

# Albany College of Pharmacy and Health Sciences Policy Against Discrimination and Harassment

## Policy Against Discrimination and Harassment

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## A. Introduction

### Statement Of Nondiscrimination

Albany College of Pharmacy and Health Sciences (“ACPHS”) does not discriminate and prohibits discrimination against any individual based on any category protected under applicable federal, state, or local laws.

Accordingly, ACPHS does not discriminate, and strictly prohibits unlawful discrimination on the basis of race (including traits historically associated with race, such as hair texture and protective hairstyles), color, religion, creed, national origin, ancestry, sex (including pregnancy, childbirth, or related medical conditions), gender, gender identity or expression, age, sexual orientation, physical or mental disability, citizenship, genetic information or predisposing genetic characteristics, marital status, familial status, domestic violence victim status, caregiver status, military status, including past, current, or prospective service in the uniformed services, or any other category or characteristic protected by applicable law. When brought to the attention of the ACPHS, any such discrimination will be appropriately addressed by the ACPHS according to the procedures below and any applicable collective bargaining agreement.

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

### **Sex Discrimination is Prohibited**

ACPHS does not discriminate in its admissions practices except as permitted by law, in its employment practices, or in its educational programs or activities on the basis of sex. As a recipient of federal financial assistance for education activities, ACPHS is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex. At ACPHS, discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or related conditions. Pregnancy or related conditions include pregnancy, childbirth, termination of pregnancy, lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; and recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

ACPHS also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process, whether internal or external to the institution.

### **Section 504/Americans with Disabilities Act**

In both practice and policy, ACPHS adheres to the requirements of the Americans with Disabilities Act of 1990, as amended 2008 (ADAAA); Sections 504 and 508 of the Rehabilitation Act of 1973, as amended; and all other federal and state laws and regulations prohibiting discrimination on the basis of disability. ACPHS is committed to providing individuals with disabilities equal access and opportunity, and strives in its policies and practices to provide for the full participation of individuals with disabilities in all aspects of ACPHS life.

Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point relating to the implementation of this policy, including making a disclosure or report, and initiating a grievance procedure. Accommodations will be granted if they are appropriate and do not fundamentally alter the process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the parties, even where the parties may be receiving accommodations in other ACPHS programs and activities. With the consent of the impacted student or employee, the Title IX Coordinator will work collaboratively with the appropriate personnel/office to ensure that approved reasonable accommodations (disability-related) are honored as applicable throughout any process related to this policy.

### **Purpose of this policy**

This policy identifies and defines conduct prohibited under this policy, the procedures for reporting harassment and discrimination, and the process that will be used to respond to allegations of Prohibited Conduct.

ACPHS will act on all notices of allegations of discrimination, harassment, or retaliation. It will take necessary measures to end conduct that is in violation of this policy, prevent its recurrence, and remedy its effect on individuals and the community. Within any process related to this policy, ACPHS provides reasonable accommodations to persons with disabilities and reasonable religious accommodations, when that accommodation is consistent with state and federal law.

Situations involving other conduct that may be in violation of other ACPHS student or employee conduct policies should be reported to the Student Conduct Administrator for matters involving students, or Human Resources for matters involving faculty or staff. Situations involving other conduct relating to nonaffiliates should be reported to either Human Resources or the Title IX Coordinator.

## Scope and Jurisdiction

### **To Whom This Policy Applies**

This policy applies to the entire ACPHS community, including, but not limited to, all students; student organizations; College employees and contractors, including staff, faculty, and administrators; and all other persons that participate in the College's educational programs and activities, including third-party visitors on campus. This policy prohibits the conduct set forth in Section VI regardless of the Complainant and Respondent's relationship status, sex, gender, gender identity, gender expression, or sexual orientation.

Albany College of Pharmacy and Health Sciences may investigate any alleged violation of this Policy that occurs in the context of a College program, or activity (including academic, educational, extracurricular, study abroad and internships, and other College programs), or that otherwise affects the working, living or learning environments, regardless of whether that conduct occurred on or off campus. Regardless of where the conduct occurred, the College will review complaints to determine whether the conduct occurred in the context of its employment or educational program or activity or has continuing effects on campus or in an off-campus sponsored program or activity, or whether the College otherwise has a substantial interest in the allegations. A substantial interest includes:

1. Any action that constitutes a criminal offense as defined by law (This includes, but is not limited to, single or repeat violations of any local, state, or federal law.);
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual; or
3. Any situation that is detrimental to the educational interests or mission of the College.

All actions by a student that involve the use of the College's computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus.

If the Respondent is unknown or is not otherwise subject to sanctions imposed by the College, the Title IX Coordinator will offer the Complainant supportive measures, remedies, and resources, such as, identifying appropriate campus and local resources and support options or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Although the College may not, in certain instances, be in a position to conduct an investigation, it may provide appropriate resources or support to impacted individuals and where appropriate, the broader the College community.

Members of the ACPHS community are expected to provide truthful information in any report, meeting, or proceeding under this policy.

Any respondent who is not an ACPHS student, faculty member, or staff member is generally considered a third party. ACPHS's ability to take appropriate corrective action against a third party may be limited and will depend on the nature of the third party's relationship, if any, to ACPHS. When appropriate, the Title IX Coordinator will refer such allegations against third-party respondents to the appropriate office.

The status of a party may impact which resources and remedies are available to them, as described in this policy.

### **What is Prohibited by This Policy**

This policy prohibits Discrimination, Harassment (including sexual harassment and sexual and interpersonal violence), and Retaliation as defined below. These acts shall also be referred to as Prohibited Conduct under this policy.

#### Title IX Prohibited Conduct

Conduct on the basis of sex that satisfies one or more of the following and meets the jurisdictional requirements described below:

- a. Title IX Quid Pro Quo Sexual Harassment. An employee or graduate student conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct;
- b. Title IX Hostile Environment Sexual Harassment. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity.
- c. Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation, as defined below and meeting the Title IX jurisdictional requirements described here.

Conduct meeting these definitions must occur within ACPHS's education program or activity and inside the United States to constitute Title IX Prohibited Conduct. ACPHS's program or activity includes (1) any on-campus premises of ACPHS; (2) any off-campus premises over which ACPHS has substantial control; (3) off-campus activities that are part of an ACPHS program, including field trips and sanctioned events; and (4) activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of ACPHS's programs and activities over which ACPHS has substantial control.

### Discrimination

Discrimination is defined as treating members of a protected category less favorably because of their actual or perceived membership in that category or as having a policy or practice that adversely impacts the members of one protected category more than others.

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

### Discriminatory Harassment

Discriminatory Harassment is subjecting an individual to unwelcome conduct, whether verbal or physical, that creates an intimidating, hostile, or abusive working, learning or campus living environment; that alters the conditions of employment or education; or unreasonably interferes with an individual's work or academic performance on the basis of someone's actual or perceived membership in a protected category.

Harassment may include, but is not limited to: verbal abuse; epithets or slurs; negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; insulting or obscene comments or gestures; and the display or circulation of written or graphic material (including in hard copy, by email or text, or through social media) that denigrates or shows hostility or aversion toward an individual or group members of a protected category. Calls, texts, emails, and social media usage that occurs on or off campus can contribute to a hostile work, learning, or living environment.

ACPHS will determine whether the conduct was discriminatory based on both subjective and objective factors, based on the totality of the circumstances surrounding an alleged incident or course of conduct, including, the frequency, nature, and severity of the conduct, and whether a reasonable person would find the conduct discriminatory. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.

Protected categories include race, religion, hearing status, color, sex, pregnancy, political affiliation, religion, creed, ethnicity, national origin (including ancestry and ethnic characteristics), citizenship status, physical or mental disability, body size, age, marital status, family relationship, sexual orientation, gender, gender identity or expression, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status or any other protected category under applicable local, state or federal law.

