

# **PLAZA COLLEGE POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT**

## **INTRODUCTION**

Members of the Plaza College community (“Plaza” or the “College”), guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

The College uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but the College never assumes a responding party is in violation of College policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

## **TITLE IX COORDINATOR**

The College's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports directly to the President of the College, and is housed in the Office of Advising. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator:

Name: Dean Lin Loffert  
Title: Title IX Coordinator  
Office of Advising  
Location/Address: Room 112

(718) 779-1430 ext.7137

Email: [lloffert@plazacollege.edu](mailto:lloffert@plazacollege.edu)

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)  
United States Department of Education, Office for Civil Rights  
Region 2 – New York  
Jacob Javits Federal Building  
26 Federal Plaza - Suite 3312  
New York, NY 10278  
Voice Phone (800) 368-1019  
FAX (212) 264-3039  
TDD (800) 537-7697  
Web: <http://www.ed.gov/ocr>

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the President of Plaza College at 718-779-1430 ext. 7138 or via email at [cec3@plazacollege.edu](mailto:cec3@plazacollege.edu).

## **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

## **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### **Types of Sexual Misconduct**

Sexual misconduct offenses include, but are not limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation

### **Sexual harassment**

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.<sup>1</sup>

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to

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<sup>1</sup> Purpose or intent is not an element of sexual harassment.

participate in or benefit from the College's educational [and/or employment], and/or social program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus
- Explicit sexual pictures are displayed in a professor's office
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in his/her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- A student grabbed another student by the hair, then grabbed her breast and put

his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### Non-consensual sexual contact

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force<sup>2</sup>.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

### Non-consensual sexual intercourse

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

### Sexual exploitation

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the

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<sup>2</sup> The use of force is not “worse” than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

#### Additional definitions and concepts

- **Affirmative Consent** is defined as 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 the 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 New York Age of Consent is 17 years old. In the United States, the age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity. Individuals aged 16 or younger in New York are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape.

New York statutory rape law is violated when a person has consensual sexual intercourse with an individual under age 17, who they are not married to

The following six principles, along with the above definition, will be used to evaluate whether affirmative consent was given:

1. Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.

2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  3. Consent may be initially given but withdrawn at any time.
  4. 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 by 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.
  5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  6. When consent is withdrawn or can no longer be given, sexual activity must stop.
- **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
    - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
    - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
  - Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
  - This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
  - For reference to the pertinent state statutes on sex offenses, please see <http://ypdcrime.com/penal.law/article130.htm>, Section 304 of the Violence Against Women Reauthorization Act of 2013.

## Other Misconduct falling under this Policy (when sex or gender-based)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
  - a. Repeated and/or severe
  - b. Aggressive behavior
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - d. That is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;
  - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
  - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
  - c. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
  - d. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
  - a. Defined:
    - i. A course of conduct
    - ii. Directed at a specific person
    - iii. On the basis of actual or perceived membership in a protected class
    - iv. That is unwelcome, AND

- v. Would cause a reasonable person to feel fear
- b. Examples of Stalking:
  - i. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.
  - ii. A student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."
- 8. Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

### **Examples of Sexual Misconduct**

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room.
2. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't

want it, she could have left. **Bill is responsible for violating the College Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**

3. Jiang is a junior at the college. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

4. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop

him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the College expects.**

### **Sexual Violence – Risk Reduction Tips**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have 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/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

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. Your partner's consent should be affirmative and continuous. 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 better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

## **ANTI-RETALIATION POLICY**

The College prohibits retaliation against any person who reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including participation as a witness. Any member of the College community or third party who attempts, either directly or indirectly, to intimidate, threaten, retaliate, interfere with, restrain, coerce, discriminate against, violate a College No Contact Order, or harass any person for reporting, attempting to report, or responsibly pursuing a complaint will be subject to prompt and appropriate disciplinary action, including possible termination or expulsion from the College.

Retaliation should be reported promptly to the College's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate College policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct.

## **RESOURCES FOR VICTIMS OF SEXUAL MISCONDUCT**

There is a wide range of resources for all students and employees to provide support and guidance in response to any incident of sexual misconduct or prohibited conduct.

## **Immediate Medical Assistance and Counseling**

If you or someone you know is or may be the victim of any form of sexual misconduct, the College strongly urges you to seek immediate assistance. This is the best way to ensure that the complainant receives appropriate medical care and emotional support.

Assistance is available 24 hours a day, 7 days a week, from:

- RAPE Crisis Hotline 914-345-9111
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- Gay & Lesbian Anti-Violence Project 212-714-1141
- Crime Victim's Hotline 212-577-7777
- New York State Domestic Violence Hotline (800) 942-6906
- New York State Office of Victim Services (800) 247-8035 or [www.ovs.ny.gov](http://www.ovs.ny.gov)

## **Sexual Assault Forensic Examiners**

In instances involving physical injury or sexual assault, the College strongly encourages the complainant to obtain a medical examination to determine the extent of injuries. It is also important to understand that physical evidence collected in a rape examination (i.e., a rape kit) is a way to preserve evidence should anyone want to pursue criminal charges with the police or a local prosecutor at a later time. A hospital, with the complainant's permission, will collect physical evidence in a sexual offense evidence collection kit. Sexual Assault Forensic Examiners (SAFE) are considered the best and most appropriate medical professionals to conduct such an examination. The following local hospitals employ SAFE:

### **COUNSELING SERVICES (NYS 129-b 6444) (3)**

The numbers below are places where you can find help:

112<sup>th</sup> Precinct Domestic Violence Unit (718) 520-9284

NYPD: Sex Crime Unit  
(212) 267-RAPE (7273) (24 Hour)

Rape Intervention Program  
St. Luke's-Roosevelt  
(212)523-4728

Victim Services Agency  
(718) 899-1233  
(212) 577-7777 (24 Hour)

Safe Horizon Sexual Assault Hotline  
866-689-HELP (4357) (24-Hour Hotline)  
212-267-3000, [www.safehorizon.org](http://www.safehorizon.org)

Mount Sinai School of Medicine / SAVI  
25-10 30th Ave, Astoria  
Hotline: (212) 423-2140  
(212) 577-7777

Sanctuary for Families  
212-349-6009,  
[www.sanctuaryforfamilies.org](http://www.sanctuaryforfamilies.org)

New York Asian Women's Center  
212-732-5230 (24-Hour Hotline)  
[www.avp.org](http://www.avp.org)

Barrier-Free Living, Inc.  
12-533-4358 (voice/TYY hotline),  
[www.bflnyc.org](http://www.bflnyc.org)

New York Asian Women's Center  
212-732-5230 (24-Hour Hotline)  
888-7702

New York City Anti-Violence Project  
212-714-1141 (24-Hour Hotline), 888-  
888-7702

Mt. Sinai Hospital  
Sexual Assault Violence Intervention Program  
One Gustav Levy Place  
Main Line: 212-423-2140

## **CONFIDENTIALITY AND REPORTING POLICY**

All College employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at College:

### **Confidential Reporting**

If a reporting individual would like the details of an incident to be kept confidential, the reporting individual may speak with Plaza College's Chief Operating Officer (COO). The COO will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor.

## Formal Reporting Options

All College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting individuals may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal College action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party individual has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporting individual, and only a small group of officials who need to know will be told, including but not limited to the Division of Student Affairs. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy.

Even College offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Name: Dean Lin Loffert  
Title: Title IX Coordinator

Office of Advising  
Location/Address: Room 112

(718) 779-1430 ext.7137  
Email: lloffert@plazacollege.edu

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of College policy and can be subject to disciplinary action for failure to comply with College policies.

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to the Office of the President regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, local police, coaches, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

### **Public Awareness Events**

The College will not begin an investigation based on information that a person chooses to share during public awareness events that are designed and intended to be safe spaces for complainants to share experiences. These events could include candlelight

vigils, "Take Back the Night," protests, or other public events. The College may decide, however, to use the information learned at such an event to inform its efforts for additional education and prevention efforts.

### **Law Enforcement Notification**

If you are the victim of sexual misconduct, the College strongly encourages you to promptly report the incident to the police. Contacting law enforcement will ensure the preservation of evidence and facilitate a timely investigation and response. College representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. Except in instances where the victim is under the age of 18, the College will respect a victim's decision regarding whether or not to report an incident to local law enforcement. Where an incident involves the suspected abuse of a minor, certain individuals at the College may have an obligation to report to law enforcement under New York State Law.

**A person may report an incident to either the police or the College or to both simultaneously.** The College's complaint resolution procedures and the criminal justice system work independently from one another and law enforcement officials do not determine whether a violation of this Policy has occurred.

You may also report Title IX complaints to the following offices:

New York Office Office for Civil Rights  
U.S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
Telephone : 646-428-3900  
F AX: 646-428-3843; TDD: 800-877-8339  
E m a i l : OCR.NewYork@ed.gov

Or

The Educational Opportunities Section of the Civil Rights Division of the US.  
Department of Justice:  
U.S. Department of Justice Civil Rights Division  
950 Pennsylvania Avenue, N.W  
Educational Opportunities Section, PHB  
Washington, D.C. 20530  
Email : [education@usdoj.gov](mailto:education@usdoj.gov)

Telephone (202)514-4092 or 1-877-292-3804 (toll-free)  
Fax (202) 514-8337

### **Effect of Criminal Proceedings**

Sexual misconduct may constitute a violation of both state law and College policy. The College's definition of sexual misconduct, its process, and its standard of proof for a finding of responsibility for sexual misconduct differ from the standards for finding a violation of criminal law. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct under this Policy has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute. Additionally, a law enforcement determination of whether or not to prosecute a respondent is not determinative of whether the College will conduct an investigation under Title IX.

The filing of a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the complainant and the College community. However, the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

### **College Notification**

An individual who feels that he or she has been the victim of sexual misconduct may go directly to the Title IX Coordinator or Deputy Title IX Coordinators to make a report of an incident.

An individual making a report will have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault. These personnel shall be available upon the first instance of disclosure 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.

When the College receives a report from a student that he or she has been the victim of sexual misconduct, including dating violence, domestic violence, sexual assault or

stalking, whether the offense occurred on or off campus, the College will provide the reporting individual with a written explanation of his or her rights and options. The College will provide the reporting individual with written notification regarding existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid and other services available for victims both within the College and in the community. If the reporting individual is not the complainant, and the identity of the complainant is made known to the College, the College will provide such written notification to the complainant.

