported to the School's Title IX Coordinator. Any incident of sexual misconduct reported to another School employee, with the exception of those employees designated as confidential, as set forth herein, will be reported by the employee to the Title IX Coordinator.

When the School receives a report from a student that he or she has been the victim of sexual misconduct, including dating violence, domestic violence, sexual assault or stalking, whether the

offense occurred on or off campus, the School will provide the reporting individual with a written explanation of his or her rights and options. The School will provide the reporting individual with written notification regarding existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid and other services available for victims both within the School and in the community. If the reporting individual is not the complainant, and the identity of the complainant is made known to the School, the School will provide such written notification to the complainant.

A complainant will have emergency access to the Title IX Coordinator, or his or her designee, who is trained in interviewing victims of sexual assault and who shall be available upon the first instance of disclosure by the complainant to provide information regarding options to proceed and other important information about his or her rights under School policy and the law. The complainant reserves the right to withdraw a complaint or his/her involvement in the School's investigation or resolution process at any time. However, in such instances the School's ability to respond will be limited and Title IX may nevertheless require the School to complete the investigation processes.

#### **Anonymous Notification:**

Any individual may make an anonymous report concerning an act of sexual misconduct without disclosing their name. If the School receives a report of alleged sexual misconduct by someone other than the complainant (e.g., friend or roommate) or from an anonymous source, the School's Title IX Coordinator will promptly notify the complainant of the report, and inform him/her of the available resources and assistance. In cases in which a report is made anonymously, this Policy will apply in the same manner as if the complainant had made the initial report.

#### **Reporting Considerations:**

**Timeliness and Location of Incident:** Complainants and third-party witnesses are encouraged to report any alleged sexual misconduct immediately in order to maximize the School's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation. The School's ability to investigate and respond effectively may be reduced with the passage of time. However, reports may be made at any time without regard to how much time has elapsed since the sexual misconduct. If the Respondent is not a member of the community, the School will still seek to meet its Title IX obligation by taking steps to end the misconduct, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent may be limited. An incident does not have to occur at the school to be reported to the School. Offsite conduct that is likely to have a substantial effect on the Complainant's onsite school life and activities or poses a threat or danger to members of Marion S. Whelan School of Practical Nursing community may also be addressed under this policy.

Under no circumstances will the School allow an impending graduation to compromise its resolution of a sexual misconduct complaint. The conferral of a degree may, therefore, be withheld, if necessary, until proper resolution of any sexual misconduct charges, provided that a hearing opportunity will be scheduled for the earliest practicable date that can accommodate the parties and their witnesses.

### **Amnesty for Alcohol or Other Drug Use:**

The health and safety of every student at School is of utmost importance. The School recognizes that students 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. The School strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to School officials. A bystander acting in good faith or reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to officials or law enforcement will be not be subject to discipline pursuant to the procedure outlined in the Student Handbook for violations of alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking or sexual assault incident.

### **Coordination with Law Enforcement:**

Sexual misconduct may constitute a violation of both law and School policy. The School encourages Complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under New York law. To the extent permitted by law, the School will assist a Complainant in making a criminal report and will cooperate with the law enforcement agencies should the Complainant decides to pursue a criminal investigation.

The School's policy, definitions of sexual misconduct, its process, and its standard of proof for a finding of responsibility for sexual misconduct may differ from the standards for finding a violation of criminal law. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct under this Policy, has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute. Additionally, a law enforcement determination of whether or not to prosecute a respondent is not determinative of whether the School will conduct an investigation under Title IX.

The filing of a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. The School will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the complainant and the School community. However, the School may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code. Temporary delays in the School's internal process may be requested by local law enforcement authorities for the purpose of gathering evidence. Any requested temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay. The School will cooperate with any criminal proceeding as permitted by law.

Additionally, orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a School community

member or other person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter or remain on School property, and Marion S. Whelan School of Practical Nursing will abide by a lawfully issued order of protection.

**Statement against Retaliation:**

The School prohibits retaliation against any person who reports sexual misconduct or participates in any proceeding under this Policy, including testifying as a witness. Retaliation should be reported promptly to the School's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the investigation procedures set forth in this Policy, and individuals found to have engaged in retaliation will be subject to disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct. An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

**False Reports:**

The School will not tolerate intentional false reports of incidents. The School takes the accuracy of information very seriously as a charge of sexual misconduct may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith the Complainant may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

## **XII. THE SCHOOL RESPONSE**

**Interim measures, remedies, and accommodations:**

In all complaints of alleged sexual misconduct, the School will take immediate steps to protect the Complainant and other affected parties, as well as the School community. In doing so, the School will undertake appropriate inquiry and take such prompt and effective action as reasonably possible under the circumstances.