Quid Pro Quo Harassment: An employee, agent, or other person authorized by ACPHS to provide an aid, benefit, or service under ACPHS' education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Hostile Environment Sex-Based Harassment: Consistent with state law, hostile environment sex-based harassment is a form of sex discrimination and a form of discriminatory harassment. Sex-based harassment need not be sexual in nature and is on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Unwelcome sexual advances, requests for sexual favors, requests for sexual contact, sexual comments, physical or visual conduct of a sexual nature, and sharing or displaying sexual images constitute sex-based harassment.

This includes when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic, co-curricular, or campus life activities; or Submission to or rejection of such conduct by an individual is used as the basis for academic, student life, or employment decisions affecting that individual; or
- Such unwelcome conduct is intentional or serves no legitimate purpose; or
- It involves unwelcome contact with parts of another individual's body which may cause that person to feel degraded or abused; or
- The unwelcome behavior is for the purpose of gratifying the actor's sexual desire; or
- The unwelcome conduct constitutes more than "petty slights or trivial inconveniences"; or
- Such unwelcome conduct has the purpose or effect of unreasonably interfering with another person's academic or work performance or creating an intimidating, hostile, demeaning, or offensive working, learning, campus, or living environment.

The following describes acts that may be unlawful sex-based harassment and are strictly prohibited:

- Unwelcome touching, pinching, patting, grabbing, brushing against another's body;
- Subtle or obvious pressure for unwelcome sexual activities;
- Unwelcome requests for sexual favors accompanied by implied or overt threats concerning performance evaluations, promotion, etc.;
- Unwelcome images, texts, social media posts, or other images or materials that are sexually demeaning or pornographic (this does not include images shown solely for the purposes of academic instruction or research); or
- Unwelcome sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile environment

Sexual assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically, this includes:

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

Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

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

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

Dating Violence: violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the people involved in the relationship.

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

Domestic Violence: felony or misdemeanor crimes of violence committed by a person who:

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

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

Stalking Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Sexual Coercion: The application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

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

Retaliation:

Retaliation is any materially adverse action taken against an individual because they were involved in the disclosure, reporting, investigation, or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, discrimination, violence, or any other conduct against any person by ACPHS, a student, or an employee or other person authorized by ACPHS to provide aid, benefit, or service under ACPHS' education program or activity, for the purpose of interfering with any right or privilege secured by this policy or by law, including Title IX or its regulations. Adverse action does not include perceived or petty slights, or trivial annoyances.

The prohibition against retaliation applies to any individuals who participate (or refuse to participate) in any manner in an investigation, proceeding, or hearing, and to any student who refuses to participate in an

investigation, proceeding, or hearing.

Retaliation may occur even where there is a finding of “not responsible” under this policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation.

### **Delegation of Duties Under This policy**

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

### **Academic Integrity**

ACPHS is dedicated to an uncompromising standard of academic excellence and an unwavering commitment to academic freedom, freedom of inquiry, and freedom of expression in the search for truth. This policy and procedures are not intended to inhibit or restrict free expression or exchange of ideas, abridge academic freedom, or prohibit educational content or discussions inside or outside of the classroom that includes germane but controversial or sensitive subject matters protected by academic freedom.

Members of the ACPHS community are free to express their views on any academic subject — regardless of whether those viewpoints are provocative or controversial. Before proceeding with or continuing an investigation of any report of harassment or retaliation that involves an individual’s speech or other communication, ACPHS will take care to distinguish between protected speech and hostile environment harassment. The Title IX Coordinator will take action as needed to restore or preserve a person’s access to ACPHS’ education program or activity.

### **Title IX Coordinator**

ACPHS is committed to promoting a diverse, equitable, and inclusive working and learning environment free from discrimination and harassment. The Title IX Coordinator is charged with monitoring compliance with Title IX; providing education and training; and coordinating ACPHS’ response, investigation, and resolution of all reports of Prohibited Conduct under this policy. The Title IX Coordinator acts with independence and authority and oversees all resolutions under this policy free from bias and conflicts of interest. The Title IX Coordinator is available to meet with any Student, Employee, or other individual to discuss this policy or the accompanying procedures and can be contacted at:

**Emma Hempel**  
**Emma.Hempel@acphs.edu**  
**518-694-7855**

### **Conflicts of Interest or Bias**

Any individual carrying out any part of this policy shall be free from any actual conflict of interest or demonstrated bias that would impact the handling of a matter. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator is to immediately notify the Vice President for Student Affairs or designee who will either take, or reassign, the role of Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue. Should any investigator, Decisionmaker, or Appeals Panel have a conflict of interest, the investigator, Decisionmaker, or Appeals Panel is to notify the Title IX



Coordinator upon discovery of the conflict so that the Title IX Coordinator may reassign the role as appropriate. This policy will note where parties have the opportunity to challenge the participation of any individual implementing this policy based on actual conflict of interest or demonstrated bias.

### **Crime and Incident Disclosure Obligations**

The Clery Act is a federal crime and incident disclosure law. It requires, among other things, that ACPHS report the number of incidents of certain crimes, including some of the Prohibited Conduct in this policy, that occur in particular campus-related locations. The Clery Act also requires ACPHS to issue a warning to the community in certain circumstances.

In the statistical disclosures and warnings to the community, ACPHS will ensure that a complainant's name and other identifying information is not disclosed. The Title IX Coordinator will refer information to the Clery Officer or to the official or office designated by ACPHS to collect crime information when appropriate for a determination about Clery-related actions, such as disclosing crime statistics or sending campus notifications.

### **Coordination Among Multiple Institutions**

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

## **B. Reporting Harassment and Discrimination**

### **Employee Reporting Obligations**

ACPHS believes it is important to be proactive in taking reasonable steps to identify and prevent incidents of harassment or discrimination. All employees, with limited exceptions as identified by ACPHS, are required to promptly provide to the Title IX Coordinator all complaints or reports of sex discrimination, including sexual harassment to the Title IX Coordinator and share all information reported or made available to the employee. If an employee in a supervisory capacity has direct knowledge of an incident of harassment or discrimination on the part of, or directed toward, any employee of the Title IX Coordinator community, that supervisor is required to bring the matter to the attention of the Title IX Coordinator.

If the Title IX Coordinator or any employee with the authority to institute corrective measures on behalf of ACPHS has knowledge about Title IX Sexual Harassment, then ACPHS is considered to have actual knowledge of the report and will respond in accordance with this policy.

ACPHS also encourages employees who themselves experience harassment, discrimination, sex-based harassment and sexual and interpersonal violence to bring their concerns to the Title IX Coordinator though they are not required to do so.

When providing this information to the Title IX Coordinator, the employee must include their own name and contact information, and all known details about an incident, which may include, if known, the dates, times, locations, names of involved individuals and the nature of the incident.

Aside from this reporting obligation, employees will, to the fullest extent possible, maintain the privacy of an individual's information, consistent with FERPA.

In addition, any employee or student of or volunteer for the Albany College of Pharmacy and Health Sciences (ACPHS) who witnesses or has reasonable cause to suspect any sexual abuse of a child occurring on ACPHS property or while off campus during official ACPHS business or College-sponsored events shall have an affirmative obligation to report such conduct to UHA Public Safety at 518-244-3177 immediately. Such report should include the names of the victim and assailant (if known), other identifying information about the victim and assailant, the location of the activity, and the nature of the activity. Upon receiving such a report, UHA Public Safety shall promptly notify local police department and the Vice President of Student Affairs who shall report such incidents to the President for periodic reporting to the Board of Trustees.

In addition, to aid in the prevention of crimes against children on ACPHS property and/or during official ACPHS business at events sponsored by ACPHS, employees must complete mandatory training on the identification of such crimes and proper notification requirements. Vendors, licensees, or others who are given permission to come onto campus or to use College facilities for events or activities that will include participation of children shall ensure that they have in place procedures for training, implementation of applicable pre-employment screening requirements and reporting of child sexual abuse.

For purposes of this policy, the applicable definitions of child sexual abuse are those used in: NYS Penal Law in Articles 130 and 263 and Section 260.10 and "child" is defined as an individual under the age of 17. <https://www.acphs.edu/students/health-safety/title-ix/employee-info>.

