

## **Procedures - Prohibited Sexual Misconduct, Weill Cornell Medical College**

Cornell University Policy 6.4 (“University Policy 6.4”), Prohibited Discrimination, Protected-Status Harassment, Sexual Harassment, and Sexual Assault and Violence, applies to Weill Cornell Medical College. These are the procedures members of the Medical College community should follow when reporting acts of prohibited discrimination, protected status harassment, sexual assault/violence, sexual abuse, rape, domestic violence, dating violence, intimate partner violence, sexual coercion, and stalking (these acts are generally referred to as “**sexual misconduct**”) if they involve a student. University Policy 6.4 prohibits all members of the university community from engaging in sexual misconduct. The Medical College is committed to providing an environment that is free from all acts of sexual misconduct and will not tolerate sexual misconduct by or against students, staff, faculty, alumni or visitors. The Medical College will respond promptly and appropriately to all reports of sexual misconduct. These procedures define the ways the Medical College will respond to such complaints. Procedures for reporting acts of violence and stalking not of a sexual nature are covered under the Standards of Conduct policy.

### **Definitions of Sexual Misconduct**

**Sexual Assault** is a broad term that covers a range of sex offenses, including, but not limited to, public lewdness, rape, sexual battery, and sexual abuse. Sexual assault occurs when any physical sexual contact or behavior is engaged in without the consent of the recipient or by force. It also includes those sexual acts against individuals who are unable to give consent due to their age or incapacity.

**Consent** is comprised of words or actions that show a voluntary agreement to engage in mutually-agreed upon sexual activity. Consent is not present when one is incapable of consent, subject to coercion or threat of coercion, violence, threat of violence, or subject to forcible compulsion.

Consent cannot be assumed – the absence of “no” does not mean “yes.” Consent can be withdrawn at any time. Consent is never implied and cannot be assumed—the absence of “no” does not mean “yes.” So when engaging in mutual or romantic intimacies, be sure your partner wants to be there, is not too intoxicated to know what is going on and that you are confident they want to be intimate.

Specifically, according to New York State law, a person cannot legally give consent, no matter what he or she verbalizes if: (a) under the age of 17, (b) mentally disabled, or (c) mentally incapacitated or physically helpless, including as a result of alcohol or drugs.

**Sexual Violence** is defined as sexual conduct or behavior engaged in without the consent of the other person or when the other individual is unable to consent to the activities. Sexual violence includes sexual assault, rape, battery, and sexual coercion; domestic violence dating violence; and stalking

**Dating Violence** is violence, including but not limited to sexual or physical abuse or the threat of such abuse, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. New York State law does not specifically define “dating violence,” but under New York State law some intimate relationships can be covered under the definition of domestic violence.

**Domestic/Intimate Partner Violence** is a pattern of coercive tactics that can include physical, psychological, sexual, economic, and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control [*per NYS Office for the Prevention of Domestic Violence. New York State’s Response to Domestic Violence: Systems and Services Making a Difference. 2006*]

**Stalking** is repeated harassing or threatening behavior toward another person, whether that person is a total stranger, slight acquaintance, current or former intimate partner, or anyone else. It is an intentional course of conduct that causes the other person mental distress, fear for his or her health and safety, or the health and safety of their family or acquaintances, or fear that his or her employment, business or career is threatened [*per NYS Penal Code 120.45*].

**Sexual Harassment** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects an individual’s work, education or access to educational opportunities, student life, or interferes with a person’s work, learning environment or academic status, or creates an intimidating, hostile or offensive working or learning environment. Sexual harassment also includes sexual violence defined above.

**Retaliation.** Retaliation and/or threats of retaliation or retribution against individual(s) or any intentional act against an individual(s) who bring concerns or make complaint(s) or assist in providing information (e.g., as witnesses) about sexual misconduct is prohibited and must be reported to the Office of Student Affairs. Retaliation also may violate local, state, and federal law and other College policies.

