

**Weill Cornell Medicine Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (previously Interim WCM Policy 206) for the Following Acts of Prohibited Conduct:**

- Aiding Prohibited Conduct;
- Attempting to Commit Prohibited Conduct;
- Dating Violence;
- Domestic Violence;
- Discrimination;
- Harassment;
- Sexual Assault;
- Sex-Based Harassment;
- Sexual Contact;
- Sexual Exploitation;
- Sexual Harassment (Other & Title IX);
- Sexual Violence;
- Stalking;
- Retaliation; and
- Violating a Supportive Measure

## DEFINITIONS

The following definitions of relevant terms apply for the purpose of Policy 6.4 only:

**Aiding Prohibited Conduct:** A person aids prohibited conduct if, with the intent to promote or facilitate such conduct, that person helps another person commit the prohibited conduct.

**Attempting to Commit Prohibited Conduct:** A person attempts to commit prohibited conduct if, with the intent to commit such conduct, that person engages in conduct directly tending toward completion of the prohibited conduct.

**Bias Activity:** An action of mistreatment or incivility (verbal, physical, in written or digital form) taken by an alleged offender/s and motivated in whole or part by an actual or perceived aspect of diversity/identity of the harmed or impacted party. Identity may include, but is not limited to, ability, age, ancestry or ethnicity, color, creed, disability, gender, gender identity or expression, immigration or citizenship status, marital status, national origin, neurodiversity, race, religion, religious practice, sexual orientation, socioeconomic status, or weight.

**Complainant:** An individual who is alleged to be the victim of the Prohibited Conduct (as defined below) under this Policy.

**Consent:** 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. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be withdrawn. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. Consent cannot be given when a person is less than seventeen (17) years of age; or mentally disabled (a person is mentally disabled when their cognitive, emotional, or behavioral functioning renders them incapable of appraising their conduct). When consent is withdrawn or can no longer be given, sexual activity must stop.

**Covered Individual(s):** These procedures apply to all WCM employees (faculty and staff), applicants for employment, students, interns, vendors, contractors, or other third parties in the workplace or who provide educational services<sup>2</sup> (or in other settings in which the

aforementioned person(s) may find themselves in connection with their employment) (collectively, “Covered Individuals”).

**Dating Violence:** Any intentional act or threatened act of violence by a person who has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence can be a single act or a pattern of behavior in relationships. Dating violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another within a dating relationship. Dating Violence may also include threatening to self-harm if another does not do what is asked. Dating violence does not include acts covered under the definition of Domestic Violence. Examples of dating violence may include, but are not limited to slapping, kicking, pinching, biting, pulling hair, punching, threatening to hit, harm, or use a weapon on a partner or a partner’s family, hurting or threatening to hurt a partner’s pets or children.

**Discrimination:** The adverse treatment of another individual on the basis of a Protected Characteristic; the use of facially neutral employment policies or practices, which disproportionately disadvantage individuals on the basis of a Protected Characteristic. Discrimination based on sex refers to such treatment of a person because of the person’s sex, sexual orientation, actual or perceived gender, gender identity, or gender expression.

**Domestic Violence:** Any intentional act or threatened act of violence against the complainant committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the victim shares a child in common; (3) a current or former cohabitant who is or has previously been in an intimate relationship with the victim; (4) a person similarly situated to a spouse under domestic or family violence law; or (5) anyone else protected under domestic or family violence law. Domestic violence may include emotional abuse, psychological abuse, or economic abuse. Domestic violence can be a single act or a pattern of behavior in relationships.

Examples of behaviors that may constitute domestic violence include, but are not limited to hitting, punching, pinching, slapping, choking, violating a protective order, or harming a person’s children or animals.

**Formal Complaint:** For the purposes of Sexual Harassment (Title IX) a “formal complaint” means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within WCM’s education program or activity and requesting initiation of the procedures consistent with Sexual Harassment (Title IX) to investigate the allegation of sexual harassment.

**Harassment:** Certain unwelcome conduct on the basis of an individual's Protected Characteristic, including, but not limited to: subjecting an individual to humiliating, offensive, abusive or threatening conduct that creates an intimidating, hostile or abusive work or learning environment; alters the conditions of employment; or unreasonably interferes with an individual's work performance on the basis of that individual's Protected Characteristic. Examples of harassing behavior may include: communicating, sharing, or displaying written or visual materials; epithets or slurs; negative stereotyping; denigrating jokes; and display or circulation in the working, learning, or living environment (including electronic transmission) of written or graphic material; making verbal comments; or engaging in physical conduct that is demeaning or derogatory to an individual because of a Protected Characteristic. Whether or not conduct is harassment will depend on the totality of the circumstances, including the frequency and severity of the discriminatory conduct; whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and whether the conduct unreasonably interferes with the alleged victim's employment environment, if applicable.

**Incapacitation:** This occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. For example: lack of consciousness, being asleep, being involuntarily restrained, or otherwise being unable to consent. Indicators of incapacitation include slurred speech, bloodshot or unfocused eyes, unsteady gait (needing assistance walking or standing), vomiting, concern expressed by others about the individual, expressed memory loss, and/or disorientation.

**Privacy:** While not bounded by confidentiality, disclosure of information will be limited, and personal information shared only as necessary.

**Preponderance of the Evidence:** The standard of proof used under these procedures. A finding by a Preponderance of the Evidence means that the quality or significance of the evidence offered in support of one side is more convincing than the evidence offered in opposition, to conclude that it is more likely than not that the alleged conduct occurred.

**Prohibited Conduct:** Any conduct that constitutes a violation of Policy 6.4. WCM has designated different types of prohibited conduct as well as procedures that correspond best with WCM's different constituencies. Conduct that constitutes prohibited conduct is set forth and defined herein. Prohibited conduct will be investigated and adjudicated pursuant to the applicable procedural pathway.

**Protected Characteristics:** An individual's or group's actual or perceived age, color, creed, disability, ethnicity, gender, gender identity or expression, marital status, national origin, race, religion, sexual orientation, predisposing genetic characteristics, status as a domestic violence victim, military or veteran status, pregnancy or recovery from childbirth, or any combination of these or related factors protected by law (collectively, "Protected Characteristics").

**Respondent:** An individual who is alleged to have engaged in Prohibited Conduct under this Policy.

**Retaliation:** Seeking revenge, reprisal, injury, or engaging in an adverse employment action (including, but not limited to: making any decision regarding job assignment or reassignment, performance evaluation, compensation, promotion or demotion, termination or commencement of employment, or any other decision involving any tangible employment action), against an individual based in whole, or in part, on any individual's: (i) exercise of their rights under this Policy; (ii) participation in an investigation into allegations of any of the conduct covered in this Policy; (iii) opposition to any conduct covered in this Policy; or (iv) encouragement of others to exercise their rights under this Policy, is ***absolutely prohibited*** by WCM and under federal, state, city, and local law. If an individual believes that they have been retaliated against for one of the aforementioned reasons, that individual should contact the Office of Institutional Equity. Any employee who retaliates against anyone involved in a discrimination, harassment, including sexual harassment, or retaliation investigation or court proceeding will be subject to discipline, up to and including termination of employment.

**Sexual Assault:** Non-consensual intentional physical contact of a sexual nature, such as unwelcome physical contact with a person's genitals, buttocks, or breasts, or any form of sexual intercourse without Consent. Rape is a form of sexual assault. Sexual assault occurs when the act (non-consensual sexual contact or non-consensual sexual intercourse) is committed by: (i) physical force, violence, threat, or intimidation; (ii) ignoring the objections of, or without the Consent of, another person; (iii) causing another's incapacitation through intoxication or impairment through the use of alcohol or other drugs; and/or (iv) taking advantage of another person's incapacitation by alcohol or drug use, disability, unconsciousness, or helplessness which renders them unable to give consent. In accordance with New York State law, a person under the age of seventeen (17) lacks the capacity to give Consent.

**Sex-Based Harassment:** A form of sex discrimination that is unlawful under applicable federal, state, and local law. Sex-Based Harassment may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature. Such conduct may constitute sex-based harassment regardless of the involved parties' respective sex, sexual orientation, and/or gender identity, or other protected classes covered by federal or state law.

