



SEXUAL MISCONDUCT POLICY  
2015 - 2016

# WELLS COLLEGE SEXUAL MISCONDUCT POLICY

## INDEX

- I. INTRODUCTION
- II. SCOPE OF POLICY
- III. NOTICE OF NON-DISCRIMINATION
- IV. STUDENT BILL OF RIGHTS
- V. PRIVACY V. CONFIDENTIALITY
  - a. Privacy**
  - b. Confidentiality**
    - i. request for confidentiality*
  - c. Timely warning**
- VI. PROHIBITED CONDUCT
  - a. Definitions**
    - i. sexual harassment*
    - ii. sexual assault*
    - iii. non-consensual sexual contact*
    - iv. sexual exploitation*
    - v. domestic violence*
    - vi. dating violence*
    - vii. stalking*
    - viii. retaliation*
    - ix. consent*
    - x. force*
    - xi. coercion*
    - xii. incapacitation*
  - b. Prohibited Relationships by Persons in Authority**
- VII. RESOURCES FOR SUPPORT
  - a. Confidential Resources**
  - b. Non-Confidential Campus Resources**
- VIII. REPORTING SEXUAL MISCONDUCT TO THE COLLEGE
  - a. Campus Options**
  - b. Anonymous Reporting**

**c. Reporting Considerations**

- i. timeliness and location*
- ii. amnesty for alcohol or other drug use*
- iii. coordination with law enforcement*
- iv. retaliation*
- v. false reports*

**IX. THE COLLEGE RESPONSE**

**a. Interim measures, remedies and accommodations**

- i. range of measures*
- ii. interim suspension*
- iii. right to review*

**b. Options for Resolution**

- i. role of title IX team*
- ii. assessment*
- iii. investigation*
- iv. informal resolution*
- v. formal resolution*
- vi. advisors*
- vii. disciplinary procedure for students*
- viii. time frame for resolution*

**c. Possible Sanctions**

**d. Outcome Notification**

**e. Conflict of Interest**

**f. Transcript Notation**

**X. RISK REDUCTION TIPS**

# **Wells College Sexual Misconduct Policy**

## **2015-2016**

### **INTRODUCTION**

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

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

Wells College encourages prompt reporting of any incident of sexual or gender-based misconduct to the College and to local law enforcement or civil rights enforcement agencies. Upon receipt of a report, the College will take prompt and effective action by: providing interim remedies and support for individuals who make a report or seek assistance under this policy (referred to as the “Complainant”); conducting a review of the conduct under Title IX of the Education Amendments of 1972; addressing the safety of individuals and the campus community, and as warranted, pursuing resolution through informal measures or formal disciplinary action against the accused individual (referred to as the “Respondent”).

All Wells College community members are strongly encouraged to report information regarding any incident of sexual misconduct directly to a member of the Title IX team. Wells College is able to respond only to those incidents that come to its attention.

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

All members of the Wells College community are encouraged to participate in the process of creating a welcoming, safe, and respectful atmosphere and environment. It is an expectation of this College that all Wells College community members will take reasonable and prudent actions to prevent and stop an act of sexual misconduct. As a bystander, taking action may include direct intervention in a situation and setting that allows a bystander to do so safely, enlisting assistance from peers, contacting Campus Safety, or seeking assistance from a person in authority. Members of the College community who choose to exercise this positive moral obligation will be supported by Wells College and protected from retaliation.

## **SCOPE OF POLICY**

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

This policy is intended to protect and guide individuals who have been affected by sexual misconduct, whether as a Complainant, a Respondent, or a third party, and to provide fair and equitable procedures for investigation and resolution of reports.

When used in this policy, Complainant refers to the individual who identifies himself as being a victim or survivor of sexual misconduct. A Respondent refers to the individual who has been accused of prohibited conduct under this policy. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

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

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

## **NOTICE OF NON-DISCRIMINATION**

The College does not permit discrimination or harassment in its programs and activities on the basis of (but not limited to) race, color, religion, ethnic or national origin, ancestry, sex, gender, gender identification, gender expression, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, military status, marital status, status

as a victim of domestic violence or any other characteristic protected by institutional policy or state, local, or federal law.

This policy addresses all forms of sexual discrimination, including sexual harassment, sexual violence, domestic and dating violence and stalking. Wells College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

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

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964.

