



**SEXUAL MISCONDUCT POLICY**  
**2021-2022**

# WELLS COLLEGE SEXUAL MISCONDUCT POLICY

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# **Wells College Sexual Misconduct Policy**

## **2021-2022**

### **INTRODUCTION**

All members of the Wells College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The behavioral expectations set forth in this policy apply to all members of the Wells College community and also apply to non-community members (e.g., visitors to campus). Sexual Misconduct, as defined by Wells College, includes but is not limited to sexual harassment, including sexual violence, sexual assault, stalking, domestic violence, and dating violence.

Wells College is committed to maintaining a positive emotional and physical environment in which all students, faculty, staff, administrators, and guests have an equal opportunity to achieve success. The College will not tolerate any acts of sexual misconduct as is outlined in this policy. These acts are inconsistent with the Wells College mission, Community Standards, Honor Code, state and federal law, and with maintaining social responsibility and academic freedom on campus. Any individual who is found to have violated this policy may face disciplinary sanctions, up to and including expulsion or termination of employment.

Wells College encourages prompt reporting of any violation of this policy. All reporting individuals have the right to report an incident to the College and/or to local law enforcement and/or civil rights enforcement agencies. All reporting individuals also have the right to be assisted by the campus authorities in notifying law enforcement authorities if the survivor so chooses. All reporting individuals also have the right to decline to notify any authority. All Wells College community members are strongly encouraged to report information regarding any incident of sexual misconduct directly to a member of the Title IX team. Wells College is able to respond only to those incidents that come to its attention.

This policy has been developed to reaffirm Wells College's institutional values, to define community expectations, to provide recourse for those individuals whose rights have been violated, and to provide fair and equitable procedures for determining when this policy has been violated. Retaliation against any person or group who makes a complaint, cooperates with an investigation, or participates in a grievance procedure is a violation of College policy. Retaliation should be reported promptly to the Title IX Coordinator, Title IX Deputies, or a member of the Title IX team for investigation, which may result in disciplinary action.

### **POLICY AND PROCEDURE SUMMARY**

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

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

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

## **SCOPE OF POLICY**

The policy applies to all Wells community members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College 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.

This policy applies to conduct occurring on Wells College property and/or at Wells College-sanctioned events or programs that take place off campus, including study abroad and internship programs. In addition, off campus conduct that is likely to have a substantial adverse effect on, or may pose a threat of danger to, any member of the Wells College community or Wells College may also be covered under this policy.

Periodically, students or local organizations host community/campus awareness events (i.e. Take Back the Night), where the College will not take actions on information shared during the event. Participants will be notified of the nature of the event and also resources available for reporting and wellness.

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

## **NOTICE OF NON-DISCRIMINATION**

The College does not permit discrimination or harassment in its programs and activities on the basis of (but not limited to) race, color, religion, ethnic or national origin, ancestry, sex, gender, gender identification, gender expression, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, military status, marital status, status as a victim of domestic violence or any other characteristic protected by institutional policy or state, local, or federal law.

This policy addresses all forms of sexual discrimination, including sexual harassment, sexual violence, domestic and dating violence and stalking. Wells College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or 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.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964 and the New York Human Rights Law. The College, 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.

The College has designated the Compliance Officer for Title IX / COVID-19 to serve as the College's Title IX Coordinator. The Title IX Coordinator oversees the College's centralized review, investigation, and resolution of reports of violations of this policy. The Coordinator also oversees the College'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;

- Assisted by a designated Deputy Title IX Coordinator. This Deputy Title IX Coordinator has a shared responsibility for supporting the Title IX Coordinator and is accessible to any member of the community for consultation and guidance;
- Knowledgeable and trained in College 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 College, both informally and formally, and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual misconduct;
- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention and education efforts and periodic reviews of climate and culture.
- Responsible for holding records of reports and investigations for a minimum of 5 years.

Members of this team include the Title IX Coordinator, Deputy Title IX Coordinator, and staff members trained in sexual misconduct investigations. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Provost and Dean of the College and a representative from the Dean of Students Office and/or Human Resources. Composition of the team will be limited to a small circle of individuals who “need to know” in order to implement procedures under this policy.

Inquiries or complaints concerning the application of Title IX may be referred to the College’s Title IX Coordinator, Deputy Title IX Coordinator and/or to the U.S. Department of Education’s Office for Civil Rights:

Charles Kenyon  
 Interim Title IX Coordinator  
 Wells College  
 315-364-3312  
[ckenyon@wells.edu](mailto:ckenyon@wells.edu)

John Norris  
 Deputy Title IX Coordinator  
 Interim Director of Residence Life & Student Conduct  
 Wells College  
 315-364-3426  
[jnorris@wells.edu](mailto:jnorris@wells.edu)

Office for Civil Rights  
 U.S. Department of Education

400 Maryland Avenue, SW  
Washington, D.C. 20202  
1-800-421-3481  
ocr@ed.gov

## **PRIVACY V. CONFIDENTIALITY**

Wells College is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. All college employees who are involved in the College's Title IX response, including the Title IX Coordinator, Deputy, Investigators, and hearing panel members receive specific instruction about respecting and safeguarding all private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Students should be aware, however, that privacy and confidentiality have distinct meanings under this policy.

***Privacy:*** Privacy generally means that information related to a report of misconduct will only be shared with a limited number of individuals, and only those on a "need to know" basis. The use of this information will be limited to college employees in order to assist in the active review, investigation, and/or resolution of the report. College employees who cannot guarantee confidentiality will maintain an individual's privacy to the greatest extent possible. The information provided to non-confidential resources will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Reported information will not be made public and only share it as necessary to comply with law and/or institutional policy.