To ensure the safety and well-being of the Complainant, the Title IX Coordinator also may take any further protective action that he/she deems appropriate concerning the interaction of the parties pending the hearing. When taking such steps to separate the Complainant and the Respondent, the School will, to the extent practicable, minimize the burden on the Complainant.

Any individual who has been the victim of sexual misconduct, regardless of whether the victim wishes to pursue a complaint or investigation under this Policy, may request accommodations/assistance in changing academic, transportation, and working situations. The School will grant such accommodations, provided they are reasonable and available. The School will promptly address violations of any interim measures.

**No Contact Order:** The School may impose a No Contact Order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. If the accused or respondent and reporting individual observe each other in a public place, it shall be the responsibility of the accused or Respondent to leave the area immediately and without directly contacting the reporting individual. In the event the School imposes a No Contact Order, the accused, respondent and/or reporting individual may request a review of the need for and terms of the No Contact Order, including potential modification, and may submit evidence in support of his or her request. The School will conduct a prompt review in response to such request.

**Order of Protection:** A Complainant also has the right to request the assistance of the School in acquiring an order of protection from either the Family or Criminal Court. If an order of protection is granted, the Complainant will have the right to receive a copy of the order of protection when the order is received by the School. The Complainant will also have the opportunity to meet or speak with an appropriate School employee who can explain the order and the consequences for violating the order, and answer any questions about the order. Additionally, if the order of protection is violated the Complainant may receive assistance from the School in calling local law enforcement to inform them of the violation.

**Range of Measures:** The Respondent and/or the Complainant will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for, and terms of an interim measure including potential modification, and will be allowed to submit evidence in support of his or her request. Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

**Interim measures will be implemented at the discretion of the School. Potential remedies, which may be applied to the Complainant and/or the Respondent, include but are not limited to:**

- **Access to counseling services and assistance in setting up an initial appointment**
- **Imposition of the School No Contact Orders**
- **Rescheduling of exams and assignments in conjunction with appropriate faculty**
- **Providing alternative course completion options (with agreement of the appropriate faculty)**
- **Adjustment of a student's academic or School work schedule**
- **Change a clinical site**
- **Assistance from School support staff in completing housing relocation**
- **Limit an individual or organization's access to certain School facilities or activities pending resolution of the matter**
- **Voluntary withdrawal**
- **Providing an escort to ensure safe movement between classes and activities**
- **Supervision or monitoring at locations or activities where the alleged misconduct occurred**

- **Interim suspension or School-imposed leave**
- **Any other remedy that could be tailored to the involved parties to achieve the goals of this policy.**

**Interim Suspension:** When the accused or Respondent is a student and is determined to present a continuing threat to the health and safety of the School community, the accused or Respondent may be subject to interim suspension pending the outcome of the hearing and resolution process, described herein. The accused, Respondent, and Complainant will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for, and terms of an interim suspension, including potential modification, and will be allowed to submit evidence in support of his or her request.

**Submitting a Request:** Requests for accommodations in connection with incidents of sexual misconduct should be submitted, in writing, to the School's Title IX Coordinator. The School will provide information about the student's request for accommodations only to those having a need to know such information in order to implement the accommodations. The accused, Respondent, and/or the reporting individual will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

**Right to Review:** **At any time, the complainant or accused may request review of the need for and the terms of any interim measures or accommodations imposed or requested that affect the individual directly and may submit evidence in support of his/her request. A request to add to, modify or eliminate an interim measure or accommodation may be made to the Title IX Coordinator. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Title IX Coordinator will respond to the request as promptly as possible, but generally no later than one calendar week after the request and the parties' submission of any evidence. The Title IX Coordinator may modify the interim measures or accommodations on a temporary basis while the parties are submitting their information and responses.**

### **XIII. STAGES OF A TITLE IX REPORTING**

The School is committed to providing a prompt, fair, and impartial investigation and resolution of all allegations of sexual misconduct. The School strongly encourages students to seek support and information on available resources on and off campus. Incidents of sexual misconduct should be reported to the School's Title IX Coordinator. Any incident of sexual misconduct reported to another School responsible employee, with the exception of those employees designated as confidential, will be reported by the responsible employee to the Title IX Coordinator.