This policy prohibits sexual misconduct against Wells community members of any gender, gender identity, gender expression or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

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

The College has designated the Director of Human Resources and Business Services to serve as the College's Title IX Coordinator. The Title IX Coordinator oversees the College's centralized review, investigation, and resolution of reports of violations of this policy. The Coordinator also oversees the College's overall compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual misconduct involving students, staff, administrators, faculty, vendors, and visitors;
- Assisted by designated Deputy Title IX Coordinators. These Deputy Title IX Coordinators have a shared responsibility for supporting the Title IX Coordinator and are accessible to any member of the community for consultation and guidance;
- Knowledgeable and trained in College policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the College, both informally and formally, and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual misconduct;

- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention and education efforts and periodic reviews of climate and culture.

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

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

Kit VanOrman  
Title IX Coordinator  
315-364-3317  
[kit@wells.edu](mailto:kit@wells.edu)

Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202  
1-800-421-3481  
[ocr@ed.gov](mailto:ocr@ed.gov)

## **STUDENT BILL OF RIGHTS**

All students have the right to:

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

## **PRIVACY V. CONFIDENTIALITY**

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



**Privacy:** Privacy generally means that information related to a report of misconduct will only be shared with a limited number of individuals, and only those on a “need to know” basis. The use of this information will be limited to college employees in order to assist in the active review, investigation, and/or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

**Confidentiality:** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include our mental health providers, rape crisis counselors at SAVAR, and certain individuals at local hospitals. To see a complete list of confidential sources, please see the resources section of this policy. These confidential resources are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

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

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

**Request for Confidentiality:** Where a Complainant requests that their name or other identifiable information not be shared with the Respondent or that no formal action be taken, Wells College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all Wells College community members. In making this determination, Wells College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

Wells College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. However, the College’s ability to do so may be limited based on the nature of the request by the Complainant. The Title IX Coordinator and/or Deputy will inform the Complainant about the course of action that will be taken, which may include the College seeking disciplinary action

against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

***Timely Warning:*** If a report of misconduct discloses a serious or continued threat to the Wells community, the College may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant.

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

## **PROHIBITED CONDUCT AND DEFINITIONS**

The College prohibits all forms of sexual and gender-based harassment, sexual violence, domestic violence, dating violence and stalking. For purposes of this policy, Wells College defines these prohibited acts of misconduct as follows:

### **Sexual Harassment**

***Sexual Harassment:*** Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity;

*or*

(2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

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

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

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.

- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

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

- Physical conduct:
  - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
  - Unwanted sexual advances within the employment context
- Verbal conduct:
  - Making or using derogatory comments, epithets, slurs or humor
  - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
  - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
  - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum if deemed severe, persistent, or pervasive by a reasonable party
  - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate

- Written conduct: letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
  - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
  - Offering employment benefits in exchange for sexual favors
  - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
  - Making or threatening reprisals after a negative response to sexual advances

**Sexual Assault:** Consistent with federal law, Wells College defines sexual assault as including non-consensual sexual intercourse and non-consensual sexual contact which can be further defined as follows:

- **Non-consensual sexual intercourse-** is any sexual penetration (anal, oral, or vaginal), however slight, with any body part (e.g., penis, tongue, finger, hand) or object, by a person upon another person that is without affirmative consent. Non-consensual sexual acts can include the following:
  - Rape: Consistent with the definition in the FBI’s Uniform Crime Report definition, rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- **Non-Consensual Sexual Contact** is any intentional sexual touching, however slight, with the intimate parts of another (including over clothing), causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

**Sexual Exploitation:** Occurs when, without affirmative consent, an individual takes sexual advantage of another. Examples of sexual exploitation include, but are not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;

- non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
- knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;
- acts of incest;
- sexually-based stalking and/or bullying; and
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

***Domestic Violence:*** Domestic violence refers to physical violence, threats of violence or acts of physical intimidation between spouses, former spouses or intimate partners, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, individuals who are similarly situated to spouses and/or individuals who are protected from the other person's acts under the domestic or family violence laws of the jurisdiction in which the act of violence occurs.