***Confidentiality:*** Confidentiality means that 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. These campus and community professionals include our mental health providers, rape crisis counselors at SAVAR, and certain individuals at local hospitals. To see a complete list of confidential sources, please see the resources section of this policy. These confidential resources are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

There are only very limited exceptions to the rule that confidentiality will be maintained by anyone listed as a confidential source. For example, if abuse of a minor under the age of 18 is suspected, it must be reported to Child Protective Services and/or local law enforcement.

A student may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is protected by the Health Insurance Portability and Accountability Act (HIPAA). 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 College shall weigh a request for confidentiality and respond to such a request. If a reporting individual discloses an incident to a non-confidential College employee but wishes to maintain confidentiality or does not consent to the institution's request to initiate an investigation, the Title IX Coordinator will weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community. The institution shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices. Where a Complainant requests that their name or other identifiable information not be shared with the Respondent or that no formal action be taken, Wells College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all Wells College community members. Wells College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. Declining to consent to an investigation shall be honored unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Complainant or other member of the community. In making this determination, Wells College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought. The College will notify the Complainant should it be in the best interest of the Complainant and community to move forward with an investigation and take actions as necessary to protect and assist Complainant; about the course of action that will be taken, which may include the College seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

## **PROHIBITED CONDUCT AND DEFINITIONS**

### **Definitions, General**

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

***Affirmative Consent:*** Wells College expects that any sexual activity or sexual contact will be based on affirmative consent to the specific sexual activity. All references to consent in this policy will mean affirmative consent as defined in this policy. Under New York law 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 essential elements of effective consent:

*Informed and reciprocal:* All parties must demonstrate a clear and mutual understanding of the nature and scope of the specific act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

*Freely and actively given:* Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or if the other party is incapacitated.

*Mutually understandable:* Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.

*Not indefinite:* Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

*Not unlimited:* Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

**Force:** Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resists the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

**Coercion:** Coercion is the use a threat or undue pressure to engage in sexual activity. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Coercion is more than an effort to persuade, seduce, entice, or attract another person to engage in sexual activity. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

**Incapacitation:** Affirmative consent cannot be given when a person is incapacitated. Incapacitation is a state where an individual cannot make an informed decision to engage in sexual activity because that individual lacks the ability to knowingly choose to participate in sexual activity. An individual is incapacitated, and therefore unable to give affirmative consent, if they are asleep, unconscious, being involuntarily restrained or otherwise cannot consent to sexual activity.

Incapacitation may also result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation because the impact of alcohol and drugs varies from person to person. 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.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one’s responsibility to obtain consent. Consent to sexual activity is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

**Formal Complaint:** A formal complaint refers to a written complaint filed in accordance with the grievance process below. A formal is necessary to initiate an investigation and adjudication process.

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

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

**Reporting Party.** The term Reporting Party refers to the person who made the report. This may or may not be the same as the Complainant, a witness, or a bystander.

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

**Respondent.** The term Respondent refers to the person alleged to have committed a violation of this policy.

**Sexual Misconduct.** Sexual misconduct is an umbrella term used in this policy to more conveniently refer to any form of conduct prohibited by this policy.

### **Definitions, Conduct Violations**

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

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

### **Title IX Category Violations**

In accordance with Title IX as interpreted by the Department of Education, the College recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the complainant was in the United States at the time of the alleged conduct, that the complainant be participating in or seeking to participate in the College’s education program or activity at the time of the complaint, and that the conduct have occurred in the context of the College’s education program or activity:

**Sexual harassment.** “Sexual harassment” means conduct on the basis of sex (including sex, gender, sexual orientation, gender identity and transgender status) that satisfies one or more of the following:

- a. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct (commonly referred to as a “quid pro quo”);
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that is effectively denies a person equal access to the College’s

education program or activity (commonly referred to as a sexually or gender-based “hostile environment”).

**Sexual assault.** “Sexual assault” is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:

- a. Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- b. Fondling. The touching of the private body parts (including genital area, anus, groin, buttocks or breast), of another person, whether under or over clothing, for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.

**Dating violence.** “Dating violence” means violence committed by a person on the basis of sex: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

**Domestic violence.** “Domestic violence” means violence on the basis of sex committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the college is located, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

**Stalking.** “Stalking” is engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. Stalking that does not occur on the basis of sex may be addressed under as a College Category Violation as described below.

### **College Category Violations**

The College prohibits the following behavior. For purpose of College Category violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the College’s education program or activity, or otherwise in circumstances over which the College does not have influence or control,

including but not limited to during College academic breaks. The College retains discretion to not respond to, investigate or adjudicate circumstances in which no College interest is implicated.

**Sexual Harassment:** Sexual harassment” means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. Sexual harassment can be verbal, written, visual, electronic or physical.

Sexual harassment includes any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal 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, evaluation of academic work, or participation in any aspect of a College program or activity; *or*
- (2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; *or*
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.

The fact that a person is offended is not alone enough to establish a violation of this policy. The College evaluates complaint based on a “reasonable person” standard, taking into account the totality of the circumstances, including the context of the interaction. Wells College is an academic institution, and freedom of intellectual thought and expression is valued. The College will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.

- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include 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 of 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 Assault:** “Sexual assault” is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent, but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity). Sexual assault consists of the following specific acts:

- **Non-consensual sexual intercourse-** is any sexual penetration (anal, oral, or vaginal), however slight, with any body part (e.g., penis, tongue, finger, hand) or object, by a person upon another person that is without affirmative consent. Non-consensual sexual acts can include the following:
  - Rape: Rape is 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.
  - Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- **Non-Consensual Sexual Contact/fondling** is any intentional sexual touching, however slight, with the private parts of another (including over clothing), causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Private parts may include the breasts, anus, genital area, buttocks, or groin,.

