



**SEXUAL AND GENDER-BASED MISCONDUCT POLICY**

**RESOURCES AVAILABLE TO VICTIMS OF SEXUAL AND GENDER-BASED MISCONDUCT (BOTH IMMEDIATELY FOLLOWING AN INCIDENT AND ON AN ONGOING BASIS) ARE SET FORTH IN APPENDIX A & D ATTACHED TO THIS POLICY.**

**THE VAUGHN COLLEGE SECURITY DEPARTMENT IS AVAILABLE 24 HOURS**

**BY PHONE:  
718 505-1024**

**Additional phone numbers for Security**

**718-429-6600  
MAIN BUILDING EXT. 130  
RESIDENCE HALL EXT. 300  
LIBRARY EXT 301  
ASTORIA EXT. 270**

**LOCATIONS:**

**MAIN BUILDING: 86-01 23<sup>rd</sup> Ave, Flushing 11369  
RESIDENCE HALL 22-40 90<sup>th</sup> St, Flushing 11369  
ASTORIA 43-05 20<sup>th</sup> Ave, Astoria 11105**

**August 14, 2020  
(updated Oct. 7, 2020)**

## **Sexual and Gender-Based Misconduct Policy and Procedures**

### **SECTION I – INTRODUCTION**

Vaughn College of Aeronautics and Technology (“Vaughn College”) is a community dependent upon trust and respect among its members. The College is committed to promoting and maintaining a healthy and safe learning, residential and working environment that promotes responsibility and respect in all matters where no one is unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination in any College program or activity on the basis of gender, sex, sexual orientation, sexual identity, gender identity, or gender expression (“sex discrimination”).

Sexual and Gender-Based Misconduct, as defined below is a form of sex discrimination prohibited by federal and state law, including Title IX of the Education Amendments of 1972, that may deny or limit an individual’s ability to participate in or benefit from College programs or activities. Sexual and Gender-Based Misconduct offenses within the College community are a violation of trust and respect, are prohibited and will not be tolerated by Vaughn College. This prohibition applies to Sexual and Gender-Based Misconduct incidents occurring between members of the College community (students, employees, and contractors, consultants, or vendors doing business or providing services to the College) on or off campus at any College academic, educational, co-curricular, athletic, study abroad, residential or other College sponsored program, as well as off-campus incidents not associated with College programs if the conduct has the effect of creating a hostile environment impacting members of the College community. This conduct and any retaliation or intimidation associated with it is prohibited by the College and may also violate federal and state law.

The College is dedicated to preventing Sexual and Gender-Based Misconduct offenses by providing:

- Education, prevention, and training programs that inform the community about the risks and myths that contribute to Sexual and Gender-Based Misconduct;
- Assistance and support, including procedures sensitive to a person who has been the victim of a Sexual and Gender-Based Misconduct offense; and
- A process for the prompt and equitable investigation and resolution of incidents of Sexual and Gender-Based Misconduct that includes appropriate disciplinary sanctions for those who commit Sexual and Gender-Based Misconduct offenses.

The College is committed to eliminating Sexual and Gender-Based Misconduct, preventing its recurrence, and addressing and remedying its effects and makes this Policy and accompanying information readily available to all students, employees and other members of the College community. Violations of this Policy may result in the imposition of sanctions up to and including termination, dismissal, suspension or expulsion.

### **SECTION II – Policy and Procedure Summary**

#### **A. SCOPE**

This Policy prohibits all forms of sex and gender related misconduct, regardless of the sex, sexual orientation, sexual identity, gender, gender expression, or gender identity (“gender-related status”) of any party. The College’s prohibition against Sexual and Gender-Based Misconduct applies to locations, events and circumstances over which the College exercises substantial control over both the respondent and the context in which the harassment occurs, including any building owned or controlled by a student organization that is officially recognized by the college. The College’s prohibition against Sexual and Gender-Based Misconduct applies not only to physical contact, but also to oral, written and electronic and other technology-assisted communications, such as e-mail, voicemail, Internet communications and searches.

A person who has experienced Sexual or Gender-Based Misconduct has several options:

- **A report to a Confidential Resource.** A confidential resource provides emotional and/or medical services and maintains confidentiality. A report to a confidential resource does not result in a college investigation or any other action to respond to the incident.
- **A report to a Responsible Employee.** Certain personnel at the college have the responsibility to receive reports of sexual misconduct and to take action based on those reports. A responsible employee will forward the information about the incident to the Title IX Coordinator. The Title IX Coordinator will discuss options with the reporting person. The assistance the Title IX Coordinator can facilitate includes the following:
  - **Supportive Measures.** Supportive measures are intended to support the individual who experienced sexual misconduct to continue in their involvement in the college's program and activities. Supportive measures include no contact orders; academic accommodations; changes in housing assignment; or other academic, residential or work accommodations.
  - **Informal Resolution.** An informal resolution is a resolution that the parties (i.e., the person making the allegations and the accused person) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
  - **Grievance Process.** A grievance process includes an investigation and adjudication process. The outcome of a grievance process is either that the person accused of Sexual Misconduct is found either responsible or not responsible for having committed a violation of this Policy. A violation results in appropriate sanctions and other remedies to address the violation.

Additionally, the person who experienced a crime has the option to pursue criminal charges:

- **A report to Law Enforcement.** If an incident involves criminal conduct, the victim may make a complaint to law enforcement.

The options for reporting above are not mutually exclusive, and an individual may pursue one option but not the other. An individual may obtain the services of a confidential resource and decide at that time or a later time to report to the college. An individual may report to the college and also make a report to law enforcement or may make a report to only the college or only to law enforcement. A person seeking to understand their options pursuant to this Policy should reach out to any of the following:

Elaine T. White, Assistant Vice President for Student Affairs/ Dean of Students  
[Elaine.white@vaughn.edu](mailto:Elaine.white@vaughn.edu) 718.429.6600 ext. 366

Kelli Smith, Vice President of Student Affairs 718 429-6600 ext. 371  
[Kelli.smith@vaughn.edu](mailto:Kelli.smith@vaughn.edu)

Mary Durkin, Associate Vice President of HR 718 429-6600 ext. 105  
[Mary.durkin@vaughn.edu](mailto:Mary.durkin@vaughn.edu)

## **B. 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.

### C. SUMMARY OF THE COLLEGE'S CONFIDENTIALITY POLICY

The college encourages any person who has experienced sexual assault or other forms of sexual or gender-based misconduct to talk to someone about what happened, so she or he can get the support needed.