### **How to Make a Report to ACPHS**

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

At the time of filing a formal complaint of Title IX Prohibited Conduct, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

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

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

**Emma Hempel**  
**Title IX Coordinator**  
**Emma.Hempel@acphs.edu**  
**518-694-7855**

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

Additional information about reporting matters involving conduct by an employee may be found by contacting Human Resources:

**Email:** [humanresources@acphs.edu](mailto:humanresources@acphs.edu)  
**Phone:** 518-694-7888

### **Policy for Alcohol and/or Drug Use Amnesty**

The health and safety of every student at ACPHS is of the utmost importance. ACPHS recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at a time that violence (including but not limited to domestic violence, dating violence, stalking, or sexual assault) occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. ACPHS strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to ACPHS officials. A bystander or complainant acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to ACPHS officials or law enforcement will not be subject to discipline under ACPHS's Policy Against Drugs and Alcohol for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault. This policy does not provide amnesty for drug dealers or those who use drugs or alcohol as a weapon or to facilitate Prohibited Conduct. Under ACPHS's Amnesty for Drug and Alcohol Policy, personal drug use and possession, whether it is intentional or accidental, will not form the basis of faculty student disciplinary charges. A bystander is someone who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

### **Privacy and Confidentiality**

ACPHS values the privacy of its students, employees, and other community members. Community members should be able to seek the assistance they need and access this policy without fear that the information they provide will be shared more broadly.

References made to privacy mean ACPHS offices and employees who cannot guarantee confidentiality, but will maintain privacy to the greatest extent possible, relaying information as necessary to investigate or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. ACPHS will limit the disclosure as much as practicable.

All activities under these procedures shall be conducted with the privacy interests of those involved. While ACPHS will take all reasonable steps to protect the privacy of individuals involved in a report, it may be necessary to disclose some information to individuals or offices on campus in order to address a report or provide for the physical safety of an individual or the campus. Thus, ACPHS cannot, and does not, guarantee that all information related to reports will be kept confidential.

In order to maintain the privacy of evidence gathered as part of any resolution process, access to materials under the procedures in this policy will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this policy. Parties may request to review a hard copy of materials, and ACPHS will make that available in a supervised or monitored setting. Inappropriately sharing materials provided during this process may constitute retaliation and result in disciplinary action. Nothing in this policy prohibits parties from discussing or disclosing the outcome of the matter, consistent with the prohibition on retaliation.

Individuals may speak confidentially with a Confidential Resource. Confidential Resources (e.g., licensed mental health care providers, physicians) may not report to Title IX Coordinator any identifying information about conduct that may violate ACPHS' policies against harassment and discrimination without the written consent of the individual who supplied the information, unless required by law. Such disclosures will not be reported to the Title IX Coordinator or initiate any process under this policy.

ACPHS employs types of employees who are not required to report information about sex discrimination to the Title IX Coordinator:

- Privileged and confidential employees whose communications are privileged or confidential under Federal or State law. The employee must be hired for and functioning within the scope of their duties to which the privilege or confidentiality applies. For example, counselors in The Office of Counseling and Wellness are all confidential employees. Disclosures made to these employees means that information cannot be disclosed to anyone internal or external to the university without the expressed permission from the individual disclosing the information.

State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or others; (ii) if there is reasonable cause to suspect that a minor has been sexually abused.

A list of resources may be found in Appendix A.

## **Protective Orders**

ACPHS' Public Safety or other officials will assist members of the campus community in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order from any state or federally-recognized tribal court. If ACPHS receives an order of protection or equivalent, an institution representative or other appropriate person will reach out and provide a copy of the order. Upon request they can also provide an explanation of the order, including the consequences for violating these orders, and

answer questions about it. Public Safety will provide assistance in effecting an arrest when an individual violates an order of protection.

### **Reporting to the Police**

Some Prohibited Conduct may constitute a violation of both the law and ACPHS policy. ACPHS encourages students to report alleged crimes promptly to local law enforcement agencies and/or state police. All persons have the right to file with law enforcement, as well as the right to decline to file with law enforcement. The decision not to file shall not be considered as evidence that there was not a violation of ACPHS policy.

Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Conduct may constitute Prohibited Conduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. However, when a report is made to ACPHS as well as to law enforcement, ACPHS may delay its process if a law enforcement agency requests that ACPHS delay its process for a reasonable amount of time to allow law enforcement to gather evidence of criminal misconduct. These temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay. Criminal or legal proceedings are separate from the processes in this policy and do not determine whether this policy has been violated.

All investigations and hearings under this policy will be thorough, reliable and impartial, and will seek to collect evidence and names of witnesses to gather information that is directly or substantially relevant to whether the alleged policy violation occurred, and will not be based on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

In the case of an emergency, where the physical well-being of a member of ACPHS community or the safety of ACPHS as an institution is threatened, any individual with such knowledge should promptly inform Public Safety. ACPHS may take any immediate steps as may be necessary and appropriate under the circumstances to ensure the well-being of the ACPHS community and ACPHS as an institution.

### **Emergency Access to Information & Resources**

At any time, one of the following resources trained in interviewing victims of sexual assault will be available to provide information about options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. These individuals will also explain whether they are authorized to offer the reporting individual confidentiality or privacy, and shall inform the reporting individual of other reporting options:

### **Title IX Coordinator**

Emma Hempel

Emma.Hempel@acphs.edu

518-694-7855

**The College Counseling Services:**

518-210-5298

<http://www.acphs.edu/albany-campus/health-safety/counseling-services>

Additional resources can be found in Appendix A.

**C. Responding to a Report**

The following process will be used following the receipt of a report of Prohibited Conduct under this Policy.

**Initial Contact**

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

- An invitation to meet to offer assistance and explain their rights, resources, and options under this policy;
- Access to this policy;
- Information regarding available campus and community resources for counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid and other available services may be provided;
- The availability of Supportive Measures regardless of whether a formal complaint is filed and/or any resolution is initiated;
- The options for resolution (no action, prevention, agreement, investigation) and how to initiate such resolution processes;
- The right to notify law enforcement as well as the right not to notify law enforcement;
- The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Public Safety or local law enforcement in preserving evidence;
- The right to bring an advisor of choice, if applicable, during ACPHS proceedings under this policy including the initial meeting with the Title IX Coordinator
- A statement that retaliation for filing a formal complaint, or for participating in any way in the procedures found in this Policy.
- Information on how to initiate the Investigation or Resolution-Based Agreement process.
- Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet and discuss the resources and options, including information about STI's, forensic exams, and resources available through NYS Office of Victim Services.

**Initial Intake & Assessment**

The Initial Assessment process seeks to gather information about the nature and circumstances of the report to determine whether this policy applies to the report and, if so, which resolution process may be appropriate, as well as which section of the grievance procedures apply based on the conduct and the status of the parties. The Title IX Coordinator may also determine that the provision of supportive

measures only is the appropriate response under the policy. The initial assessment is not a finding of fact or responsibility. If the individual bringing forward the report is not the actual complainant, the Title IX Coordinator will limit communication to general information on policies and processes.