**Sexual Exploitation:** Occurs when, without affirmative consent, an individual takes sexual advantage of another. Examples of sexual exploitation include, but are not limited to, surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances; knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; acts of incest; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

***Domestic Violence:*** Domestic violence refers to physical violence, threats of violence or acts of physical intimidation between spouses, former spouses or intimate partners, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, individuals who are similarly situated to spouses and/or individuals who are protected from the other person's acts under the domestic or family violence laws of the jurisdiction in which the act of violence occurs, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College's education program or activity).

***Dating Violence:*** Dating violence refers to a pattern of violent behavior (including, but not limited to, sexual or physical abuse or the threat of such abuse) that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College's education program or activity). The existence of such a relationship is 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.

***Stalking:*** "Stalking" is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation as defined above because of basis on which it occurs or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College's education program or activity).

***Retaliation:*** Acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in reporting the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others. An act of retaliation may be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. A person who acts in good faith is protected from retaliation. The fact that a statement is not determined to be proven or established following

investigation and adjudication does not mean that the statement lacked good-faith; a person may provide inaccurate information believing it is accurate, which is still good-faith. If a person who makes a statement knowing that it is false, the person has acted without good faith.

### **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 employers, supervisors, professors, coaches, advisors or other College employees. Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the college.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to their own supervisor. Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

## **RESOURCES FOR SUPPORT**

Treating all members of the community with dignity, care, and respect is of the utmost importance to Wells College. Campus community members are expected to understand and respect one another's personal boundaries. Students are encouraged to take care of their friends and ask that they take care of you. 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 and other resources.

Wells College encourages all community members to make a prompt report of any incident of sexual harassment, sexual violence, stalking, domestic violence, or dating violence to local law enforcement and the College. The College recognizes that deciding whether or not to make a report, to either Wells College or law enforcement, and choosing how to proceed can be a difficult decision. All individuals are encouraged to seek the support of campus and community resources regardless of where the incident occurred. Certain of these resources can advise individuals that if you have sexual limits, it is best make them known as early as possible in any encounter. These trained professionals can also 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 both on and off of campus. There are confidential resources, which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private but are not considered confidential. Even College offices and employees who cannot guarantee confidentiality will maintain a complainant's privacy to the greatest extent possible. The information provided to non-confidential resources will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek resolution.

### **Confidential Resources**

The confidential resources listed below will not share information with the College or anyone else without the individual's permission. These confidential resources can provide assistance and information regarding medical assistance and treatment (including information about sexually transmitted infections, and sexual assault forensic examinations) and resources available through the New York State Office of Victim Services. The On Campus health and counseling services noted below are generally available to students free of charge.

#### **On Campus Confidential Resource:**

Community Medical Center

The Community Medical Center is open five days a week, 8 a.m. to 6 p.m.

Counselors are available during these times and can assist and support individuals in need of a confidential resource.

(315) 364-3273

### **Off Campus Confidential Resource:**

Sexual Assault Victim's Advocate Resource (S.A.V.A.R.) Rape/Crisis Hotline  
SAVAR offers services to survivors of all forms of sexual violence. Provides a 24-hour hotline with certified rape crisis counselors/advocates. They will answer any questions, help sort out feelings, refer individuals to appropriate resources, accompany individuals through the process of reporting a sexual assault if they should wish to do so, and with seeking appropriate treatment.

(315) 364-9795 - Main Office, 17 East Genesee Street, Auburn NY 13021

(315) 252-2112 - Sexual Assault Hotline

NYS Domestic Violence Hotline

1(800) 253-3358

NYS Office of Victim Services

1(800) 247-8035

### **Confidential Medical Resources**

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 step 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. All hospitals in the state of New York are required to provide care for victims of sexual assault in the Emergency Department.

#### **Hospitals in the Area:**

**Auburn Community Hospital** (315-255-7011)

17 Lansing Street, Auburn NY 13021

**Cayuga Medical Center** (607-274-4011)

101 Dates Drive, Ithaca NY 14850

*Cayuga Medical Center provides a SANE (Sexual Assault Nurse Examiner) for examinations. This program employs a team approach to assist survivors of sexual assault, sexual abuse, and rape with medical, emotional, and legal needs. With the survivor's consent, a team of nurses, sexual assault counselors/advocates, doctors, and law enforcement work together to support the survivor.*

New York State Department of Health designated Sexual Assault Forensic Examiner (SAFE) hospitals provide specialized care to victims of sexual assault.

The goals of the SAFE program are to:

1. Provide timely, compassionate, patient-centered care in a private setting that provides emotional support and reduces further trauma to the patient;
2. Provide quality medical care to the patient who reports sexual assault, including evaluation, treatment, referral and follow-up;
3. Ensure the quality of collection, documentation, preservation and custody of physical evidence by utilizing a trained and New York State Department of Health certified sexual assault forensic examiner to perform the exam;
4. Utilize an interdisciplinary approach by working with rape crisis centers and other service providers, law enforcement and prosecutors' offices to effectively meet the needs of the sexual assault victim and the community;
5. Provide expert testimony when needed if the patient chooses to report the crime to law enforcement; and,
6. Improve and standardize data regarding the incidence of sexual assault victims seeking treatment in hospital emergency departments.

The hospital and the Rape Crisis Program will not report the crime to police, unless the individual wants the crime reported. Reporting is an individual's choice. An individual can also refuse any step of the evidence collection process. This is also their choice.

The hospital will not release evidence to the police without the individual's written consent and will hold the evidence for 30 days in case they decide later to make a police report.