**Intake Meeting with Complaint:** Upon notice of any allegation of sexual misconduct, the Title IX Coordinator or his or her designee will schedule, within three (3) days of receiving the report, an individual intake meeting with the Complainant. This intake meeting is separate and apart



from the Complainant's right to emergency access to the Title IX Coordinator or designee upon the first instance of disclosure. At the intake meeting, the Title IX Coordinator or his/her designee will provide the complainant with a general understanding of this Policy, and identify forms of support or immediate assistance available to the complainant. Such information includes, but is not limited to, the complainant's right to report the incident(s) to local law enforcement agencies, information concerning available medical treatment, information on available support services, how the School handles requests for confidentiality, and the School's policy against retaliation. The Title IX Coordinator or his/her designee will also provide the complainant with a written explanation of his/her rights and options with respect to his/her report of sexual misconduct. The intake meeting may also involve a discussion of any interim accommodations that may be appropriate concerning the complainant's academic schedule, and/or School employment arrangements. Additional information regarding interim accommodations is set forth below.

At the initial intake meeting or at a subsequent time the Title IX Coordinator or his/her designee will seek to determine how the Complainant wishes to proceed, i.e., whether the Complainant wishes to enter the School's resolution process, described in the "Resolution Process", or does not wish to pursue resolution of any kind. Regardless of how the Complainant chooses to proceed, the School seeks to resolve every report of sexual misconduct within 60 calendar days of the initial report, excluding any appeal. The time frames included in this policy may vary depending on the details of the Complaint and, in some cases, the time of the academic year (e.g., during School breaks or final exams). The School may extend any time frame for good cause and will provide the complainant and respondent with a written explanation as to the reason for such extension.

If the Complainant does not wish to pursue resolution through the School's Resolution Process and either requests that his/her complaint remain confidential, or refuses to participate in the initial intake meeting with the Title IX Coordinator, the Title IX Coordinator will inform the Complainant that the School's ability to meaningfully investigate and respond to the report may be limited. In such scenarios, Title IX nevertheless requires the School to evaluate the complainant's request(s) for no action in the context of the School's commitment to provide a safe and non-discriminatory environment for the entire School community.

If the complainant wishes to proceed through the School's Resolution Process, the process will proceed in accordance with Section XIV.

#### **XIV. RESOLUTION PROCESS**

**Investigation:** When the Complainant indicates a desire to pursue resolution through the School's Resolution Process, the reported allegations will be investigated promptly, thoroughly, and impartially. The investigation is a neutral fact-finding process. The Respondent is entitled to

a presumption of non-responsibility until a finding of responsibility is made in accordance with the procedures set forth in this Policy.

The Title IX Coordinator and/or his/her designee will, within twenty-four (24) hours of receiving notice that the Complainant would like to proceed with the Resolution Process, provide the Respondent with written notification that a complaint of sexual misconduct has been filed, the date, time, location and factual allegations concerning the alleged violation, and a list of possible sanctions. The Title IX Coordinator will promptly contact the Respondent to set up an intake meeting to discuss the allegations against the respondent and his/her rights under this Policy.

The Title IX Coordinator will then promptly prepare a formal letter to the President of the School and the Dean notifying the both individuals of the initiation of a formal investigation. The letter will provide the both the President and the Dean with the names of the complainant and respondent and the date, location, and nature of the alleged sexual misconduct.

The Title IX Coordinator will inform both the Complainant and Respondent that both parties have the right to an advisor of their choice, who may attend any meetings, conferences and interviews. During all phases of the Resolution Process, the parties will be provided with advance notice of any meeting they are required or eligible to attend. The advisors role is limited to observing and consulting with, and providing support to, the Complainant or Respondent. Advisors may not speak on behalf of the Complainant or Respondent. At the Complainant's or Respondent's request, the Title IX Coordinator will appoint to the requesting party an advisor who has been formally trained. An advisor may not direct questions to the Hearing Committee, described in Section II.B below, or witnesses at the hearing, but may consult with the party that he or she is assisting. While the advisor may provide guidance and support, all written submissions must be authored by the complainant or respondent. All School administrators and staff will communicate directly with the Complainant or Respondent and not his/her advisor. The Hearing Committee will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.