- There are a variety of **confidential resources** available to members of the Vaughn College community. Some of these resources, such as the professional counselors in the **Office of Counseling and Wellness**, maintain near complete confidentiality; talking to them is sometimes called a "privileged communication." A confidential resource does not reveal the information shared with him/her/them without the disclosing person's consent. (There may be instances where a confidential resource must disclose information in a criminal or civil court proceeding, but those are very limited circumstances.) A list of confidential resources is provided below. The only college employees who can offer confidentiality are those listed as confidential resources below.
- A **non-confidential resource** is a person who is permitted to share information with others with a need to know. A college employee who is a non-confidential resource will disclose to as few individuals as possible, but a non-confidential resource does not have the ability to promise that he/she/they will not tell others within the college about the information that has been shared with him/her/them.
- A "**Responsible Employee**" is a non-confidential resource who, at a minimum, shares all information with the Title IX Coordinator/Affirmative Action Officer.
- The following Confidential Resources are available to members of the college community. The college's on-campus health, counseling and pastoral services noted below are available to students free of charge.
- LIST OF ON CAMPUS AND OFF CAMPUS CONFIDENTIAL RESOURCES – see Appendix A and D

The College encourages victims to talk to someone identified in one or more of these groups. Vaughn offices and employees who cannot guarantee confidentiality will maintain students' privacy to the greatest extent possible.

### D. BYSTANDER INTERVENTION

The College expects all community members to take reasonable and prudent actions to prevent or stop an act of Sexual or Gender-Based Misconduct or provide assistance if an act has occurred. Taking action or providing assistance may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

If someone suspects a friend, acquaintance, or stranger may be in a high risk situation for becoming a victim, is being victimized, or has been victimized in any form of Sexual or Gender-Based Misconduct, it is important to decide as a bystander whether there is a safe and reasonable way to intervene effectively.

Do's:

- Remind friends that affirmative consent is required and is the difference between sex and sexual assault and that someone can be too intoxicated to consent;
- Take the initiative to help friends who aren't thinking clearly from becoming targets of violence (or) take steps to stop a friend who chooses to use violence;
- When possible, prevent an intoxicated friend/person from going to a private location with an acquaintance or friend;
- Contact Vaughn College Security, Title IX Coordinators or another person of authority who can assist.

Don'ts:

- Let friends engage in activities, such as excessive alcohol/drug consumption, that impedes judgement and that therefore could lead to actions, including sexual advances, that are unwelcome and/or endanger the rights, safety, and well-being of others;
- Let friends walk / run alone in secluded areas or at night;
- Leave a friend or acquaintance alone at a party;
- Leave residence hall doors unlocked;
- Let friends drink to the point of impairment;
- Place yourself in a vulnerable situation where you are unable to voice consent.

#### **E. OTHER FORMS OF DISCRIMINATION AND HARASSMENT**

The College recognizes that harassment related to an individual's gender-related status can occur in conjunction with misconduct related to an individual's race, color, religion, age, national origin, ancestry, citizenship, disability, pregnancy, genetic disposition, veteran or military status, marital status, familial status or other legally protected characteristic ("protected characteristics"). Targeting individuals on the basis of these protected characteristics is also a violation of College policy. When misconduct relates to both a person's gender-related status and other protected characteristics, the College will coordinate the investigation and resolution efforts by following the process set forth in this Policy to address any and all harassment and discrimination.

### **SECTION IV – DEFINITIONS**

1. **Advisor of Choice.** An advisor of choice is a person selected by the Complainant or Respondent to advise and accompany the Complainant or Respondent throughout the investigation and adjudication process. An advisor of choice may be any person, including an attorney. The institution does not appoint or pay for an advisor of choice. An advisor of choice's role is limited to the functions further described in this policy.
2. **Affirmative Consent.** 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 affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
3. **Coercion.** Coercion is a threat, undue pressure, or intimidation to engage in sexual activity. Coercion is more than an effort to persuade, seduce, entice, or attract another person to

engage in sexual activity. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity.

4. **Complainant.** The term Complainant refers to the person who allegedly experienced the sexual misconduct in violation of the policy whether or not a formal complaint is filed. In some cases, the Title IX Coordinator may file a formal complaint and thereby initiate an investigation and adjudication process pursuant to this policy. In that instance, the Title IX Coordinator is not the "Complainant"; the complainant remains the person who allegedly experienced the sexual misconduct.
5. **Consent.** As used in this policy, term "consent" always refers to "affirmative consent" (defined above).

By way of further explanation, consent is free and informed permission. Consent given verbally is evidenced by affirmative agreement to engage in specific sexual activity. Consent through action is active participation in the specific sexual activity. Past consent to sexual activity cannot be presumed to be consent to engage in the same sexual activity in the future. Consent can be withdrawn at any time, and, if so, the sexual activity must cease. Consent to some sexual activity (e.g., kissing, fondling) cannot be presumed consent for other sexual activity (e.g., intercourse). Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

Certain conditions prevent a person from being able to consent. 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. A person cannot consent if they are unaware of the who, what, when and how of a sexual interaction. 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 or drugs or other intoxicants may be incapacitated and therefore unable to consent.

A person who has been drinking or using drugs is still responsible for ensuring that the person has the other person's affirmative consent and/or appreciating the other person's incapacity to consent. This means that, even if the accused was drunk or high and, as a result, did not realize that the other person was not consenting to or was unable to consent to sexual activity, the person who committed the non-consensual act is still responsible for having violated this policy.

Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.

6. **Formal Complaint.** A formal complaint refers to a written complaint filed in accordance with the grievance process below. A formal is necessary to initiate an investigation and adjudication process.
7. **Institution Advisor.** A Complainant or Respondent who does not opt to be accompanied by an advisor of choice at a hearing is entitled to be appointed an advisor by the college at no charge to the party. This advisor is referred to an "institution advisor" who may be but need not be an attorney. An institution advisor's role is limited to asking cross-examination

questions of the other party during a hearing. An institution advisor does not represent a party in any legal sense. The party is responsible for formulating the cross-examination questions the institution advisor will pose during the hearing.

8. **Party.** A Complainant or Respondent may be referred to as a Party, or collectively, the Parties.
9. **Reporting Party.** The term Reporting Party refers to the person who made the report. This may or may not be the same as the Complainant, a witness, or a bystander.
10. **Respondent.** The term Respondent refers to the person alleged to have committed a violation of this policy.
11. **Sexual Misconduct.** Sexual misconduct is an umbrella term used in this policy to more conveniently refer to any form of conduct prohibited by this policy.

I. **Definitions, Conduct Violations:**

This policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged violations. This policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations) and also applies to a broader range of contexts and behaviors inconsistent with the college’s commitment to equal opportunity (i.e., “College Category” violations).

The designation of conduct or allegations as either “Title IX Category” or “College Category” is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the college’s broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

A. **Title IX Category Violations**

Title IX of the Education Amendments of 1972 provides: “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

In accordance with Title IX as interpreted by the Department of Education, the college recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the complainant was in the United States at the time of the alleged conduct, that the complainant be participating in or seeking to participate in the college’s education program or activity at the time of the complaint, and that the conduct have occurred in the context of the college’s education program or activity:

1. **Sexual harassment.** “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual’s participation in unwelcome sexual conduct (commonly referred to as a “quid pro quo”);

- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that is effectively denies a person equal access to the college's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").
2. **Sexual assault.** "Sexual assault" includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent. Sexual assault consists of the following specific acts:
  - a. Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - b. Fondling. The touching of the private body parts<sup>1</sup> of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her/their youth or because of his/her/their temporary or permanent mental or physical incapacity.
  - c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
3. **Dating violence.** "Dating violence" means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.
4. **Domestic violence.** "Domestic violence" means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the college is located, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
5. **Stalking.** "Stalking" is engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. Stalking that does not occur on the basis of sex may be addressed under as a College Category Violation as described below.

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<sup>1</sup> Private body parts include: genital area, anus, groin, inner thigh, buttocks or breast.



## B. College Category Violations

The college prohibits the following behavior. For purpose of College Category violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the college's education program or activity, or otherwise in circumstances over which the College does not have influence or control, including but not limited to during College academic breaks. The college retains discretion to not respond to, investigate or adjudicate circumstances in which no college interest is implicated.

1. **Sexual harassment.** "Sexual harassment" means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. Sexual harassment can be verbal, written, visual, electronic or physical.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a "reasonable person" standard and takes into account the totality of the circumstances. The college considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning or working community.

2. **Sexual assault.** "Sexual assault" includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent, but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the college's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the college's education program or activity). Sexual assault consists of the following specific acts:
  - a. Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim.
  - b. Fondling. The touching of the private body parts<sup>2</sup> of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving affirmative consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

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<sup>2</sup> Private body parts include: genital area, anus, groin, inner thigh, buttocks or breast.

- d. **Statutory Rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- 3. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. the length of the relationship;
  - b. the type of relationship; and
  - c. the frequency of interaction between the persons involved in the relationship;

but that does not constitute dating violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example, because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the college’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the college’s education program or activity).

- 4. **Domestic violence.** “Domestic violence” means violence committed by a or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the college is located, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the college’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the college’s education program or activity).
- 5. **Stalking.** “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation as defined above because of basis on which it occurs or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the college’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the college’s education program or activity).
- 6. **Sexual Exploitation.** Sexual exploitation occurs when, without affirmative consent, a person takes sexual advantage of another in a manner that does not constitute another violation

under this Policy. Examples of sexual exploitation include, but are not limited to: prostitution, acts of incest, observing or recording (whether by video, still photo or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing or showering) without the affirmative consent of all involved; taking intimate pictures of another, but then distributing the pictures to others without the photographed person's affirmative consent; engaging in voyeurism, engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; or exposing one's genitals in non-consensual circumstances.

7. **Retaliation.** Retaliation is an adverse act perpetrated to "get back" at a person because the person reported sexual misconduct, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the college or by an external agency. An act of retaliation may be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. A person who acts in good-faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good-faith; a person may provide inaccurate information believing it is accurate, which is still good-faith. If a person who makes a statement knowing that it is false, the person has acted without good-faith.

## **SECTION V – TITLE IX COORDINATOR, DEPUTY COORDINATOR, AND ADMINISTRATIVE AGENCIES**

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity.

Title IX prohibits all forms of discrimination on the basis of sex (gender), including all forms of sexual violence, sexual assault and sexual harassment. This prohibition applies to all Vaughn College faculty, staff, students and third parties in both the educational and employment settings. If inappropriate sexual behavior occurred, the College will take prompt and effective steps to end the behavior, prevent its reoccurrence, and address its effects.

Inquiries concerning the application of Title IX and its implementation may be referred to the Title IX Coordinator or to the U.S. Department of Education or the Office for Civil Rights.

### **A. TITLE IX COORDINATOR**

The Title IX Coordinator is responsible for monitoring the overall Title IX implementation for Vaughn 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 Coordinators 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 Coordinators who will also be informed of all Title IX claims filed and their ultimate disposition.