*SAFE Hospitals in the Area:*

**St. Joseph's Hospital Health Center** (315-448-5111)

301 Prospect Avenue, Syracuse, NY 13203

**University Hospital SUNY Health Science Center** (315-464-5540)

750 East Adams Street, Syracuse, NY 13210

**Non-Confidential Campus Resources**

Community members may contact the below non-confidential campus resources for information about the College's policies and procedures, and for information and access to support and resources. These are the persons designated to receive information of alleged sexual misconduct and to initiate the College's responsive action. If information is made to any other College employee, the individual reporting the information risks that the information will not be acted upon. The staff members listed below are trained to support individuals affected by sexual misconduct and to coordinate with the Title IX Coordinator consistent with the College's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain

the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

Non-confidential, on-campus College resources also include the following individuals/offices:

**Charles Kenyon, Interim Title IX Coordinator;** Available on weekdays during regular office hours: 8:30a-4:30p

**Kit Van Orman,** Director of Human Resources and Business Services. Available on weekdays during regular office hours; 8:30a - 4:30p

**Campus Safety**

Available as a first option to report an incident of sexual misconduct. Also provides an escort service on-campus to any student and can reach the on-call professional at any time. Available 24 hours a day, 7 days a week.  
security@wells.edu; (315) 364-3229, Bellinzoni

**Charles Kenyon, Dean of Students**

Can provide reasonable accommodations for housing, academic flexibility and No Contact Orders. If a report is made to the Dean of Students, the Dean of Students will contact a trained first responder to take the initial report and start the process. Available on weekdays during regular office hours; 8:30a - 4:30p, and on an on-call basis.

**John Norris,** Interim Director of Residence Life & Student Conduct/ Deputy Title IX Coordinator, can provide reasonable accommodations for housing, academic flexibility and No Contact Orders. Trained first responder; can take an initial report and start the process. Available on weekdays during regular office hours; 8:30a - 4:30p and on an on-call basis.

**Resident Advisors (RAs),** available in all Residence Halls

RAs are peer staff members that live within the Residence Halls. Each building has 2-6 RAs. For a current listing of RAs on-campus, please see the Globe or wells.edu page. List of RA names and room number can also be found within the Residence Halls, posted by each RA's room. Once contacted with information regarding alleged sexual misconduct, RAs are obligated to pass along that information to the College. If a report is made to an RA, the RA will contact a trained first responder to take the initial report and start the process. Available via phone at (315)956-2624 or (315)956-2507 between the hours of 8pm-8am daily during the academic year.

**Student Affairs Staff members,** located in the Student Affairs suite in Sommer center. The Student Affairs staff also serve as private resources. Student Affairs staff members can provide resources to community members and are available during regular College hours.

## **REPORTING SEXUAL MISCONDUCT TO THE COLLEGE**

Wells College 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 preservation of evidence and to begin a timely investigative and remedial response.

Wells College encourages all individuals to make a report to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously.

Making a report means telling a designated non-confidential, on-campus College Resource (see above) what happened -- in person, by telephone, in writing or by electronic communication. Once a report is received a trained staff member will “check in” with the complainant and complete a check list confirming medical treatment options, counseling support services, right for a campus no contact order; reporting options to campus security and local law enforcement, Wells College Sexual Misconduct Policy and Student Bill of Rights review along with notification that should the College believe there is imminent danger to the complainant or the community the College may take action without consent. At the time a report is made, a Complainant has the right to request action against the Respondent or not pursue any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and the College will consider the Complainant’s wishes in deciding how to proceed. In this process, the College will balance the individual’s interest with its obligation to provide a safe, non-discriminatory environment for the campus community.

**Reporting to the College:** The College encourages all individuals to report sexual misconduct to the following. If information is made to any other College employee, the individual reporting the information risks that the information will not be acted upon.

Reports can be made to the following individuals/offices:

- **Charles Kenyon**, Interim Title IX Coordinator; [ckenyon@wells.edu](mailto:ckenyon@wells.edu) ; (315) 364-3312; Macmillan 210
- **Kit Van Orman**, Director of Human Resources and Business Services; [kit@wells.edu](mailto:kit@wells.edu) ; (315) 364-3317; Macmillan 221
- **John Norris**, Interim Director of Residence Life & Student Conduct; Deputy Title IX Coordinator; [jnorris@wells.edu](mailto:jnorris@wells.edu) ; (315) 364-3426; Sommer 23
- **David Hewitt**, Supervisor of Campus Safety- [security@wells.edu](mailto:security@wells.edu) ; (315) 364-3229; 170 Main Street, Bellinzoni
- **Charles Kenyon**, Dean of Students; [ckenyon@wells.edu](mailto:ckenyon@wells.edu) ; (315) 364-3312; Macmillan 210

All Wells community members are strongly encouraged to report information regarding any incident of sexual misconduct directly to the Title IX Coordinator or a member of the Title IX team.

## **Reporting Considerations**

Anonymous Reporting: Any individual may make an anonymous report concerning an act of sexual misconduct. An individual may report the incident without disclosing their name, identifying the Respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. The Anonymous Reporting Form can be found on the [www.wells.edu/studentlife/notalone](http://www.wells.edu/studentlife/notalone) webpage. The Title IX Coordinator/Deputy will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Director of Campus Safety, compliance with all Clery Act obligations.

Timeliness and Location of Incident: Complainants and third-party witnesses are encouraged to report sexual misconduct as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the Respondent is not a member of the Wells community, the College 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 on campus to be reported to the College. Off-campus conduct that is likely to have a substantial effect on the Complainant's on-campus life and activities or poses a threat or danger to members of the Wells community may also be addressed under this policy.

Amnesty for Alcohol or Other Drug Use: The health and safety of every student at Wells College is of utmost importance. Wells 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. Wells strongly encourages students 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 Wells officials or law enforcement will not be subject to the Wells code of conduct for violations of the alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or, sexual assault.