The Title IX Coordinator will appoint a trained investigator or investigators to conduct the fact-finding within three (3) business days of the intake meeting. The Title IX Coordinator, or his/her designee, will provide the investigator(s) with the names of the Complainant and Respondent, and the date, location, and nature of the alleged sexual misconduct. The Title IX Coordinator will provide both the Complainant and Respondent with the name(s) of the investigator(s). A party wishing to challenge the participation of the investigator(s) must notify the Title IX Coordinator, in writing, within twenty-four (24) hours of receiving the written notice of investigation. The party must state the specific reason(s) for the party's objection. The Title IX Coordinator will then determine whether the party's objection has merit and review the appointment of the investigator(s) to reassess whether the investigator(s) will handle complaints impartially and objectively. If the party's claim has merit or if there is a conflict of interest where the investigator(s) cannot be impartial, another investigator or investigators will be appointed by the Title IX Coordinator to conduct the investigation.

The investigation will commence within five (5) business days of the Title IX Coordinator's appointment of an investigator(s). During the investigation, each party will have an equal opportunity to submit evidence, identify witnesses, and submit questions that should be directed by the investigator(s) to the other party or to any witness (if deemed appropriate by the Title IX Coordinator). The investigator(s) will collect and review evidence it deems necessary or helpful to the investigation of the alleged sexual misconduct. The investigation will include individual interviews with the parties involved and with individuals who may have observed the alleged misconduct or may have other relevant knowledge. The investigation may also include examination of medical records, surveillance video, cell phone and other electronic records, and other evidence.

Within five (5) business days of the investigation's completion, the investigator(s) will provide a written report of the findings of his or her investigation to the Title IX Coordinator. Within three (3) business days of receiving the report, the Title IX Coordinator will provide such report to the Hearing Committee.

The Complainant and Respondent will each have an opportunity to review the investigative report in the presence of a School official. In response to the investigation report, both the Complainant and the Respondent will be given the opportunity to submit a written statement. The written statement must be completed by the student and can be no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The written statement will be provided to the Title IX Coordinator, the opposing party, as well as members of the Hearing Committee. Written statement must be submitted at least three (3) days prior to the hearing date.

**Hearing Committee:** The Resolution Process involves a hearing before a committee comprised of three (3) members of the ("Hearing Committee"). All Hearing Committee members receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking. They will also be trained regarding how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The Dean will select the Hearing Committee members who will participate in the hearing. The Dean will also select a non-voting Hearing Chair. Upon receiving notice from the Title IX Coordinator that a formal investigation has begun, the Dean has five (5) business days to assemble the Hearing Committee. Notice will be provided to both the complainant and respondent indicating the members of the Hearing Committee. A party wishing to challenge the participation of a Hearing Committee member(s) must notify the Title IX Coordinator, in writing, within twenty-four (24) hours of receiving the written notice of the Hearing Committee. The party must state the specific reason(s) for the party's objection. The Title IX Coordinator will then determine whether the party's objection has merit and review the appointment of the Hearing Committee member(s) to reassess whether the member(s) will handle complaints impartially and objectively. If the party's claim has merit or if there is a conflict of interest where the member(s) cannot be impartial, another member or members will be appointed by the Dean to preside over the hearing.

**The Hearing:** After the investigation the School will provide written notice at least five (5) business days before the hearing date to both parties stating the date, time, and place of the hearing. The hearing will commence no later than fifteen (15) business days following the conclusion of the investigation. The hearing is a closed proceeding; no one other than the Hearing Committee members, the respondent and the complainant, and their respective advisors, witnesses (when called), and necessary School personnel may be present in the hearing room or rooms during the proceeding.

**Pre-Hearing Submissions:** In addition to the written statements submitted by the parties, the parties will provide the Title IX Coordinator with a list of witnesses they wish the Hearing Committee to call, copies of documents, and a description of any other information they propose to present at the hearing at least three (3) business days prior to the hearing. The Title IX Coordinator will determine whether such witnesses and documents are deemed relevant to the Hearing. The Title IX Coordinator will provide each party with a copy of the list of witnesses and copies of documents or other information submitted by each party. A party wishing to challenge the admittance of evidence and/or witnesses must notify the Title IX Coordinator, in writing, at least two (2) days before the hearing date. The party must state the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, the relevance of any proffered evidence, and whether to include or exclude certain types of evidence.

In the absence of good cause, as determined by the Hearing Committee, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided by this deadline.

**Conduct of the Hearing:** The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the School will provide both parties with written notice explaining the reason for such change. The School will arrange for the hearing to be recorded, and may arrange for the preparation of any transcript of the recording that the School deems appropriate. Both the complainant and the respondent have the right to be present at the hearing. Additionally, either party may request alternative methods of participating in the hearing, including through electronic means, if the party does not wish to be in physical proximity of the other party.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Hearing Committee will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The School will ask for all necessary witnesses to be present, or to have provided written statements in lieu of attending the hearing. This may be done as necessary to accommodate a witness who cannot be present, or whom the Hearing Committee determines may remain anonymous. The Hearing Committee will review in advance of the hearing all the written materials provided.