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

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

### **Requests for Confidentiality or No Further Action**

When a complainant requests that ACPHS not use their name as part of any resolution process, or that ACPHS not take any further action, ACPHS will generally try to honor those requests. However, there are certain instances in which ACPHS has a broader obligation to the community and may need to act against the wishes of the complainant. In such circumstances, the Title IX Coordinator will notify the complainant in writing of the need to take action. The factors the Title IX Coordinator will consider when determining whether to act against the wishes of a complainant include:

1. The complainant's request not to proceed with filing a formal complaint;
2. The complainant's reasonable safety concerns regarding filing a formal complaint;
3. The risk that additional acts of Prohibited Conduct would occur if a formal complaint is not filed;
4. The severity of the alleged Prohibited Conduct, including whether the conduct, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. The age and relationship of the parties, including whether the respondent is an employee of ACPHS, or whether the impacted person is a minor;
6. The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
7. The availability of evidence to assist a Decisionmaker in determining whether discrimination occurred; and
8. Whether ACPHS could end the alleged discrimination and prevent its recurrence without filing a formal complaint.
9. Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other persons, or that the conduct as alleged prevents ACPHS from ensuring equal access on the basis of sex to its education program or activity.
10. Whether the accused has a history of violent behavior or is a repeat offender;
11. Whether the incidents represents an escalation on the part of the person accused;
12. Whether the accused used a weapon or force;
13. Whether available information reveals a pattern of perpetration at a given location by a particular group;

### **Emergency Removal**

For Title IX Prohibited Conduct, ACPHS retains the authority to remove a respondent from ACPHS's program or activity on an emergency basis, where ACPHS (1) undertakes an individualized safety and risk analysis, (2) determines that an immediate and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations of sex discrimination justifies a removal, and (3) ACPHS provides the respondent with notice of and an opportunity to challenge the decision immediately following the removal.

The respondent may challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. ACPHS will designate an impartial individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

For all other Prohibited Conduct, ACPHS may defer to its interim suspension policies for students and administrative leave for employees.

### **Administrative Leave**

ACPHS retains the authority to place an employee respondent on administrative leave during a pending formal complaint or other process under this policy, with or without pay as appropriate. Administrative leave may be a supportive measure, emergency removal, consistent with any employee process or guidelines. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

### **Formal Complaints**

A formal complaint is required in order to proceed with a resolution process under this Policy except Support-Based Resolution. A formal complaint must be written, in paper form (hand delivered or by mail or shipping service) or electronically submitted and either signed or with another indication that it is being filed by the Complainant, the Complainant's parent or guardian, or by the Title IX Coordinator, and that alleges a violation of the Policy as defined above, by a covered person, within an ACPHS program or activity, and requesting that ACPHS investigate the allegations.

Where the Complainant is unable or unwilling to file a formal complaint, and there have been allegations of violations of this Policy involving covered persons in ACPHS's programs and activities, the Title IX Coordinator may file and sign a formal complaint. In that case, the Title IX Coordinator does not have the status of Complainant or party. A Complainant retains their rights even if they decline to participate, including but not limited to receiving notices, the opportunity to review evidence and the right to receive the final investigation report. The Title IX Coordinator will use discretion in these matters.

A formal complaint cannot be filed anonymously because the Respondent must be notified who is making the accusation against them. A person does not, however, need to file a formal complaint to obtain supportive measures. For supportive measures, the Complainant's identity may remain confidential to the extent practicable to implement the supportive measure.

### **Dismissal of a Formal Complaint**

Before dismissing a formal complaint, ACPHS will make reasonable efforts to clarify the allegations with the complainant.



ACPHS may dismiss a formal complaint at any time before a determination is made if:

- ACPHS is unable to identify the respondent after taking reasonable steps to do so;
  - If specific circumstances prevent ACPHS from gathering evidence sufficient to reach a determination regarding the formal complaint or allegations within the formal complaint; or
  - The respondent is not participating in ACPHS' education program or activity and is not employed by ACPHS];
  - The complainant voluntarily withdraws their complaint in writing and the Title IX Coordinator declines to initiate a complaint.
  - The complainant voluntarily withdraws some but not all allegations in a formal complaint in writing, and the ACPHS determines that, the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under this policy.
  -
1. A formal complaint of Title IX Prohibited Conduct must be dismissed when:
- The conduct alleged did not occur in ACPHS's education program or activity, or did not occur against a person in the United States;
  - The complainant voluntarily withdraws some but not all allegations in a formal complaint in writing, and the ACPHS determines that, the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under this policy **or**
  - ACPHS determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under this policy.

Upon dismissal, ACPHS will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then ACPHS will notify the parties simultaneously in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Title IX Coordinator will include that information in the notification.

ACPHS will notify the complainant that a dismissal may be appealed on the basis outlined in the Appeals section. If dismissal occurs after the respondent has been notified of the allegations, then ACPHS will also notify the respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, ACPHS will follow the procedures outlined in the Appeals section of these procedures.

When a formal complaint is dismissed, ACPHS will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Prohibited Conduct does not continue or recur within ACPHS' education program or activity.

A complainant who decides to withdraw a complaint or any portion of it may later request to reinstate it or refile it.

## **Referrals for Other Misconduct**

ACPHS has the discretion to refer reports of misconduct not covered by this policy for handling under any other applicable ACPHS policy or code. As part of any such referral for further handling, ACPHS may use evidence already gathered through any process covered by this policy.

Should there be a conflict between the provision of this policy and other ACPHS policies, procedures, rules, regulations, or terms or conditions of employment, the provisions of this policy will govern unless specifically stated otherwise.

This policy and these procedures are separate from ACPHS's student disciplinary processes, by which ACPHS may bring a discipline charge against a student for violating ACPHS policy according to the provisions found in ACPHS Student Handbook, which can be found at:

<https://www.acphs.edu/students>

### **Consolidation of Cases**

ACPHS may consolidate reports under this policy as appropriate: for example, if there are multiple reports where the allegations of Prohibited Conduct arise out of the same facts or circumstances, or there are multiple reports with overlapping parties.

ACPHS also reserves the right to use this policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct under this policy. The Title IX Coordinator will address these consolidated matters in collaboration and coordination with other appropriate offices, such as Student Conduct and Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this policy.

### **Student Withdrawal or Employee Resignation while Matters are Pending**

If a student or employee respondent permanently withdraws or resigns from ACPHS with unresolved allegations pending, ACPHS will consider whether and how to proceed with the resolution process. ACPHS will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged harassment, discrimination or retaliation.

A student respondent who withdraws or leaves while the process is pending may not return to ACPHS without first resolving any pending matters. Such exclusion applies to all ACPHS campuses and programs. Admissions will be notified that the student cannot be readmitted. They may also be barred from ACPHS property or events. If a student respondent withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to ACPHS unless and until the matter is fully resolved.

An employee respondent who resigns with unresolved allegations pending is not eligible for rehire with ACPHS and the records retained by the Title IX Coordinator will reflect that status. All ACPHS responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **D. OPTIONS FOR RESOLUTION**

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

This section includes information on Support-Based Resolution, Agreement-Based Resolution, and two types of Investigation and Decisionmaking procedures depending on the Prohibited Conduct alleged.

### **Support- Based Resolution**

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

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

### **Agreement-Based Resolution**

A formal complaint is required for Agreement-Based Resolution. Agreement-Based Resolution is **not** available to resolve a student Complainant's allegation that an employee has engaged in Title IX Prohibited Conduct.

Agreement-Based Resolution is an alternative to the investigation and decisionmaking procedures where the Parties each voluntarily agree to resolve the formal complaint in a way that does not include any finding of responsibility. Agreement-Based Resolution is a voluntary, structured interaction between or among affected parties that balances support and accountability. If ACPHS offers Agreement-Based Resolution to the parties, and they voluntarily consent to engage in that process, the Title IX Coordinator must still take other prompt and effective steps as needed to ensure that Prohibited Conduct does not continue or recur within the education program or activity.

Any party may design a proposed agreement between the parties. The Title IX Coordinator must approve of the use of the Agreement-Based Resolution process, and approve the final agreement between the parties. Agreement-Based Resolution may be initiated at any time prior to the release of the final determination. Agreement-Based Resolution does not result in a determination about whether the alleged Prohibited Conduct occurred.

The Title IX Coordinator has the discretion to determine that Agreement-Based Resolution is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through the Investigation or Investigation and Hearing process, including the hearing procedures for Title IX Prohibited Conduct.

### **Initiating the Agreement-Based Resolution Process**

Prior to the initiation of Agreement-Based Resolution, the Title IX Coordinator will provide the Parties written notice that includes:

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

#### Facilitating an Agreement

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

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

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

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

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

#### Finalizing the Resolution Agreement

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

Records of an Agreement-Based Resolution process can be shared with other offices as appropriate.