**Sexual Contact:** Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

**Sexual Exploitation:** Non-consensual sexual abuse or exploitation of another when such behavior does not otherwise constitute another specifically defined behavior. Examples of sexual exploitation include, but are not limited to, non-consensual use of electronics to capture, reproduce, or share images of a sexual nature without consent of parties involved, public

indecenty, or exposing genitals to others without consent, or engaging in ‘peeping’ (observing another when privacy would be reasonably expected) without consent.

**Sexual Harassment (Title IX):** Sexual harassment (Title IX) includes conduct on the basis of sex that is of a sexual nature that satisfies one or more of the following: (i) a WCM employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called “quid pro quo” harassment); (ii) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to WCM’s education program or activity; or (iii) sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined herein and under law).

**Sexual Harassment (Other):** This is a form of employee misconduct. Other Sex-Based Harassment is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature. Sexual harassment (other) may include harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender (collectively, “Sex”). Sexual harassment may also involve unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when: (i) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment; (ii) such conduct is made either explicitly or implicitly a term or condition of employment; or (iii) submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment. Unlawful sexual harassment may take many forms, including, but not limited to: offensive and unwelcome sexual invitations, whether or not the individual submits to the invitation, and particularly when a spoken or implied quid pro quo for sexual favors is a benefit of employment or continued employment; sex stereotyping; hostile actions taken against an individual because of that individual’s Sex; unwelcome sexual flirtations, advances, questions or propositions; requests or demands for sexual favors; graphic or degrading verbal comments or questions about an individual’s appearance or their sexual conduct or relationships; sexually oriented gestures, noises, remarks or jokes, or comments about an individual’s sexuality or sexual experience; unwanted, offensive, or abusive physical contact; words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s Sex, which cause the recipient discomfort or humiliation, and/or which interfere with the recipient’s job performance. The above list is only illustrative of types of conduct that would violate this Policy and, as such, by no means represents an exclusive list of conduct or types of conduct that would violate this Policy.

**Sexual Violence:** Sexual contact perpetrated against an individual's will, without valid consent, or when an individual is incapable of giving consent. Examples of sexual violence include sexual assault, dating violence, or domestic violence.

**Stalking:** A course of conduct directed at a specific person based on their sex or gender that would cause a reasonable person to feel fear for their safety or to suffer substantial emotional distress. Stalking involves repeated and continued harassment made against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear and apprehension. Stalking behaviors may include: pursuing or following; non-consensual (unwanted) communication or contact – including face-to-face, telephone calls, voice messages, electronic mail, video calls, text messages, unwanted gifts, handwritten notes, etc.; trespassing and surveillance, or other types of observation.

### **APPLICATION OF WCM PROCEDURE**

Where more than one procedure covers the misconduct complained of, once the Complainant makes a report to the Office of Institutional Equity, a determination will be made as to the applicable procedure.

### **ACADEMIC FREEDOM**

Nothing in these procedures shall be construed to abridge academic freedom and inquiry, principles of free speech and expression, or the university's educational mission. Based on the protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered Prohibited Conduct unless this speech or expression meets the definition of Prohibited Conduct under these procedures.

<p><b>PROCEDURE FOR REPORTING AND INVESTIGATION OF DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT AND/OR RETALIATION FOR ALL PROTECTED CHARACTERISTICS</b></p>
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### **REPORTING PROHIBITED CONDUCT<sup>4</sup>**

If a Covered Individual believes that they have experienced Prohibited Conduct, including but not limited to discrimination, harassment, and/or retaliation based on any Protected Characteristic except Sexual Harassment (Title IX) either in person, in writing, at an employment-related offsite event, or over WCM's electronic devices and equipment, electronic messaging systems, or the internet, or if the Covered Individual has witnessed same, the Covered Individual should report the Prohibited Conduct immediately. When the Respondent is an employee (faculty or staff), Prohibited Conduct is considered a form of employee misconduct.

It is, of course, very difficult for WCM to address an instance of Prohibited Conduct unless it learns of the incident. Therefore, in order for WCM to ensure that it provides an environment

free from Prohibited Conduct, WCM strongly encourages Covered Individuals to immediately report their concerns using one of the methods below so that the OIE can evaluate and resolve the issue. However, due to the sensitivity of these problems and because of the emotional toll such conduct may have on the individual, no fixed period has been set for reporting incidents of Prohibited Conduct.

Covered Individuals can report the Prohibited Conduct in the following ways:

- Submit a written Complaint Form, which can be found at: <https://equity.weill.cornell.edu/reporting/report-incident>
- Contact (orally or in writing) Office of Institutional Equity directly to lodge a complaint (718-619-5527) or [equity@med.cornell.edu](mailto:equity@med.cornell.edu).
- Contact Cornell University Ethics Point by dialing 866-293-3077, or using the following link: <https://audit.cornell.edu/services/ethical-conduct-and-compliance-hotline/>

Covered Individuals can also use the external remedies (e.g., a government agency or in court under federal, state) outlined in the “Legal Protections and External Remedies” section below.

## **RESPONSIBILITY OF SUPERVISORS AND ADMINISTRATORS**

All supervisors, administrators, and faculty members are expected to maintain a work environment that does not tolerate or condone any form of Prohibited Conduct. If a supervisor or administrator becomes aware of an interaction involving an employee that may be considered Prohibited Conduct, either because they receive a complaint or information or observes or suspects the Prohibited Conduct, they should take all reasonable actions to report the Prohibited Conduct by contacting their Human Resources Business Partner and/or OIE. This is true even if a Complainant reports Prohibited Conduct in confidence and requests confidentiality; however, the supervisor or administrator may keep the Complainant’s name confidential. Failure to immediately notify their Human Resources Business Partner or OIE may impede the ability of the investigators to conduct an impartial, timely, and thorough review of the complaint and inhibit WCM’s ability to adhere to its obligations under the law.

In addition to being subject to discipline if they engage in Prohibited Conduct themselves, supervisors, managers, and administrators will be subject to discipline for failing to report suspected Prohibited Conduct or otherwise knowingly allowing the Prohibited Conduct to continue, up to and including termination of employment or appointment.

## **INVESTIGATION PROCEDURE**

All complaints that allege Prohibited Conduct will be investigated by the OIE, regardless of how they were initiated. Investigations will be prompt, thorough, and impartial. All persons involved, including Complainants, Respondent, and witnesses will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. While the process



may vary from case to case depending on the circumstances (except where procedures are expressly prescribed by this Policy), typically, the investigation will include review of documents, individual interviews with parties involved, and where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge of the facts and circumstances. Qualified investigators with appropriate expertise will conduct the investigation.

During the investigation, WCM will provide all parties appropriate due process and reach a reasonable conclusion based on the evidence collected. All interviews will be recorded and WCM will maintain documentation regarding, and track the progress of, each complaint and ensuing investigation. All parties contacted during the course of such investigation will be notified that WCM will not tolerate retaliation in any form against any employee who believes in good faith that discrimination or harassment has occurred and reports such conduct, or who truthfully cooperates in an investigation of alleged discrimination or harassment.

**Confidentiality:** Investigations will remain confidential to the greatest extent possible. The investigation will proceed with appropriate consideration given to the privacy of all involved. It must be recognized that WCM will take reasonable measures to protect the confidentiality of the complaint, testimony, and witnesses throughout the investigatory process. However, WCM cannot and does not guarantee absolute confidentiality.

**Cooperation:** All employees (faculty and staff) and students of WCM must fully cooperate with WCM's investigations into complaints of harassment, discrimination, or retaliation. A faculty member, staff member, or student who has relevant information but refuses to cooperate after being asked to do so during an investigation may be subject to disciplinary action. Note: the mere fact that an investigation is being conducted by WCM does not suggest that WCM has grounds to substantiate the allegations of the complaint.