Only the Hearing Committee may question the individual parties and any witnesses unless permission is granted to modify the questioning process. The Complainant and Respondent will have the opportunity to suggest questions of the other party and/or of witness. The complainant

and respondent must submit suggested questions to the Hearing Committee in writing. The Hearing Committee reserves the right to decline to ask questions submitted by a party where it determines that the information sought is not relevant to the resolution process.

In general, any information or questioning about the prior sexual history of the complainant or respondent with individuals other than the other party is precluded and will not be admitted as evidence at the hearing. Additionally, any information or questioning about either party's mental health history diagnosis, and/or treatment is precluded and will not be admitted into evidence at the hearing. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanctions. After all witnesses have been questioned, each party may make a closing statement.

In order to comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, the School will not disclose documents prepared in anticipation of the hearing or documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or School policy.

The parties are expected to cooperate at the hearing. If either party fails to appear at the scheduled hearing, the Hearing Committee may postpone the proceedings if there is a legitimate documented reason for the absence, or proceed and determine the complaint on the basis of the evidence available, provided the absent party was duly notified of the scheduled hearing date.

If the Hearing Committee determines that unresolved issues exist that would be clarified by the presentation of additional information, the Hearing Committee may suspend the hearing and reconvene it in a timely manner to receive such information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents which were readily available at the time of the hearing.

**Determination:** In all investigations into alleged sexual misconduct, the School will evaluate evidence under a “**preponderance of the evidence**” standard. A preponderance of the evidence means that the Hearing Committee, after careful consideration of the evidence has determined that it is “**more likely than not**” that the Respondent violated this policy. The Hearing Committee must decide if the Respondent is responsible or not responsible. The Hearing Committee will provide a written statement of such determination to the Title IX Coordinator. The Hearing Committee's written report will also be sent to the Title IX Coordinator. The Title IX Coordinator will then pass this information along to the **[individual imposing sanctions]**.

**Complaints and Respondent Impact Statements:** Within three business (3) days of the conclusion of the hearing, both the Complainant and Respondent will be given access to the record of the hearing and offered an opportunity to provide an impact statement to the **[individual imposing sanctions]** while he or she is deliberating on the appropriate sanctions. The record of the hearing may not be copied.

The impact statement may be no longer than five (5) singled-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The impact statement is the student's opportunity to discuss his/her experience and the incident in question, as well as respond to how the investigation and hearing was conducted and any areas of agreement or/disagreement with the investigation or hearing or determination of the Hearing Committee. The impact statement may not seek to introduce new evidence.

This impact statement must be provided to the Title IX Coordinator who will provide it to the opposing party as well and the **[individual imposing sanctions]**, and all members of the Hearing Committee.

**Possible Sanctions:** The **[individual imposing sanctions]** may impose one or more of the following sanctions that are determined to be fair and proportionate to the violation:

- Reprimand or warning
- Changing the Respondent's academic schedule
- Disciplinary probation
- Revocation of honors or awards
- Restricting the Respondent's access to School facilities or activities
- Community service
- Issuing a No Contact Order to the Respondent or requiring that such an order remain in place
- Dismissal from or restricting or reassignment of School employment
- Suspension (limited time or indefinite)
- Expulsion

In determining appropriate sanctions, the **[individual imposing sanctions]** will consider any record of past violations of School policies, as well as the nature and severity of such past violation(s). The **[individual imposing sanctions]** will consider as part of the deliberations whether the Respondent poses a continuing risk to the complainant and/or the School community. Any sanction imposed will be explained and supported in the written decision of the **[individual imposing sanctions]**. The imposition of sanctions is meant to eliminate sexual misconduct, prevent its recurrence, and remedy its effects, while ensuring a safe and nondiscriminatory environment for the entire School community.

Within seven (7) business days from the determination of the Hearing Committee, the **[individual imposing sanctions]** will issue a determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this determination letter.

The determination letter will contain only the following information: (i) the name of the respondent; (ii) whether the respondent has been found responsible or not responsible for specific violation(s) of this Policy; (iii) a list of the possible sanctions imposed, if any; (iv) the sanctions actually imposed; (v) the rationale for the sanctions imposed; (vi) the School's appeal process; (vii) any change to the results that occur prior to the time that the results become final; and (viii) when the results become final.