#### **Title IX Coordinator**

Elaine T. White, Assistant Vice President of Student Affairs/Dean of Students  
718.429.6600 ext. 366

[Elaine.white@vaughn.edu](mailto:Elaine.white@vaughn.edu)

**Inquiries and/or reports of misconduct should be directed to either of the following Deputy Title IX Coordinators. If one of the Deputy Title IX Coordinators is not immediately available, please contact the other Deputy.**

Kelli Smith, Vice President of Student Affairs  
718 429-6600 ext. 371  
[Kelli.smith@vaughn.edu](mailto:Kelli.smith@vaughn.edu)

Mary Durkin, Associate Vice President of HR  
718 429-6600 ext. 105  
[Mary.durkin@vaughn.edu](mailto:Mary.durkin@vaughn.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 Vaughn College Security Department 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:
  - Access to medical and mental health treatment;
  - Victim support and resources; and
  - 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.

**B. DEPUTY TITLE IX COORDINATORS**

The Deputy Title IX Coordinators work cooperatively with the Title IX Coordinator to assist with the handling of Title IX-related Complaints. The Deputy Title IX Coordinators may serve as the Assigned Title IX Coordinator in connection with a given Complaint.

**Inquiries and/or reports of misconduct should be directed to either of the following Deputy Title IX Coordinators. If one of the Deputy Title IX Coordinators is not immediately available, please contact the other Deputy.**

**C. OFFICE FOR CIVIL RIGHTS**

In addition to the College’s Title IX Coordinator, inquiries regarding Title IX from members of the campus community may be directed to the United States Department of Education’s Office of Civil Rights (“OCR”). This agency may be contacted as follows:

The OCR regional office for New York is located at:

**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

**E. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**U. S. Equal Employment Opportunity Commission - New York District Office**  
33 Whitehall Street, 5th Floor  
New York, NY 10004  
1-800-669-4000  
TTY: 1-800-669-6820  
Fax: 212-336-3790

**SECTION VI – REPORTING SEXUAL AND GENDER-BASED MISCONDUCT, RETALIATION OR INTIMIDATION INCIDENTS**

All individuals may report alleged incidents of Sexual or Gender-Based Misconduct, Retaliation or Intimidation to the College, to outside resources, and/or to law enforcement.

**A. REPORTING OPTIONS WITHIN THE COLLEGE**

Victims and witnesses do not need to determine whether incidents of Sexual or Gender-Based Misconduct qualify as Title IX or College Violations before reporting in good faith to the College. The various confidential and non-confidential disclosure options available to members of the Vaughn College community are set forth below:

**1. Professional, Licensed College Counselors (Confidential Resource)**

Individuals have the option to report alleged Sexual and Gender-Based Misconduct to the Confidential Sources on campus listed below. Individuals may choose this option if they want to discuss the incident in a confidential setting but do not want any action to be taken. Confidential Sources can provide individuals with

both immediate and long-term help. They will listen and help access additional assistance and explain options for making a non-confidential report to the College and reporting to the police.

The professional or non-professional counselor or advocate listed below will preserve an individual's privacy to the extent possible by the law. This means that Personally Identifiable Information shared with these professionals is not part of students' or employees' College education or personnel records and will not be reported to other College personnel (including the Title IX Coordinator), to the Respondent, or to others unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual or Gender-Based Misconduct involving a minor or under conditions involving imminent harm to one or more members of the College community.) Therefore, disclosures to these employees generally will not trigger a College investigation into an incident against the victim's wishes.

A victim who speaks to one of the professional or non-professional counselors or advocates listed below must understand that, if he or she wants to maintain confidentiality, the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the Respondent. Even so, these counselors and advocates will still assist the victim in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules. Moreover, a victim who at first requests confidentiality may later file a Complaint with the College and/or report the incident to local law enforcement.

Individuals can make a confidential report of Sexual or Gender-Based Misconduct by contacting a professional, licensed counselor at the **Office of Counseling and Wellness** during posted business hours:

**Office of Counseling and Wellness**

Dr. Stacey Dutil, Director of Counseling and Wellness at  
[stacey.dutil@vaughn.edu](mailto:stacey.dutil@vaughn.edu)

The licensed professional(s) in the **Office of Counseling and Wellness** may also be visited in person/via zoom during posted business hours. Please call/email to check on the hours.

**2. Formal, Non-Confidential Reporting to the College**

Individuals who believe that they have been the subject of or have witnessed an incident of Sexual or Gender-Based Misconduct, Retaliation or Intimidation are encouraged to report the conduct to the College so that it can take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions), and, if it is determined that Sexual or Gender-Based Misconduct has occurred, take appropriate steps to address the situation.

There are several ways to formally report Sexual or Gender-Based Misconduct, Retaliation or Intimidation incidents to the College:

**a. Title IX Coordinator or a Deputy Title IX Coordinator**

**Title IX Coordinator, Elaine T. White, Assistant Vice President for Student Affairs/Dean of Students**

**Inquiries and/or reports of misconduct should be directed to either of the following Deputy Title IX Coordinators. If one of the Deputy Title IX Coordinators is not immediately available, please contact the other Deputy.**

**Deputy Title IX Coordinators:**

- **Kelli Smith, Vice President of Student Affairs**
- **Mary Durkin, Associate Vice President of HR**

**b. Vaughn College Security Department**

Sexual and Gender-Based Misconduct, Retaliation or Intimidation may be reported to the Vaughn College Security Department.