### **Rights of Complainant and Respondent**

Any student or group believing that he, she, or the group has experienced sexual harassment, sexual assault/violence or other violence based on his or her sex, or retaliation, in the context of academic pursuit, the living/learning environment, or employment should report the matter promptly to:

Dr. Joseph Murray  
Title IX Coordinator  
Office of Student Affairs  
445 East 69<sup>th</sup> Street, Room 110  
New York, NY 10021  
(212) 746-1058

for guidance on appropriate action, psychological counseling, and other support services. A

comprehensive list of resources is available in the Office of Student Affairs. Reports and inquiries concerning acts of sexual misconduct may also be directed anonymously using the University Hotline - Silent Witness form at [hotline.cornell.edu](http://hotline.cornell.edu).

For emergency assistance, you can contact

- The New York Presbyterian Hospital (525 East 68<sup>th</sup> Street)
  - NYPH ER 212-746-1056
  - NYPH VIP (Victim Intervention Program) 212-746-9414
- Emergency Medical Services: 911

### **Informal Resolutions**

Students have an option to resolve concerns of prohibited sexual harassment without an investigation under our policy by acting through the Title IX Coordinator who will work with the appropriate Medical College official(s) to achieve a resolution under applicable policy. If the matter is resolved, no complaint may be filed and no appeal may be taken. Informal resolution is not available for complaints related to sexual assault or sexual violence.

If you are a victim of an act of specific acts of sexual misconduct, such as sexual assault, violence, sexual abuse, rape, domestic violence, dating violence or stalking, you are encouraged to seek health care services through the NYPH Victim Intervention Program (212-746-9414) and/or student health, even if you chose not to file or pursue a complaint. The Medical College will ensure that these support and medical services are accessible and available to you. Students who seek confidential support services for counseling and mental health are encouraged to report to the NYPH Victim Intervention Program (212-746-9414) or Student Mental Health Services, under the direction of Dr. Richard Friedman (212-746-5775).

### **Filing a Complaint: Internally Versus Externally**

If you have experienced sexual misconduct, you have the option to report the incident to the Medical College under these procedures or to external government agencies, including local law enforcement such as the New York City Police Department (NYPD) and the Manhattan District Attorney's Office. The choice of whether or not to file a complaint with the Medical College under our policy and/or report it to external government agencies and law enforcement is entirely yours.

### **Internal Complaint**

A student or group may file a complaint within one year of the alleged sexual misconduct. The individual bringing the complaint is called the *Complainant*. A Complainant who files a written complaint with the Title IX Coordinator may seek resolution through the Medical College's informal intervention process, mediation (if possible), or formal investigation. At any time (before or after filing a complaint with the Title IX Coordinator), the Complainant is free to file a charge externally, that is, by instituting formal proceedings before a local, state, or federal agency, or by filing a lawsuit.

## **A. Initiating an Internal Formal Complaint**

If the student or group wishes to pursue the matter beyond informal resolution efforts, he, she, or the group may file a formal complaint with the Title IX Coordinator in the Office of Student Affairs, which is the only office with authority to investigate and resolve such complaints under this procedure. The Complainant may be a single person or several individuals. If there are several individuals, and they cannot agree on an approach or desired outcome, the complaint will be divided into two or more complaints. Each Complainant must describe verbally or in writing the alleged act or acts, identify the person or persons purportedly responsible, and indicate the date or approximate date on which the alleged sexual misconduct occurred.

At the request of the individual or group, an advisor (who can be an attorney) may accompany the complaining individual or group during a complaint investigation.

◆ Note: Complaints will ordinarily only be investigated when the complaining party so elects. In extraordinary circumstances, however, the Medical College may determine on its own to investigate particularly serious (such as, coerced sexual acts) and well-founded allegations, even when the complaining party does not wish to pursue such charges. In such extraordinary circumstances, the Title IX Coordinator will advise the complaining party of steps being taken and, pending completion of the investigation, may also recommend to the appropriate Medical College official interim steps, to protect the safety and well-being of members of the College community.

In addition, when the complaining party does not elect to pursue any process under our procedure, the appropriate Medical College official may request an investigation under this policy; in such cases, the complaining party may be asked to serve as a witness in the investigation process but shall not be treated as a party with rights of appeal, etc.