***Dating Violence:*** Dating violence refers to a pattern of violent behavior (including, but not limited to, sexual or physical abuse or the threat of such abuse) that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

***Stalking:*** A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

***Retaliation:*** Acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

## **Affirmative Consent: Force, Coercion, Incapacitation**

***Affirmative Consent:*** Wells College expects that any sexual activity or sexual contact will be based on affirmative consent to the specific sexual activity. All references to consent in this policy will mean affirmative consent as defined in this policy. Under New York law affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following are essential elements of effective consent:

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

***Freely and actively given:*** Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

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

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

***Not unlimited:*** Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person

constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

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

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

**Coercion:** Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against his will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

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

Incapacitation may also result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation because the impact of alcohol and drugs varies from person to person. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and, therefore, unable to consent.

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



## **Prohibited Relationships by Persons in Authority**

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors or other College employees. Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

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

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

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

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

## **RESOURCES FOR SUPPORT**

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

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

As detailed below there are a number of resources available both on and off of campus. There are confidential resources, which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private but are not considered confidential. Even College offices and employees who cannot guarantee confidentiality will maintain a complainant's privacy to the greatest extent possible. The information provided to non-confidential resources will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek resolution.

### **Confidential Resources**

All community members are encouraged to make a prompt report of any incident of sexual misconduct to local law enforcement and the College. Should any individual not be prepared to make a report, or may be unsure of what happened, but is still seeking information and support, there are several legally protected confidential resources available. These confidential resources will not share information with the College or anyone else without the individual's permission. These confidential resources can provide assistance and information regarding medical assistance and treatment (including information about sexually transmitted infections, and sexual assault forensic examinations) and resources available through the New York State Office of Victim Services. The On Campus health and counseling services noted below are generally available to students free of charge.

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

Community Medical Center

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

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

(315) 364-3273

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

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

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

(315) 252-2112 - Sexual Assault Hotline

NYS Domestic Violence Hotline

1(800) 253-3358

NYS Office of Victim Services

1(800) 247-8035

### **Confidential Medical Resources**

A medical provider can provide emergency and/or follow-up medical services. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution. All hospitals in the state of New York are required to provide care for victims of sexual assault in the Emergency Department.

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

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

17 Lansing Street, Auburn NY 13021

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

101 Dates Drive, Ithaca NY 14850

*Cayuga Medical Center provides a SANE (Sexual Assault Nurse Examiner) for examinations.*

*This program employs a team approach to assist survivors of sexual assault, sexual abuse, and rape with medical, emotional, and legal needs. With the survivor's consent, a team of nurses, sexual assault counselors/advocates, doctors, and law enforcement work together to support the survivor.*

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

The goals of the SAFE program are to:

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

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

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

*SAFE Hospitals in the Area:*

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

301 Prospect Avenue, Syracuse, NY 13203

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

750 East Adams Street, Syracuse, NY 13210

### **Non-Confidential Campus Resources**

A report to the College may be made to any of the following. These are the persons designed to receive reports of sexual misconduct and to initiate the College's responsive action. If information is made to any other College employee, the individual reporting the information risks that the information will not be acted upon. The staff members listed below are trained to support individuals affected by sexual misconduct and to coordinate with the Title IX Coordinator consistent with the College's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

**Kit Van Orman**, Manager of Human Resources and Business Services

Title IX Coordinator

Available on weekdays during regular office hours; 8:30a - 4:30p

kit@wells.edu; (315) 364-3317

**Campus Safety**

Available as a first option to report an incident of sexual misconduct. Also provides an escort service on-campus to any student and can reach the on-call professional at any time. Available 24 hours a day, 7 days a week.

security@wells.edu; (315) 364-3229

**Jennifer Michael**, Dean of Students

Can provide reasonable accommodations for housing, academic flexibility and No

Contact Orders. Available on weekdays during regular office hours; 8:30a - 4:30p and on an on-call basis.

jmichael@wells.edu; (315) 364-3311

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

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

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

The College is committed to supporting victims and survivors of sexual misconduct and encourages all individuals or third party witnesses to report any incident to the College.

Making a report means telling a designated non-confidential Campus Resource (see above) what happened -- in person, by telephone, in writing or by electronic communication. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and the College will consider the Complainant's wishes in deciding how to proceed. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

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

**Campus Reporting Options:** The College encourages all individuals to report sexual misconduct to:

Campus Reporting Options:

**Kit Van Orman**, Manager of Human Resources and Business Services

Title IX Coordinator

Available on weekdays during regular office hours; 8:30a - 4:30p

kit@wells.edu; (315) 364-3317

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jmichael@wells.edu; (315) 364-3311

All Wells community members are strongly encouraged to report information regarding any incident of sexual misconduct directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident is reported to the College.