### **Amnesty for Victims and Witnesses**

The health and safety of every student at the College is of utmost importance. The 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. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to College officials. A bystander acting in good faith or reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to discipline for violations of the College's alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking or sexual assault.

### **PROTECTIVE AND REMEDIAL MEASURES**

Remedial and protective measures are available regardless of whether a complainant pursues a complaint or investigation under this Policy. When the College receives a report of alleged sexual misconduct, the College will take immediate steps to protect the complainant, other affected parties, and the College community.

#### **Interim Measures**

Any individual who has been the victim of sexual misconduct may request assistance in changing academic, transportation, and working situations, as applicable. These interim measures may also include issuance of a No Contact Order, changes in academic, extracurricular, dining, employment, transportation, or other applicable arrangements.

Requests for accommodations in connection with incidents of sexual misconduct should be made in writing to the College's Title IX Coordinator. The College will grant such

accommodations, provided they are reasonable and available, regardless of whether the complainant chooses to report the crime to law enforcement. When taking such interim measures and/or steps to separate the complainant and the respondent, the College will, to the extent practical, minimize the burden on the complainant. The College will provide information about the request for accommodations only to those having a need to know such information in order to implement the accommodations.

The respondent and/or the complainant will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim measure, including potential modification. The respondent and/or complainant will be allowed to submit evidence in support of his or her request. Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

### **No Contact Order**

The College may impose a No Contact Order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. If the complainant and respondent observe each other in a public place, it shall be the responsibility of the respondent to leave the area immediately and without directly contacting the complainant. In the event the College imposes a No Contact Order, the respondent and/or complainant may request a review of the need for and terms of the No Contact Order, including potential modification, and may submit evidence in support of his or her request. The College will conduct a prompt review in response to such request. An individual who wishes to report a violation of a No Contact Order can contact the Title IX Coordinator.

### **Order of Protection**

A student-complainant also has the right to request the assistance of the College in obtaining an order of protection from either the Family or Criminal Court. If an order of protection is granted, the parties will have the right to receive a copy of the order of protection when the order is received by the College. The parties will also have the opportunity to meet or speak with an appropriate College employee who can explain the order and the consequences for violating the order, and answer any questions about the order. Additionally, if the order of protection is violated, the student-complainant may receive assistance from the College in calling local law enforcement to inform them of the violation.

## **Interim Suspension**

In the event the respondent is determined to present a continuing threat to the health and safety of the community, the respondent may be subject to an interim suspension pending the final outcome of the conduct process. Both parties, upon request, will 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 such request. Again, when taking such interim measures and/or steps to separate the complainant and the respondent, the College will, to the extent practical, minimize the burden on the complainant.

## **RECORDS OF REPORTS AND INVESTIGATIONS**

Personal information about any witness and records regarding these matters will remain confidential insofar as it does not interfere with the College's right to investigate allegations of misconduct and take corrective action where appropriate and practicable. Written records will be retained with regard to the complaint, the investigation and fact-finding, and the resolution. However, the College will comply with criminal legal subpoenas or other civil court-ordered requests for information or paperwork in compliance with FERPA and other laws.

In all cases, all information and other appropriate records will be maintained for a minimum of six (6) years from the outcome of an investigation.

## **APPLICABLE PROCEDURES UNDER THIS POLICY**

Reporting individuals have the right to request that student conduct charges be filed against the accused in proceedings governed by this Policy. The College applies the preponderance of the evidence ("more likely than not") standard when determining whether this Policy has been violated. Where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate this Policy, the student shall be entitled to:

- (i)** notice describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;
  
- (ii)** an opportunity to offer evidence during an investigation, and 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; and

**(iii)** access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate 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.

Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate this Policy, the following rights shall also exist:

**i.** For the respondent, accused, and reporting individual to 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.

**ii.** To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals 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 pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.

**iii.** To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.

**iv.** To have the institution's judicial or 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.

**v.** To review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with institution policies and procedures.

**vi.** 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.

**vii.** To receive written or electronic notice, provided in advance pursuant to the 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 judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.

**viii.** To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

**ix.** To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.

**x.** To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.

**xi.** To choose whether to disclose or discuss the outcome of a conduct or judicial process.

**xii.** 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.

## **TRANSCRIPT NOTATION**

In accordance with New York State Education Law, Article 129-B, Section 6444 (B)(6), 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)-(VIII), the College shall make a notation on the transcript of students found responsible after the completion of the conduct process. Students found responsible of committing a crime meeting the reporting requirements of 20 U.S.C. § 1092(f)(1)(F)(I) -(VIII) shall have noted on their transcript 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*".

Students who withdraw from the College while such conduct charges are pending and decline to complete the disciplinary process shall have noted on their transcript that they "*withdrew with conduct charges pending*." For more information on the transcript notation policy, please contact the Title IX Coordinator.

## **STUDENTS' BILL OF RIGHTS**

All students have the right to:

1. Make a report to local law enforcement and/or state 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 investigation and hearing process and/or criminal justice process free from pressure from the College;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the College 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 or violations;
7. Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the College, any student, the accused and/or respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
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 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 College.