If the Complainant wants the consultation to remain confidential or “off the record,” the Medical College may still have an obligation to take appropriate action while respecting the needs and circumstances of the Complainant. However, a Complainant may have a privileged and confidential communication with resources at the College, including counseling at the NYPH Victim Intervention Program (212-746-9414) or Student Mental Health, under the direction of Dr. Richard Friedman at (212-746-5775).

## **B. Time Limits for Filing a Formal Internal Complaint**

Complaints brought by students must be filed with the Title IX Coordinator in the Office of Student Affairs, within one year of the alleged action, with the following exception: for students bringing a complaint against faculty in the context of a subordinate-supervisory relationship between the faculty member and the student (such as in relation to teaching, advising, research, and thesis or dissertation supervision), a student may file a complaint one year after he or she is no longer under the faculty’s supervision or three years from the date of the alleged behavior, even if the student is no longer affiliated with the Medical College, whichever is earlier. The Medical College will strive to resolve all reports and complaints of sexual harassment, sexual assault/violence, domestic/intimate partner violence and stalking within 60 days.

◆Note: Complainants are reminded that the more time lapses, the more difficult it is to obtain information, contact witnesses, or the alleged accused, or *Respondent* may no longer be affiliated with the Medical College.

### **C. Processing an Internal Complaint**

The Title IX Coordinator in the Office of Student Affairs has exclusive responsibility for accepting and processing prohibited discrimination and sexual harassment complaints, including sexual assault/violence, dating violence, domestic violence and stalking and will undertake to resolve these complaints impartially, promptly, and confidentially through informal intervention, mediation (where allowed), or formal investigation. If, after its initial review, the Title IX Coordinator determines that the complaint (a) describes an alleged violation of the University Policy 6.4, it will notify the Respondent that he or she has been named in a complaint and proceed under this procedure; or, (b) does not describe an alleged violation of University Policy 6.4, it will notify the Complainant that the complaint is dismissed, and the Complainant will be informed of his or her right, if any, to appeal the determination and/or to seek external avenues of complaint resolution.

If the Complainant's concerns are unrelated to sexual harassment or sexual assault/violence the Title IX Coordinator may refer the Complainant to or cooperate with an appropriate College officials to investigate and/or address such unrelated concerns.

When a Complainant does not pursue a complaint that he, she, or the group has filed, the Title IX Coordinator will confidentially maintain materials obtained during the complaint filing for at least three years, or until any external agency investigation or legal action is concluded, whichever is later. These records cannot be considered for any purpose in the mediation, investigation, or adjudication of future harassment cases.

### **D. Interim Measures**

Pending resolution of the matter, the Title IX Coordinator may recommend to the appropriate College official who may impose interim measures to protect the safety and well-being of members of the College. These measures may include no-contact orders, change of housing or place of employment or schedule, change of class schedule or location, change of supervision, temporary suspension, or otherwise. Medical services, if needed, can be provided through the emergency room, at New York Presbyterian Hospital, Weill Cornell Medical Center, Student Health Services, or primary care provider based on the immediate need. Review of interim measures may be conducted by the Senior Associate Dean (Education), the Dean of the Graduate School, or the investigation panel.

### **E. Investigating an Internal Formal Complaint**

The purpose of the investigation is to gather evidence relating to the alleged sexual misconduct to determine whether the Respondent engaged in such conduct by a preponderance of the evidence (i.e., it is more likely than not that prohibited discrimination or sexual harassment, or sexual misconduct or retaliation has occurred.)

An investigator will be assigned by the Title IX Coordinator. The investigator conducts these formal investigations, which must be completed within 60 days, subject to extension by the investigator as may be necessary or for good cause. During investigations, the investigator must keep both parties informed on the investigation's status, as appropriate.

The precise features and steps of the investigation process, which is conducted by the investigator, are described in herein.