The Vaughn College Security Department is located at:

**MAIN BUILDING: 86-01 23<sup>rd</sup> Ave, Flushing 11369**  
**RESIDENCE HALL 22-40 90<sup>th</sup> St, Flushing 11369**  
**ASTORIA 43-05 20<sup>th</sup> Ave, Astoria 11105**

The Vaughn College Security Department is also available by phone at

**718 505-1024**

**Additional phone numbers are:**

**718-429-6600:**

**MAIN BUILDING - EXT. 130**  
**MAIN BUILDING - LIBRARY - EXT 301**  
**RESIDENCE HALL - EXT. 300**  
**ASTORIA - EXT. 270**

Vaughn College Security Officers are available 24 hours a day, seven days a week. Vaughn College Security Department personnel will immediately report to the Title IX Coordinator all relevant details about the alleged Sexual or Gender-Based Misconduct that the College will need to determine what happened – including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

**c. Human Resources**

In addition to the Deputy Title IX Coordinators, incident of Sexual and Gender-Based Misconduct, Retaliation or Intimidation may also be reported to the Human Resource Office if the Complainant or witness is an employee, or Third Party. Human Resource Office is located in the Main Building. Human Resource staff members are available during business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) by phone at **718-429-6600, Extensions -105, 224 and 115.**

**d. Other Responsible Employees**

A Responsible Employee is an individual designated by the college to respond on the college's behalf to allegations of violations of this Policy. A Responsible Employee is a Non-Confidential Resource. The following are Responsible Employees and offices available to receive a report of sexual misconduct:

- **Director, Residence Life and Housing, extension 316**

An individual who reports an incident to a college employee or office other than one of the Responsible Employees and offices listed above risks that the information may not be acted upon by the college. Therefore, a person who wishes for the college to take action is strongly encouraged to report to one of the

offices listed above.

## **B. REPORTING OPTIONS OUTSIDE THE COLLEGE**

### **1. Privileged and Confidential Communications to Community Resources**

Off-campus counselors, advocates, and health care providers will generally maintain confidentiality and not share information with the College unless the victim requests the disclosure and signs a consent or waiver form. Confidential community resources are set forth in the Resource Table of Appendix A.

Note: While off-campus community counselors and advocates may maintain a victim's confidentiality vis-à-vis the College, they may have reporting or other obligations under state law.

### **2. Law Enforcement**

Any member of the College community who has experienced an incident of Sexual and Gender-Based Misconduct may also report the conduct to local law enforcement. Victims of Sexual and Gender-Based Misconduct are not required to report to local law enforcement. The College's investigation and resolution of a case of Sexual and Gender-Based Misconduct is not contingent upon a party's decision to report or not report to local law enforcement. Reports to the police may be made at the same time and in addition to reports to the College. In some circumstances, the College, however, may be obligated to report the matter to local law enforcement, such as in the case of violent felonies or missing persons.

Victim support and resources are available even if a student, employee or Third Party elects not to pursue criminal charges or file a report or Complaint with the College.

The College will assist individuals in making a report to local law enforcement.

A criminal investigation into the matter does not preclude the College from conducting its own investigation. If a report is filed with both the College and law enforcement, the College will proceed with its normal investigation process. The College, however, may need to temporarily delay its fact-finding portion of the investigation while law enforcement is gathering initial evidence.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether Sexual or Gender-Based Misconduct, for purposes of this Policy, has occurred.

Individuals can file a police report 24 hours a day by contacting the Vaughn College Security Department at

**718 505-1024**

#### **Additional phone numbers:**

**718-429-6600: Main Building - Ext. 130; Library – Ext 301; Residence Hall - Ext. 300; Astoria - Ext. 270.**

If the incident occurred off campus in the East Elmhurst and or Astoria NY area, individuals can file a report with the **NY Police Department:**

**Emergency: Dial 911**

#### **Non-Emergency Contact:**

115<sup>th</sup> Precinct, 92-15 Northern Blvd., Jackson Heights, NY 11372; (718) 533-2002

114<sup>th</sup> Precinct, 34-16 Astoria Blvd., Astoria, NY 11103; (718) 626-9311

If a victim chooses to file a police report, those on and off-campus resources listed in the Resources Table of **Appendix A** can provide assistance in contacting local law enforcement.

### **3. Protective Orders**



Orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence. The College can assist such individuals in obtaining judicial protective orders. For more information on how to obtain an order of protection from the courts, **contact Title IX Coordinator, Title IX Deputy Coordinators or the Office of Wellness and Counseling** who can explain and support you through the process.

The College will provide a copy of any order of protection that it receives to the parties affected by it, explain the order of protection and the consequences for violating it, call upon and assist local law enforcement in effecting an arrest for violation of the order of protection or similar document, and follow legally issued orders of protection or similar documents, including denying the restricted person access to the College's property, if necessary.

#### **4. Preservation of Evidence/Emergency Medical Attention**

Preservation of evidence is critical, especially in cases of possible violence and sexual violence, and it must be done properly and promptly. In sexual assault cases, it is important not to shower, change clothes or brush one's hair, as physical evidence may be lost, although having showered or changed does not mean that a sexual assault forensic exam (rape kit) cannot be completed. In cases of violence or physical abuse, it is important to document injuries, including by taking photographs.

For more information about support services and resources see **Appendix A**.

For more information for local, non-College affiliated confidential hotlines and crisis centers see **Appendix D**.

### **SECTION VII - GENERAL PROVISIONS APPLICABLE TO ALL ALLEGATIONS OF SEXUAL AND GENDER-BASED MISCONDUCT**

#### **A. TIME FRAME FOR RESOLUTION**

The College will investigate and resolve all reports of Sexual and Gender-Based Misconduct in a prompt but meaningful way. The complexity and severity of a Complaint, holiday or semester breaks and availability of witnesses, for example, may influence the length of time needed to do so. In general, a Complainant and Respondent can expect to receive periodic updates from the Title IX Coordinators and/or Investigator.

#### **B. PUBLIC AWARENESS EVENTS**

Public awareness events such as candlelight vigils, protests, or other forums in which students disclose incidents of Sexual Misconduct, are not considered notice to the College of Sexual or Gender-Based Misconduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about students' Title IX rights at these events.

#### **C. FALSE INFORMATION AND MALICIOUS ACCUSATIONS**

Any individual who knowingly files a false report or Complaint under this Policy, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a report of Sexual or Gender-Based Misconduct, Retaliation, and/or Intimidation may be subject to disciplinary action up to and including termination or dismissal.