**Outside Individuals:** WCM may be limited in what actions it may take when investigating or responding to a report if an accused person is not known to WCM, not affiliated with WCM, or is no longer affiliated with WCM at the time a report of Prohibited Conduct is made. In such cases, WCM will, to the best of its ability, conduct an inquiry, take steps to prevent the recurrence of such conduct to any Covered Individual, and remedy the effects, if appropriate. If one of the parties involved in a report is not affiliated with WCM but is employed by, and/or provides services for another entity, WCM may cooperate with that entity to complete its investigation.

**Informal Resolution:** If the Complainant and Respondent agree, certain cases may be resolved informally. OIE may work with Human Resources and Department Administration, or the Senior Associate Dean, and the appropriate Department Chair to devise an informal resolution plan. If the case can be resolved informally, the parties will receive written notice of the outcome explaining the terms of the informal agreement. If the informal resolution process is unsuccessful, OIE will consult with the appropriate WCM officials and will

continue with a formal investigation. Note: If the matter is resolved through the informal resolution process, no complaint can be filed, and no appeal will be considered.

**Administrative Assistance:** The investigator(s) may seek the assistance and advice from other administrative offices, notably the Office of General Counsel, Human Resources, Office of Faculty Affairs, Office of Diversity and Inclusion, Office of Research and Sponsored Programs, Audit or the Finance Office. Such advice does not become part of the investigation record and is not available for review by the involved parties. In the absence of special circumstances, it is expected that the investigation will be complete within 120 calendar days from receipt of the written allegations (or from receipt of an oral allegation if allegations are not in writing). In the case of an investigation in which a faculty member is the Respondent, a request for additional time to investigate may be approved by the appropriate Senior Associate Dean.

**Advisors:** At all points in the investigation process, the complainant and respondent have the right to seek the advice of personal advisors. One advisor may attend the investigative interview but may not respond to questions for their clients or advisees and may not pose questions.

**Dismissal:** The investigator may dismiss a complaint and close the case where the complaint is not supported by sufficient facts, lacks merit based upon the available evidence, or does not fall within the jurisdiction of the Investigator.

Similarly, the investigator may dismiss a complaint and close the case under any of the following circumstances:

- The Complainant cannot be located after reasonable efforts have been made and has not responded for at least ten (10) calendar days to a notice sent by the investigator to their last known residence, office, or email address.
- The Complainant fails to provide requested, necessary information.
- The Complainant fails or refuses to cooperate with the investigation to the extent that the investigator is unable to reasonably resolve the matter.

If the Investigator(s) determines that a complaint should be dismissed, the Complainant will be informed of that decision and given an opportunity to submit a written response to the Director OIE within ten (10) business days. If the dismissal is affirmed, the complainant shall have a right of appeal under the appeal procedures, herein. Upon completion of the investigation (whether it is dismissed, or an investigation report is issued), it will be timely closed, documented, and kept confidential to the greatest extent possible.

**Complainant Withdrawal:** If the Complainant withdraws the complaint at any time during the proceeding, OIE will determine whether dismissal is appropriate based on the severity of the allegations in the complaint and whether there is a risk to the health and safety of any member

of the WCM community. If OIE determines that the complaint will be dismissed, the investigation will be deemed closed.

**The Investigation Record:** The investigator will maintain a record of all witnesses interviewed, notes from the interviews, and, if prepared, a written summary of those interviews and copies of all documents or other records reviewed by the investigator. The record will be maintained in a confidential file maintained by the OIE.

**Investigation report:** Upon concluding an investigation, the investigator(s) will prepare a written investigation report, which will include the following: the scope of the investigation, a summary of the recommended findings, recommendations for any corrective actions and/or sanctions, any non-punitive, preventative remedies for the Complainant, and if warranted, recommended action to restore the Respondent's reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome. When the Respondent is a staff member, prior to the investigation report being finalized, it will be shared first with Human Resources and the appropriate Departmental Administrator/Chief Administrative Officer to provide an opportunity for the investigators and Departmental Administration to jointly develop a recommended decision (i.e., investigative findings and plan of correction). When the Respondent is a faculty member, prior to the investigation report being finalized, it will be shared first with the appropriate Sr. Associate Dean to provide an opportunity for the investigators and Sr. Associate Dean to jointly develop a recommended decision (i.e., investigative findings and plan of correction); and when the respondent is a trainee (post-doc), the investigation report will be shared first with the Graduate School Associate Dean for Academic Affairs to provide an opportunity for the investigator and the Associate Dean to jointly develop a recommended decision (i.e., investigative findings and plan of correction).

## **RESULTS OF THE INVESTIGATION**

**Decision Maker(s):** The Decision Maker will change based upon the status of the Respondent. HR and OIE will jointly decide all complaints against WCM staff and other non-faculty employees. Complaints against faculty members will be decided jointly by OIE's Director, the appropriate Sr. Associate Dean, and the faculty member's Department Chair; except that complaints made by students against faculty members that are classified by the OIE as Level 1 complaints (per the Teaching-Learning Environment and Student Mistreatment Policy) will be decided jointly by the OIE's Director and, as applicable, the Medical College Teacher-Learner Committee or the Graduate School Trainer-Learner Committee. Complaints against Trainees (Post-Docs) will be decided jointly by the OIE's Director, the Graduate School Associate Dean, Academic Affairs and the Trainee's Department Chair. Upon receipt of the investigation report the Decision Makers accept, modify, or reject the investigation findings, determination(s), recommended sanctions and/or remedial measures; return the report for further investigation or reconsideration; or render an

independent decision for a final course of action. During this review, the Decision Makers may consult confidentially with The Office of General Counsel, appropriate WCM officials, and with the Respondent's supervisor and Human Resources if disciplinary actions are recommended, concerning the sufficiency of the investigation and the findings or any recommendation. If, based on the investigation, WCM believes that it is more likely than not that conduct in violation of Policy 6.4 has occurred, it will take appropriate remedial measures to resolve the situation, on a case-by-case basis.

**Corrective Action:** Appropriate sanctions and/or remedial measures should take into consideration appropriate action to deter future misconduct. Individuals found (as a result of investigation) to have engaged in Prohibited Conduct, including employees, faculty, students, supervisors and managers, will be dealt with promptly and appropriately. Corrective action may include: education, training, referral to counseling, monitoring, and/or a corrective action, suspension, or other discipline up to, and including termination of employment, termination of appointment, or dismissal of appointment. Individuals who engage in Prohibited Conduct may also be subject to civil and criminal penalties. Conduct that is found not to be in violation of Policy 6.4 may violate other WCM policies and WCM reserves the right to take corrective action in line with its **Shared Values**. In the case of faculty members, termination or dismissal of appointment shall be handled in accordance with Section Seven of the Academic Staff Handbook for Termination (7.25 et seq.) or Dismissal (7.31 et seq.), as applicable.

Corrective action, if any, will be implemented by the following: For non-faculty employees, the Department Administrator/Chief Administrative Officer/Chair will implement corrective action, with assistance from Human Resources and, if needed, the Human Resources Business Partner. For faculty members and Trainees (Post-Docs), the Department Chair will implement corrective action, with assistance from other resources that may include the appropriate Senior Associate Dean, Office of General Counsel, Office of Faculty Affairs, or others.

**Notice of Decision:** WCM will promptly notify the parties of the Decision Makers' final determination. The parties will be provided with a summary of the final investigation report. Upon completion of the investigation, it will be timely closed and kept confidential to the greatest extent possible.

**Grievance from Disciplinary Action:** Requests for review of disciplinary action by WCM Staff are given consideration under HR's Policy 265 *Employee Grievance Procedures* (<https://hr.weill.cornell.edu/policies/265-employee-grievance-procedures>).

The determination of the Decision Makers in the case of a complaint against a faculty member may be grieved by the Respondent faculty member or Complainant. Grievances by faculty members shall be according to the procedures detailed in Section 12 of the Academic Staff Handbook, Faculty Grievance Policy:

([https://faculty.weill.cornell.edu/sites/default/files/handbook\\_sections/section12grievance.pdf](https://faculty.weill.cornell.edu/sites/default/files/handbook_sections/section12grievance.pdf)).

