

INTRODUCTION

The mission of the Westchester Community College Student Code of Conduct is to create an effective living and learning environment by setting standards, providing a student-centered disciplinary process, and offering sanctions that foster ethical development, personal accountability and civility toward others.

It is the policy of Westchester Community College to establish a student code of conduct, administered by the Vice President and Dean of Student Access, Involvement & Success and his/her judicial affairs designee for the purpose of maintaining a campus environment that is conducive to learning, protects the college's educational purposes, maintains order on campus, and protects the rights of all members of the college community. Students enrolling at the college assume an obligation to conduct themselves in a manner compatible with the college's academic standards; general policies; local, state and federal law; and the code of conduct. Behavior which adversely affects the student's responsible membership in the College community, shall result in appropriate disciplinary action. The College will not tolerate any interference with the rights of any member of our college community, any defacement of college property or any disruption of any authorized college function. The code of conduct and the accompanying student disciplinary processes are intended to assist students in their personal development by providing a fair conduct review procedure that issues consistent penalties for behaviors that are incongruent with the College's expectations.

In furthering the educational aims of the college and maintaining compliance with the provisions of Article 129-A and Article 129-B of the education law of the State of New York, the code of conduct outlines the practices to be utilized in administering the student disciplinary system at the College.

SECTION I:

Philosophy

The Code embraces several core philosophies: preservation of the freedom of speech and the right of peaceable assembly; respect for academic freedom and constructive criticism; a conviction that honesty and integrity are key values to the College community; and the belief that all members of the institution should be part of a campus environment that respects differences of culture, gender, gender identity, gender expression, sexual orientation, religion, race, age, and ability.

SECTION II:

Responsibility for Implementation

The Vice President & Dean of Student Access, Involvement and Success, as Chief Student Affairs Officer of the College, has overall responsibility for implementation of the Student Conduct Code and the student disciplinary process. The overall management of the Code and the disciplinary process has been delegated to the Associate Dean of Student Life and his/her designees.

SECTION III:

Jurisdiction

The College will have jurisdiction over misconduct that occurs on College premises, rented facilities and/or at College-sponsored activities, but may also address off-campus behavior if the College determines that the actions, or the continued presence of the student hinders or disrupts the procedures or functions of the College. Off-campus criminal offenses that violate the Student Conduct Code may be subject to College disciplinary action. This disciplinary action may occur concurrently while the student is facing criminal charges; the charges are pending; have been reduced or have been dismissed. Should the Associate Dean of Student Life determine that a particular alleged act of off-campus misconduct falls within the jurisdiction of the College, the case will be referred to the College student conduct system.

SECTION IV: Definitions

The following selected terms are defined in an effort to facilitate a more thorough understanding of *The Code of Conduct*. The Associate Dean of Student Life or designee shall make the final determination on the definition of any term found in *The Code of Conduct*. Certain definitions have been adapted from Section 6439 NYS Education Law Article 129-B.

1. **“Hearing officer” or “student conduct officer”** means a College staff member who is authorized to determine the appropriate resolution of an alleged violation of *The Code of Conduct*, and/or to impose sanctions or affect other remedies as appropriate. Subject to the provision in this code, a hearing officer or student conduct officer is vested with the authority to, among other duties, investigate a complaint of an alleged violation of *The Code of Conduct*; decline to pursue a complaint; refer identified disputants to mediation or other appropriate resources; establish *The Code of Conduct* alleged violations regarding a respondent; approve an administrative agreement developed with a respondent; conduct a hearing; impose sanctions; chair and/or advise a hearing.
2. **“Business day”** means any day, Monday through Friday, that the College is open.
3. **“Code of conduct”** shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.
4. **“Title IX Coordinator”** shall mean the Title IX Coordinator and/or his or her designee or designees.
5. **“Bystander”** shall mean a person 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.
6. **“Confidentiality”** means the condition of not wishing to have information passed on to anyone else. This disposition may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.
7. **“Privacy”** means the disposition to prefer having their information secluded from as many people as possible. This condition may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.
8. **“Accused”** shall mean a person accused of a violation who has not yet entered an institution’s judicial or conduct process.
9. **“Respondent”** shall mean a person accused of a violation who has entered an institution’s judicial or conduct process.
10. **“Complainant”** shall mean the person responsible for filing a misconduct complaint.
11. **“Reporting individual”** shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a Title IX violation. When a student, faculty or staff member believes that s/he has been a victim of another student’s misconduct, the person who believes s/he has been a victim will have the same rights under *The Code of Conduct* as are provided to the accused or respondent.

12. **“Designee”** refers to a staff or faculty member who has responsibility for implementing the student conduct process or administering the student conduct system, in part or in whole.
13. **“Associate Dean of Student Life”** refers to the person responsible for the overall coordination of the College student conduct system, including the development of policies, procedures, and education/training programs. This individual may serve as a hearing officer and/or as a complainant.
14. **“Member of the College community”** includes any person who is a student, instructor, or College staff member; any other person working for the College, either directly or indirectly (e.g., private enterprise on campus); or any person who resides on College premises. A person’s status in a particular situation shall be determined by the Associate Dean of Student Life.
15. **“Student”** means any person admitted, registered, enrolled, or attending any College course or College conducted program; any person admitted to the College who is on College premises or College-related premises for any purpose pertaining to his or her registration or enrollment.
16. **“Student organization”** means an association or group of persons that has complied with the formal requirements for College recognition by the Department of Student Involvement.
17. **“Support person”** means any person who accompanies a respondent or reporting individual for the limited purpose of providing support, advisement and guidance. A support person may not directly address the Hearing Officers, question witnesses, or otherwise actively participate in the student conduct process.
18. **“College” or “Institution”** shall mean Westchester Community College.
19. **“College official”** includes any person employed by the College to perform administrative, instructional, or professional duties.
20. **“College premises”** includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the College, either solely or in conjunction with another entity.
21. **“Sexual activity”** shall have the same meaning as “sexual act” and “sexual contact” as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).

“(2) the term **“sexual act”** means—

- a) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- c) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term **“sexual contact”** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse,

humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.”

22. “**Domestic violence**” includes asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
23. “**Dating violence**” means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
24. “**Stalking**” means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.
25. “**Sexual assault**” is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.
26. “**Affirm Consent to Sexual Activity**” 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. (Section 6441 Education Law Article 129-B)
 - a) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
 - b) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - c) Consent may be initially given but withdrawn at any time.
 - d) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. 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.
 - e) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - f) When consent is withdrawn or can no longer be given, sexual activity must stop.