The School does not publically release underlying information regarding investigations unless required by law. However, after students are provided with an outcome, a student can choose whether to disclose or discuss the outcome of the conduct process.

**Transcript Notification:** In accordance with Article 129-B of the New York State Education Law, if a student is found responsible through the School's conduct process for crime(s) of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII), the School will make one of the following notations on the transcript of such student.

That they were:

- Suspended after a finding of responsibility for a code of conduct violation;
- Expelled after a finding of responsibility for a code of conduct violation; or
- Withdrew with conduct charges pending.

If a student withdraws from the School while such conduct charge(s) is pending and declines to complete the disciplinary process, the School will note on the student's transcript that he/she "withdrew with conduct charges pending."

The student has a right to appeal to the school seeking removal of a transcript notation for a suspension, noting that such notation shall not be removed prior to one year after conclusion of the suspension.

Transcript notations for suspensions may be removed at the discretion of the School, but no earlier than one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

**Appeal Process:** Either party may appeal the Hearing Committee's determination and/or the disciplinary decision of the **[individual imposing the sanctions]**. A party has three grounds under which to appeal the School's determination: (i) the Hearing Committee committed procedural errors that had an impact on the decision, (ii) there is new evidence that was not reasonably available at the time of the hearing before the Hearing Committee, or (iii) the sanctions are not consistent with past practices or the severity of the alleged sexual misconduct.

Final sanctions are in effect until any timely appeal of the decision is resolved. The **[individual imposing the sanctions]** may suspend the determination pending exhaustion of appeal, allow the student to attend classes or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable. Interim measures will remain in effect until the appeal is resolved.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the findings of the Hearing Committee and/or sanctions imposed by the **[individual imposing the sanctions]** must file a notice of intent to appeal within ten (10) business days of the date the party is notified of the Hearing Committee's finding and the **[individual imposing the sanctions]'s** sanctions. The notice of intent to appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. The notice of intent

to appeal must contain the party's grounds for the appeal. If either the complainant or the respondent submits an appeal, the Title IX Coordinator will notify the other party within two (2) days after receipt of the notice of intent to appeal.

2. Within two weeks of filing a notice of intent to appeal, the party's formal appeal must be filed. The party should submit copies of any and all material the party wishes to provide as evidence for his/her appeal. Additionally, the party can submit a written statement that is no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins.

3. In the event a formal appeal is filed, the non-appealing party is given an opportunity to review the appealing party's submissions and material and submit a written response. The response can be no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The written response must be submitted within five (5) day after the appealing party submits a formal appeal.

4. A committee made up of three full-time faculty/staff ("Appeals Committee"), which shall not include the **[individual imposing sanctions]** or members of the Hearing Committee, will be assembled by the Title IX Coordinator. Except for appeals brought under (ii) above, the Appeal Committee's entire review process will be based on the party's appeal, the non-appealing party's response to the appeal, if any, and the Hearing Committee's record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.

5. The Appeals Committee will make a final determination on the appeal and will report such determination in writing to the **[individual imposing sanctions]**. The Appeals Committee shall render its decision regarding the appeal within 20 calendar days of receipt of the appeal, the non-appealing party's response to the appeal, if any, the record of the case, and, if applicable, any new evidence pursuant to (ii) above.

6. Within three (3) business days of receipt of the Appeals Committee's report, the **[individual imposing sanctions]** will concurrently issue a final determination letter to the respondent and the complainant.

## **XV. PREVENTION AND AWARENESS EDUCATION**

Creating a safe and respectful environment is the responsibility of all members of the School's community. To promote and maintain this environment, the Schools engages in comprehensive educational programming to prevent sexual misconduct (including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation). The School provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees. The School seeks to ensure that all programs are culturally relevant, responsive to community needs, and informed by research and assessed for value.

**Risk Reduction Tips:** With no intention to victim-blame, and with recognition that only those individuals who commit sexual misconduct are responsible for these actions, the suggestions



below are provided to assist in reducing a student's risk of experiencing a non-consensual sex act.

- If you have sexual limits, make them known as early as possible
- Tell a sexual aggressor "NO" clearly and firmly
- Try to remove yourself from the physical presence of a sexual aggressor
- Find someone nearby and ask for help
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol and drugs lower your sexual inhibitions and may make you vulnerable to someone who views someone under the influence as a sexual opportunity
- Take care of your friends and ask that they take care of you.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct.

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you
- Understand and respect personal boundaries
- Don't make assumptions about: consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension, and communicate. You may be misreading your partner. You must respect all timelines and boundaries for that your partner has.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.