## **LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

Prohibited Conduct and Sexual Harassment are not only prohibited by WCM, but are also prohibited by state, federal, and, where applicable, local law. Aside from the process described in these procedures, employees may also choose to pursue legal remedies with the following entities.<sup>7</sup>

### **STATE HUMAN RIGHTS LAW (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regards to discrimination, harassment, including sexual harassment, and retaliation and protects employees, paid or unpaid interns and non-employees, regardless of immigration status.

A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court. Complaints with DHR may be filed any time within one year (or, in some instances, three years) of the discrimination, harassment, including sexual harassment, or retaliation. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov). Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint.

### **CIVIL RIGHTS ACT OF 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the date of the incident. There is no cost to file a complaint with the EEOC. The EEOC's NYC Office is located at 33 Whitehall Street, 5<sup>th</sup> Floor, New York, NY 10004. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

### **LOCAL PROTECTIONS**

Many localities enforce laws protecting individuals from discrimination, harassment, including sexual harassment, or retaliation. For example, employees who work in New York City may file complaints of discrimination, harassment, including sexual harassment, or retaliation with the New York City Commission on Human Rights. Contact their main office, which is located at 22 Reade Street, New York, NY 10007, by calling "311" or (212) 306-7450; or visiting: <https://www.nyc.gov/site/cchr/about/report-discrimination.page>.

<sup>5</sup> Sexual Assault claims are adjudicated under this procedural pathway.

## **NYP SECURITY**

New York Presbyterian Security can be reached at (212) 746-0911. If harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime.

## **JUDICIAL FORUMS**

In addition to notifying the local police department, or the government agencies listed above, employees can also file a complaint in federal or state court under federal and/or state anti-discrimination and anti-harassment laws.

## **QUESTIONS ABOUT THESE PROCEDURES**

If you have any questions about these procedures, about whether you should report an incident, or about WCM's commitment to a workplace free of discrimination and harassment, please contact the Office of Institutional Equity.

## **PROCEDURE FOR REPORTING AND INVESTIGATION OF SEXUAL HARASSMENT (TITLE IX)<sup>5</sup>**

### **INTRODUCTION**

In accordance with Title IX of the Education Amendments of 1972 ("Title IX"), WCM is committed to fostering an environment that is free from unlawful discrimination on the basis of sex in its educational programs or activities, or in any area and phase of employment. To that end, this Title IX procedure is intended to ensure a safe and non-discriminatory educational and work environment and describe the process by which WCM meets its obligations under Title IX and its implementing regulations.

Inquiries concerning WCM's application of Title IX may be referred to the following Title IX Coordinator:

Brittney Blakeney, JD  
 Director, Office Institutional Equity  
 575 Lexington Avenue, Suite 670  
 New York, NY 10022  
 Phone: 718-619-5527  
 Email: [bsb4002@med.cornell.edu](mailto:bsb4002@med.cornell.edu)

The Title IX Coordinator or designee has the authority to take action to redress Sexual Harassment (Title IX) as an official with authority. Individuals who have been given the duty of reporting incidents of Sexual Harassment (Title IX) to the Title IX Coordinator, Director,

<sup>5</sup> Sexual Assault claims are adjudicated under this procedural pathway.

Office of Institutional Equity, or other appropriate designee are identified below as Designated Mandatory Reporters.

### **WCM Designated Mandatory Reporter List**

All the employees holding the one of the titles listed below must report to the Title IX Coordinator every known incident or report of Prohibited Conduct:

Practice Managers, Department and Division Administrators, Deans, Senior Associate Deans, Associate Deans, Executive Vice Provost, Assistant Vice Provost, Assistant Deans, Chief Administrative Officers, Directors, Senior Directors, and any person who serves as the head of a department, unit, center, and/or institute.

### **What is the purpose of a Title IX Procedure?**

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

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX<sup>6</sup> of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence).
- Addresses how WCM **must** respond to reports of misconduct falling within that definition of sexual harassment; and
- Mandates a grievance process that WCM **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

These procedures will apply in all cases where a Formal Complaint of alleged Prohibited Conduct under these procedures is signed on or after the effective date of these procedures, or subsequent updates to these procedures, regardless of when the alleged conduct occurred.

WCM's Title IX Procedures are effective August 14, 2020.

### **SCOPE AND APPLICABILITY**

This Sexual Harassment (Title IX) Procedure applies when an employee's (faculty or staff) alleged Prohibited Conduct occurred in WCM education programs and activities in the United States. At the time of the filing of the formal complaint, the complainant must be participating in or attempting to participate in the WCM's education program or activity.

<sup>6</sup> See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Sexual Harassment (Title IX) can occur between supervisor/employee, co-workers, students/employees, and from people of the same or opposite sex. WCM must follow the procedures set forth in this section of this Policy if it has actual knowledge of Sexual Harassment (Title IX).

## **LOCATIONS COVERED**

These procedures apply to Sexual Harassment (Title IX) that occurs:

- In the United States (Study-Abroad Programs and off campus locations that are not within a WCM program or activity are not covered by the Title IX regulations).
- On or within property owned and controlled by WCM, or organizations officially recognized by WCM.
- In the context of WCM employment (including contracted services), education programs or activities that receive Federal financial assistance (whether on-site or off-site). For the purpose of these procedures, “education program or activity” includes locations, events, or circumstances over which WCM exercised substantial control over both the Respondent and the context in which the Sexual Harassment (Title IX) occurred.
- Off-site activities if they have continuing effects on or creates a hostile environment for any Covered Individual. This includes Sexual Harassment (Title IX) that occurs on the internet, social media, or other online platforms.

## **TITLE IX COORDINATOR RESPONSIBILITIES**

- Ensuring compliance with Title IX
- Overseeing anti-discrimination, harassment, and retaliation training and education as it relates to Sexual Harassment (Title IX)
- Overseeing and coordinating the response, investigation, and resolution of reports made of Sexual Harassment (Title IX)
- Coordinating timely and thorough responses to complaints of Sexual Harassment (Title IX), and approving changes to all applicable deadlines
- Assisting with, and resolving, any issues related to these procedures as they apply to Sexual Harassment (Title IX)
- Ensuring appropriate action to eliminate Sexual Harassment (Title IX), prevent its recurrence, and remedy its effects.

## **REPORTING OPTIONS FOR SEXUAL HARASSMENT (TITLE IX)**

### **Reporting Options**

There is no specific timeframe for individuals who have experienced conduct that may constitute Sexual Harassment (Title IX) to make an initial report pursuant to this procedure.



Individuals, however, are encouraged to report alleged incidents soon after the conduct has occurred to maximize WCM's ability to investigate and reach a finding.

Any Covered Individual (regardless of whether or not the reporting party is the person alleged to have experienced the conduct) may report Sexual Harassment (Title IX) directly to the Title IX Coordinator identified above. Reports may be made in person, in writing, by mail or email to the address listed above, or by telephone. Additionally, such a report may be made at any time, including during non-business hours by contacting the Title IX Coordinator.

Notice to a Title IX Coordinator, or designee charges WCM with actual knowledge, and triggers its obligation to respond. Notice can include whenever a Title IX coordinator or designee: (1) witnesses sexual harassment; (2) hears about sexual harassment or receives sexual harassment allegations from a Complainant or a third party (e.g., a complainant's friend, or peer); (3) receives a written or verbal complaint about sexual harassment or sexual harassment allegations; or (4) receives notice by any other means.

The Title IX Coordinator or designee will maintain the Complainant's privacy to the greatest extent possible but cannot guarantee confidentiality and will take the appropriate action designated herein to ensure that an investigation is conducted and/or a resolution is reached.

### **External Emergency Reporting Options**

In addition to making a report to WCM, all individuals are encouraged to seek assistance from a medical provider and/or law enforcement immediately after an incident involving sexual exploitation, stalking, domestic/sexual/dating violence, and/or sexual assault. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. Please note that reporting options are not mutually exclusive. Both internal and external reports may be made simultaneously. If requested, the Title IX Coordinator/NYP Security can assist an individual with filing a police report, ensuring access to a sexual assault forensic examination, obtaining an Order of Protection, or restraining order, and/or contacting law enforcement. These procedures as it relates to Sexual Harassment (Title IX) may run concurrently with any criminal justice investigation and will only be subject to temporary delays at the specific request of law enforcement. Nothing herein shall prohibit WCM from initiating its own report to local law enforcement.