SECTION V: Violations

As members of the College community, students have an obligation to uphold *The Code of Conduct* as well as to obey federal, state, and local laws. The Associate Dean of Student Life or designee shall make the final determination on what constitutes a potential violation of *The Code of Conduct* and shall establish the specific behavioral allegations(s) as appropriate. The subsequent behaviors are subject to disciplinary action under the Westchester Community College Student Code of Conduct, but are not limited to the following infractions. A student or a group of students may be charged with any of the violations listed below as well as any institutional policy. In cases where a violation is committed by an

individual student, any other students not directly involved, but who participate in the activity by encouraging or condoning the act in any manner, will also be subject to disciplinary action.

- A. **Academic Dishonesty.** Engaging in academic dishonesty in any form with respect to examinations, course assignments, research projects, grades, and/or academic records.
 - a. Cheating - using or attempting to use unauthorized materials, information or study aids in any academic assignment
 - b. Falsification - intentional and unauthorized falsification or invention of any information or citation in an academic assignment
 - c. Plagiarism - deliberate and knowing use of someone else's work or ideas as one's own.

- B. **Drug and Alcohol Violations.** Possession, consumption or being under the influence of any controlled substance while physically present at any facility owned or rented by College.
 - a. Attendance in class, or at any college-sponsored function, under the influence of alcoholic beverages, or narcotics and illegal drugs.
 - b. Unauthorized possession and/or use of alcoholic beverages, narcotics, prescription drugs or other controlled substances in violation of local, state or federal drug or narcotic laws.
 - c. Distribution, delivery or sale of alcoholic beverages, narcotics, prescription drugs or other controlled Substances in violation of local, state or federal drug or narcotic laws.
 - d. Possession or use of drug paraphernalia.

- C. **Computer Misuse.** Engaging in any unauthorized use of the College's hardware, software or network systems.
 - a. Unauthorized access, entry or use of a computer, computer system, network, software, password, account or data
 - b. Unauthorized alteration or tampering with computer equipment, software, network, or data.
 - c. Unauthorized copying or distribution of computer software or data.
 - d. Use of computing facilities or equipment to send obscene, harassing, threatening or abusive messages.
 - e. Use of computers to falsify records, tamper with records or commit any act of academic dishonesty.
 - f. Any other act in violation of the law and/or College policies and guidelines regulating computer related use.

- D. **Disruptive Conduct.** Engaging in any behavior that disrupts any function of the College.
 - a. Actions that impair, interfere with, or obstruct the normal operations of the College.
 - b. Actions that interfere with the rights of other members of the College community.
 - c. Actions that impair, interfere with, or obstruct the orderly conduct, processes and functions within any classroom or other instructional setting.
 - d. Participating in, leading or inciting others to disrupt scheduled and/or normal campus activities, events and programs.
 - e. Disturbance of any member of the College community or visitor.
 - f. Solicitation on campus without prior approval from appropriate College officials. This includes, but is not limited to, the disbursement of any form of promotional/informational material on College property or on items (e.g. motor vehicles) on College property, requests for donations, or the selling or vending of any merchandise or services.
 - g. Use of any unauthorized vehicle on campus or failure to adhere to traffic regulations.

- E. **Failure to Comply with Authority.** Failing to comply with the directions of any authorized College official.

- a. Failure to comply with a lawful order of a College official, including security personnel, in the performance of his/her duty.
 - b. Failure to comply with request to show proper identification to College officials or employees acting in the performance of their duties.
 - c. Failure to comply with the sanctions rendered from the student judicial process.
 - d. Failure to comply with a request to be interviewed by the Associate Dean of Student Life or his/her designee during the investigation of a conduct code violation.
- F. **Falsification/Fraud/False Testimony.** Knowingly providing false or incorrect information to any College official or misrepresenting yourself to the institution.
- a. Falsification of information to the College, including false reporting of emergencies, knowingly making false accusations or providing misleading statements.
 - b. Providing the College with false documentation, including records and transcripts.
 - c. Providing false testimony during the disciplinary process.
 - d. Misuse, reproduction, alteration or forgery of any College related documents, records, identification, keys, access codes or property.
- G. **Fire and Safety Violations.** Knowingly engaging in behavior that disrupts any fire and safety systems, procedures and policies.
- a. Damage to, removal of or tampering with any fire safety system, firefighting equipment or other emergency warning equipment.
 - b. Intentional or reckless burning or setting fire to any building or piece of property owned or controlled by the College.
- H. **Gambling Violations.** Any unauthorized gambling on campus.
- a. Participation in games of chance or gambling on campus for money or other items of value except as provided by law.
- I. **Violations committed by guests, friends, or family members.** Any violations to the code committed by guests, friends, or family members invited to the campus or on behalf of a student. In addition:
- a. Students are responsible for informing their guests, friends or family members about campus regulations and conduct policies before they invite them on-campus. Therefore, any behavior can be sanctioned if that third party violates The Code of Conduct of conduct.
 - b. Students who sign a release form authorizing a third party to speak freely to College officials on their behalf, can be sanctioned if that third party violates The Code of Conduct of conduct.
- J. **Harassment and Sexual Harassment-Title IX Code.** Any form of harassment and sexual harassment:
- a. Conduct (not of a sexual nature) that creates an intimidating, hostile, or offensive campus, educational or work environment for any member of the college community or visitors.
 - b. Conduct (not of a sexual nature) that threatens, intimidates, humiliates, or otherwise harms another member of the college community or visitors.
 - c. Conduct of a sexual nature that creates an intimidating, hostile or offensive campus, educational or working environment for another person. This includes unwelcome sexual advances or requests for sexual favors, inappropriate sexual or gender-based activities, comments or gestures, or other forms of verbal or physical conduct or communications constituting sexual harassment.