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

#### **Investigation & Decisionmaking Resolution**

This policy includes two types of investigation and decisionmaking procedures:

- Investigation and decisionmaking procedures where the investigator is the decisionmaker for Discrimination, Discriminatory Harassment, Quid Pro Quo Harassment (Non-Title IX), Hostile Environment Sex-Based Harassment (Non-Title IX), and Retaliation. There is no hearing for this procedure.
- Investigation and hearing procedures for Sexual Assault, Dating Violence, Domestic Violence, Stalking, Sexual Coercion, Sexual Exploitation, Title IX Quid Pro Quo Harassment, Title IX Hostile Environment Harassment. This procedure involves a live hearing.

The following information applies to both types of investigation and decisionmaking procedures.

#### Acceptance of Responsibility

If a respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the designated sanctioning officer will issue an appropriate sanction or responsive action as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

#### Assignment of the Investigator and/or Decisionmaker

ACPHS will assign a trained investigator and/or Decisionmaker to conduct an adequate, reliable, and impartial investigation and hearing, if applicable, in a reasonably prompt timeframe. ACPHS reserves the right to utilize internal or external investigators, Decisionmakers, or hearing officers.

All parties have the option to participate in the investigation and/or hearing, and each have the same rights during the resolution process including the right to an advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the investigator prior to the investigator providing the final report to the Decisionmaker. In cases where there is a hearing, all parties have the same rights at the hearing, including the right to review any evidence that will be considered by the Decisionmaker prior to the hearing.

The investigator will establish deadlines for submission of names of relevant witnesses and submission of evidence and communicate those deadlines to the parties in writing.

#### Conflict of Interest or Bias

After a Notice of Investigation is issued to all parties, any party may object to the participation of the Title IX Coordinator or designated investigator on the grounds of a demonstrated bias or actual conflict of interest. All parties will have three (3) days from the date of the Notice of Investigation to object to the selection of the investigator or the Title IX Coordinator. Objections to the Title IX Coordinator are to be made, in writing, to the Vice President of Student Affairs. Objections to the appointment of the investigator are to be made in writing, to the Title IX Coordinator. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Title IX Coordinator or the Investigator, that individual shall be replaced. Any change will be communicated in writing.

#### Timeline

In those cases that do not include a hearing, ACPHS strives to complete the investigation process within ninety (90) days from the date of the Notice of Investigation. In those cases that include a hearing, ACPHS strives to complete the investigation process within sixty (60) days from the date of the Notice of Investigation, and complete the hearing within sixty (60) days of the Notice of Hearing.

The timeline for any part of the resolution process may be extended for good cause by the Title IX Coordinator. All parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

ACPHS shall not unreasonably deny a student party's request for an extension of a deadline related to a formal complaint during periods of examinations or school closures.

The investigator and/or Title IX Coordinator shall provide the Parties with periodic status updates, in writing.

#### Burden and Standard of Review

ACPHS has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any party, and any party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from ACPHS and does not indicate responsibility. The standard of proof used in any

investigation and decisionmaking process is the preponderance of the evidence standard, which means more likely than not.

#### Written Notice of Meetings

ACPHS will provide to a party or witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.

#### Evidence Gathering

##### *Interviews*

The investigator will interview all parties and relevant witnesses and gather relevant and directly related documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person, or via video conference. When a party meets with an investigator, the investigator will ask questions related to the allegations in the formal complaint and a party is given the opportunity speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant or directly related to the allegations. This will include inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The investigator ultimately determines whom to interview to determine the facts relevant to the formal complaint.

##### *Irrelevant Evidence*

The following are not relevant, as per applicable federal law. This means this information will not be accessed or considered, except by ACPHS to determine whether one of the exceptions listed below applies:

- Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless ACPHS obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence an questions about the Complainant's sexual predisposition or prior sexual behavior unless:
  - a. It is offered to prove that someone other than the respondent committed the Prohibited Conduct alleged in the formal complaint, or
  - b. They concern specific incidents of complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Under New York state law, parties have the right to exclude their own prior sexual history with persons other than the other party in the investigation and decisionmaking process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility.

#### **Investigation & Decisionmaking Procedures (No Live Hearing)**

This procedure is for Discrimination, Discriminatory Harassment, Quid Pro Quo Harassment (Non-Title IX), Hostile Environment Sex-Based Harassment (Non-Title IX), and Retaliation.

ACPHS will assign a trained investigator and/or trained hearing officer to conduct an adequate, reliable, and impartial investigation and hearing in a reasonably prompt timeframe. ACPHS reserves the right to utilize internal or external investigators and hearing officers.

All parties have the option to participate in the investigation and/or hearing, and each have the same rights during the resolution process including the right to an advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the investigator prior to the investigator's making any findings. In the event of a hearing, all parties have the same rights, including the right to review any evidence that will be considered by the Hearing Officer prior to the hearing.

#### Notice of Investigation

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

The Notice shall include, at a minimum:

- ACPHS' resolution procedures, including the applicable determination procedure, and any alternative resolution process, with a link to the full procedures;
- The specific allegations, including the identity of the parties, and dates and location if known;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
- A statement that Retaliation is prohibited;
- Contact information for the assigned investigator and Decisionmaker, as well as the process for raising a challenge to the appointed investigator, Decisionmaker, or Title IX Coordinator, and the deadline for doing so.
- Expected length of the major stages of the resolution process, as well as any applicable deadlines.
- Whether the Investigator, or another individual, shall serve as the Decisionmaker.
- A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the investigation and decisionmaking procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
- The parties may have an advisor of their choice who may be a friend, colleague, therapist, or attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response;
- A statement that ACPHS prohibits knowingly making false statements or knowingly submitting false information during grievance procedures, with a link to the relevant policy(ies).
- The date and time of the initial interview with the investigator, with a minimum of five (5) days' notice.

#### Individual Interviews



The investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Only the investigator and the party or witness may attend each individual interview. A party's advisor may attend these meetings, subject to the rules described in this policy. Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of those proceedings, and may be subject to further ACPHS discipline for failure to do so.

ACPHS may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at ACPHS' discretion, with all participants joining virtually through a video conferencing option.

ACPHS will share expectations of decorum to be observed at all times in any meeting or proceeding under this policy. These expectations are applied equally to all parties and advisors. ACPHS has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or advisor who does not comply with these expectations and any other applicable ACPHS rules.

#### Evidence Review

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

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

The parties will have a minimum of 5 days to inspect and review the evidence and submit a written response in writing to the investigator. ACPHS will provide access to copies of the parties' written responses to the investigator to all parties and their advisors, if any. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors. The parties shall have 5 days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant

evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

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

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

### Investigation Report

The investigator, who may also serve as the Decisionmaker, shall evaluate the relevant and not impermissible evidence and make a factual determinations regarding each allegation, and also determine whether a violation of the policy occurred. The investigator may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible or declined to participate. The investigator will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions.

The investigator shall prepare a report which shall include:

- A description of the allegations of Prohibited Conduct;
- Information about the policies and procedures used to evaluate the allegations;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
- An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
- Findings of fact for each allegation, with rationale;
- Conclusions regarding which section of this policy or other ACPHS policy, if any, the respondent has or has not violated, with rationale.

This report shall be provided to the Title IX Coordinator. In the event that the Decisionmaker has determined that a violation of university policy has occurred, the Title IX Coordinator shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Title IX Coordinator shall then determine the appropriate remedy(ies) for the complainant and any impacted parties. Past findings of responsibility relating to this policy or any other ACPHS policy are admissible in the sanctioning stage only.

The Title IX Coordinator shall then provide the parties and their advisors, if any, with a written Notice of Outcome and a copy of the investigation report. The Notice of Outcome shall include:

- A statement of, and rationale for, any disciplinary sanctions ACPHS imposed on the respondent
- A statement as to whether remedies will be provided to the Complaint
- For the complainant, a description of any remedies that apply to the complainant

- ACPHS' procedures and the permitted reasons for the parties to appeal, including identifying the Appeals Panel.
- How to challenge participation by the Appeals Panel for bias or conflict of interest, which the Title IX Coordinator will resolve in their sole discretion.