### **Confidential and Anonymous Reporting**

Covered Individuals may make anonymous reports to the Title IX Coordinator. However, note that the less identifying information the Title IX Coordinator receives about the involved individuals, and facts and circumstances of the Sexual Harassment (Title IX) claim, the more limited WCM's ability to respond to, investigate, and remedy the conduct.

## **RESPONSIBILITY OF SUPERVISORS AND ADMINISTRATORS**

All WCM supervisors, administrators, and faculty should understand that sexual harassment is considered a form of employee misconduct. Supervisors, administrators, and faculty members are expected to maintain a work environment that does not tolerate any form of Sexual Harassment. If a supervisor or administrator becomes aware of an interaction involving an employee that may be considered Sexual Harassment (Title IX), they must take all reasonable actions to report the Sexual Harassment (Title IX) to the Title IX Coordinator immediately. This is true even if the Complainant reports the Sexual Harassment (Title IX) in confidence and requests confidentiality; however, the supervisor or administrator may keep the complainant's name confidential.

Failure to immediately notify the Title IX Coordinator may impede the ability of the investigators to conduct an impartial, timely, and thorough review of the complaint and may inhibit WCM's ability to adhere to its obligations under the law.

In addition to being subject to discipline if they engage in Sexual Harassment themselves, supervisors, managers, and administrators will be subject to discipline for failing to report suspected Sexual Harassment or otherwise knowingly allowing the Sexual Harassment to continue, up to and including termination of employment or appointment.

## **INITIAL PROCEDURE**

WCM established the following procedure to provide Covered Individuals the opportunity to seek redress from WCM. These procedures are not intended to replace or replicate a formal judicial process but reflect WCM's obligations under applicable laws. This procedure, the "Investigation and Resolution Procedure" discussed below, and the sanctioning options and procedures included in both, will supersede any contrary procedure or provision of any other policies included in Academic Staff Handbook, including the Faculty Misconduct Policy and the Teacher Learning Environment and Student Mistreatment Policy.

### **Initial Meeting**

Upon receipt of a report of potential Sexual Harassment (Title IX), either directly from the Complainant, or through a designated Official with Authority or department, the Title IX Coordinator will conduct an initial meeting (the "Initial Meeting") with the Complainant. At that meeting, the Title IX Coordinator will address the following topics:

- The Complainant's physical safety, and health and emotional needs.
- The availability of Supportive Measures (detailed herein), including that Supportive Measures are available with or without filing a Formal Complaint.
- How to file a Formal Complaint.

- Complainant’s right to report or not report the incident to law enforcement, and, to the extent practicable, assist the Complainant with locating criminal justice resources.
- WCM’s resolution processes.
- Complainant’s access to sexual assault forensic examination, order(s) of protection, restraining orders and/or assisting local law enforcement, if necessary.
- Information about on-site and off-site resolution procedures, including the reporting process, short-term remedies, the informal and formal resolution options, and other measures that can be taken regardless of whether the Complainant wishes to file a formal report with WCM.
- WCM’s policies regarding retaliation.
- Mandated reporting requirements.
- Ensure the complainant is aware of their right to an advisor.

### **Conduct Automatically Handled Through the Prohibited Conduct Investigation Procedure**

If, after the Initial Meeting, the Title IX Coordinator determines that the conduct at-issue is discrimination or retaliation based on sex, or clearly Sexual Harassment that is not covered under Title IX, i.e., Non-Title IX Sexual Harassment, then the Title IX Coordinator will refer the Complaint to the appropriate individual who will perform an investigation and issue corrective action pursuant to the Weill Cornell Medicine Procedures for Resolution of Reports of Non-Title IX Prohibited Discrimination, Harassment, Sexual Harassment, and Retaliation Against Employees Under Cornell University Policy 6.4.

### **Supportive Measures**

Regardless of whether the Complainant desires to file a Formal Complaint, WCM will offer free supportive measures to every Complainant or Respondent (referred to collectively as the “Parties,” and individually as, “Party”) before or after the filing of a Formal Complaint. Such supportive measures are individualized services that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other Party, while designed to ensure equal access to education and employment opportunities, protect safety, and deter Sexual Harassment (Title IX).

Supportive measures may include, but are not limited to:

- assistance obtaining access to counseling or medical services
- educational conversations with the parties
- extensions of deadlines or other work-related adjustments
- modifications of work schedules
- escort services

- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the workplace

Supportive Measures will be different for every matter and will be based on individualized review. WCM offers confidential counseling through the Employee Assistance Program Consortium (EAP).

The parties will have a say in the type of supportive measures offered by WCM to ensure they best meet their needs.

### **Violating a Supportive Measure**

A person violates a supportive measure if the measure is an order by a WCM (or University) official and the person to whom the order applies knowingly violates any of the conditions of the order. One common example of an order by a WCM (or University official) is a “no-contact” order.

### **Reasonable Measures Pending the Resolution of the Complaint**

In an instance where the nature of the complaint is emergent or poses a threat to the safety or health of the WCM community, or the integrity of its operations, WCM may impose other remedial measures on a short-term basis, for a period of time deemed appropriate by WCM (“Reasonable Measures”). Such Reasonable Measures will be determined at WCM’s sole discretion.

These Reasonable Measures are determined on a case-by-case basis and depend on the conduct alleged and an evaluation of the work environment. The Reasonable Measures could include, for example, a separation of the parties, including a change in assignment, shift, or work location or administrative leave. Reasonable Measures may also include a recommendation to the department and/or Human Resource Business Partner that they offer counseling and/or training for the affected individuals. These immediate Reasonable Measures do not preclude additional Supportive Measures or the complainant’s or WCM’s pursuit of a resolution under these procedures.

The Title IX Coordinator will notify each Party in writing of the Reasonable Measures to be imposed. Please note that the issuance of Reasonable Measures is not a determination of guilt. Failure to adhere to the Reasonable Measures may result in disciplinary action, up to and including termination of appointment or employment.

### **Formal Complaint Determination**

Based on the Initial Meeting, the Title IX Coordinator may seek permission from the Complainant to make a Formal Complaint, which can be withdrawn at any time. The Title IX

investigative procedure will not move forward until a Formal Complaint is filed. The Formal Complaint must be filed by the Complainant or signed by the Title IX Coordinator and must request that WCM investigate the Complaint. In the event the Complainant withdraws the Formal Complaint, the Title IX Coordinator has the authority to determine that signing a Formal Complaint to initiate an investigation, despite the Complainant's preference, is not unreasonable in light of the known circumstances (e.g., to provide a safe, non-discriminatory environment for the members of its community, considering factors such as the Respondent's history of similar behavior, escalated behavior, or the risk of additional acts, the use of weapons or force, or the involvement of a minor). If the Complainant declines to make a Formal Complaint, the TitleIX Coordinator may still be required to make certain disclosures pursuant to applicable law. WCM respects Complainant's wishes and autonomy by giving them the clear choice to file a Formal Complaint. Such decision will not impact Complainant's ability to access supportive measures, as described above. The succeeding process will be fair and impartial, and neither WCM, nor anyof its agents, will coerce or threaten a Complainant into filing a Formal Complaint.

### **Notification of Formal Complaint**

The Title IX Coordinator shall concurrently notify the Parties of the decision to proceed with the investigation in writing within two (2) business days of the Initial Meeting.

The Notification of Formal Complaint must:

- 1) include notice of WCM's Complaint Reporting, Investigation, Hearing, and CorrectiveAction process (the "Process").
- 2) contain written notice of the factual allegations, including the identities of the parties involved in the incident (if known), the conduct allegedly constituting the violation of Policy 6.4, the date and location of the alleged incident (if known).
- 3) include a statement that the Respondent is presumed not responsible for the alleged conduct, that a determination regarding responsibility is made at the conclusion of theProcess, and that the Respondent may be entitled to Supportive Measures (as describedabove).
- 4) inform the Parties that they may have an advisor of their choice, who may be, but is notrequired to be, an attorney, including the language of the "Advisor Information and Guidelines" below.
- 5) inform the Parties of their and their Advisors' rights to inspect and review inculpatoryand exculpatory evidence.
- 6) notify the Parties of any provision of any WCM policy that prohibits knowingly makingfalse statements or knowingly submitting false information during the Process; and
- 7) state that alleged behavior may also violate criminal law.