- d. Obscene or indecent behavior, which includes, but is not limited to, indecent exposure or the display of sexual behavior that would reasonably be offensive to others; disorderly, lewd, indecent, or obscene conduct or expression.
- K. **Stalking - Title IX Code.** Intentionally engaging in a course of conduct, directed at a specific person, which is likely to causes a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. **Any student found responsible for violating this code will be suspended or expelled.**
- a. Repeatedly committing unwanted acts that alarm, cause fear, or seriously harass or annoy a member of the College community or family member.
 - b. Repeatedly engaging in unwanted communications, including electronic means, with any member of the College community in a manner likely to alarm, cause fear, or seriously harass or annoy that serve no legitimate purpose.
 - c. Repeatedly following another person without his or her consent.
 - d. Contacting any member of the College community after being asked or ordered not to contact this person.
- L. **Physical, Verbal Endangerment and Domestic Violence - Title IX Code.** Any form of physical or verbal abuse.
- a. Physical violence or attempted physical violence toward another member of the College community or visitors.
 - b. Any verbal assault or abuse towards another member of the College community or visitors.
 - c. Threat of physical violence against another member of the College community or visitors.
 - d. Any action that endangers the health, safety or welfare of any member of the College community or visitors.
 - e. Engaging in domestic violence: any violent action committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabiting with the victim as a spouse or intimate partner. Includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law. **Any student found responsible for violating this code will be suspended or expelled.**
- M. **Misuse of Property/Facilities/Services.** Any form of destruction, vandalism or physical abuse to any College Facility or property.
- a. Theft of College property or property of a member of the College or visitor.
 - b. Damage, destruction, or defacement of College property or property of a member of the College or visitor.
 - c. Public posting, selling of, or in any other way, distribution of notes of class lectures, course handouts and outlines, and/or any other College-supplied materials without the express written permission of the instructor.
 - d. Unauthorized possession and/or use of College property or property of a member of the College or visitor, including knowingly being in possession of stolen goods.
 - e. Unauthorized entry into College facilities, including but not limited to buildings, classrooms, hallways, entryways, conference rooms, and campus grounds.
 - f. Use or operation of rollerblades, skates, skateboards, hover boards, bicycles, and similar items inside College facilities or on College grounds, unless expressly permitted.
 - g. Violation of any policy or guidelines pertaining to specific usage of a College facility.

- h. The use of college computers to view pornography, obscene material, or any subject matter that would be reasonably offensive to others.
- N. **Non-Consensual Sexual Activity/Sexual Assault/Dating Violence - Title IX Code.** Any form of non-consensual sexual activity, sexual assault or dating violence.
- a. Any sexual activity perpetrated against a person where they are incapable of giving affirmed consent. Such acts include, but are not limited to, rape, sexual battery, and sexual coercion. **Any student found responsible for violating this code will be suspended or expelled.** *Please see Section IV.20 of the code for further clarity on sexual activity.*
 - b. Any act of sexual assault is any type of sexual activity that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault, but not limited to, are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape. **Any student found responsible for violating this code will be suspended or expelled.** *Please see Section IV.20 of the code for further clarity on sexual activity.*
 - c. Any act of violence 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 shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. **Any student found responsible for violating this code will be suspended or expelled.**
- O. **Weapons/Firearms/Explosives.** Unauthorized possession or use of weapons.
- a. Possession, storage or use of firearms and other weapons, including non-lethal weapons.
 - b. Possession, storage or use of firecrackers, gunpowder, ammunition, explosives or incendiary devices, or other articles or substances which could endanger health or safety.
- P. **Other Violations.** Violation of any other College policy or regulation can be subject to disciplinary action, including:
- a. Violation of any other published or posted College regulations not specifically mentioned in this Section, including, but not limited to, the WCC Catalogue; WCC's Drug and Alcohol Policy; WCC Classroom Conduct Policy; WCC Smoking Policy; and WCC Policy on Human Diversity.
 - b. Aiding and abetting another in any violation of College policies, regulations and codes.
 - c. Attempting or intending to commit any violation outlined in the Student Conduct Code.

SECTION VI: Student Conduct Process

A. Reports of Misconduct

- a. Any person may file a report regarding any student or registered student organization alleging misconduct. Reports shall be prepared in writing and directed to the Associate Dean of Student Life or designee. A report should be submitted as soon as possible after the alleged misconduct takes place.
- b. The Associate Dean of Student Life or designee shall determine if a complaint alleges or addresses a potential violation of *The Code of Conduct* and will notify the accused of

such allegations. The decision to continue a complaint through the conduct process is the decision of the Associate Dean of Student Life or designee.

- c. Generally, the Associate Dean of Student Life or designee will assign a student conduct officer(s) to the case who will investigate, schedule a conference with the respondent(s) and other individuals as deemed necessary and appropriate.

B. Administrative Conference

- a. The administrative conference is a meeting between a respondent and a student conduct officer to review a complaint/incident, explain the student conduct process, and possible options for resolving the matter.
- b. After reviewing the incident with the respondent, the student conduct officer will determine the appropriate resolution and whether the situation may be resolved by way of an administrative agreement or by a hearing. A student who agrees to resolve any allegation(s) without a hearing shall have no right to appeal.
- c. Title IX Code violations cannot be adjudicated through an Administrative Conference. Such cases are adjudicated through a hearing board described in Section VIII.
- d. The respondent shall each have the right to:
 - i. A written statement of the charges against them.
 - ii. The opportunity to request a hearing at any time or waive their right to a hearing and resolve the situation by an administrative agreement.
 - iii. An opportunity to present information in their defense.
 - iv. A written statement of the administrative agreement.

C. Hearing

The Associate Dean of Student Life or designee will assign a hearing officer(s) to conduct a hearing, with one individual being designated as the Hearing Chair. Hearing Officers are designated and trained by the Associated Dean of Student Life annually. Hearing officers are College officials. They may conduct hearings on any type of alleged violation of *The Code of Conduct*, excluding Title IX Code violations which are to be adjudicated through a Title IX hearing process described in Section VIII. Hearing officers may impose any sanction as appropriate. The hearing participants may include the investigating student conduct officer(s), respondent(s), a complainant, witnesses, two to three hearing officers, and a support person for each respondent or complainant.

An essential component of any a hearing is the determination and the weighing of the facts that pertain to the allegation(s). Therefore, it is vital that personal statements and other information be presented clearly and factually. All participants are expected to be respectful of each other's purpose in the hearing process and to conduct themselves according to the direction of the hearing body. In an effort to be as fair as possible to the complainant and respondent, student conduct procedures may be modified by the hearing officers.

- a. Normally, a hearing will be conducted within fifteen (15) business days of an investigation report being submitted to the Associate Dean of Student Life.
- b. The complainant, any reporting individual and the respondent shall each have the right to:
 - i. A written statement of the charges against them and a list of their rights.
 - ii. Review the completed investigation and findings report.
 - iii. Be informed about the hearing process.
 - iv. A prompt and impartial hearing.
 - v. A reasonable period of time to prepare for a hearing.
 - vi. Request a delay of a hearing due to extenuating circumstances.