## **PERIOD OF LIMITATIONS**

There is no window of time after an incident of Sexual or Gender-Based Misconduct has occurred in which a report must be made. The College, however, strongly encourages early reporting in order to preserve evidence for a potential legal or College resolution proceeding. Delays in reporting, while permitted, may limit the College's ability to respond fully to the report.

If the alleged perpetrator is no longer a student or employee, the College may not be able to take disciplinary action against the individual, but it will still seek to meet its obligations by providing support for a victim and taking steps to end the misconduct, prevent its recurrence, and address its effects.

## **TITLE IX COORDINATOR**

The Title IX Coordinator is responsible for monitoring the overall Title IX implementation for Plaza College and coordinating compliance with all areas and departments covered under Title IX regulations. If a Complaint is filed, one of the Deputy Title IX Coordinator(s) will meet with the Complainant to explain the available options, the process used to investigate the Complaint, and any available support, resources, and protective measures. The Title IX Coordinator works in conjunction with the Deputy Title IX Coordinator(s) who will also be informed of all Title IX claims filed and their ultimate disposition.

Name: Dean Lin Loffert  
Title: Title IX Coordinator  
Office of Advising  
Location/Address: Room 112

(718) 779-1430 ext.7137

Email: lloffert@plazacollege.edu

**Inquiries and/or reports of misconduct should be directed to either the Title IX Coordinator or the Deputy Title IX Coordinator.**

Name: Dean Correne Cavaleri  
Title: Deputy Title IX Coordinator  
Dean, Human Resources

(718) 779-1430 ext.7139

Email: ccavaleri@plazacollege.edu

Title IX Coordinator Responsibilities: The Title IX Coordinator is a neutral administrator in any Sexual or Gender-Based Misconduct investigatory and resolution proceedings, including any allegations pertaining to incidents of Retaliation and Intimidation in this Policy. The Title IX Coordinator is responsible for:

Overseeing all Title IX complaints and investigations to provide prompt, fair, and equitable resolutions and working with all parties (the Title IX Coordinator does not, however, determine if a Sexual or Gender-Based Misconduct Policy violation has occurred);

Identifying and addressing any patterns or systemic problems that may arise;  
Being available to meet with students and employees, provide support and answer questions;

Working with other College officials;

Coordinating training, education, and communication pertaining to Title IX, as well as periodic reviews of the College's climate and culture with regard to Sexual and Gender-Based Misconduct;

Determining appropriate Interim Measures for a Complainant upon learning of a report or complaint of Sexual or Gender-Based Misconduct;

Being available to assist with Plaza College administration and local law enforcement if necessary;

Ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers;

Ensuring that the College carries out its Title IX responsibilities.

The Title IX Coordinator also assists with:

- o Access to medical and mental health treatment;
- o Victim support and resources; and
- o Serving as someone to talk to.

In addition, the Title IX Coordinator maintains an annual report documenting: (1) the number of reports or Complaints received pursuant to the College's Sexual and Gender-Based Misconduct Policy; (2) the categories of those involved in the allegations; (3) the number of Policy violations found; and (4) examples of sanctions imposed for each violation of this Policy.

### **TIME FRAME FOR RESOLUTION**

The College will endeavor to investigate and resolve all reports of Sexual and Gender-Based Misconduct within 60 days. The complexity and severity of a Complaint, holiday or semester breaks and availability of witnesses, for example, may extend the process beyond 60 days. In general, a Complainant and Respondent can expect to receive periodic updates from the Title IX Coordinators and/or Investigator.

If an investigation cannot be completed within sixty days, the Title IX Coordinators will notify the Complainant and Respondent(s) of that fact and provide an updated timeframe for completing the investigation.

## **INITIATING A FORMAL COMPLAINT OF SEXUAL OR GENDER-BASED MISCONDUCT**

### **A. INITIATION OF A FORMAL COMPLAINT**

A report of Sexual and Gender-Based Misconduct becomes a formal Complaint in one of the following ways:

1. An alleged victim may file a written Complaint with the College or a Third Party may file a written Complaint on his or her behalf. An alleged victim may submit a written statement in his or her own words to the Title IX Coordinator providing sufficient information for the College to investigate the allegations contained therein;
2. An alleged victim can meet in person with the Title IX Coordinator, Deputy Title IX Coordinator(s) or another designated Responsible Employee to report alleged Sexual or Gender-Based Misconduct. Reports made to a Responsible Employee will be referred to the Title IX Coordinator, who will ask the alleged victim to submit a written statement in his or her own words.
3. Pursuant to Title IX, the College has an obligation to address all incidents of Sexual and Gender-Based Misconduct of which it becomes aware. If the Title IX Coordinator decides to proceed with a formal Complaint under these circumstances, a College administrator will serve as the “Complainant.”

Once a formal Complaint is initiated, an alleged victim will be referred to as a “Complainant” and an alleged perpetrator will be referred to as a “Respondent.”

### **B. INTERIM PROTECTIVE AND DISCIPLINARY MEASURES**

Once a Complaint has been initiated, the Title IX Coordinator, in consultation with the appropriate Deputy Title IX Coordinator(s) and other appropriate administrators as necessary, will determine whether any Interim Measures and Interim Disciplinary Sanctions are needed, and assess the parties’ requests for Interim Measures, to support the Complainant and Respondent and to protect the campus community.