## **Support Person & Advisor Information and Guidelines**

Both the Complainant and the Respondent have the right to a support person of their choice to provide emotional support to the party. Any individual being interviewed has the right to be accompanied to any meeting or proceeding related to these procedures by an advisor of their choice (“Advisor”). An Advisor is an individual chosen to accompany the Party to advise on the various procedures involved with a Title IX proceeding.

An Advisor may take notes and quietly confer with the individual being advised but may not speak on behalf of the individual or in any way disrupt any meeting or the resolution procedure and may not speak on behalf of the party at any time with limited exception for cross-examination conducted by Advisors at the hearing. Individuals who may have factual information relevant to the Complaint may not serve as Advisors. If an individual being interviewed wishes to have an attorney serve as their Advisor, he or she may retain counsel independently. Attorney-Advisors may participate in the resolution process to the same extent as other Advisors. Although the Parties are not required to choose an Advisor or to bring their Advisor to all meetings, utilizing the same Advisor throughout the process, unless there are extenuating circumstances, allows the process to move forward in the most efficient fashion. If a Complainant or Respondent does not have an Advisor, WCM will provide an Advisor. In the event that a Party wants to make a change to their Advisor, he or she must provide written notice to the Title IX Coordinator.

Although reasonable attempts will be made to schedule proceedings consistent with an Advisor’s availability, the process will not be delayed in an effort to schedule the proceedings at the convenience of the Advisor.

If an Advisor fails to comply with the procedures set forth herein, including through a material breach of confidentiality, WCM reserves the right to exclude the Advisor from further participation in the process.

## **INVESTIGATION PROCESS**

WCM is obligated to investigate all Formal Complaints. At all points up until a final determination, there is a presumption of innocence for the Respondent. At all times during the adjudication Process (as defined herein), the burden of gathering evidence and the burden of proof remains on WCM.

**Note:** For all written submissions permitted by these procedures, the Parties must submit the documents. Written submissions from an Advisor, support person, or other individual made on behalf of the party will not be included in the investigative record.

### **Prohibition Against Conflicts of Interest**

The Title IX Coordinator, all investigators, and the members of the Hearing Panel must be impartial. Within three (3) business days from the date of the Notification of the Formal Complaint, either Party may object, in writing, to anyone's involvement based on a real or perceived bias or a conflict of interest. The Title IX Coordinator will refer the objection to the Hearing Panel to determine whether the allegation of bias or conflict is sustained (and in the case of an allegation of bias or conflict of interest on behalf of a member of the Hearing Panel, the Title IX Coordinator will make the determination). The Title IX Coordinator, all investigators, and the members of the Hearing Panel may also voluntarily recuse themselves at any point in the process if they may have a real or perceived conflict of interest. If they voluntarily recuse themselves or if the Title IX Coordinator or Hearing Panel determines that someone has a real or perceived bias or conflict, that individual will be recused from their responsibilities for the Formal Complaint in question and be replaced by an individual chosen by the Title IX Coordinator for the remainder of the Process.

### **Investigation Procedure**

Within five (5) business days from the Notice of Formal Complaint, the Title IX Coordinator shall appoint an investigator(s). All investigators must be trained on Title IX.

The goal of the investigator(s) is to conduct a thorough investigation of the allegations in the Formal Complaint to determine whether any conduct alleged in the Formal Complaint warrants moving forward to the Hearing Panel (the "Investigation"). The Investigation must include interviewing the Complainant and Respondent, if possible, it may also include interviewing other relevant witnesses or individuals with relevant information, including witnesses identified or requested by the Complainant and Respondent. All Parties will have an equal opportunity to offer witnesses and other evidence, and to review evidence throughout the Investigation. The investigator(s) will interview the Complainant, the Respondent, and any witnesses in separate, private sessions. The investigator(s) will provide the Parties and witnesses with reasonable notice of any and all meetings, interviews, or hearings that require their attendance, which will include the date, time, location, participants, and purpose. The investigator(s) will maintain notes of each witness interview and will maintain a file of all documentary evidence reviewed during the Investigation (the "Investigative File").

The investigator(s) shall have access to all potentially relevant documents. The investigator(s) will request and review any relevant evidence such as emails, text messages, videos, audio recordings, and photographs. The investigator(s) may also choose to interview witnesses not identified by the Parties, or to request relevant evidence that was not presented to them. The Parties must cooperate with the investigator(s) by providing any additional information that the Investigator(s) may request; however, Parties have the right to request that the investigator(s) exclude from evidence their own prior sexual history with persons other than the other party,

their own mental health diagnosis and/or treatment, past findings of responsibility, sensitive personal or medical information, and such information may not be used inappropriately. A Party must provide voluntary, written consent before WCM may use their medical, psychological, or similar treatment records during any part of the Formal Resolution.

Note: Neither Party is prohibited from discussing or sharing information relating to the Complaint with others who may support them or assist them in the matter. The Investigation will be completed under a reasonably prompt timeframe of the conduct alleged to constitute covered Sexual Harassment (Title IX) after issuing the Notice of Formal Complaint. The Title IX Coordinator may grant a reasonable extension of time upon request from the investigator(s). The investigator(s) should periodically check in with the Title IX Coordinator during the course of the Investigation to update the Title IX Coordinator on the progress of the Investigation.

### **Investigator(s)' Report**

At the conclusion of the Investigation, WCM will send the Parties and their Advisors evidence directly related to the Complaint, and a written report that fairly summarizes the investigator(s)' identification of contested and uncontested facts based on their objective evaluation of the evidence (whether inculpatory or exculpatory) and address relevancy of evidence (the "Investigator's Report"). The investigator(s) will not assess credibility based on a person's status as a Complainant, Respondent, or witness. The investigator(s) will not render an opinion on responsibility. Parties will have ten (10) days to respond to the Investigator's Report and inspect and review any evidence obtained as part of the Investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which WCM does not intend to rely in reaching a determination regarding responsibility. In no instance will the Investigator's Report be provided to the Parties and their Advisors less than ten (10) days prior to a Hearing (discussed below). Upon receipt of all responses, the investigator(s) will finalize the Investigator's Report. The final Investigator's Report will be immediately sent to the Parties and Parties' Advisors for their review and written response. The final Investigator's Report, and any written responses, will be kept in the Investigative File.

### **Dismissal of the Formal Complaint**

The Title IX Coordinator must dismiss the Formal Complaint if the conduct alleged, *even if proved*, would not constitute Sexual Harassment (Title IX); did not occur in WCM's education program or activity; or did not occur against a person in the United States. If the Formal Complaint alleges multiple allegations that arise out of the same circumstances, and the Title IX Coordinator determines that some conduct is covered under Title IX and some is not, all claims may proceed together to be resolved under this Title IX procedure. If, however, the Title IX Coordinator determines some claims do not arise out of the same circumstances and are not covered by Title.



IX, but could violate other WCM policy, that conduct will be dismissed and referred to another process, and the Title IX Procedure will proceed with respect to the covered claim only.

The Title IX Coordinator *may* also dismiss the Formal Complaint, or any of the allegations therein, if the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein; if the Respondent is no longer employed by WCM; or if specific circumstances prevent WCM from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein. Note: the conduct may be in violation of other WCM policies and may be reviewed and/or investigated under their respective, separate protocols.

Upon dismissing the Formal Complaint, the Title IX Coordinator will promptly send a written notice of dismissal, which will contain their reasons, simultaneously to the Complainant and the Respondent. Either Party has the right to appeal from the Title IX Coordinator's decision to dismiss the Formal Complaint or any allegation therein pursuant to the "*Appeal*" section below.