- vii. Be notified of the proposed information to be presented and to know the identity of witnesses who have been called to speak at the hearing or provide written information for the hearing when such information is known by the Associate Dean of Student Life or designee prior to the hearing.
 - viii. A support person from the College, who is a full time employee of the institution, of his/her choosing. This support person may attend but may not participate or speak during the process. A student should select a support person whose schedule allows attendance at the scheduled date and time for the administrative hearing because delays will not normally be allowed due to the scheduling conflicts of a support person.
 - ix. Present information, witnesses, and witness statements when deemed appropriate and relevant by the hearing body as long as such witnesses and information are identified to the hearing body no less than two days in advance of the hearing.
 - x. Be present at the pertinent stages of the hearing process as indicated by the Associate Dean of Student Life or designee. The deliberations of the hearing body are private. Following the hearing, the hearing body shall advise the respondent in writing of its determination and of the sanction(s) imposed, if any. The Associate Dean of Student Life or designee will disclose to the alleged reporting individual of any crime of violence, non-forcible sex offense or sexual harassment the results of the hearing in writing.
 - xi. Submit a written response to the investigation and findings report. The decision to not present information is not an admission of responsibility.
 - xii. Respond to statements and other information presented at the hearing.
 - xiii. Present a personal or community impact statement to the hearing body upon a finding of “responsible”.
 - xiv. Written statement of the outcome of the proceeding, and a description of the appeal procedure.
 - xv. Have the right to appeal the decision.
- c. A hearing is conducted differently from legal proceedings and shall be conducted in accordance with the procedures listed below. Specific hearing officers may adopt additional procedures that are not inconsistent with the provisions of *The Code of Conduct*:
- i. A hearing shall be closed and not open to the public.
 - ii. Admission of any person into the hearing room shall be at the discretion of the chair. The chair shall have the authority to remove any person whose presence is deemed unnecessary or obstructive to the proceedings.
 - iii. When a hearing involves more than one respondent, the Associate Dean of Student Life or designee may, at his or her discretion, permit the hearings to be conducted either separately or jointly.
 - iv. If a respondent, after receiving notification, does not appear for a hearing, the hearing will proceed without the student.
 - v. Except as directed by the chair, the support person shall limit his/her role in a hearing to that of a consultant to the respondent/complainant/victim.
 - vi. The complainant, the respondent, and the investigating student conduct officer may arrange for witnesses to present pertinent information to the hearing officers. The respondent, complainant, investigating student conduct officer, and any witnesses will provide information to and answer questions from the hearing officers. Questions may be suggested by the investigating student conduct officer, respondent and/or complainant to be answered by each other or by other witnesses. Questions will be directed to the chair, rather than to the individuals directly. This method is used to preserve the educational tone of the hearing and

to avoid creation of an adversarial environment. It will be left to the discretion of the chair whether or not to entertain the questions.

- vii. Pertinent evidence (records or exhibits) and written statements may be accepted as information for consideration by the hearing officers' discretion. Information presented by a student during a hearing that indicates a potential violation of *The Code of Conduct* may be adjudicated at a future time.
 - viii. After the portion of the hearing concludes in which all pertinent information has been received, the hearing officers shall determine whether the respondent has violated each section of *The Code of Conduct* which the student is alleged with violating.
 - ix. The hearing officer's determination shall be made based on the preponderance of the evidence meaning whether it is more likely than not that, the respondent violated *The Code of Conduct*.
 - x. When a student respondent has been found "responsible" on any violation, the hearing body shall review the student's academic transcript and student conduct history, hear impact statements by the respondent, complainant, and investigating student conduct officer, and impose the appropriate sanction(s).
 - xi. All procedural questions are subject to the final decision of the chair. Procedural questions may be asked at any point during the course of the hearing by any member of the hearing, with the exception of the support person, who may advise the individual they are supporting to ask a question.
- d. Hearings may be recorded and the College will maintain the audio recordings as required by New York state law. Recordings are the property of the College. Participants are prohibited from making their own recording. Upon written request, a respondent or complainant may review the audio recording and make appropriate arrangements for it to be transcribed on College premises. Arrangements for a transcriber and all associated costs involved in the transcription will be the responsibility of the requesting individual.

D. Sanctions for Misconduct

The following are sanctions that may be imposed on individuals and/or groups found in violation of *The Code of Conduct*:

- a. **Official Warning**: is an official written statement of the College's disapproval of a student's actions and a warning that any future violation(s) could result in more severe sanctions which could include probation, suspension, or expulsion.
- b. **College Probation**: is an official notice that the student's conduct is in violation of the Student Conduct Code but does not warrant suspension or permanent dismissal. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student commits another conduct code violation during the probationary period. During the Probation period, a student may be excluded from some programs and curricular or extra-curricular activities and a notation will be placed on their record.
- c. **Suspension**: is an involuntary separation of the student from the College for a definite period of time and/or until certain conditions for readmission are met. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission. Once the suspension is completed, the student must file for a reinstatement to the College with the Associate Dean of Student Life where a review of the case will be conducted by the Vice President for Student Access, Involvement and Success. Once a student has been placed on

suspension, he or she is not permitted on any College-owned property or at any off-campus College sponsored event or activity until the student suspension is completed and has been reinstated. Violating the terms of a suspension may result in criminal charges of trespassing as well as additional Code of Conduct violations. During periods of suspension, students may not earn credit towards a Westchester Community College degree and should consider withdrawing from all courses. Students are financially responsible for all tuition and fees acquired during a term in which the suspension occurs after the designated Drop/Add deadline.

- d. **Expulsion:** is an involuntary separation from the College for an indefinite period and will be invoked where extreme violations of the code of conduct occur. Expulsions from the College come from either the result of a hearing or when suspensions have been issued and a student is not granted a reinstatement.
- e. **Other Secondary Sanctions:** The following may be imposed instead of or in addition to those specified above. Secondary sanctions include, but are not limited to:
 - i. Restitution (compensation for loss, damage or injury)
 - ii. Community service
 - iii. Educational activities such as a reflective writing assignment or attendance at an event directly related to the violation committed.
 - iv. Restrictions (temporary or permanent loss of privileges or the use of a College facility or service)
 - v. Mandated counseling, psychiatric or threat assessments.
- f. *Aggravated Violations:* If a student is responsible for violation of any College policy that is directed toward an individual or group due to race, ethnicity, ancestry, national origin, religion, gender, sexual orientation, gender identity or expression, age, physical or mental disabilities, including learning disabilities, intellectual development disorders, and past/present history of a mental disorder, the student conduct officer or hearing officer(s) may enhance the sanctions.
- g. The following sanctions may be imposed upon registered student organizations:
 - i. All sanctions listed above.
 - ii. *Loss of Recognition:* Loss of all College privileges for student club/organizations for a designated period of time. Loss of recognition for more than two consecutive semesters requires an organization to reapply for College recognition. Conditions for future recognition may be specified.