#### **1. *Examples of Interim Measures***

The Title IX Coordinator may implement one or more of the following Interim Measures, if appropriate and/or reasonably available. Interim Measures are available even if a party chooses not to report an offense to local law enforcement:

- Issuing of mutual “no-contact” orders to prevent any contact between the Complainant, the Respondent, witnesses, and/or third parties. If the

Respondent is a student, the Title IX Coordinator will issue a “no contact” order to the Respondent. Continued intentional contact with the Complainant is a violation of this policy and may result in additional conduct charges. Both the Complainant and Respondent may request review of the “no contact” order and explain why they think that the order should be modified;

- Providing the Complainant an escort to ensure that he or she can move safely between classes, work, and/or activities;
- Rescheduling classwork, assignments, and examinations;
- Changing work arrangements or schedules;
- Providing academic support services such as: alternative course completion options, dropping a course without penalty in some cases, or transferring to a different class section (with the agreement of the appropriate faculty);
- Limiting access to College facilities or activities, including participating in collegiate sports, pending resolution of the matter. Temporary (interim) suspension/removal from campus.

Note: Failure to comply with the terms of Interim Measures may be considered a separate violation of this Policy.

The specific Interim Measures will vary depending on the facts of each case. The Title IX Coordinator will consider a number of factors in determining what Interim Measures to take, including, for example, the specific needs expressed by the Complainant and Respondent; the age of the parties involved; the severity of the allegations; whether the allegations were part of a pattern of conduct; whether a weapon was involved; whether the Complainant and Respondent share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the Complainant and Respondent (e.g., civil protection orders).

Throughout the College’s investigation and resolution process, the Title IX Coordinator will periodically check with the Complainant and Respondent to ensure interim measures are effective and, if not, identify alternatives.

### **C. INITIAL MEETINGS**

#### **1. Meeting with the Complainant**

The Title IX Coordinator or deputy will contact the Complainant in writing to schedule an initial meeting. (If the person who reported the alleged Sexual or Gender-Based Misconduct is a Third- Party Reporter, the Title IX Coordinator will attempt to meet with

him or her as soon as possible to gather information.) At this initial meeting, the Title IX Coordinator or deputy will, as applicable:

- Provide the Complainant a copy of this Policy, and review his or her rights under the Policy;
- Provide the Complainant information about on and off-campus resources, such as the Office of Counseling and Wellness;
- Explain the avenues for formal and, if applicable, informal resolution of the Complaint;
- Explain the steps involved in a Formal Title IX investigation;
- Advise the Complainant that he or she may have an advisor of his or her choice present throughout the Title IX investigation and resolution process. The advisor may be an attorney, retained at the Complainant's own expense. Any advisor will function as a silent observer in any meeting or proceeding related to the investigation or resolution process. If the Complainant is a member of the Plaza College community and does not have an advisor, the College will provide him or her with a list of faculty or staff who have volunteered to act as an advisor to parties involved in the Title IX investigative and resolution process;
- Discuss confidentiality standards and concerns;
- Discuss the importance of preserving relevant evidence or documentation in the case (e.g., texts, emails, notes, photographs (etc.);
- Discuss protection from, and reporting of, Retaliation and Intimidation; and
- Discuss with the Complainant, as appropriate, possible Interim Measures that can be provided to him or her during the pendency of the investigative and resolution processes. (If Interim Protective Measures have already been implemented, the Title IX Coordinator will evaluate whether they should continue to be provided and whether other Interim Measures should also be implemented.) The College may implement such measures regardless of whether a formal Complaint has been filed (with either campus officials or law enforcement agencies) or whether an investigation has commenced (by either campus officials or law enforcement agencies). These Interim Measures may include the protective measures listed in paragraph B.1 above.
- The Title IX Coordinator will promptly inform the Complainant (no later than it is communicated to the Respondent) of the imposition of any Interim Measures and, to the extent that it affects him or her, the Respondent.

## 2. Meeting with Respondent

If the Complainant wishes to pursue resolution through the College or if the College otherwise deems that further investigation is warranted, the Title IX Coordinator will contact the Respondent in writing to schedule an initial meeting. During the initial meeting with the Respondent, the Title IX Coordinator will, as applicable:

- Provide the Respondent, in writing notice of charges, information consistent with state and federal privacy laws and, if applicable, the alleged victim's request for confidentiality, that is sufficient to allow him or her to respond to the substance of the allegation, including, if possible, the name of the Complainant and the date, location, and nature of the alleged Sexual or Gender-Based Misconduct;
- Provide the Respondent a copy of this Policy, including a review of his or her rights under the Policy;
- Explain the College's procedures for resolution of the Complaint;
- Explain the steps involved in a Formal Title IX investigation;
- Advise the Respondent that he or she may have an advisor of his or her choice present throughout the Title IX investigation and resolution process. The advisor may be an attorney, retained at the Respondent's own expense. Any advisor will function as a silent observer in any meeting or proceeding related to the investigation or resolution process. If the Respondent is a member of the Plaza College community and does not have an advisor, the College will provide the Respondent with a list of faculty or staff who have volunteered to act as an advisor to parties involved in the Title IX investigative and resolution process;
- Discuss confidentiality standards and concerns with the Respondent;
- Discuss non-Retaliation and Intimidation requirements with the Respondent;
- Inform the Respondent of any Interim Measures to be provided to the Complainant that directly affect the Respondent (e.g., changing the Respondent's class schedule, or moving the Respondent to an alternate residence hall);
- Discuss the importance of preserving relevant evidence or documentation in the case (e.g., texts, emails, notes, photographs (etc.);
- Refer the Respondent to other resources, as appropriate; and
- Discuss with the Respondent, as appropriate, possible Interim Measures that can be provided to the Respondent during the pendency of the investigative and resolution processes. The College may implement such

measures if requested and/or appropriate, and reasonably available, whether a formal Complaint has been filed (with either campus officials or law enforcement agencies) or whether an investigation has commenced (by either campus officials or law enforcement agencies). Such determination will promptly be communicated to the Respondent (no later than it is communicated to the