1. Identify the individual alleged to have committed the acts complained of by the Complainant (the Respondent).
2. Thoroughly ascertain all facts in connection with the alleged incident, beginning by initially and separately interviewing the Complainant and the Respondent.
3. Ask Complainant for all evidence he or she wishes to present and any other witnesses proposed.
4. During the first interview with the Respondent, inform the him or her of all the charges being made, and remind the Respondent of the university's policy against retaliation for making a complaint of discrimination, harassment, sexual violence/assault; ask for the Respondent's explanation of the alleged behavior; as appropriate, interview witnesses proposed by the Respondent; receive any other evidence that the Respondent wishes to present; and thoroughly examine and evaluate the rebuttals made by the Respondent.
5. Present to the Complainant additional information learned in the course of the investigation that will be germane to the outcome of the investigation.
6. Interview, as appropriate, witnesses who observed, or were told about, the alleged conduct.
7. Obtain any other documents or materials deemed relevant to the investigation.
8. Expert witnesses may be interviewed when deemed necessary for the determination of the facts of the case.
9. Remind all parties and witnesses of the need for confidentiality, consistent with the requirements of Title IX when allegations under Title IX are an issue.
10. Review, as appropriate, personnel files maintained by departments and/or administrative units; including housing, previously concluded mediation agreements; previous records of findings for the charge of discrimination or harassment; other records obtained pursuant to university policy and procedure;

and, after giving notice to the individual(s) to whom the files or records pertain and an opportunity for that individual(s) to raise objections, other relevant files and records not in the investigator's possession. The Title IX Coordinator, human resources or academic affairs will rule upon any objections.

Adversarial hearings (including confrontation, cross-examination by the parties, and active advocacy by attorneys) are not permitted during the investigation process. Throughout the investigative process, the Complainant and Respondent may seek the advice of personal attorneys and advisors. Such representatives may attend their own clients' or advisees' investigative interview, but may not respond to questions for their clients or advisees, and may not pose questions.

Throughout the investigative process, the investigator may consult with human resources, subject-matter experts, and/or university counsel.

#### **F. Resolution by Agreement**

At any point in the investigation or the formal complaint process, the investigator or any of the parties may suggest a settlement of the matter based on the investigation up to that point. The investigator or his or her designee will serve as an impartial communicator so the parties will not have direct contact. Any information provided or discussions with the investigator or designee in attempts to settle the matter may not be considered part of the investigation. If the parties do not come to an agreement regarding settlement, the formal complaint process continues, as described herein.

#### **G. Investigator's Report of Investigation Findings**

Upon concluding an investigation, the investigator must produce a written investigation report, which must include the following:

- The scope of the investigation.
- A summary of the factual findings.
- Recommendations for any corrective actions and/or sanctions.
- Any non-punitive, preventative remedies for the Complainant.
- 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.
- The investigator will apply a preponderance of the evidence standard to determine the factual findings and whether there has been a violation of the University Policy 6.4.

The investigator will forward a summary of the investigation report to the Title IX Coordinator, who will assemble a three-member panel to act as the final decision-maker (reviewer).

## **H. Issuance of Final Determination**

The panel will have the ultimate responsibility to determine whether there has been a violation of University Policy 6.4. The Panel will consist of a combination of administrator(s) and faculty member(s) at the Medical College. The panelists will all be trained in the adjudication of sexual assault/sexual violence and harassment claims. Objections to panel members must be raised with the Title IX Coordinator.

The panel to which the investigation report summary is forwarded ultimately may either accept or modify the recommendations, or return the report for further investigation. During this review, the panel may consult confidentially with university counsel, appropriate Medical College officials, if disciplinary actions are recommended, concerning the sufficiency of the investigation and the findings or any recommendations. Before making any decision, the panel must first forward to the Complainant and the Respondent, copies of the summary of the investigation report, and give both parties a reasonable opportunity (that is, within 10 business days, unless the panel extends such time in consultation with the investigator) to submit written comments and ask the panel to review the evidence, determination, and/or recommended sanctions or remedial measures contained in the final investigation report. The panel will conduct such a review, and may accept, modify, or reject the determination or recommended sanctions and/or remedial measures because of that review. The panel will apply a preponderance of the evidence standard in making their determinations.