**Anonymous Reporting:** Any individual may make an anonymous report concerning an act of sexual misconduct. An individual may report the incident without disclosing their name, identifying the Respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. The Anonymous Reporting Form can be found on the [www.wells.edu/studentlife/notalone](http://www.wells.edu/studentlife/notalone) webpage.

The Title IX Coordinator/Deputy will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Director of Campus Safety, compliance with all Clery Act obligations.

## **Reporting Considerations**

*Timeliness and Location of Incident:* Complainants and third-party witnesses are encouraged to report sexual misconduct as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the Respondent is not a member of the Wells community, the College will still seek to meet its Title IX obligation by taking steps to end the misconduct, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent may be limited.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct that is likely to have a substantial effect on the Complainant's on-campus life and activities or poses a threat or danger to members of the Wells community may also be addressed under this policy.

*Amnesty for Alcohol or Other Drug Use:* The health and safety of every student at Wells College is of utmost importance. Wells recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Wells strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to Wells officials or law enforcement will not be subject to the Wells code of conduct for violations of the alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or, sexual assault.

*Coordination with Law Enforcement:* Wells College encourages Complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under New York law. The College will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law. The Auburn Police Department, which can be reached at **315-253-3231**, can assist in filing a criminal complaint and in securing an appropriate examination, including by a Sexual Assault Nurse Examiner. The NYS Police Sexual Assault Hotline, which can be reached at 1(844) 845-7269, may also be of assistance in reporting an incident to law enforcement.

The College's policy, definitions and burden of proof may differ from New York criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

Any internal College investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in the College's internal process may be requested by local law enforcement authorities for the purpose of gathering evidence. Any requested temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify longer delay. The college will cooperate with any criminal proceeding as permitted by law. The Title IX Coordinator and other College officials listed above can assist individuals in making a report of a crime to local law enforcement.

Additionally, orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a Wells College community member or other person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter or remain on College property, and Wells College will



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

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

*Statement against Retaliation:* It is a violation of Wells College policy to retaliate in any way against an individual because that individual raised allegations of sexual misconduct. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

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

## **INTERIM MEASURES, REMEDIES AND ACCOMMODATIONS**

Upon receipt of a report, Wells College will impose reasonable and appropriate interim measures designed to eliminate the hostile environment and protect the parties involved. Wells College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional, and physical well-being concerns are being addressed. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College.

A Complainant or Respondent may request a No-Contact Order or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader Wells College and Aurora community, and/or the integrity of the process.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

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

- Access to counseling services and assistance in setting up an initial appointment, both on and off campus
- Imposition of the campus No Contact Orders
- Rescheduling of exams and assignments in conjunction with appropriate faculty
- Providing alternative course completion options (with the agreement of the appropriate faculty)
- Changing of class schedule, including the ability to take an “incomplete”, drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)
- Change a work schedule or job assignment
- Change housing assignments
- Arrange to dissolve a Housing Contract and pro-rate a refund in accordance with campus housing policies
- Assistance from College support staff in completing housing relocation
- Limit an individual or organization’s access to certain College facilities or activities pending resolution of the matter
- Voluntary withdrawal
- Providing an escort to ensure safe movement between classes and activities
- Providing medical services
- Providing academic support services, such as tutoring

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

*Interim Suspension or Separation:* When the report of sexual misconduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus and/or Aurora community, or the performance of normal College functions, the College may place a student or student organization on interim suspension.. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities, and/or all other college activities or privileges for which the student might otherwise be eligible, as the College deems appropriate. When the accused is not a student but is a member of the College community, he or she is subject to interim suspension and/or other measures in accordance with applicable collective bargaining agreements and College employment policies and procedures.

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

## **OPTIONS FOR RESOLUTION**

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

At the conclusion of the assessment, the College may choose to pursue an informal resolution, a remedies-based approach that does not involve disciplinary action against a Respondent, or refer the matter for investigation. The goal of an investigation is to gather all relevant facts and determine if there is sufficient information to refer the report to the Dean of Students, or his designee, for disciplinary action using Wells College's formal resolution procedures. The initial steps for resolution of a complaint against a student, an employee, or a faculty member will involve the same stages: an initial assessment, investigation, and either informal or formal resolution. Within these steps, there are specific procedures.