E. Appeals.

For Hearings Only (Administrative Agreements cannot be appealed):

- a. A decision reached by the hearing officers or a sanction imposed by the hearing officers may be appealed by the accused student(s) or complainant(s) within five (5) business days of the decision. All appeals shall be in writing and shall be delivered to the Vice President & Dean of Student Access, Involvement & Success.
- b. Except as required to explain the basis of new information, an appeal shall be limited to a review of the student conduct file. The audio recording of the hearing shall be available to the Vice President & Dean of Student Access, Involvement Success for review as necessary. The review shall be for one or more of the following purposes:
 - i. To determine whether the hearing was conducted in conformity with prescribed procedures giving the complainant and investigating student conduct officer a

- reasonable opportunity to prepare and to present information that *The Student Code* was violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations.
- ii. To determine whether the sanction(s) imposed were appropriate for the violation(s) of *The Student Code* which the student was found responsible.
 - iii. To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original administrative hearing.
- c. If an appeal is upheld by the Vice President & Dean of Student Access, Involvement Success, the matter shall either be referred to the original hearing officers for re-opening of the hearing to allow reconsideration of the original determination or the Vice President & Dean of Student Access, Involvement Success will determine any change in sanctions. If an appeal is not upheld, the matter shall be considered final and binding upon all involved.

SECTION VII: Interim Administrative Action

The Associate Dean of Student Life or designee may impose an interim “Suspension”, an interim “Removal from a Class(es),” an interim “Loss of Recognition”, and/or other necessary restrictions on a student prior to a hearing on the student’s alleged violation. Such action may be taken when, in the professional judgment of a College official, a threat of continued classroom disruption, imminent harm to persons or property exists.

Interim administrative action is not a sanction. It is taken in an effort to protect the safety and well-being of the respondent, of others, of the College, or of property. Interim administrative action is preliminary in nature; it is in effect only until there is a resolution of the student conduct matter following the procedures described in Section VI.

Involuntary Withdrawal

The Associate Dean of Student Life or designee may involuntarily withdraw a student from the College if it is determined that a student’s behavior meets the following criteria:

1. Demonstrates behavior that is unreasonably disruptive to the normal education process and orderly operation of the College, and requires an excessive amount of College resources.
2. Demonstrates significant and ongoing inability to satisfy basic personal needs (e.g., nourishment, shelter) such that there is a reasonable possibility that harm may occur.
3. Commits a violation of the College's Student Conduct Code and lacks the capacity to comprehend and participate in the College's disciplinary process, and/or did not understand the nature or wrongfulness of the conduct at the time of the offense.

This process is initiated when a student is reported to the Behavioral Intervention Team for a formal review of the student’s reported behavior. The Behavioral Intervention Team will review the information and determine whether the student meets one or more of the listed criteria above. If the committee agrees the student meets at least one of the criteria, through a majority vote, then a formal recommendation for involuntary withdrawal will be made to the Associate Dean or designee. The Associate Dean or his/her designee will make a determination within 5 business days after receiving the BIT recommendation(s) and will inform the student of the decision and the right to appeal in writing within 5 business days. The student will have 5 business days to notify the Associate Dean or his/her designee of their choice to either

accept or appeal the decision in whole or in part. The decision will go into effect if the student fails to respond within 5 business days. The student may appeal any of the actions taken under this policy, provided a written appeal is received by the Office of the Vice President of Student Access, Involvement and Success within 5 business days from the date of the decision. The Vice President of Student Access, Involvement and Success will issue a written decision within 5 business days. This decision will be final.

SECTION VIII: Conduct Process for Title IX Violations

A. Reporting and reporting individual's rights

The following procedures have been adopted by Westchester Community College to respond, investigate, and adjudicate complaints from reporting individuals of non-consensual sexual activity, sexual assault, stalking, domestic violence, dating violence or sexual harassment.

Reporting Process

1. Any person may file a report regarding any student, faculty, staff or community member alleging an incident of non-consensual sexual activity, sexual assault, stalking, domestic violence, dating violence or sexual harassment. Reporting individuals shall be directed to the Title IX Coordinator or designee to file their written report. The report should be submitted as soon as possible after the alleged incident takes place.
2. The Title IX Coordinator or designee shall determine if a complaint alleges or addresses a potential violation of a Title IX Code and will notify the accused of such allegations, if it does not interfere with a police investigation. The decision to continue a complaint through the conduct process is the decision of the reporting individual, unless the institution determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community.
3. Title IX Coordinator will notify the accused of such allegations, and assign a designee to investigate, schedule a conference with the accused and other individuals as deemed necessary.
4. Once the Title IX Coordinator decides to go forward with the investigation, he/she will inform the Vice-President and Dean of Student Access, Involvement, and Success of the need for an investigation. The Vice-President and Dean of Student Access, Involvement, and Success shall then notify the President that such an investigation will commence.
5. The College's procedures seek to ensure a prompt (within 60 days of initial reporting), fair, and impartial investigation and resolution. Procedures will be conducted by college officials who receive annual training on conducting investigations on allegations of non-consensual sexual activity or sexual assault, including domestic violence, dating violence, stalking, and sexual assault, and managing the hearing process that protects victim's safety and promotes accountability.