Coordination with Law Enforcement: Wells College encourages Complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under New York law. The College will, upon request, assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law. The Cayuga County Sheriff, which can be reached at [315-253-1222](tel:315-253-1222) or [911](tel:911), can assist in filing a criminal complaint and in securing an appropriate examination, including by a

Sexual Assault Nurse Examiner. The NYS Police Sexual Assault Hotline, which can be reached at [1\(844\) 845-7269](tel:18448457269), may also be of assistance in reporting an incident to law enforcement. The College's policy, definitions and burden of proof may differ from New York criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute an accused, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

Any internal College investigation and/or hearing process will be conducted concurrently with any investigation and/or proceeding conducted by law enforcement authorities. Temporary delays in the College'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) business days, except when local law enforcement authorities specifically request and a justify longer delay. The College will cooperate with any criminal proceeding as permitted by law. The Title IX Coordinator and other College officials listed above can assist individuals in making a report of a crime to local law enforcement.

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 Wells College 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 College property, and Wells College will abide by a lawfully issued order of protection. Campus Safety or other College officials will, upon request, provide reasonable assistance to any member of the College community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order, including providing that person with:

- a copy of an order of protection or equivalent when received by the College and providing that person with an opportunity to meet or speak with a College representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement to effect an arrest for violating such an order of protection

*False Reports:* The College will not tolerate intentional false reporting of incidents. The College 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 intentionally fabricated allegations or given false information with malicious intent or in bad faith, that individual may be subject to disciplinary action. It is a violation of the Code of Student Conduct and the Wells College Honor Code to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

## **SUPPORTIVE MEASURES, EMERGENCY REMOVAL AND ACCOMMODATIONS**

### **Supportive Measures**

Upon receipt of a report, Wells College will impose reasonable and appropriate supportive measures designed to eliminate any hostile environment and protect the parties involved. Wells College will make reasonable efforts to communicate with the parties to ensure that, to the extent feasible, all safety, emotional, and physical well-being concerns are being addressed. Supportive measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by a supportive measure. The College will take immediate and responsive action to enforce a previously implemented measure.

Once a report is made under this Policy, the complainant will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. A report that triggers supportive measures need not be a formal complaint, and it may be made by a third-party (i.e., someone other than the complainant himself/herself). Once the respondent is informed of a report or a formal complaint, the respondent will be contacted by the Title IX Coordinator and offered individualized support as more fully described below.

Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the College's educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties. Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course-related adjustments or allowing a withdrawal from a course or to transfer sections (with the agreement of the appropriate faculty) without penalty;
- Rescheduling of exams and assignments in (with the agreement of the appropriate faculty);
- Providing alternative course completion options (with the agreement of the appropriate faculty);
- Providing academic support services, such as tutoring

- Changes to housing, transportation and campus working situations if those changes are requested by a party and reasonably available;
- Arrange to dissolve a Housing Contract and pro-rate a refund in accordance with campus housing policies
- Mutual “No Contact” orders and, possibly, in rare cases, one-way no contact orders.
- Access to campus escorts or other reasonable security or monitoring measures;
- Counseling services and assistance in setting up an initial appointment, both on and off campus;
- Any other remedy that could be tailored to the involved parties to achieve the goals of this policy

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various College departments and offices that may be involved. Supportive measures will be offered free of charge.

If a party’s request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, each party will, upon request, be afforded the opportunity for a prompt review of the need for supportive measures that have been implemented, including the potential modification of these measures, to the extent that the party is affected by the measure(s) being reviewed. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affects that party. Information about how to request a review will be included in a written communication that will outline the supportive measures offered and any that were requested by the party but denied. The Title IX Coordinator will respond to such review requests 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 supportive measures on a temporary basis while the parties are submitting their information and responses.

### **Emergency Removal**

In some cases, the College may undertake an emergency removal of a student respondent in order to protect the safety of the College community, which may include contacting local law enforcement to address imminent safety concerns. When a report of sexual misconduct poses a substantial and immediate threat of harm to the physical safety or well-being of an individual, members of the campus and/or Aurora community, or the performance of normal College functions, the College may place a student or student organization on interim suspension. Emergency removal is not a substitute for reaching a determination as to a respondent’s responsibility for the sexual misconduct allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person’s physical health or safety, which may arise out of the sexual misconduct allegations. Prior to removing a student respondent through the emergency removal process, the College will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis

determines that an immediate threat to the physical health or safety of any student, including the student respondent, or other individual justifies removal, then a student respondent will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed. In such cases, the individual or organization may be denied access to campus, campus facilities, and/or all other college activities or privileges for which the student might otherwise be eligible, as the College deems appropriate. After determining a student respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the complainant and respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision. If a student respondent disagrees with the decision to be removed from campus, the respondent may appeal the decision. The respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Title IX Coordinator within 10 days of receiving the notice of removal. The burden of proof is on the student respondent to show that the removal decision was incorrect.

When the accused is not a student but is a member of the College community, he or she is subject to interim suspension and/or other measures in accordance with applicable collective bargaining agreements and College employment policies and procedures.

### **Disability Accommodation**

A Complainant or Respondent with a disability who requires accommodation in the complaint, investigation, hearing or any other phase of the process is responsible for disclosing the need for accommodation to the Title IX Coordinator. The Title IX Coordinator may consult with the College's Disability Services officer in deciding whether to grant a disability accommodation request

## **OPTIONS FOR RESOLUTION UNDER THE GRIEVANCE PROCESS**

Upon receipt of a report, the College's Title IX Coordinator and/or Deputy will discuss with Complainant the option for filing a formal complaint with the College. The Title IX Coordinator will also conduct an initial assessment of the report. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution.