#### **D. CLERY ACT STATISTICAL AND TIMELY WARNING REPORTING OBLIGATIONS**

Statistical Reporting: The Clery Act is a federal law requiring institutions of higher education to collect and report statistics on certain crimes in an annual Security Report. Campus Security Authorities at the College have a duty to provide the College's Security Department with information regarding certain crimes when they are reported to them. All personally identifiable information is kept confidential, but statistical information regarding Clery reportable crimes must be shared, including the date and location of the incident (but not the specific address) and information about the reported crime to allow for proper classification. This report provides the College community with information about the extent and nature of crime on the College's campus and helps ensure greater community safety.

The following individuals are considered to be Campus Security Authorities and are required to inform the Vaughn College Security Department of crimes reported to them: Vice Presidents, Department Chairs, Directors and Athletic Coaches; Any employee in a supervisory or management role; Any faculty member responsible for supervising any activities or programs that include direct contact with students outside of classroom (including faculty advisors to recognized student organizations); Vaughn College Security Department personnel; Any staff member whose primary job description includes providing academic advice to students; Residence Hall staff; and Student Affairs staff; and any other staff with significant responsibility for student and campus activities. These individuals can keep the victim's identity anonymous in their report to Campus Safety and Security if they are not also a "Responsible Employee."

Timely Warning Notifications: If a report of Sexual or Gender-Based Misconduct reveals that there is an immediate threat to the health or safety of students or employees on campus, or that an ongoing serious or continuing threat to the campus community exists, an emergency Timely Warning notification will be issued. The purpose of the Timely Warning notification is to enable individuals to protect themselves and to increase safety awareness, as well as seek information that will lead to the arrest and conviction of the perpetrator. The victim's names and other personally identifiable information will not be included in any emergency notification or public safety advisory.

#### **E. INDIVIDUALS WITH DISABILITIES AND INTERNATIONAL STUDENTS**

This Policy is accessible to students, employees and third parties with disabilities. The College will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations as needed to participate in the steps and procedures outlined in this Policy.

Requests for accommodations by students must be made to Vaughn College's ADA (Americans with Disabilities Act) Coordinators. All other members of the campus community should contact the Human Resource Office. The ADA Coordinators or the Human Resource Office as applicable will review the supporting disability-related documentation, make a decision about the request, notify the individual about approved accommodations and make arrangements for the accommodations. Accommodations may include, but are not limited to, providing interpreters for the deaf, providing recordings of materials for the blind, and assuring a barrier-free location for any proceedings.

In addition, this Policy is accessible to students who are English language learners and is distributed on campus in such a way that all students are aware of their rights under Title IX and the Violence Against Women Act.

#### **F. COOPERATION WITH LOCAL LAW ENFORCEMENT**

Vaughn College will cooperate with local law enforcement investigations.

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

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

A formal complaint is necessary to initiate the college's grievance process, meaning an investigation and adjudication process. A formal complaint must be in written form and must be signed by the complainant. A third-party or anyone other than the victim of the misconduct may not file a formal complaint. However, a formal complaint may be filed by a parent or guardian of a minor person.

A formal complaint is a document filed by a complainant or signed by the college's Title IX Coordinator alleging sexual harassment against a respondent and requesting that the college investigate the allegation. The respondent may be either a student or an employee or a visitor, independent contractor, intern, or volunteer of the college. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail to: Elaine T White, Assistant Vice President of Student Affairs/Dean of Students 86-01 23<sup>rd</sup> Ave, Flushing 11369, [Elaine.white@vaughn.edu](mailto:Elaine.white@vaughn.edu). In order to qualify as a formal complaint, the document must contain the complainant's physical or electronic signature, or otherwise indicate that the complainant is the person filing the formal complaint.

If a complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, or the complainant's identity is unknown, and the Title IX Coordinator determines there is sufficient cause to file a formal complaint, the Title IX Coordinator may file a formal complaint. In such cases, the Title IX Coordinator is not considered to be a complainant or other party under this Policy.

The Title IX Coordinator will consider the wishes of the complainant not to proceed with the investigation and adjudication process. However, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that the allegations are such that it would be unreasonable not to proceed despite the wishes of the complainant. In making this determination, the Title IX Coordinator will consider, among other factors:

- the risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, which may be assessed by evaluating:
- whether there have been other complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the college possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

Additionally, where the respondent is not enrolled at the college and is not employed by the college, the college may decline to process the complaint through the Grievance Process. The college may take the steps it deems appropriate under the circumstances.

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. MANDATORY DISMISSAL OF TITLE IX CATEGORY CHARGES**

The Title IX Coordinator will review a formal complaint filed by a Complainant. In order to comply with Title IX regulations, the Title IX Coordinator must "dismiss" the Title IX Category violation(s) if it is apparent that

the allegations are not within the scope of Title IX, including that the conduct alleged:

- would not constitute sexual harassment as defined in Section XX, even if proved,
- did not occur in the college's education program or activity, or
- did not occur against a person in the United States.

Notice of dismissal of the Title IX Category violation(s) will be in writing and issued to both the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the dismissal of a Title IX Category violation. A decision to dismiss a Title IX Category violation is immediately appealable by the complainant.

Even if Title IX Category violations are subject to dismissal, the college may continue to process the allegations as College Category violations, assuming that the allegations, if true, would constitute College Category violations.

### **C. DISCRETIONARY DISMISSAL OF TITLE IX CATEGORY CHARGES**

The Title IX Coordinator may, but is not required to, dismiss formal complaints in the following circumstances:

- When the complainant withdraws a formal complaint;
- When the respondent is no longer enrolled in or employed by the college; and
- Where specific circumstances prevent the college from gathering evidence (such as where a complainant refuses to cooperate but does not withdraw a formal complaint).

The decision to dismiss or not to dismiss a charge under these circumstances will depend on the totality of the situation.

### **D. INTERIM MEASURES**

#### **Supportive Measures**

Once a report is made under this Policy, the complainant will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. A report that triggers supportive measures need not be a formal complaint, and it may be made by a third-party (i.e., someone other than the complainant himself/herself). Once the respondent is informed of a report or a formal complaint, the respondent will be contacted by the Title IX Coordinator and offered individualized support as more fully described below.

Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the college's educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties.

Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course-related adjustments or allowing a withdrawal from a course without penalty;
- Changes to housing, transportation and campus working situations if those changes are requested by a party and reasonably available;
- Mutual "No Contact" orders and, possibly, in rare cases, such as when legal restraining orders or orders of protection have been issued, one-way no contact orders.
- Access to campus escorts or other reasonable security or monitoring measures;

- Counseling services; and
- Interim removal of a student from college will only be done pursuant to the Emergency Removal protocol, discussed below.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various college departments and offices that may be involved. Supportive measures will be offered free of charge.

If a party's request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, each party will, upon request, be afforded the opportunity for a prompt review of the need for supportive measures that have been implemented, including the potential modification of these measures, to the extent that the party is affected by the measure(s) being reviewed. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affects that party. Information about how to request a review will be included in a written communication that will outline the supportive measures offered and any that were requested by the party but denied.

### **Emergency Removal**

In some cases, the college may undertake an emergency removal of a student respondent in order to protect the safety of college community, which may include contacting local law enforcement to address imminent safety concerns.

Emergency removal is not a substitute for reaching a determination as to a respondent's responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual harassment allegations.

Prior to removing a student respondent through the emergency removal process, the college will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student, including the student respondent, or other individual justifies removal, then a student respondent will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed.

After determining a student respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the complainant and respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

If a student respondent disagrees with the decision to be removed from campus, the respondent may appeal the decision. The respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to Kelli Smith, [kelli.smith@vaughn.edu](mailto:kelli.smith@vaughn.edu) within 10 days of receiving the notice of removal. The burden of proof is on the student respondent to show that the removal decision was incorrect.

This section applies only to student respondents. Employee respondents are not subject to this section and may be placed on administrative leave pursuant to the college's policies and/or collective bargaining agreements during the pendency of a Title IX grievance process.

## **E. INITIAL MEETINGS**

### **Meeting with the Complainant**

The Title IX Coordinator or deputy will contact the Complainant in writing to schedule an initial meeting. 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 (see

### **Appendix C);**

- 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 Vaughn 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).
- 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.

### **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 (see **Appendix C**);
- 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 Vaughn 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 the **Office of Counseling and Wellness** or 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.

#### **F. 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**

An Informal Resolution Process is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a complainant. An Informal Resolution prioritizes educational and conciliatory approaches over more adversarial contestation of the facts. One objective of the Informal Resolution is to provide to the parties an opportunity to hear each other's' concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator.

The intent of an Informal Resolution Process is for the parties to undertake a facilitated discussion regarding the matters at issue related to the allegations to see if they can reach agreement on a resolution that leaves both parties feeling satisfied with that resolution.

The Informal Resolution Process is not available if the respondent in a sexual misconduct complaint is a faculty or staff member of college and the complainant is a student. The Informal Resolution Process is also

not available in a complaint involving more than two parties unless (1) all parties consent to use the Informal Resolution Process, (2) there is an understanding among all parties about what happens when the right of any party to stop the Informal Resolution process and return or proceed to the formal grievance and hearing process is invoked, and (3) there is an understanding among all parties about whether some parties, but not all, can agree to a resolution.

Supportive measures are available to both parties in the same manner as they would be if the formal complaint were proceeding under the formal grievance and hearing process.

#### **A. Steps Prior to the Informal Resolution Process**

The Title IX Coordinator will offer the Informal Resolution Process to the parties after a formal complaint is filed by a complainant. Both parties must consent to use the Informal Resolution process. Either party in an Informal Resolution process may terminate it at any time and the complaint will proceed to the formal grievance and hearing process. In some instances, as detailed below, the facilitator in the Informal Resolution process may terminate the process as well.

A written notice will be given to both parties before entering an Informal Resolution Process, and both parties must consent to the process in writing. No party should feel intimidated, coerced or threatened to participate in an Informal Resolution Process, or to withdraw from an Informal Resolution Process.

If both parties consent to participate in the Informal Resolution process, the college will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be trained on how to perform the role. The facilitator will also be screened to ensure that such person is free from conflicts of interest and bias.

#### **B. How the Process Works**

The facilitator will schedule one or more meetings with the parties. The facilitator will assist the parties in communicating information and opinions to the facilitator and each other regarding the allegations in an effort to find common ground and a resolution of the allegations that is satisfactory to both parties. The facilitator may meet separately with each party to explore the party's views about the allegations and desired outcome from the process. Either party can elect to have any meeting occur so that the parties are in different rooms and the facilitator "shuttles" between the parties.

Informal Resolution may be appropriate if the parties are willing to openly exchange views and reach a resolution acceptable to both parties. The parties to this process should have a clear understanding of the allegations in the complaint and the issues that are in dispute since the investigation phase of the formal grievance and hearing process will not occur if an Informal Resolution is reached.

#### **C. Role of the Facilitator**

The facilitator's role is to conduct the Informal Resolution process in a way that is impartial and does not favor one party over the other. If the facilitator believes at any point in the Informal Resolution process that one party is not behaving in a way that allows for a productive resolution between the parties, the facilitator will discuss the matter in confidence with the Title IX coordinator and either another facilitator will be appointed or the college will require that the Informal Resolution process be cancelled and the complaint will return to the formal grievance and hearing process.

#### **D. Confidentiality**

For the Informal Resolution process to have the best chance for success, the parties should be free to express themselves. As a result, the information received from both parties during the Informal Resolution process will be kept confidential by the facilitator but may share information with the Title IX Coordinator if, in the judgement of the facilitator, there is merit to the disclosure.



In addition, the facilitator will not be available as a witness in any hearing that may occur should either party terminate the Informal Resolution process before a resolution. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties and is not listening or taking notes for any purpose other than assisting the parties.

Should the Formal Complaint be returned to the formal grievance and hearing process of this policy, the parties and any support persons may not disclose information shared by the other party during the process in the hearing. All persons participating in the Informal Resolution process must sign a confidentiality agreement that provides that no information revealed by a party in the Informal Resolution process will be used against that party in a hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise (but not learned through a violation of the confidentiality agreement).