The determination regarding responsibility becomes final either on the date that ACPHS provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

## **Investigation & Hearing Procedures**

The following describes the investigation and hearing procedures for Sexual Assault, Dating Violence, Domestic Violence, Stalking, Sexual Coercion, Sexual Exploitation, Title IX Quid Pro Quo Harassment, Title IX Hostile Environment Harassment.

### Notice of Investigation

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

The Notice shall include, at a minimum:

1. ACPHS' investigation and hearing procedures, including a link to the relevant policies;
2. Information about the agreement-based resolution process, with a link to the full procedures.
3. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the specific type of Prohibited Conduct alleged under the policy, and the date(s), time(s), and location(s) of the alleged incident(s);
4. A list of possible sanctions.
5. A statement that retaliation is prohibited;
7. Expected length of the major stages of the resolution process, as well as any applicable deadlines.
8. The Notice will inform the parties that the investigator will establish and communicate, in writing, all investigation deadlines, including the final deadlines for submitting names of witnesses, evidence, and relevant questions to ask a party or witness. These deadlines may be extended by the Title IX Coordinator for good cause, and any changes will be provided, in writing, to the parties, along with the rationale for the revised deadline(s).
9. The process for raising a challenge to the appointed investigator, hearing officer, Title IX Coordinator, or other individual implementing this Policy, and the deadline for doing so.
10. A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process. Prior to such a determination, the parties will have an opportunity to present relevant and directly related evidence to a trained, impartial Decisionmaker;
11. A statement that the parties may have an advisor of their choice who may be a friend, parent, therapist, colleague, or attorney;
12. The parties are entitled to an equal opportunity to access the relevant and directly-related evidence or an investigation report that accurately summarizes this evidence. And;

13. ACPHS' Code of Conduct and/or Title IX Policy prohibits knowingly making false statements or knowingly submitting false information during grievance procedures, include the following knowingly making false statements or knowingly submitting false information during the grievance procedures. An individual found to have knowingly made a false complaint or report, or to have knowingly given false information during a process under this Policy, may be subject to disciplinary action, up to and including termination of employment or dismissal from the College's academic programs.

14. The date and time of the initial interview with the Investigator, with a minimum of five (5) days' notice.

#### Individual Interviews

The investigator will hold individual interviews with parties and witnesses to ask relevant questions and follow-up questions, including questions exploring credibility, and to request of the parties the names of relevant witnesses and relevant evidence. Only the investigator and the party or witness may attend each individual interview. A party's advisor may attend these meetings, subject to the rules described in this policy. Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the grievance process, and may be subject to further ACPHS discipline for failure to do so.

The investigator will then gather from parties, witnesses, and other sources, all relevant and directly-related evidence.

ACPHS will share expectations of decorum to be observed at all times in any meeting or proceeding under this policy. These expectations are applied equally to all parties and advisors. ACPHS has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or advisor who does not comply with these expectations and any other applicable ACPHS rules.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at ACPHS' discretion, with all participants joining virtually through a video conferencing option. The investigator will determine, in their sole discretion, whether parties and witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which parties and witnesses to call to an interview. The investigator may conduct follow-up interviews as they deem appropriate.

#### Investigator Determination of Relevance

The investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which parties and witnesses to call to individual follow-up meetings.

The investigator will review all evidence gathered through the investigation and determine what evidence is relevant, directly-related, or irrelevant. Character evidence is not relevant evidence, and therefore will not be considered.

### Evidence Review

At the conclusion of all fact-gathering, the investigator will provide each party and their advisor the opportunity to review all relevant and directly-related evidence gathered. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence or names of witnesses. Evidence not provided during the investigation process will not be considered by the Decisionmaker. Given the sensitive nature of the information provided, ACPHS will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have a minimum of 10 days to inspect and review the evidence and submit a written response in writing to the investigator. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence.

When deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the parties and their advisors. The parties shall have 5 days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

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

### Investigation Report

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

### Conclusion of Investigation, Notice of Hearing

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

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

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

#### Hearing Procedures

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

ACPHS will appoint a Hearing Officer (also known as the Decisionmaker) , who will determine whether a violation of ACPHS policy has occurred. The Hearing Officer shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a party's absence from the hearing or refusal to answer questions posed.

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

#### *Prior to the Hearing*

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

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

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

Three (3) days prior to the hearing, each party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other party, or to a witness. If the Hearing Officer determines that any questions are not relevant, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing. Questions that are unclear or harassing of the party or witness being questioned will not be permitted.

#### *Advisor*

Each party is entitled to be accompanied by one advisor at the hearing. The role of the advisor is to assist the party with understanding and navigating the proceedings, and at the direction of the Hearing Officer, pose questions developed by their advisee to the other party or witnesses. The advisor may not advocate for, respond for, or otherwise speak on behalf of, a party during the hearing. In the event that a party does not appear for the hearing, the advisor for that party may not participate in place of their advisee, for example by answering questions or making statements.

An advisor of ACPHS's choosing shall be provided for any party who does not have an advisor for the hearing.

#### *Hearing Participation Guidelines*

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

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

During the hearing, each party will be permitted to provide an introductory statement. Following introductory statements, the Hearing Officer will call parties and witnesses for questioning. The order of questioning shall be determined by the Hearing Officer. The Hearing Officer will pose questions to the parties and witnesses and provide each party an opportunity to pose questions to the other party or witnesses through their advisor. If the Hearing Officer determines that any questions are not relevant to the allegations the Hearing Officer shall not permit the response to the question and explain the reason for the excluding the response to the question at the hearing. Neither party may directly question another party or witness.

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

#### Hearing Officer's Report

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

The determination report will include:

- A description of the Prohibited Conduct alleged;
- A reference to the policies and procedures used to evaluate the allegations;
- Description of all procedural steps taken to date;
- The Hearing Officer's evaluation of the relevant evidence along with the finding of facts;
- Determinations for each allegation, with the rationale;
- Sanction determination (if applicable)
- Whether remedies will be provided;
- The procedures for an appeal, including how to challenge participation by the Appeal Panel for bias or conflict of interest, which the Title IX Coordinator will resolve in their sole discretion.

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

If there is a finding of responsibility, the Title IX Coordinator shall contact the appropriate sanctioning officer who will determine the sanction and notify the Title IX Coordinator of the sanctioning determination. The Title IX Coordinator will then provide each party, and their advisor should the party wish the advisor to receive it, a written Notice of Outcome regarding the Hearing Officer's decision, including the Hearing Officer's report. The Title IX Coordinator will also provide written communication to the complainant regarding any appropriate remedies.

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

## **APPEALS**

Dismissals of formal complaints and determinations made in investigation and hearing procedures may be appealed in writing by either party consistent with this Policy. Appeals will be sent to the Title IX Coordinator, who will then send the appeal to the Appeals Panel assigned to conduct a written review of the appeal(s) and to make a final determination. Appeals must be in writing and filed within ten (10) days following the issuance of the outcome letter.

When an appeal is filed, the other party shall be notified and provided with a copy of the filed appeal within one (1) day, and have five (5) days to respond to the appeal in writing. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal.

Within three (3) days of an Appeal Officer being assigned, either party may provide written objection to the Appeal Officer on the basis of an actual bias or conflict of interest. Any objection is to be sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator will appoint another Appeal Officer.

Appeals may be filed only on the following three grounds:



1. Procedural Error: A procedural error occurred would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal; or,
2. New Evidence: New evidence or information has arisen that was not available or known to the party during the investigation or hearing, that would change the outcome. Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal; or
3. Actual Conflict of Interest or Demonstrated Bias: The Title IX Coordinator, investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.

The Appeal Officer will make a determination regarding the appeal and communicate that decision, along with a rationale for the decision to the Title IX Coordinator who will communicate the Appeal Officer's decision to the Parties. The decision of the Appeals Panel is final.