- Complainant) and, to the extent that it affects him or her, the Complainant.

#### ***D. TITLE IX COORDINATOR'S INITIAL ASSESSMENT***

After meeting with the Complainant and the Respondent, the Title IX Coordinator will make a determination as to whether (a) a Formal Title IX Investigation is warranted to resolve the case; (b) the case can possibly be resolved through Informal Resolution; or (c) there is insufficient evidence to pursue charges of alleged Sexual or Gender-Based Misconduct.

In the event that the Title IX Coordinator determines there insufficient evidence to pursue charges of the alleged Sexual or Gender-Based Misconduct as defined by this Policy, the Title IX Coordinator will determine (in separate consultation with the Complainant, the Respondent, and other College administrators) and document the appropriate resolution of the Complaint, will promptly notify the parties of the resolution and will close the Complaint. Either party may appeal the Title IX Coordinator's decision according to the procedures for appeal below.

### **SECTION IX - INFORMAL RESOLUTION**

In appropriate instances where it is deemed possible and safe, the Title IX Coordinator may choose to attempt to resolve certain Complaints of Sexual and Gender-Based Misconduct through Informal Resolution means. If, based on the facts of the case, it is determined that an Informal Resolution may be appropriate, the Title IX Coordinator will discuss this option with the Complainant during the initial meeting. If the Complainant agrees, the Title IX Coordinator will discuss Informal Resolution with the Respondent during the initial meeting. Consent from both parties is required to proceed further in the Informal Resolution process.

*The College will not use the Informal Resolution process to address complaints of Sexual Assault, Dating Violence, Domestic Violence, Stalking or any matters involving physical touching or violence of any kind, as well as other cases of serious violations of the Sexual and Gender-Based Misconduct Policy as determined by the Title IX Coordinator.*

It is not necessary to pursue Informal Resolution first in order to make a Formal Resolution Complaint. Moreover, either party may terminate the Informal Resolution process at any time and proceed with Formal Resolution. The Title IX Coordinator may also terminate Informal Resolution at any time and order that the parties proceed with Formal Resolution instead. In such cases, statements or disclosures made by the parties in the course of the Informal Resolution process may be considered in the subsequent Formal Resolution proceedings.

If Informal Resolution is determined to be appropriate and the parties agree to proceed, the Title IX Coordinator or a trained designee will meet separately with both parties to present and discuss a resolution based on the information available. If both the Complainant and Respondent are satisfied with a proposed resolution and the Title IX Coordinator believes the resolution satisfies the College's obligation to provide a safe and non-discriminatory environment for the entire College community, the resolution will be implemented, and the matter will be closed. If these efforts are unsuccessful, the Formal Resolution process will commence.

## **SECTION X – FORMAL TITLE IX INVESTIGATION AND RESOLUTION PROCEDURES**

If the Title IX Coordinator determines that a Formal Resolution is warranted to resolve the Complaint or Informal Resolution efforts are not successful, the Title IX Coordinator will refer the matter for Formal Resolution, which includes a thorough and prompt investigation and provides for a fair and impartial evaluation and resolution.

### **A. FORMAL RESOLUTION PROCEDURES FOR SEXUAL OR GENDER-BASED MISCONDUCT COMPLAINTS**

#### **1. *Assignment of an Investigator***

If the Title IX Coordinator determines that a Formal Title IX Investigation is warranted to resolve a Complaint of Sexual or Gender-Based Misconduct or Informal Resolution efforts were not successful, the Title IX Coordinator will appoint an investigator or an investigative team ("investigator") who has specific training and experience investigating allegations of Sexual and Gender-Based Misconduct. The Title IX Coordinator will notify both the Complainant and the Respondent in writing of the Formal Title IX Investigation and the name of the investigator(s). The investigator(s) may be an employee(s) of the College or an external investigator(s) engaged to assist the College in its fact gathering.

The Respondent and the Complainant may protest the appointment of the investigator(s) by identifying a possible conflict of interest in writing to the Title IX Coordinator within twenty four (24) hours after the appointment of the Investigator(s). The Title IX Coordinator will carefully consider such statements and will assign a different investigator(s) if it is determined that a material conflict of interest exists.

## **2. *The Investigator's Activities***

The Title IX investigation will be conducted in a manner appropriate in light of the circumstances of the case. The formal investigation may include, but is not limited to, conducting interviews of the Complainant, the Respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character); reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering, examining, and preserving other relevant documents and physical, written (including medical records), and electronic evidence (including social media, security camera footage, etc.). The parties will have an equal opportunity to present relevant witnesses and evidence to the investigator, as well as identify witnesses who may have relevant information. Moreover, both the Complainant and Respondent(s) may have an advisor accompany (but not actively participate) him or her through the investigation process.