Reporting Individual's Rights

1. Reporting individuals have the right 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 to provide information regarding 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. Such official shall also explain whether he or she is authorized to offer the reporting individual

- confidentiality or privacy, and shall inform the reporting individual of other reporting options.
2. The reporting individual is also encouraged and has the right to file a report with security or local or state police for legal action if the conduct violates New York State or local laws. Both of these processes can happen simultaneously. Reporting individuals will receive assistance from security, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order. In addition, both the accused/respondent and the reporting individual may receive assistance in how to obtain a copy of the order of protection or equivalent when received by an institution and have an opportunity to meet or speak with an institution representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused'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 to receive assistance from campus security in effecting an arrest by calling on local law enforcement for violating such an order, provided that nothing in this article shall limit current law enforcement jurisdiction and procedures.
 3. Reporting individuals also have the right to disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals; disclose confidentially the incident and obtain services from the state or local government; disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals; receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court; and withdraw a complaint or involvement from the institution process at any time.
 4. Should the accused be an employee of the College, the reporting individual has the right to have the incident reported to the institution's human resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate human resources authority. Once reported, an investigation will ensue and a final report on the findings will be filed with the Human Resources Office. From there the College will follow the appropriate employment grievance procedures in accord with that person's collective bargaining unit or terms of employment.
 5. At the first instance of disclosure by a reporting individual to an institution representative, the following information shall be presented to the reporting individual: *"You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."*
 6. All reporting individuals will receive information about resources, including intervention, mental health counseling, and medical services, which shall include information on whether such resources are available at no cost or for a fee. In addition, information will be provided on sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York state office of victim services, established pursuant to section six hundred twenty-two of the executive law.
 7. Retaliation of any kind against a reporting individual or against any person participating in the investigation is strictly prohibited. Any retaliation will be treated as a new and additional violation of the code of conduct.
 8. Declining to consent to an investigation shall be honored unless the institution determines in good faith that failure to investigate does not adequately mitigate a potential risk of

harm to the reporting individual or other members of the community. Honoring such a request may limit the institution's ability to meaningfully investigate and pursue conduct action against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- a. Whether the accused has a history of violent behavior or is a repeat offender;
- b. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- c. The increased risk that the accused will commit additional acts of violence;
- d. Whether the accused used a weapon or force;
- e. Whether the reporting individual is a minor; and
- f. Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

B. Pre-Hearing Procedures

The following procedures have been adopted by Westchester Community College to separate the accused/respondent and the reporting individual during an investigation and possible hearing for the purpose of preventing retaliation and providing a non-hostile environment.

Separation of accused/respondent and reporting individual

1. The reporting individual will be provided a "no contact order" against the accused or respondent consistent with institution policies and procedures, whereby continued intentional contact with the reporting individual would be a violation of institution policy subject to additional conduct charges; if the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual.
2. When the accused or respondent is a student determined to present a continuing threat to the health and safety of the community, the accused or respondent is subject to interim suspension pending the outcome of a judicial or conduct process. When the accused is not a student but is a member of the institution's community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and rules and policies of the institution.
3. Lastly, reasonable and available interim measures and accommodations will be provided that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, consistent with the institution's policies and procedures.

C. Investigation process and student's rights

Students involved in Title IX cases will receive a prompt response to any complaint and have the complaint investigated in a fair, impartial, timely manner that provides a meaningful opportunity to be heard.

Investigation Process

1. All reports shall be investigated in accordance with institution policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy.
2. The investigator, a trained college officer, will take primary statements from the complainant and respondent, ask follow up questions, reach out to and collect statements from others who have evidence/information relevant to the question of violation of the code of conduct, and ask follow-up questions as needed.

3. The complainant, reporting individual and respondent may each provide evidence, suggest questions to the investigator to be asked of others, and may suggest others that the investigator should interview. Final decisions about with whom to talk and what to ask will be made by the investigator.
4. All of those contacted by the investigator will be required to maintain the privacy of the investigation however; the investigator may consult with the Title IX Coordinator in decisions regarding the investigation process.
5. The Title IX Coordinator will receive and review the report, ensure that the report does not contain material that is inadmissible in the decision process and may request that additional information be gathered. Once the report is finalized, he/she will determine whether to bring charges against the accused student.
6. If charges are brought up against a student, the Title IX Coordinator will notify the respondent, complainant and the reporting individual describing the date, time, location and factual allegations concerning the violation, the need for a hearing, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
7. If the accused is an employee, the final report will be submitted to the Human Resources Office to follow appropriate grievance procedures.

Student's Rights in an Investigation

1. If a reporting individual reports an incident of non-consensual sexual activity or sexual assault but does not wish to participate in the investigation and adjudication process, the situation will be reviewed by the Title IX Coordinator for student concerns. He/she will determine whether there is sufficient information to proceed with an investigation.
2. If the accused/respondent does not wish to participate in the investigation and adjudication process, the process will proceed without their contribution to the determination of the facts of the case. The respondent should note that the appeal process based on appearance of new information not available to the hearing officers does not apply in cases of deliberate omission of information by the respondent, including refusal by the respondent to participate in the investigation.
3. All students will receive a process investigated by individuals in a thorough manner, without a conflict of interest, and who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made.

D. Hearing procedures and student's rights

All students involved in a hearing, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or non-consensual sexual activity will be afforded a hearing adjudicated in a fair, impartial, timely manner that provides a meaningful opportunity to be heard. All students will receive a process conducted by individuals without a conflict of interest, and who receive annual training in conducting hearings of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made. A hearing is conducted differently from legal proceedings and shall be conducted in accordance with the procedures listed below. Specific hearing officers may adopt additional procedures that are not inconsistent with the provisions of The Code of Conduct.

The Title IX Coordinator or designee will assign three hearing officers, who are College Officials to conduct the hearing, with one individual being designated as the Hearing Chair. Hearing Officers are designated and trained by the Title IX Coordinator annually. Hearing officers in Title IX cases may only impose sanctions of suspension or expulsion. The hearing participants may include the

investigating officer, respondent(s), a complainant, reporting individual, witnesses, three hearing officers, the Title IX Coordinator and a support person for each respondent or complainant.

An essential component of any a hearing is the determination and the weighing of the facts that pertain to the allegation(s). Therefore, it is vital that personal statements, investigator's final report and other information be presented clearly and factually. All participants are expected to be respectful of each other's purpose in the hearing process and to conduct themselves according to the direction of the hearing body. In an effort to be as fair as possible to the reporting individual and respondent, student conduct procedures may be modified by the hearing officers.