*The Role of the Title IX Team:* The Title IX team is led by the Title IX Coordinator, and includes two deputies. Their roles are to assist in the review, investigation, and resolution of reports. Composition of the team will be limited to a small circle of individuals who "need to know" in order to implement procedures under this policy.

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

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

### **The Stages of a Title IX Report:**

1. Initial Title IX Assessment: In every report of sexual misconduct, Wells College will make an immediate assessment of any risk of harm to individuals or to the campus and/or Aurora community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the community. The initial review will proceed to the point where a reasonable assessment of the safety of all involved parties and the community can be made. Thereafter, the investigation may be initiated depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

2. Investigation: Where the Title IX assessment concludes that a report appears to allege a plausible violation of this policy, the College will initiate an investigation. The College will designate an investigator or a team of two investigators, with specific training on investigating allegations of sexual misconduct. Trained investigators include the Student Life staff, Campus Safety staff, and the Title IX team. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns. In situations of alleged sexual misconduct, the Complainant and Respondent may be accompanied by an advisor of their choice and at their own expense, if the advisor is a paid advisor. The Complainant and Respondent are expected to speak for themselves, and advisors must not obstruct the process or otherwise be disruptive to the interview or meeting.

The Complainant and Respondent shall have the right to exclude their own prior sexual history with persons other than the other party or their own mental health diagnosis and/or treatment from the investigation and disciplinary hearing process.

The College will seek to complete the investigation within 14(fourteen) days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case.

At the conclusion of the investigation, the investigator(s) will prepare a written report synthesizing the facts and the investigators' conclusions. The investigation report will contain a recommendation as to a finding of no responsibility or responsibility, and if appropriate, recommended sanction(s). This report will be forwarded to the Dean of Students (for student respondents), Director of Human Resources (for staff respondents), Provost (for faculty respondents) or Head of Security (for non-community member respondents).

Based on the information gathered in the initial Title IX assessment and/or full investigation, the College will take appropriate measures designed to end the sexual misconduct, prevent its recurrence and address its effects.

The Title IX Coordinator and/or Deputy will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will

review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

3. Informal Resolution: In some cases, an informal resolution may be appropriate. Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking formal disciplinary action against a Respondent. Where the Title IX Coordinator concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in the section titled "Interim Remedies." Other potential remedies include targeted or broad-based educational programming or training, directives for future behavior issued to the Respondent and/or indirect action by the Title IX Coordinator/Deputy or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue an informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant or the Respondent can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) days of the initial report.

4. Formal Resolution: Disciplinary action against a Respondent may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

The specific procedures for Formal Resolution vary based upon the status of the Respondent:

- For a *complaint against a student*, disciplinary action may be taken by the Dean of Students or their designee following a finding of responsibility. Further explanation as to this procedure follows below (see "Disciplinary Procedure for Students").
- For a *complaint against a staff/administrator*, disciplinary action may be taken at the conclusion of the investigation by the Director of Human Resources and Business Services, and there is no right to appeal for either party.

- For a *complaint against a faculty member*, disciplinary action may be taken at the conclusion of the investigation in a manner consistent with the College’s disciplinary procedures for faculty.
- For a *complaint against a non-community member* (i.e., a visitor, vendor, alum, etc.), responsive action may be taken at the conclusion of the investigation by the Head of Campus Safety, which action may be a ban from the campus or other appropriate measure. There is no right of appeal.

In all of the above procedures, the standard to be applied in determining whether a violation occurred is “preponderance of the evidence”, and the complainant and respondent will be provided an equal opportunity to offer evidence and witnesses and to be accompanied by an advisor.

### Advisors

The Complainant and Respondent may choose to be assisted by an advisor. The Dean of Students Office maintains a list of campus community members who have undergone Title IX training and are available to act as advisors. The Complainant and/or Respondent may choose as an advisor a person not a member of the college community, including an attorney at the party’s own expense. The advisor may accompany the Complainant or Respondent to any College investigative, administrative or adjudicative meeting. The advisor may not make statements, objections or arguments but may consult quietly with the party. Absent extenuating circumstances, witnesses and others involved in an investigation or hearing are not entitled to have an advisor present.