#### **Failure to Complete Sanctions/Comply with Responsive Actions**

All responding parties are expected to comply with conduct sanctions/responsive actions/ corrective actions within the timeframe specified by ACPHS. Responding parties needing an extension to comply with their sanctions must submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions, such as suspension, expulsion, termination, or a transcript notation. Students who fail to comply will be referred to the Student Conduct Administrator in accordance with ACPHS's Student Handbook.

#### **Transcript Notations**

ACPHS has a policy of making a notation on a transcript related to outcomes for crimes of violence as defined by the Clery Act. Upon conclusion of any appeal process, a transcript notation will be indicated on the respondent's record for cases resulting in suspension, expulsion or in cases where the respondent withdraws from ACPHS during the investigation and decisionmaking process. Notations on transcripts will be indicated as follows:

- "suspended after a finding of responsibility for a code of conduct violation"
- "expelled after a finding of responsibility for a code of conduct violation" or
- "withdrew with conduct charges pending."

Transcript notations for a student who is suspended or who chooses to withdraw with a pending investigation will remain on a transcript for a minimum of one year. After one year's time, a student may request to have the transcript notation removed by filing an appeal with the Vice President of Student Affairs.

Transcript notations for students expelled are permanent and cannot be removed.

If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

## **E. RECORD RETENTION**

In implementing this policy, records of all reports and resolutions will be kept by the Coordinator in accordance with the applicable ACPHS records retention schedule. All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act governing confidentiality of student information.

## **F. ADDITIONAL ENFORCEMENT INFORMATION**

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful discrimination and harassment in employment.

The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

For more information, contact the nearest office of the EEOC or OCR.

US Department of Education  
Office for Civil Rights  
Contact information

U.S. Equal Employment Opportunity Commission (EEOC)  
<https://www.eeoc.gov/contact-eeoc>

## **G. POLICY REVIEW & REVISION**

These policies and procedures will be reviewed and updated regularly by the Title IX Coordinator. The Title IX Coordinator will submit modifications to this policy in a manner consistent with institutional policy upon determining that changes to law, regulation or best practices require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. The policy definitions in effect at the time of the conduct will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon posting to the ACPHS website.

## D. KEY DEFINITIONS

**Advisor:** Each party has the right to choose and consult with an advisor of their choice at their own expense. The advisor may be any person, including a friend, family member, therapist, or an attorney. ACPHS will not limit their choice of advisor. Parties in this process may be accompanied by an advisor of choice to any meeting or proceeding to which they are required or are eligible to attend.

Except where explicitly stated by this policy, advisors shall not participate directly in the process. ACPHS will provide the parties equal access to advisors; any restrictions on advisor participation will be applied equally.

The advisor may not represent, advocate, or speak on behalf of a complainant or respondent. An advisor may not disrupt or impede any resolution proceeding.

### **Affirmative Consent, Coercion, and Force**

**Affirmative Consent:** Sexual contact must be consensual at all times, and sexual contact is considered consensual only after affirmative consent has been given. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following are principles that apply to the above definition of affirmative consent:

- Consent to any sexual act or prior consensual sexual activity 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 or alcohol.
- Consent may be withdrawn at any time.
- When affirmative consent is withdrawn or can no longer be given, sexual activity must stop.
- A person is incapable of affirmative consent when they are:
  - Less than seventeen years of age;
  - 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. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats and intimidation (implied threats) that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.>"). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is intimidation or conduct that would compel an individual to do something against their will by:

- a. expressed or implied threats of physical, emotional, property, or reputational harm, or
- b. pressure that would cause a reasonable person to fear such harm.

Coercion is more than an effort to persuade or attract another person to engage in sexual activity. In assessing whether coercion was used, the frequency, duration, and intensity of the pressure applied will be taken into consideration.

**Formal Complaint:** A formal complaint means written document (hard copy or electronic) that alleges respondent engaged in Prohibited Conduct and requests initiation of the procedures consistent with this Policy to investigate the allegation of the conduct. A formal complaint can only be filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint to Title IX Coordinator that objectively can be understood as a request for ACPHS to investigate and make a determination about alleged discrimination under this policy. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (email), by using the contact information listed on the Title IX/Equal Opportunity website (LINK), or as described in this policy. Individuals who would like more information about filing a formal complaint are invited to contact the Title IX Coordinator for additional information.

**Complainant:** Any individual who has reported being or is alleged to be impacted by Prohibited Conduct as defined by this policy, and who was participating in a ACPHS program or activity at the time of the alleged misconduct.

**Confidential Resources:** any individual identified by the university who receives information about conduct prohibited under this policy in their confidential capacity and who are privileged under state law will not report prohibited conduct disclosed to them without written consent. Designation as a confidential resource under this policy only exempts such individuals from disclosure to the Title IX Coordinator. It does not affect other mandatory reporting obligations under state child abuse reporting laws, the Clery Act as a campus security authority, or other laws that require reporting to campus or local law enforcement.

**Days:** any reference to days refers to business days when ACPHS is in normal operation.

**Decisionmaker or Hearing Officer:** Trained professional designated by ACPHS to decide responsibility, sanction, or appeals. A Decisionmaker may be one person, or a panel of multiple people as determined by ACPHS. When there is no hearing, the investigator may be appointed as the Decisionmaker.

**Disclosure or Report:** A disclosure or report may be made by anyone, whether they learned about conduct potentially constituting Prohibited Conduct under this policy, or whether they personally experienced such conduct. A person making a disclosure or report may or may not be seeking to initiate an investigation.

**Finding:** a written conclusion by a preponderance of the evidence, issued by an Investigator, that the conduct did or did not occur as alleged.

**Incapacitation** occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing and informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, or being under the influence of drugs or alcohol. This policy also covers a person whose incapacity results from temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs, or who are sleeping.

Under this policy, ACPHS will consider whether a respondent knew or should have known the complainant to be incapacitated, based on an objective, reasonable person standard that assumes the reasonable person is both sober and exercising sound judgment. The fact that the respondent was unaware of the complainant’s incapacity due to the respondent’s own drug or alcohol use shall not be considered as an excuse.

**No-Contact Directive:** A No Contact Directive shall mean an administrative directive to both the reporting individual and accused or respondent to refrain from direct contact whether in person or through other means. This includes all contact made which can be considered verbal, nonverbal, physical, written, or via telecommunications devices, including electronic mail and text messages. In addition, this request extends to all action, which may occur as a result of third parties acting on the student’s behalf.

**Notice:** All notices under this policy are written and sent to the student or employee’s assigned ACPHS email address or delivered via Certified Mail to the local or permanent address(es) of the parties as indicated in official ACPHS records, or personally delivered to the intended recipient.

**Party/parties:** Referring to complainant(s), respondent(s), or both/all complainant(s) and respondent(s).

**Remedies:** Remedies means measures provided, as appropriate, to a complainant or any other person ACPHS identifies as having had their equal access to ACPHS’ education program or activity limited or denied by discrimination or other prohibited conduct covered by this policy. These measures are provided to restore or preserve that person’s access to the education program or activity after a ACPHS determines that discrimination occurred. Only the complainant will be informed of any remedies pertaining to them. Some examples are academic support and/or opportunity to retake a class or resubmit work or time extensions on course or degree completion, or non-academic support such as counseling, or changes to work assignments or locations. The Title IX Coordinator is responsible for implementation of remedies.

**Respondent:** an individual, or group of individuals such as a student organization, who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct under this policy; or retaliation for engaging in a protected activity.

**Sanctions:** One or more sanctions or disciplinary steps may be imposed on a respondent who is found responsible for a violation of ACPHS’s policies. Sanctions or disciplinary steps not listed in Appendix E of this policy may imposed in consultation with the Title IX Coordinator. The form of sanction or discipline used will depend on the nature of the offense, as well as any prior disciplinary history. Such discipline or sanction will be imposed pursuant to and in accordance with any and all applicable ACPHS rules, policies, and

procedures. To see a full list of sanctions, please see **Appendix E: Possible Sanctions For Students And Employees** .