The investigation will be discreet and only disclosed only to those who "need to know." In cases where the Complainant, Respondent, and witnesses are students, the College will take reasonable care to protect the students' privacy by using an assigned number in incident reports and in publicly available recordkeeping.

## **3. *The Investigator's Report***

The Investigator will complete, generally within 30 days after the investigation begins, a preliminary written report that is a neutral summary of the facts. The Complainant and Respondent will be given the opportunity to review the Investigator's Report. Consistent with FERPA or safety concerns, identifying information about a party or third parties may be redacted at the discretion of the Title IX Coordinator. A Complainant and Respondent may request an opportunity to submit any additional comments or evidence to the investigator within five (5) business days of the opportunity to review the report.

## **4. *Adjudication***

Upon receipt of any additional information by the Complainant or Respondent, if any, or after the five (5) day comment period has lapsed without comment, the investigator(s), in consultation with the Title IX Coordinator, will issue a final Report to the Hearing Officer who will review the Investigative Report and make a Determination

in consultation with the Title IX Coordinator as to whether the Respondent, by the preponderance of the evidence, violated any provision of the College's Sexual and Gender-Based Misconduct Policy. (See *Notice of Outcome* section below)

**a. Determination Not to Proceed to Disciplinary Action**

If the Hearing Officer, in consultation with the Title IX Coordinator, determines that the Respondent did not violate any provision of the College's Sexual and Gender-Based Misconduct Policy, the final outcome letter to both parties will inform them of this determination and the parties' right to appeal that decision.

**b. Determination to Proceed to Disciplinary Action**

If the Hearing Officer, in consultation with the Title IX Coordinator, determines that there is sufficient information to find, by a preponderance of the evidence, that the Respondent violated the College's Sexual and Gender-based Misconduct Policy, the final written report to both parties will inform them that the matter will be referred to the appropriate Administrative Officer to determine what disciplinary sanction, if any, may be appropriate.

**5. Disciplinary Sanctions and Remedial Actions**

The Administrative Officer is responsible for determining the appropriate disciplinary sanction.

**a. Assignment of the Administrative Officer**

For Complaints against **Students**, the Administrative Officer is typically the President or designee.

For Complaints against **Staff**, the Administrative Officer is typically the President or a designee.

For Complaints against **Faculty**, the Administrative Officer is typically the President or designee.

For a Complaint against a **Student Employee** who is acting solely within the scope of his/her College employment at the time of the incident the Administrative Officer is typically the President or designee.

For complaints against a **Third Party**, the Administrative Officer is typically the President or designee.

The Administrative Officer must be a neutral and impartial decision-maker. Any Administrative Officer who has reason to believe s/he cannot make an objective decision regarding the appropriate sanction must recuse him/herself from the process.

**b. Imposition of Disciplinary Sanctions**

Both the Complainant and Respondent will be provided five (5) days from the date they are provided the Hearing Officer determination to submit a written impact statement for the Administrative Officer's consideration. The Administrative Officer, in reaching a final decision on an appropriate sanction, will review the Investigative Report, the Hearing Officer written determination on responsibility and impact statements, as well as consult with the Title IX Coordinator.

The Administrative Officer may impose any sanction deemed appropriate after a consideration of all of the relevant information.

For **Students**, the sanction may include warnings, behavioral contracts, community service, referrals to professional counseling, social probation, probation, suspension from the College, expulsion, and the withholding or revocation of a degree.

- o **Transcript Notations.** Students suspended or expelled for committing an act of sexual assault, domestic violence, dating violence, stalking or a "violent crime," as defined by the Clery Act,<sup>3</sup> will have a notation placed on their transcript as follows: "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." The College will consider requests to remove transcript notations. A transcript notation will not be removed prior to one year after conclusion of the suspension. Expulsion notations will not be removed in any case. Appeals seeking removal of a transcript notation should be addressed to the Title IX Coordinator. If an accused student withdraws from the College while charges are pending and declines to complete the disciplinary process the following notation will be placed on his/her transcript: "withdrew with conduct charges pending."

For **Staff and Employees (non-Faculty)**, the sanction may include any form of discipline or termination as set forth in the Employee Handbook, including disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination, as well as possible training and/or referral to counseling.

For **Faculty**, the sanction may include any form of discipline or termination as set forth in the Faculty Handbook, including disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination, as well as possible training and/or referral to counseling.

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<sup>3</sup> "Violent crimes" defined by the Clery Act are murder, sexual offenses (forcible and non-forcible), robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.

Both parties will be notified in writing, and in a simultaneous manner, of the College's determination on the charges.