Disciplinary Procedure for Students: The Dean of Students will receive and review the investigation report. The Dean of Students may request to meet with either party or that further information be gathered, if deemed necessary in his discretion. The Dean of Students may uphold or modify the investigator(s)’s recommendation as to the finding of responsibility or no responsibility. The Dean of Students’ decision as to the outcome of the complaint, which will include a brief rationale for the outcome, will be communicated to both complainant and respondent in writing simultaneously. When a finding of responsibility for violation of this policy is made, both the complainant and respondent shall have the opportunity to make a written impact statement to the Dean of Students prior to the determination of an appropriate sanction. In making a determination regarding sanctions, the Dean of Students may consider the parties’ impact statements and the investigators’ recommendation regarding sanctions, if any. The Dean of Students may also consult with the Title IX Coordinator and other appropriate College officials. Past findings of domestic violence, dating violence, stalking or sexual assault may be considered for purposes of determining an appropriate sanction.

Both complainant and respondent will receive simultaneous written notice of the outcome to the extent permitted by law. The final outcome letter shall include factual findings supporting the

determination, the decision and sanction, if any, as well as the rationale for the decision and sanction. The Dean of Students may designate his authority to another administrator.

**Appeal:**

Either party, complainant or respondent, may appeal the Dean of Students' decision to the appeal panel comprised of three members of the Wells Community who have been trained in Title IX and the colleges appeal process. The appeal panel will be called together at the request of the Title IX coordinator. The parties will be given equal access to review any party or witness statements and the investigatory report, to the extent allowed or required by FERPA. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. The grounds for appeal are limited to:

- A procedural irregularity occurred so substantial as to have likely altered the outcome
  - New information has come to light that could not have been known previously that is so substantial as to have likely altered the outcome
  - The finding of responsibility or the finding of no responsibility was not supported by a preponderance of the evidence
  - The sanction is grossly out of line with the violation, either because the sanction is too severe or too lenient
- In the event of an appeal, the panel may:
    - Affirm the finding of responsibility and sanction
    - Affirm the finding of responsibility but modify the sanction, either by increasing or reducing it
    - Affirm the finding of no responsibility
    - Reverse the finding of no responsibility and assign a sanction
    - Reverse the finding of responsibility and eliminate any sanction
    - Remand the decision back to the Dean of Students if warranted due to new information presented or procedural error
    - Take other action deemed appropriate

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Title IX coordinator shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the grounds. If the Title IX coordinator determines that the appeal is not properly framed, the appeal will be denied.

Appeals are not intended to be full reinvestigation of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation collected in the investigation, and pertinent documentation regarding the grounds for appeal.



Sanctions imposed by the Dean of Students are implemented immediately unless the Title IX coordinator or the appeal panel stays implementation in extraordinary circumstances, pending the outcome of the appeal. Pending graduation, study abroad, internships/externships, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term. The panel will render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

**Time Frame for Resolution:** Wells College seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require an extension of time frames, including extension beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, Wells College will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

**Possible Sanctions:**

Possible sanctions include, but are not limited to:

- Expulsion from Wells College
- Suspension from Wells College for a designated amount of time
- Removal from college housing
- Mandated counseling/behavioral change plans
- No Contact Order
- Disciplinary probation
- Restrictions on academic, housing, co-curricular, or extracurricular participation
- Ban from certain areas/events on campus or from the campus as a whole
- Educational Sanctions as appropriate

**Notification of Outcome:** The Complainant and Respondent will be notified simultaneously and in writing of the factual findings supporting the determination, the decision as to responsibility and the sanction(s), if any, as well as the rationale for the decision and sanction(s). To the extent

permitted by law, the complainant will be informed of responsive/disciplinary action taken by the College, if any.

**Conflict of Interest:** Any person empowered by this policy to take action may designate his authority to another due to a conflict of interest or for any other reason deemed necessary or appropriate.

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

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

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

## **RISK REDUCTION TIPS**

With no intention to victim-blame, and with recognition that only those individuals who commit sexual misconduct are responsible for these actions, the suggestions below are provided to assist in reducing a student's risk of experiencing a non-consensual sex act.

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

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

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