If the Complainant or Respondent does not object to the final determination of the panel within 10 business days (unless otherwise extended) of it being sent to him or her, and the panel agrees that the charges and sanctions and/or remedial measures presented therein are valid, the Senior Associate Dean (Education) or the Dean of the Graduate School will review and implement the sanctions and/or remedial measures recommended in the investigation report within 10 business days, except for good cause shown. The panel shall issue a final determination in writing, simultaneously, to all Complainants and Respondents.

## **I. List of Sanctions**

The Medical College may impose a number or sanctions on a student or other Medical College faculty or staff if it has been determined that a violation of University Policy 6.4 has occurred:

- Warning/reprimand
- Disciplinary probation or suspension
- Dismissal
- Removal from student housing
- Change of Respondent's academic schedule
- Restricting access to Medical College facilities

## **J. Dismissing a Complaint**

The investigator may dismiss a complaint and close the case where the complaint:



Is not reported or filed in a timely manner.  
It 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 fails or refuses to appear or to be available for interviews or conferences as necessary.
- The Complainant cannot be located after reasonable efforts have been made, and has not responded for at least 10 calendar days to a notice sent by the investigator to his or her last known residence, office, or e-mail 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 charge.

If the investigator 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 reviewer within ten (10) business days. If the dismissal is affirmed by the reviewer, the Complainant shall have a right of appeal under the appeal procedures, herein. Furthermore, the disposition will include, if appropriate, an attempt to restore the reputation of the Respondent (such as deletion of records, and, unless the Respondent otherwise requests, notification to persons who participated in the investigation of the charge, and/or public announcement of the outcome consistent with any applicable requirements under the Family Education Rights and Privacy Act [FERPA]).

## **K. Claims Against Faculty**

When the claim arises out of the subordinate-supervisory relationship between a faculty member and a student, or could involve an issue of academic freedom, the investigator will inform the Vice Dean of the Medical College who will have the option to appoint a faculty co-investigator. The panel's determination will be sent to the Vice Dean for consultation.

### **The Appeal Process**

Both the Complainant and Respondent may appeal the panel's determination or recommended sanctions or remedial measures (or lack thereof) from a complaint of alleged sexual misconduct within 10 business days of the determination. Appeals are decided by the Senior Associate Dean (Education) or Dean of the Graduate School, whoever is the Dean of the Respondent's school.

No appeal shall be heard by a Medical College official who is a Respondent, and in such cases, an appropriate college official will be designated by the Dean.

The appeal shall be conducted in accordance with procedures to be established by the Senior Associate Dean (Education) or Dean of the Graduate School hearing the appeal, including scheduling any meetings on the appeal, but shall commence with the requirement that the Complainant submit a written statement of the basis for the appeal, setting forth the grounds for the appeal and the reasons therefore, accompanied by a copy of the determination being

appealed. The appeal is not a new fact-finding process. It is a written appeal on the record only.

Appeals may be grounded on any of the following bases:

1. The sanction is not commensurate with the violation or is unjust.
2. The investigator or reviewer violated the fair application of relevant university procedures and such violation may have had a prejudicial effect upon the outcome.
3. The investigator or reviewer committed a prejudicial error in interpreting the policy.
4. The investigator or reviewer rendered a decision clearly against the evidence.
5. New evidence was discovered after the decision and could not have readily been discovered before the decision, which would change the outcome.
6. The remedial actions awarded the Complainant are not commensurate with the injury or is unjust.

It is expected that sanctions will go into effect immediately after being imposed by the panel. The Senior Associate Dean (Education) or the Dean of the Graduate School however, has the authority in his or her sole discretion to stay the sanctions pending the appeal. The appeal process will be completed within thirty (30) days from the filing of the appeal. The appeal is not a new fact-finding process. If there is no appeal, or at the conclusion of the appeal, the decision becomes final and will be implemented within ten (10) working days, except for good cause.

**Amendments.** Weill Cornell Medical College will amend these procedures from time to time or as required by applicable law.