At the conclusion of the assessment, if the Complainant files a formal complaint, the College may choose, in consultation with the parties, to pursue an informal resolution or refer the matter for investigation and adjudication. If a Complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, or the Complainant's identity is unknown, and the Title IX Coordinator determines there is sufficient cause to file a formal

complaint, the Title IX Coordinator may file a formal complaint. In such cases, the Title IX Coordinator is not considered to be a complainant or other party under this Policy. The initial steps for resolution of a complaint against a student, an employee, or a faculty member will involve the same stages: an initial assessment, investigation, and either informal resolution or a formal adjudication process. Within these steps, there are specific procedures.

*The Role of the Title IX Team:* The Title IX team is led by the Title IX Coordinator, and includes one deputy, several trained investigators, advisors, hearing panel and appeals panel members. Their roles are to assist in the review, investigation, and resolution of reports. Composition of the team will be limited to a small circle of individuals who “need to know” in order to implement procedures under this policy.

The College directs individuals to make reports to the Title IX team to ensure consistent application of the policy to all individuals, and to allow the College to respond promptly and equitably to eliminate the harassment, prevent its recurrence, and address its effects.

The members of the Title IX team oversee the resolution of a report under this policy. Resources are available for both students and employees, whether as Complainant or Respondents, to provide guidance throughout the investigation and resolution of the complaint. Supportive measures are also available to provide protection and security.

### **Filing a Complaint**

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

A formal complaint is a document filed by a complainant or signed by the College’s Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation. The respondent may be either a student or an employee or a visitor, independent contractor, intern, or volunteer of the College. A formal complaint may be filed in person, by mail, or by electronic mail to: Charles Kenyon, Interim Title IX Coordinator, MacMillan Building 210L, 170 Main Street, Aurora, NY 13026, 315-364-3312; [ckenyon@wells.edu](mailto:ckenyon@wells.edu). In order to qualify as a formal complaint, the document must contain the complainant’s physical or electronic signature, or otherwise indicate that the complainant is the person filing the formal complaint.

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

- the risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, which may be assessed by evaluating:
- whether there have been other complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the college possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence);
- whether the victim’s report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

Additionally, where the respondent is not enrolled at the College and is not employed by the College, the College may decline to process the complaint through the Grievance Process. The College may take the steps it deems appropriate under the circumstances.

### **Mandatory Dismissal of Title IX Category Charges**

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

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

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

### **Discretionary Dismissal of Title IX Category Charges**

The Title IX Coordinator may, but is not required to, dismiss formal complaints in the following circumstances:

- When the complainant withdraws a formal complaint;
- When the respondent is no longer enrolled in or employed by the College; and

- Where specific circumstances prevent the College from gathering evidence (such as where a complainant refuses to cooperate but does not withdraw a formal complaint).

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

### **Informal Resolution**

In some cases, an informal resolution may be appropriate. An Informal Resolution Process is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a complainant. Informal resolution is a remedies-based, non-judicial approach designed to eliminate any hostile environment without taking formal disciplinary action against a Respondent. The Informal Resolution Process is not available if the respondent in a sexual misconduct complaint is a faculty or staff member of College and the complainant is a student. Where the Title IX Coordinator concludes that informal resolution may be appropriate, the Title IX Coordinator will offer the Informal Resolution Process to the parties after a formal complaint is filed by a complainant. Both parties must consent to use the Informal Resolution process. Either party in an Informal Resolution process may terminate it at any time and the complaint will proceed to the formal grievance and hearing process.

Supportive measures are available to both parties in the same manner as they would be if the formal complaint were proceeding under the formal grievance and hearing process. A written notice will be given to both parties before entering an Informal Resolution Process, and both parties must consent to the process in writing. No party should feel intimidated, coerced or threatened to participate in an Informal Resolution Process, or to withdraw from an Informal Resolution Process. The facilitator of the process will be screened to ensure that such person is free from conflicts of interest and bias. The facilitator's role is to conduct the Informal Resolution process in a way that is impartial and does not favor one party over the other.

The facilitator will schedule one or more meetings with the parties. The facilitator will assist the parties in communicating information and opinions to the facilitator and each other regarding the allegations in an effort to find common ground and a resolution of the allegations that is satisfactory to both parties. The facilitator may meet separately with each party to explore the party's views about the allegations and desired outcome from the process. Either party can elect to have any meeting occur so that the parties are in different rooms and the facilitator "shuttles" between the parties.

For the Informal Resolution process to have the best chance for success, the parties should be free to express themselves. As a result, the information received from both parties during the Informal Resolution process will be kept confidential by the facilitator. In addition, the facilitator will not be available as a witness in any hearing that may occur should either party terminate the Informal Resolution process before a resolution. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties and is not listening or taking notes for any purpose other than assisting the parties. In addition, the parties may not disclose information shared by the other party during the process in the hearing. This confidentiality

protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise.

The College will not compel a Complainant or Respondent to engage in informal resolution or to directly confront the other party during the informal resolution process. The decision to pursue an informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant or the Respondent can request to end informal resolution at any time. Both Complainant and Respondent may be assisted by an Advisor during an informal resolution.

A resolution is reached only if both parties agree. The College encourages terms of resolution that meets the parties' needs, and may include a disciplinary sanction. The facilitator will not impose an outcome, although they may assist the parties in suggesting resolutions that appear to meet the parties' needs. If there is no agreement on a resolution, the complaint is returned to the formal grievance and hearing process outlined in this policy. Any investigation of the allegations in the formal complaint will resume/begin and the formal grievance process will proceed from there.