## **HEARING PROCESS**

### **The Hearing**

If the Title IX Coordinator does not dismiss the Formal Complaint, the Title IX Coordinator shall send the Formal Complaint to a Hearing in front of a decision-making Hearing Panel ("Hearing"). A non-voting Hearing Panel Chair appointed by the Office of Institutional Equity will preside over the Hearing. The Hearing Panel has three (3) members and one non-voting Hearing Panel Chair. The Hearing Panel members will include trained individuals selected through a process established by WCM.

The Hearing Panel must select a date for the Hearing. The Title IX Coordinator will simultaneously notify each Party (in person, by mail, or by email) that a Hearing is being convened and the date of the Hearing. Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by the Hearing Panel. The Hearing shall occur within five (5) business days of this notice.

Any witness, including the Complainant and Respondent, has the right to be accompanied to the Hearing by an Advisor of his or her choice. (*See* "Advisor Information and Guidelines" section above). In any hearing before the Hearing Panel, the Hearing Panel may question the Parties and other witnesses and may request and/or accept evidence. All Parties will have an equal opportunity to offer witnesses and other evidence. The Parties are allowed to cross-examine each other and each Party's witness; however, only Advisors will be allowed to ask these questions through cross-examination. The cross-examination can include questions challenging credibility, but it must be oral and in real-time. If the Party does not have an Advisor present at the live hearing, WCM will provide one, without fee or charge. This Advisor may, but is not

required to be, an attorney. This Advisor has the same right to conduct a cross-examination. No Advisor may serve as a witness.

The Parties are entitled to provide brief written opening statements and oral and written closing statements that shall not exceed 2500 words. The Parties will also have the opportunity to submit a written or recorded Impact/Mitigation Statement (“Impact Statement”) relevant to any sanction, which may be submitted up to the start of the hearing.

Prior to the answering of any question, the Hearing Panel Chair will first determine whether the question is relevant and explain to the Advisor any decision to exclude a question as not relevant. Questions and evidence about a Complainant’s prior sexual behavior are deemed irrelevant, unless they are offered to prove that someone other than the Respondent committed the alleged Sexual Harassment (Title IX) or are offered to prove Consent.

If a Party or witness does not submit to cross-examination at the live hearing, the Hearing Panel may consider statements made by parties or witnesses even if they do not participate in cross-examination at the live hearing in reaching a determination of responsibility. Regardless, the Hearing Panel cannot draw an inference about the determination of responsibility based solely on a Party’s or witness’s absence from the live hearing or refusal to answer a question.

The Hearing Panel will arrange for an audio, audiovisual recording, or transcript of the Hearing, which will be available upon request; no other individual may record the Hearing Panel. To the extent practicable, the Hearing Panel should be held in one (1) business day.

The Hearing Panel will use its best efforts to ensure the appearance of witnesses and the production of documents relevant to any matter before it. WCM will cooperate with the Hearing Panel and will use sanctions at its disposal in ensuring the appearance of witnesses and the production of documents in all proceedings before the Hearing Panel.

Hearing Format: Hearings are closed to the public. The Complainant and Respondent (and their Advisors) may, if they choose, observe the proceeding; neither Party is required to be physically present in the room where the Hearing is being held, other than to provide relevant testimony. Upon timely request by either Party, the Title IX Coordinator may, in their discretion, accommodate concerns for a Party’s personal safety, well-being, and/or fears of confrontation during the Hearing by permitting the use of available technology to conduct the Hearing while allowing the Complainant and Respondent to be in separate rooms. Witnesses and their Advisors (other than the Complainant, the Respondent, and their Advisors, as discussed below) are not permitted to observe the Hearing before or after their questioning but will be able to see all participants during their testimony. The Title IX Coordinator may remove any individual from the Hearing who is disrupting the proceeding or is not abiding by the rules of the Hearing.

### **The Hearing Panel’s Determination**

At the conclusion of the Hearing, the Hearing Panel will deliberate in private to determine if there was a violation of Policy 6.4. The Hearing Panel’s deliberations will not be recorded. The Hearing Panel shall determine whether a violation of Policy 6.4 occurred under the “preponderance of the evidence” standard. Under this standard, it must be more likely than not that a Policy 6.4 violation occurred. Based on this standard, the Hearing Panel may find the Respondent responsible for a violation of Policy 6.4, or not responsible, based on a majority vote. If the Hearing Panel makes a finding of responsibility, they may review a Respondent’s prior disciplinary record related to sexual misconduct or other forms of prohibited discrimination.

After deliberations, the Hearing Panel shall prepare a written determination regarding responsibility (the “Report and Panel Decision”). The Report and Panel Decision will include:

- 1) identification of the allegations potentially constituting Sexual Harassment (Title IX).
- 2) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with the Parties or witnesses, site visits, methods used to gather other evidence, and hearings held.
- 3) findings of fact supporting the determination.
- 4) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions WCM imposes on the Respondent.
- 5) whether remedies designed to restore or preserve equal access to WCM’s education program or activity will be provided by WCM to the Complainant.
- 6) WCM’s procedures and permissible bases for the Complainant and Respondent to appeal; and
- 7) any dissenting opinion in the Hearing Panel decision.

The sanctions and remedies shall be issued per the section below. The Report and Panel Decision will be provided simultaneously to the Complainant and Respondent. The Hearing Panel’s determination regarding responsibility becomes final either on the date that WCM provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **APPEAL**

Both Complainant and Respondent have a limited right to appeal from the Title IX Coordinator’s decision to dismiss the Formal Complaint or the Hearing Panel’s final determination (“Appeal”).

An Appeal shall be based only on the following factors:

- i. A procedural irregularity that affected the outcome of the matter.
- ii. Discovery of new, relevant evidence that was not reasonably available during the investigation process and which could affect the outcome of the case.
- iii. Title IX Coordinator's, Investigator(s)', and/or Hearing Panel's conflict of interest or bias that affected the outcome of the matter.
- iv. Sanction for the Respondent is not commensurate with the violation of WCM's policy or is unjust.
- v. The Title IX Coordinator, Investigator, or Hearing Panel assigned responsibility for performing specific functions under these procedures committed prejudicial error in interpreting Policy 6.4, these procedures and/or applicable WCM or University policies and procedures.
- vi. The remedial actions awarded the Complainant unreasonably affect the Respondent.
- vii. The Hearing Panel rendered a decision on responsibility that is clearly erroneous.

Either Party may submit a written appeal to the Title IX Coordinator within ten (10) business days of the Title IX Coordinator's decision to dismiss the Formal Complaint or the Hearing Panel's issuance of the Report and Panel Decision. The Title IX Coordinator will notify the non-appealing Party of the Appeal when it is filed. Upon receiving an Appeal, the Title IX Coordinator shall, within three (3) business days of receiving the Appeal, convene an Appeal Panel to review the Appeal. The Appeal Panel will consist of three members. **Members of the Hearing Panel will not serve on the Appeal Panel.** Both Parties will have three (3) business days to object to any member of the Appeal Panel based on a real or perceived bias or conflict of interest. If an objection is sustained by the Title IX Coordinator, the Title IX Coordinator shall replace any member of the Appeal Panel determined to have such a conflict of interest or bias with another similarly situated individual. Both Parties will have five (5) business days to submit a written statement in support of, or challenging, the particular outcome.

Appeals are not intended to be a full rehearing of the Complaint. The Appeal Panel will have the opportunity to review the Investigative File and the Hearing Record. Appealed determinations are presumed to have been decided reasonably and appropriately. The Appellant carries the burden of proof to demonstrate that the original determination, or any of its components per the above, were improper. The Appeal Panel shall decide based on the issue being appealed by a simple majority vote. The appeal statement from the Appellant must set forth the determination being appealed; the specific grounds for the appeal; and the facts supporting those grounds. The appeal statement will be provided to the other party and the Appellee may submit a response statement.

Within twenty (20) business days of receiving all written statements and conducting its review, the Appeal Panel will issue a written decision describing the result of the Appeal and the rationale for the result (the "Appeal Decision"). The Appeal Decision will be provided

simultaneously to both Parties. A copy of the Appeal Decision will be made part of the Investigative File.