**c. Remedial Actions**

In addition to the imposition of disciplinary sanctions, the Title IX Coordinator may take remedial action to remedy the hostile environment created by the Policy violation. These remedies may be imposed to protect the parties and the College community and are considered separate from, and in addition to, any disciplinary sanction or interim measure that may have been provided prior to the conclusion of the College's investigation.

i. Examples of Remedial Action for the Complainant/Respondent Following a Determination:

Remedies for the Complainant and Respondent, as determined by the Title IX Coordinator to be appropriate may include:

- Providing an escort to ensure that the parties can move safely between classes and activities;
- Ensuring the Complainant and Respondent do not share classes or extracurricular activities;
- Providing comprehensive, holistic support services including academic support services, such as tutoring.

ii. Examples of Remedial Action for the Broader College Community:

Remedies for the broader College community, as determined by the Title IX Coordinator to be appropriate may include:

Training or retraining employees on the College's responsibilities to address allegations of Sexual and Gender-Based Misconduct and how to conduct Title IX investigations;

Developing materials on Sexual and Gender-Based Misconduct;

Conducting bystander intervention and Sexual and Gender-Based Misconduct prevention programs with students;

Issuing policy statements or taking other steps that clearly communicate that the College does not tolerate Sexual and Gender-Based Misconduct and will respond to all reported and known incidents;

Conducting a campus climate check to assess the effectiveness of efforts to ensure that the College is free from Sexual or Gender-Based Misconduct, and using that information to inform future proactive steps that the school will take;

Targeted training for a group of students if, for example, the Sexual or Gender-Based Misconduct created a hostile environment in a residence hall or on an athletic team.

#### 6. Final Outline Letters

Both parties will be notified concurrently, in writing, of the administrator's determination on the charges and proposed sanction. These outcome letters will contain findings of fact, the decision, and sanction, if any, as well as a rationale for the decision and sanction. The notice of outcome letters will also provide each party with their appeal options.

#### 7. Appeals

The Complainant and the Respondent may appeal the determination of the final outcome letter. Appeals are decided by an Appeal Panel. There are three grounds for appeal:

The original conduct review meeting was inconsistent with the established procedures;

Evidence is now available that could not have been obtained at the time of the conduct review meeting; or

The sanction is excessive, inconsistent or insufficient with the nature of the offense.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. The appeal must be submitted within 5 days of the date of the final outcome letter to the Appeal Panel.

Upon receipt of the appeal, the Title IX Coordinator (or designee) will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within five (5) business days from receipt of notice of the appeal. In the event that both parties initially appeal the findings, each party will be provided notice and a copy of the other party's appeal.

The appeal will be conducted in an impartial manner by a panel (or designee). 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 appeal is not a new review of the underlying matter. (The Panel will review the written investigation report and all supporting documents and may consult with both parties independently.)

The panel can affirm the original determination of responsibility, alter the determination of responsibility, and/or alter the sanctions, depending on the circumstances. The matter can also be referred back for further investigation or consideration if appropriate.

The panel will communicate the results of the appeal to the Complainant and Respondent in writing generally within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

## **B. QUESTIONS AND ANSWERS REGARDING INVESTIGATIONS**

### What Standard of Proof is used in allegations of Sexual or Gender-Based Misconduct?

The Respondent will not be presumed responsible. Instead, responsibility must be established by a preponderance of the evidence standard. "Preponderance" means more than half or "more likely than not." If, for example, the investigator concludes that the totality of the evidence weighs equally on both sides, the preponderance standard has not been met and the charges have not been proven.

### Are Complainants and Respondents allowed to question each other?

Respondents and Complainants will **NOT** be allowed to personally question or cross-examine each other, but are instead encouraged to submit questions to the investigator who may then ask the other party on the student's behalf. Questions submitted by either party will be utilized at the investigator's discretion.

### May the Respondent's Prior Conduct History be considered?

While previous conduct violations of the Respondent(s) are generally not admissible as information about the present alleged violations, the investigator and Administrative Officer may consider the Respondent's prior conduct history in the sanction stage if:

- The Respondent(s) was previously found to be responsible;
- The previous incident was substantially similar to the present allegation; and/or
- The information indicates a pattern of behavior by the Respondent(s).

### What information must be provided to the Complainant in the notice of outcome?

Title IX requires both parties to be notified, in writing, about the outcome of the investigation and any appeal. This notification will be provided concurrently in writing. The College must inform the Complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the Complainant or any sanctions imposed on the Respondent that directly relate to the Complainant, or other steps the College will take to eliminate the hostile environment, if the College finds one to exist, and prevent its recurrence.

### What sanctions imposed on the Respondent may "directly relate" to the Complainant?

Sanctions that directly relate to the Complainant include, but are not limited to, requiring that the Respondent stay-away from the Complainant until both parties graduate (No-Contact Orders), suspensions, removal from residential housing or being moved to another residence hall, alteration of class schedule, or expulsion.

What type of Disciplinary Sanctions may be used?

In light of the facts and circumstances of each case, the sanctions, or combination of sanctions (with or without appropriate modifications) outlined above may be applied.

May a Complainant or Respondent appeal the College's Determination of Responsibility?

Yes. Complainants and Respondents may appeal the sanction. The appeal must be submitted within 5 days of the date of the final outcome letter to Office.

The three grounds for appeal are:

1. The original conduct review meeting was inconsistent with the established procedures;
2. Evidence is now available that could not have been obtained at the time of the conduct review meeting; or
3. The sanction is excessive, inconsistent or insufficient with the nature of the offense.

The appeal will be conducted in an impartial manner by the Panel. 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 appeal is not a new review of the underlying matter. The Panel shall consider the merits of an appeal only on the basis of the grounds for appeal. The Panel will review the written investigation report and all supporting documents and may consult with both parties independently.