Hearing proceedings

1. A hearing shall be closed and not open to the public.
2. Admission of any person into the hearing room shall be at the discretion of the chair. The chair shall have the authority to remove any person whose presence is deemed unnecessary or obstructive to the proceedings.
3. When a hearing involves more than one respondent, the Title IX Coordinator or designee may, at his or her discretion, permit the hearings to be conducted either separately or jointly.
4. If a respondent, after receiving notification, does not appear for a hearing, the hearing will proceed without the student.
5. Except as directed by the chair, the support person shall limit his/her role in a hearing to that of a consultant to the respondent/reporting individuals.
6. The reporting individual, complainant, the respondent, and the investigating student conduct officer may arrange for witnesses to present pertinent information to the hearing officers. The respondent, complainant, reporting individual, investigating student conduct officer, and any witnesses will provide information to and answer questions from the hearing officers.
7. Questions may be suggested by the investigating student conduct officer, respondent, reporting individual and/or complainant to be answered by each other or by other witnesses. Questions will be directed to the chair, rather than to the individuals directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. All questions made by the respondent and reporting individual must be vetted at least two days prior to the hearing by the Title IX Coordinator. It will be left to the discretion of the Title XI Coordinator whether or not to entertain the questions during the hearing.
8. Pertinent evidence (records or exhibits) and written statements may be accepted as information for consideration by the hearing officers' discretion. Information presented by a student during a hearing that indicates a potential violation of The Code of Conduct may be adjudicated at a future time.
9. After the portion of the hearing concludes in which all-pertinent information has been received, the hearing officers shall determine whether the respondent has violated each section of The Code of Conduct which the student is alleged with violating.
10. The hearing officer's determination shall be made based on the preponderance of the evidence meaning whether it is more likely than not that, the respondent violated The Code of Conduct.
11. If a student respondent is found "responsible" on any violation, the hearing body shall review the student's academic transcript and student conduct history, hear impact statements by the respondent, complainant, reporting individual and investigating student conduct officer, and impose the appropriate sanction(s).
12. All procedural questions are subject to the final decision of the chair. Procedural questions may be asked at any point during the course of the hearing by any member of the hearing, with the exception of the support person, who may advise the individual they are supporting to ask a question.

Hearings may be recorded and the College will maintain the audio recordings as required by New York state law. Recordings are the property of the College. Participants are prohibited from making their own recording. Upon written request, a respondent or complainant may review the audio recording and make appropriate arrangements for it to be transcribed on College premises. Arrangements for a transcriber and all associated costs involved in the transcription will be the responsibility of the requesting individual.

Student rights during a hearing

1. The reporting individual, complainant and respondent will have the opportunity to state whether they feel a hearing officer should not participate in the panel due to bias or any other reason, which would prevent them from making a fair assessment of the evidence. The final decision on any such requests for recusal will be made by the Title IX Coordinator.
2. The Hearing Officers must review the investigators report prior to the date of the Hearing.
3. To present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record
4. Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. In order to effect an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual must be similarly provided to a respondent and any rights provided to a respondent must be similarly provided to a reporting individual.
5. For the respondent and reporting individual to be accompanied by an advisor of choice (Does not have to be a member of the College), who may assist and advice throughout the conduct process including during all meetings and hearings related to such process. Rules for participation of such advisor shall be established in the code of conduct.
6. To have the institution's conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay
7. To review and present available evidence in the case file, including the investigator's findings report, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with institution policies and procedures.
8. To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
9. To receive written or electronic notice, provided in advance pursuant to the college policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the conduct process, at which time the designated hearing board shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.
10. To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
11. To simultaneous (among the parties) written or electronic notification of the outcome of a conduct process, including the sanction or sanctions.

12. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the hearing and the rationale for the actual sanction imposed.
13. To choose whether to disclose or discuss the outcome of a conduct or judicial process and.
14. To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

E. Appeal

The reporting individual/complainant and the respondent have the right to request an appeal of the decision made by the hearing board. The right to appeal is limited to:

- a. significant procedural lapses;
- b. the appearance of substantive new evidence not available at the time of the original decision; or
- c. the decision was manifestly unfair or unsupported by the testimony and evidence received at the hearing.

The deliberate omission of information by the appealing party in the original investigation is not grounds for appeal. Each party has 10 working days following the receipt of the written decision to indicate their intention to appeal with the Vice-President and Dean of Student Access, Involvement and Success. Any new evidence, proof of a procedural lapse or proof that the decision was unsupported by evidence must be included in the request. Appeals will be reviewed by a three-member appeal panel consisting of Vice-President and Dean of Student Access, Involvement and Success and two other designated College members of the Vice President's choice. The appeal panel may uphold the original decision, reverse the decision or ask for another hearing with a new board. If the original decision is upheld or reversed, this decision will be final. If a new board is convened, the process will follow the same rules as the original process. The results of any appeal will be communicated simultaneously and in writing to the reporting individual/complainant and the respondent by Vice-President and Dean of Student Access, Involvement and Success.

F. Student Bill of Rights

- a. *"All students have the right to:*
 - i. Make a report to local law enforcement and/or state police;
 - ii. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
 - iii. 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;
 - iv. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
 - v. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
 - vi. 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;
 - vii. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
 - viii. 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;
 - ix. Access to at least one level of appeal of a determination;

- x. 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
- xi. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.”
(Section 6443 NYS Education Law Article 129-B)

G. Policies

a. Policy for Confidential Disclosure

Westchester Community College shall ensure that reporting individuals have the following:

- i. Information regarding privileged and confidential resources they may contact regarding domestic violence, dating violence, stalking or sexual assault;
- ii. Information about counselors and advocates they may contact regarding domestic violence, dating violence, stalking, or sexual assault;
- iii. A plain language explanation of confidentiality which shall, at a minimum, include the following provision:
- iv. “Even Westchester Community College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.”
- v. Information about how the institution shall weigh a request for confidentiality and respond to such a request. Such information shall, at a minimum, include that if a reporting individual discloses an incident to an institution employee who is responsible for responding to or reporting domestic violence, dating violence, stalking, or sexual assault but wishes to maintain confidentiality or does not consent to the institution’s request to initiate an investigation, the Title IX Coordinator must weigh the request against the institution’s obligation to provide a safe, non-discriminatory environment for all members of its community. The institution shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices;
- vi. Information about public awareness and advocacy events, including guarantees that if an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, the institution is not obligated to begin an investigation based on such information. However, if the institution determines that an investigation is required, it shall notify the reporting individual and take immediate action as necessary to protect and assist them. The institution may use the information provided at such an event to inform its efforts for additional education and prevention efforts;
- vii. The College will take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking or sexual assault in a general way that does not identify those who disclose or the information disclosed.
- viii. Information about existing and available methods to anonymously disclose including, but not limited to information on relevant confidential hotlines provided by New York state agencies and not-for-profit entities;
- ix. Information regarding institutional crime reporting including, but not limited to:
 - 1. reports of certain crimes occurring in specific geographic locations that shall be included in the institution’s annual security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual; that the institution is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or

- continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual; that a reporting individual shall not be identified in a timely warning; that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows institutions to share information with parents when i. there is a health or safety emergency, or
2. when the student is a dependent on either parent's prior year federal income tax return; and that generally, the institution shall not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual.
- b. *Policy for the review of no contact order:* Both the accused or respondent and the reporting individual shall, upon request and consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. Institutions may establish an appropriate schedule for the accused and respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual. (Section 6444 Education Law Article 129-B)
 - c. *Policy for MOU:* For resources or services the College cannot provide, to the extent practicable, Westchester Community College shall enter into memoranda of understanding, agreements or collaborative partnerships with existing community-based organizations, including rape-crisis centers and domestic violence shelters and assistance organizations, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, which may also include resources and services for the respondent. In addition, the College shall, to the extent practicable, ensure that students have access to a sexual assault forensic examination by entering into memoranda of understanding or agreements with at least one local health care facility to provide such a service.
 - d. *Policy for review of an interim suspension:* Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request. (Section 6444 Education Law Article 129-B)
 - e. *Policy for review of interim measures/accommodations:* Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request. (Section 6444 Education Law Article 129-B)
 - f. *Policy for transcript notations:* For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary

process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.” Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. (Section 6444(6) NYS Education Law Article 129-B)

- g. *Policy/instructions on how parties can review the case file.* In student disciplinary proceedings involving domestic violence, dating violence, stalking, con-consensual sexual activity or sexual assault, the campus will allow parties to review available evidence held by the campus in accordance with college. Parties can also present available evidence as appropriate under campus policies.
- h. *Student Onboarding and Ongoing Education.* The College will provide a comprehensive student onboarding and ongoing education campaign to educate members of the institution’s community about domestic violence, dating violence, stalking, and sexual assault, in compliance with applicable federal laws, including the Clery Act as amended by the Violence Against Women Act reauthorization of 2013, 20 U.S.C. 1092(f). Included in this campaign shall be a requirement that all new first-year and transfer students shall, during the course of their onboarding to their respective institution, receive training on the following topics, using a method and manner appropriate to the institutional culture of each institution:
 - i. The institution prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;
 - ii. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
 - iii. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
 - iv. The role of the Title IX Coordinator, university police or campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;
 - v. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
 - vi. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
 - vii. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
 - viii. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.

The College will regularly assess programs and policies established to determine effectiveness and relevance for students. (Section 6447 Education Law Article 129-B)

- i. *Policy on General and Specific Training in Domestic Violence, Dating Violence, Stalking and Sexual Assault.* The College will provide training general and specific training in domestic violence, dating violence, stalking and sexual assault prevention and shall conduct a campaign that complies with the Violence Against Women Act, 20 U.S.C. 1092(f), to educate the student population. They shall, as appropriate, provide or expand specific training to include groups such as international students, students that are also employees, leaders and officers of registered or recognized student organizations, and online and distance education students. They shall also provide specific training to members of groups that the institution identifies as high-risk populations. (Section 6447 Education Law Article 129-B)

- j. *Policy on Training Requirement for Athletes and Student Leaders.* The College shall require that each student leader and officer of student organizations recognized by or registered with the institution, as well as those seeking recognition by the institution, complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to receiving recognition or registration, and each institution shall require that each student athlete complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to participating in intercollegiate athletic competition. (Section 6447 Education Law Article 129-B)

- k. *Policy for Alcohol and/or Drug Use Amnesty.* “The health and safety of every student at Westchester Community College is of utmost importance. Westchester Community College 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. Westchester Community College 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 Westchester Community College’s officials or law enforcement will not be subject to Westchester Community College’s code of conduct action 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.” (Section 6442 Education Law Article 129-B)
 - i. Nothing in this section shall be construed to limit an institution’s ability to provide amnesty in additional circumstances.

SECTION IX:

Special Disciplinary Provisions Governing Acts of Academic Dishonesty

- A. Academic dishonesty is both an academic matter between a student and his/her faculty member and a violation under the Student Conduct Code subject to College disciplinary action. An act of academic dishonesty may and should be handled by the faculty member, the student, and, if appropriate, the faculty member’s department head and/or the dean over that particular academic division. Sanctions that can be assigned by a faculty member range from giving a reduced grade on the particular work in question to failing the student for the entire course. In addition, some academic departments and programs have their own policies for dealing with academic dishonesty. A sanction assigned by a faculty member and/or an academic department or program is an academic, not a disciplinary sanction.

- B. If the matter is resolved satisfactorily between the student and the faculty member, and the faculty member decides not to refer the student for College disciplinary action, the faculty member may still report the incident to the Associate Dean of Student Life. The Associate Dean will maintain a record of the reported incident and may elect to pursue College disciplinary action against a student who is reported to that office.
- C. If the faculty member decides that a stronger sanction is needed instead of or in addition to any academic sanctions assigned by that faculty member, the incident may be referred to the Associate Dean of Student Life for review and possible College disciplinary action. Once the referral is made, the incident will be handled in the same manner as would any other allegation under *The Code of Conduct* (Section V).
- D. In cases where the student denies the allegation of academic dishonesty, the faculty member may elect to postpone assigning any academic sanctions until after the student has gone through the College disciplinary process. If at the end of that process, the charge of academic dishonesty is upheld, the faculty member may then assign an academic sanction. The academic sanction is independent of any disciplinary actions taken against the student by the College.
- E. Academic sanctions assigned by the faculty member in agreement with the student or assigned by the faculty member after the charge of academic dishonesty has been validated through the College disciplinary system cannot be grieved under the College's Grade Grievance Procedure.

**SECTION X:
Student Disciplinary Files and Records**

The Associate Dean of Student Life will establish a student disciplinary file whenever a case is referred for investigation of a possible conduct code violation. A student's file will be destroyed if the investigation indicates that no violation occurred. The file of a student found to have violated the conduct code will be retained for four years from the date of the sanction or until the student's graduation or transfer from the College, whichever comes first. Student conduct records may be retained longer or permanently if the student was suspended or permanently dismissed or if there is reason to believe the case could result in future litigation. The case summary will be retained on the Maxient database indefinitely.

The release of student disciplinary records will be governed by applicable federal and state laws governing the privacy of educational records.