### **SANCTIONS AND REMEDIES**

If the Respondent is found to have violated the Policy, by committing conduct found to be Sexual Harassment (Title IX), WCM will issue sanctions commensurate with the violation(s). The Hearing Panel will oversee the sanctioning process. In addition to taking disciplinary action against the Respondent per the Report and Panel Decision, or the Appeal Decision, effective corrective action may require alternative remedies for the Complainant and/or Respondent. WCM may take continuing steps to ensure that it is meeting the needs of the Complainant, preventing the recurrence of Sexual Harassment (Title IX), and remedying the effects.

Impact Statements will become part of the Investigative File and will be maintained by the Title IX Coordinator. The Hearing Panel will review the Investigative File, including any Impact Statements, in assessing the appropriate sanction, and will decide regarding the appropriate sanction within three (3) days after the time to submit Impact Statements has expired.

The Hearing Panel has the discretion to implement a variety of sanctions consistent with the severity of the violation, the Respondent's prior history, the Respondent's role within WCM, and sanctions assigned to other individuals with similar violations. Past findings of domestic violence, dating violence, stalking, or sexual abuse may be considered when evaluating sanctions. Sanctions and remedies may include, by way of example only but not limited to, written warnings, restitution, Supportive Measures, probation or suspension, termination of employment or association/affiliation with WCM, a persona non grata letter/order, denial or limitation of future increases in salaries, benefits, or other terms and conditions of employment, job transfer, termination of employment -per any restrictions for tenured faculty, non-renewal of appointment, or dismissal.

The Respondent must be informed in writing of the sanction and the rationale for the sanction within one (1) business day of the sanction determination. The Complainant will concurrently be informed in writing of the finalization of the sanctioning process, and, to the extent that such disclosure would be reasonable and permissible, will be informed of the final sanction.

### **EMERGENCY REMOVAL**

Once a Formal Complaint has been filed, in extraordinary circumstances, where immediate action is necessary to protect the complainant or any other individual, the Dean or Senior Director, Human Resources, have the discretionary authority to suspend the Respondent pending resolution of the underlying case. In determining whether a Temporary Suspension is appropriate, there will be a determination that an immediate threat to the physical health or safety of the Complainant or any other individual arising from the allegations underlying the

Formal Complaint justifies such emergency removal of the respondent. Several factors, among others, should be considered:

- whether the Respondent has a history of violent behavior.
- whether the incident represents escalation in unlawful conduct by the Respondent from previously noted behavior.
- whether the alleged incident involved a minor.
- whether there are facts indicating a risk that the Respondent will commit additional acts of violence; and
- whether the Respondent used a weapon or force.

Temporary Suspension from employment of a faculty member must be done in accordance with the process under the Dismissal Policy and its protocol for issuing emergency suspensions unless or until that policy is amended to reflect the standard and process used by these procedures.

## **INFORMAL RESOLUTION PROCESS**

Recognizing that a wide spectrum of behaviors can constitute violations of Policy 6.4 as it relates to Sexual Harassment (Title IX), the Title IX Coordinator may, at any time prior to the Report and Panel Decision, facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication for conduct covered under Sexual Harassment (Title IX). **Resolution is not available for any other type of Sexual Harassment (Title IX), or in any situation where the allegations involve an employee (faculty or non-faculty) sexually harassing or perpetrating sexual violence against a student.**

Prior to initiating the Informal Resolution process, the Title IX Coordinator will provide a written notice to both Parties disclosing: (1) the allegations; (2) the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegation; and (3) any consequences resulting from participating in the Informal Resolution Process, including the records that will be maintained or could be shared. At any time prior to agreeing to a resolution during the Informal Resolution process, either Party has the right to withdraw from the Informal Resolution process and resume the Process with respect to a Formal Complaint. Any information obtained during the Informal Resolution process may be used during Formal Resolution.

Participation in the Informal Resolution process is entirely voluntary. All Parties must agree to use the Informal Resolution process through voluntary, informed, written consent. If appropriate and agreed to by all Parties, the Title IX Coordinator will initiate the Informal

Resolution process within five (5) business days from the date of the Parties' agreement (i.e., the last date on which any Party indicates his or her agreement).

The nature of Informal Resolution is flexible, but in general, the Parties meet together with the Title IX Coordinator to discuss the incident(s) that led to the Complaint and potential resolutions. While fault is not determined in the Informal Resolution proceeding, the goal of Informal Resolution is for the Parties to agree on a solution or resolution together. Such resolutions may include a permanent no-contact order, reassignment, a written apology, community service, or other alternate resolutions. Any agreement between the Parties will be reduced to writing and signed by both Parties. If the Title IX Coordinator and the Parties reach agreement, the matter will be closed. The Informal Resolution procedure must conclude within fifteen (15) business days from the date of the Parties' written consent to the Informal Resolution process, unless all Parties, including the Title IX Coordinator, agree to an extension of time. After the time for Informal Resolution has expired, including any agreed-upon extensions, the Title IX Coordinator must initiate Formal Resolution.

#### **INVESTIGATIVE FILE**

The Investigative File will be comprised of the Formal Complaint, the Investigator's Report, any interview notes, or evidence considered by the Hearing Panel in making its determination, any recording of the Hearing (if applicable), the Report and Panel Decision (if applicable), any materials regarding an appeal, and all materials required to be in the Investigative File pursuant to prior sections. The Office of Institutional Equity will maintain the Investigative File. The Title IX Coordinator may redact sensitive information that is not directly relevant to the questions raised in the investigation or Hearing.

Upon request to the Director, Office of Institutional Equity, the Parties and their advisors may review the Investigative File. Given the sensitive nature of this information, the Title IX Coordinator will provide this information in a secure manner (e.g., by providing a hard copy to be reviewed in a location designated by the Title IX Coordinator). Neither of the Parties nor their advisors may copy, remove, photograph, take notes regarding, or in any other manner duplicate or disseminate the information in the Investigative File. The Investigative File will be maintained by WCM for at least seven (7) years.

#### **FAILURE TO COMPLY WITH INFORMAL OR FORMAL RESOLUTION, OR REMEDIES OR SANCTIONS**

If an individual fails to comply with any of the above-referenced protocols or procedures, or any imposed remedies or sanctions, including, for example, by breaching confidentiality or refusal to abide by sanctions, WCM reserves the right to bring additional remedial actions.

## **LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

Prohibited Conduct and Sexual Harassment are not only prohibited by WCM, but are also prohibited by state, federal, and, where applicable, local law. Aside from the process described in this Policy, employees may also choose to pursue legal remedies with the following entities.<sup>7</sup>

### **TITLE IX**

The United Department of Education, Office of Civil Rights enforces federal antidiscrimination laws, including Title IX of the 1972 federal Civil Rights Act. Contact the Office of Civil Rights at the address below:

U.S. Department of Education, Office of Civil Rights, New York – Region II  
32 Old Slip, 25<sup>th</sup> Floor  
New York, NY 10005  
T: 646.428.3800  
E. [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

### **NYP SECURITY**

New York Presbyterian Security can be reached at (212) 746-0911. If harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime.

### **NEW YORK CITY POLICE DEPARTMENT**

To report any conduct which may constitute a crime, you may also contact the New York City Police Department (“NYPD”).

### **JUDICIAL FORUMS**

In addition to notifying the local police department, or the government agencies listed above, employees can also file a complaint in federal or state court under federal and/or state anti-discrimination and anti-harassment laws.

### **NYP VICTIM INTERVENTION PROGRAM**

Victims of sexual offenses and assault may also obtain assistance through the Victim Intervention Program (VIP), at New York Presbyterian Hospital, which provides adult crimes victims (age 12 and over) with crisis intervention services, as well as Office of Victim Services claims assistance, help navigating the criminal justice system, advocacy information, and



referrals. Short-term counseling services as well as follow-up telephone counseling services are provided by licensed professional social workers.

Address: 525 E. 68<sup>th</sup> Street, New York, NY 10065

Phone: 212.746.9414

### **QUESTIONS ABOUT THESE PROCEDURES**

If you have any questions at all about these procedures, about whether you should report an incident, or about WCM's commitment to a workplace free of discrimination and harassment, please contact the Office of Institutional Equity.