A party may terminate the informal process at any time before the final written resolution is signed. If the parties reach a resolution, the facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This written and signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or to pursue the formal grievance and hearing process. After a written resolution has been finalized, the College will keep a record of the parties' written consent to the Informal Resolution process and the written resolution.

### **Investigation**

Where a formal complaint has been filed, and in the absence of an informal resolution, the College will appoint an investigator to conduct an investigation into the allegations in the formal complaint.

The College may appoint any qualified investigator, who may be a person internal or external to the College. The College also may appoint more than one investigator in the College's sole discretion. The investigation is an impartial fact-finding process. Trained investigators include the Student Affairs staff, and the Title IX team. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest. The Complainant and Respondent will be provided with notice of the name of the appointed investigator and an opportunity of not more than three (3) days after the notice to raise an objection to the investigator based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator.

The Complainant and Respondent shall receive a notice of investigation referencing the violation(s) of this policy alleged to have been committed and the range of possible disciplinary sanctions and

remedies following any determination of responsibility. The notice of investigation will include, to the extent known:

- the identities of the involved parties;
- the date, time, location and factual allegations concerning the alleged violation;
- the policy provisions allegedly violated;
- a description of the investigation and adjudication process;
- potential sanctions;
- the right to an advisor of their choice, who may be, but is not required to be, an attorney;
- their right to inspect and review evidence in accordance with this policy;
- notice that knowingly making false statements or knowingly submitting false information is prohibited under the Code of Student Conduct [Falsification violation, pg. 53]; and
- that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process

If, in the course of the investigation, the College decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator or designee will provide notice of the additional allegations to the parties.

The investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case and begins with an interview with the Complainant, relevant witnesses and the Respondent. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns. The Complainant and Respondent will be provided with advance written notice of the date, time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate. The Complainant and the Respondent will be given an equal opportunity to present information. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the College. The investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the complainant with a person other than the respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The investigator will determine the order and method of investigation.

The Complainant and Respondent may be accompanied by an advisor of their choice, who may be an attorney, and at their own expense, if the advisor is a paid advisor. The Complainant and Respondent are expected to speak for themselves, and advisors must not obstruct the process or

otherwise be disruptive to the interview or meeting. The College does not appoint an advisor for a party during the investigation phase of the process. No unauthorized audio or video recording of any kind is permitted during investigation meetings or interviews.

The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single complainant against a respondent, or multiple complaints by a single complainant against multiple respondents.

#### Opportunity for Inspection and Review of Evidence

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to the conclusion of the investigative report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Respondent will be provided with at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps.

#### Investigative Report

At the conclusion of the investigation, the investigator(s) will prepare a written report summarizing the investigation. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator. At least ten (10) days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

#### Investigation Timeframe

The College will seek to complete the investigation within thirty (30) business days of receiving the formal complaint, but this time frame may be extended depending on the complexity of the circumstances of each case.

## **HEARING PROCEDURES**

This policy applies campus-wide and sets forth the behavioral expectations for all. However, the applicable formal disciplinary procedure that will be applied in a particular case may depend on

whether the accused is a student, employee, or a non-community member. A report by anyone against a non-community member (e.g., a visitor, vendor, etc.) will be investigated but no formal policy or procedure applies. The College may opt to ban the non-community member from College property or take other appropriate responsive measures.

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

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

Participants in the hearing will include the members of the Hearing Panel, the Complainant and the Respondent, their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s). Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Hearing Panel and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence. The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

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

1. Opportunity for Opening Statement by the Complainant
2. Opportunity for Opening Statement by the Respondent
3. Summary of the results of the investigation by the investigator(s)

4. Questions for the investigator(s) by the Hearing Panel and, if desired, on behalf of Complainant and the Respondent (as described below)]
5. Questions for the Complainant by the Hearing Panel and, if desired, on behalf of the Respondent (as described below)
6. Questions for the Respondent by the Hearing Panel and, if desired, on behalf of the Complainant (as described below)
7. Questions for each witness by the Hearing Panel and, if desired, on behalf of Complainant and the Respondent (as described below)
8. Opportunity for Closing Statement by the Respondent
9. Opportunity for Closing Statement by the Complainant

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

The Chair of the Hearing Panel will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this Policy, the Chair will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, and/or to recall parties or witnesses for additional questions as the Chair deems necessary or appropriate. The Chair may impose additional ground rules as the Chair may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

Advisors:

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice. The Dean of Students Office maintains a list of campus community members who have undergone Title IX training and are available to act as advisors. The Complainant and/or Respondent may choose as an advisor a person not a member of the college community, including an attorney at the party's own expense. If a party does not have an advisor present at the hearing, the College will provide, without fee or charge to that party, an Institution Advisor of the College's choice for the limited purpose of conducting questioning on behalf of that party as provided in this Policy. Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence,

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

### Questioning Procedures

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

Only relevant questions may be asked by a party's advisor to a party or witness. Before the party or witness answers a question posed by an advisor, the Chair of the Hearing Panel will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Such decisions by the Chair are final and not subject to objection or reconsideration during the hearing. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### Hearing Determinations

Following conclusion of the hearing, the Hearing Panel will deliberate and render a determination by majority vote as to whether the Respondent is responsible or not responsible for the alleged violation(s). The Hearing Panel will use "preponderance of the evidence" as the standard of proof to

determine whether each alleged violation of the Policy occurred. “Preponderance of the evidence” means that the Hearing Panel must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

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

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

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

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

- **Warning:** A formal statement that the behavior was unacceptable and that further infractions of any College policy, procedure, or directive may result in more severe disciplinary action.
- **Probation:** A written reprimand for violation of the Policy, providing for more severe disciplinary sanctions in the event that the Respondent is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified privileges, exclusion from extracurricular activities, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Cessation of student status for a definite period of time and/or until specific criteria are met.
- **Expulsion:** Permanent termination of student status.