**Student:** Any person who has (or will have) attained student status by way of:

1. Admission, housing, or other service that requires student status.
2. Registration for one or more credit hours.
3. Enrollment in any non-credit, certificate or other program offered by the university.

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

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

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

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

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

A party may challenge ACPHS' decision to provide, deny, modify, or terminate supportive measures when such measures are applicable to them. An impartial employee will be designated to consider modification or reversal of ACPHS' decision to provide, deny, modify, or terminate supportive measures. When the individual providing Supportive Measures is a Deputy Title IX Coordinator or other individual identified by the Title IX Coordinator to provide Supportive Measures, the Title IX Coordinator will be designated to consider the challenge regarding supportive measures. The impartial employee will typically respond to the challenge within five (5) days.

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

## Appendix A: Resources

On Campus Confidential Resources (and exempt from employee reporting):

1. The College Counseling Services: 518-210-5298  
<http://www.acphs.edu/albany-campus/health-safety/counseling-services>

Off Campus Confidential Resources for Students, Faculty, and Staff:

1. [Albany County Crime Victims and Sexual Violence Center](#): 518-447-7716
2. [Equinox Domestic Violence Services](#): 518-432-7865
3. [The Legal Project Campus Violence Connection](#): 518-435-1770

Anonymous reporting to Confidential Hotlines for students and employees provided by New York agencies and not-for-profit entities:

- NYS Office of Victim Services: 1-800-247-8035 **Note:** Information regarding STIs, forensic exams, and resources available through the NYS Office of Victim Services
- New York State Domestic and Sexual Violence Hotline: 1-800-942-6906
- Equinox Hotline: 518-432-7865
- Unity House Hotline: 518-272-2370
- The National Domestic Violence Hotline: 1-800-799-7233
- The National Sexual Assault Hotline: 1-800-656-4673
- Safe Horizon Hotlines: 800-621-4673 (domestic violence), 866-689-4357 (victims of other crimes, 1-212-227-3000 (rape & sexual assault victims)

## Appendix B: New York State Student Bill of Rights

All students have the right to:

- Make a report to local law enforcement and/or state police;

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

## **Appendix C: Additional Rights Regarding a Report of Sexual Misconduct**

Anyone reporting an incident of sexual assault, domestic or dating violence, or stalking has the right to:

- Notify campus security authorities, as identified in the annual Campus Safety Report, local law enforcement, or the New York State Police;
- Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
  - Options to proceed, including the right to report to College officials, local law enforcement, and/or the New York State Police, or choose not to report; to report the incident to the College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College;



- Where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
  - That the criminal justice process utilizes different standards of proof and evidence than the College's misconduct procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
  - Whether the person they are reporting to is authorized to offer confidentiality or privacy; and
  - Any other reporting options.
- Disclose the incident confidentially to College representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants.
  - Disclose the incident confidentially and obtain services from the state or local government.
  - File a report of sexual assault, domestic violence, dating violence, and/or stalking and consult with the Title IX Coordinator and other appropriate College personnel for information and assistance. Reports shall be investigated in accordance with College policy. A Complainant's identity shall remain private if that is what the Complainant wishes. However, privacy is not the same as confidentiality and private information can be shared as necessary to implement and fulfill the College's obligations under the law and its policies and procedures.
  - If the accused is a College employee, disclose the incident to Human Resources or request a confidential or private employee assist in reporting to Human Resources.
  - Receive assistance from appropriate College representatives if interested in initiating legal proceedings in family court or civil court. Such assistance consists of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings.
  - Withdraw a formal complaint or involvement from the College process at any time, with the understanding that in appropriate cases, the College may nonetheless be required to continue investigating and appropriately resolving cases even if the reporting individual does not wish the case to continue.
  - Reporting Individuals will be protected from retaliation for reporting an incident.

## **Appendix D: Penal Law of the State of New York**

### **Sexual Assault and the Law**

Albany College of Pharmacy and Health Sciences has programs in place to protect all members of the ACPHS community from sexual assault. NYS Law contains the following legal provisions defining the crimes related to sexual assault:

#### **Section 130.20 – Sexual Misconduct**

This offense includes sexual intercourse without consent, oral or anal sexual conduct without consent or engaging in sexual intercourse with an animal or a dead body. The penalty for violation of this section includes imprisonment for a definite period to be fixed by the court up to one year.

#### **Section 130.25/.30/.35 – Rape**

This series of offenses includes sexual intercourse with a person incapable of consent because of the use of forcible compulsion or because the person is incapable of consent due to a mental defect, mental incapacity, or physical helplessness. This series of offenses further includes sexual intercourse with a person under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed four years up to imprisonment for a period not to exceed 25 years.

**Section 130.40/.45/.50 – Criminal Sexual Act**

This series of offenses includes oral or anal sexual conduct with a person incapable of consent because of the use of forcible compulsion or because the person is incapable of consent due to a mental defect, mental incapacity, or physical helplessness. This series of offenses further includes oral or anal sexual conduct with a person under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed 25 years.

**Section 130.52 – Forcible Touching**

This offense involves the forcible touching of the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. Forcible touching includes the squeezing, grabbing, or pinching of such other person's sexual or other intimate parts. The penalty for violation of this section includes imprisonment for a period of up to one year in jail.

**Section 130.55/.60/.65 – Sexual Abuse**

This series of offenses includes sexual contact with a person by forcible compulsion, or with a person who is incapable of consent due to physical helplessness, or due to the person being under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed three months up to imprisonment for a period not to exceed seven years.

**Section 130.65-a/.66/.67/.70 – Aggravated Sexual Abuse**

This series of offenses occurs when a person inserts a finger or a foreign object in the vagina, urethra, penis or rectum of another person by forcible compulsion, when the other person is incapable of consent by reason of being physically helpless, or when the other person is under the age of consent. The level of this offense is enhanced if the insertion of a finger or foreign object causes injury to the other person. The penalties for violation of these sections range from imprisonment for a period not to exceed seven years up to imprisonment for a period not to exceed 25 years.

**Appendix E: Possible Sanctions For Students And Employees**

One or more of the sanctions or disciplinary steps listed here may be imposed on a respondent who is found responsible for a violation of ACPHS's policies. Sanctions or disciplinary steps not listed here may be imposed in consultation with the Title IX Coordinator.

The form of sanction or discipline used will depend on the nature of the offense, as well as any prior disciplinary history. Such discipline or sanction will be imposed pursuant to and in accordance with any and all applicable ACPHS rules, policies, and procedures. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous grievances or allegations involving similar conduct.
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, or retaliation.
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, or retaliation.

- The need to remedy the effects of the discrimination, harassment or retaliation on the victim and the campus community.

Student sanctions imposed are implemented when the decision is final (after an appeal, or, if there was no appeal, after the appeals period expires).

Faculty found responsible for violating this policy may be referred to the appropriate academic official for any other applicable processes.

Possible sanctions and disciplinary steps for student respondents include, but are not limited to the following (common sanctions that may be imposed upon students or organizations singly or in combination):

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any ACPHS policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either ACPHS-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at ACPHS, a notation of this suspension is put on their transcript.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend ACPHS-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma:* ACPHS may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* ACPHS reserves the right to revoke a degree previously awarded from ACPHS for fraud, misrepresentation, and/or other violation of ACPHS policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including ACPHS registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, ACPHS may assign any other sanctions as deemed appropriate.

Possible sanctions and disciplinary steps for staff and faculty respondents include, but are not limited to:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process

- Enhanced supervision, observation, or review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Delay of tenure track progress
- Assignment to new supervisor
- Restriction of stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions may assign any other responsive actions as deemed appropriate.

Possible sanctions for VAWA Crimes (domestic violence, dating violence, sexual assault and stalking, including (but not limited to):

- College warning (except in cases of sexual assault/violence)
- Suspension/expulsion
- Probation
- Termination of employment
- Other steps to address the impact of harassment or discrimination on the Reporting Party, any witnesses, and the College community