- Withholding Degree and/or Diploma: The College may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities.
- Other Actions: In addition to or in place of the above sanctions, the Hearing Panel may assign any other sanctions as deemed appropriate, including but not limited to the following:
  - Mandated counseling so the Respondent has the opportunity to gain more insight into his/her/their behavior.
  - A "no contact" directive (including but not limited to continuation of a no contact directive imposed as a supportive measure) prohibiting contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact directive may include additional restrictions and terms.
  - Requiring the Respondent to write a letter of apology.
  - Restitution for damage to or misappropriation of property, or for personal injury, and other related costs.
  - Ban from certain areas/events on campus or from the campus as a whole
  - Loss, revocation or restriction of housing privileges (e.g., exclusion from specified locations or alteration of status in the housing lottery or other selection system)
  - Monetary fines.

Transcript Notation: For those crimes of violence that Wells College is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after an investigation and appeal, if any, shall include the following notation:

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

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

#### Notice of Outcome

The Complainant and Respondent will be notified simultaneously and in writing of the factual findings supporting the determination, the decision as to responsibility and the sanction(s), if any, as well as the rationale for the decision and sanction(s). The Hearing Panel will issue a written determination including the following information:

- A description of the charges that were adjudicated;
- A description of the procedural steps taken from the submission of the formal complaint through the determination, including notifications to the parties, interviews

with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's educational programs or activities will be provided to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

Time Frame for Resolution: Wells College endeavors to complete the investigatory and hearing process within 60 business days of the date the College received the formal complaint. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements.

Extenuating circumstances may arise that require an extension of time frames, including extension beyond 60 business days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

## **APPEALS**

A respondent or complainant may appeal: (1) a determination regarding responsibility, and (2) the College's dismissal of a formal complaint or any allegations therein.

If a party wishes to appeal a determination regarding responsibility or the dismissal of a formal complaint, the party must submit written notice to the Title IX Coordinator of the party's intent to appeal within five (5) business days of receiving the written notification of the appealable decision. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. A respondent or complainant may appeal on the following grounds:

- Procedural irregularity that affected the determination regarding responsibility or dismissal of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the determination regarding responsibility or dismissal of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the determination regarding responsibility or dismissal of the matter. The professional experience of an individual need not disqualify the person from the ability to serve impartially. Furthermore, bias is not demonstrated by working in complainants' or respondents' rights organization.

- The sanction is grossly out of line with the violation, either because the sanction is too severe or too lenient

In addition to the four bases for appeal, College reserves the right to add additional bases for appeal that will be available equally to both the respondent and the complainant. Any additional bases of appeal that are added will not be applied retroactively to previous determinations and dismissals.

Appeals involving a student respondent will be submitted to a three-member hearing panel. Appeals involving a faculty or staff respondent will be submitted to a single appeal officer. The appeal panel/appeal officer will be designated by the Title IX coordinator. In the event of an appeal panel/appeal officer may:

- Affirm the finding of responsibility and sanction
- Affirm the finding of responsibility but modify the sanction, either by increasing or reducing it
- Affirm the finding of no responsibility
- Reverse the finding of no responsibility and assign a sanction
- Reverse the finding of responsibility and eliminate any sanction
- Take other action deemed appropriate

When a party submits a written notice of its intent to appeal to the Title IX Coordinator within 5 business days of the appealable decision, College will notify the other party in writing and implement appeal procedures equally for both parties. Sanctions imposed by the Hearing Panel are implemented immediately unless the Title IX coordinator stays implementation in extraordinary circumstances, pending the outcome of the appeal. If no written notice of either party's intent to appeal is sent, then the written determination becomes final after the time period to file an appeal (5 days) has expired.

Each party will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Each party will have at least 3 business days to submit its written statement. If a party needs additional time, it can request such additional time from the decision-maker for the appeal. Such requests will be granted on a case-by-case basis. If the decision-maker for the appeal grants a request for additional time to submit a written statement, all parties will be granted the additional time. In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. Appeals are not intended to be full reinvestigation of the complaint (de novo). Appeals are generally confined to a review of the written documentation collected in the investigation, and pertinent documentation regarding the grounds for appeal.

The decision-maker for the appeal will not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

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

## **APPLICATION TO FACULTY & STAFF**

One or more of the College's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies to any situation where a student is the complainant or respondent. In all other situations, the College reserves the right to apply this policy or another applicable College policy or process. The College will apply this policy to any situation where the College determines that Title IX requires the application of this policy.

## **CLERY ACT COMPLIANCE**

The College is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Neither the names of individuals involved in incidents nor the specific details of the incidents are reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, the College will issue a campus-wide timely warning to the campus (which can take the form of an email to campus), except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/Complainant will not be disclosed.

At no time will Wells College 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 College 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 proceedings except as required or permitted by law and College policy.

## **COORDINATION WITH OTHER POLICIES**

A particular situation may potentially invoke one or more College policies or processes. The College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

## **DESIGNATION OF AUTHORITY**

Any College administrator or official empowered by this policy, may delegate their authority to any other appropriate College official. Delegation of authority may be necessary to avoid conflicts of

interest or where time constraints or other obligations prevent a College official named in this policy from fulfilling their designated role.

## **STUDENT BILL OF RIGHTS**

All students have the right to:

1. Make a report to local law enforcement and/or police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes and violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from any 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;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

Upon report to the College, students are informed “You have the right to make a report to Campus Safety, Local Law Enforcement, and/or State Police or choose not to report; to report the incident to Wells; to be protected by Wells from retaliation for reporting the incident; and to receive assistance and resources from Wells.”