#### **E. Support Persons During Informal Resolution Process**

Each party may have a support person accompanying them to any Informal Resolution meeting. A support person is someone who provides support to a party during the Informal Resolution process. This role should be distinguished from the role of an Advisor under the formal grievance and hearing process of this policy. For instance, the support person will not cross-examine the other party.

A support person can help a party understand or explain the issues under discussion or simply help the party feel more comfortable during the Informal Resolution process. A support person should be someone the party feels comfortable with. A party may need to tell your support person sensitive things related to the facts and circumstances surrounding the allegations. The support person may be a friend or relative or any other person the party trusts.

A support person cannot be someone who has been involved in the facts and circumstances in the allegations in any way. In addition, the other party and the facilitator must agree to the support person attending. The facilitator can also exclude a support person if their presence is disruptive during the Informal Resolution process.

A party should let the facilitator know if they would like a support person to attend any Informal Resolution meeting and the name of the support person and that person's relationship to the party. The facilitator will check with the other party to confirm that such party agrees to continue with the Informal Resolution with the support person present.

Support can be provided in several ways. Support people do not necessarily have to be in an Informal Resolution session. Support people can be available to offer support in a nearby area and the facilitator can schedule breaks so that a party can talk with their support person outside the meeting. The support person can attend the Informal Resolution meeting but may not participate or speak during it. The support person can ask for a break if the person wishes to confer with the party.

Neither party is permitted to have a support person participate in meetings with the facilitator through an electronic device such as a cell phone or computer.

#### **F. Possible Outcomes of the Process**

A resolution is reached only if both parties agree. The facilitator will not impose an outcome, although they may assist the parties in suggesting resolutions that appear to meet the parties' needs. If there is no agreement on a resolution, the complaint is returned to the formal grievance and hearing process outlined in this policy. A party may terminate the informal process at any time before the final written resolution is signed.

The facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This written and signed resolution indicates that the complaint has been resolved

under this policy without the need for further investigation or to pursue the formal grievance and hearing process.

After a written resolution has been finalized, the college will keep a record of the parties' written consent to the Informal Resolution process and the written resolution.

**G. Consequences if Informal Resolution Process Does Not Result in an Agreed-Upon Resolution**

The Informal Resolution process should proceed with due promptness. The college imposes no specified timeframe for the process but the facilitator may choose to terminate the Informal Resolution Process (and either party may elect to terminate the Informal Resolution) if insufficient progress is being made.

If an Informal Resolution Process does not result in an agreed-upon resolution, the complaint returns to the formal grievance and hearing process outlined in this Policy. Any investigation of the allegations in the complaint will resume and the formal grievance process will proceed from there. The college encourages terms of resolution that meets the parties' needs, and may include a disciplinary sanction. In unusual circumstances, the Title IX Coordinator may determine that the parties' agreed upon resolution cannot be approved by the college.

The college and the facilitator will maintain confidentiality concerning the Informal Resolution process. The parties and any support persons may not disclose information shared by the other party during the process in the hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise (but not learned through a violation of the confidentiality agreement).

**SECTION X – FORMAL TITLE IX INVESTIGATION 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. Appointment of Investigator**

Where a formal complaint has been filed, and in the absence of an informal resolution, the college will appoint an investigator to conduct an investigation into the allegations in the formal complaint.

The COLLEGE may appoint any qualified investigator, who may be a person internal or external to the college. The college also may appoint more than one investigator in the college's sole discretion. The investigation is an impartial fact-finding process.

**B. Temporary Delay Due to Concurrent Law Enforcement Investigation**

The college's investigation may be temporarily delayed where there is a concurrent law enforcement investigation if necessary to avoid interference with the law enforcement investigation. Any such delay shall not exceed ten (10) days unless the law enforcement agency requests and justifies a longer delay.

**C. Notice of Investigation**

The Complainant and Respondent shall receive a notice of investigation referencing the violation(s) of this policy alleged to have been committed and the range of possible disciplinary sanctions and remedies following any determination of responsibility. The notice of investigation will include, to the extent known:

- the identities of the involved parties;

- the date, time, location and factual allegations concerning the alleged violation;
- the policy provisions allegedly violated;
- a description of the investigation and adjudication process;
- potential sanctions;
- the right to an advisor of their choice, who may be, but is not required to be, an attorney;
- their right to inspect and review evidence in accordance with this policy;
- notice that knowingly making false statements or knowingly submitting false information is prohibited; and
- that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process

If, in the course of the investigation, the college decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator or designee will provide notice of the additional allegations to the parties.

#### **D. Notice of and Opportunity to Object to Investigator**

The Complainant and Respondent will be provided with notice of the name of the appointed investigator and an opportunity of not more than three (3) days after the notice to raise an objection to the investigator based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator.

#### **E. Meetings and Interviews to Gather Information**

The Complainant and Respondent will be provided with advance written notice of the date, time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate. The Complainant and Respondent have a right to be accompanied by an advisor of their choice, who may be an attorney. The college does not appoint an advisor for a party during the investigation phase of the process.

The Complainant and the Respondent will be given an equal opportunity to present information. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the college. The investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the complainant with a person other than the respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The investigator will determine the order and method of investigation.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or interviews. If the investigator elects to audio and/or video record interviews, all involved parties involved in the meeting or interview will be made aware that audio and/or video recording is occurring.

#### **F. Opportunity for Inspection and Review of Evidence**

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to the conclusion of the investigative report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Respondent will be provided with at least ten (10) days to submit a written response, which

the investigator will consider prior to completion of the investigative report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps.

#### **G. Investigative Report**

At the conclusion of the investigation, the investigator will complete a written investigative report that fairly summarizes the relevant evidence. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator.

At least ten (10) days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

#### **H. Consolidation of Cases**

The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single complainant against a respondent, or multiple complaints by a single complainant against multiple respondents.

#### **I. Investigation Timeframe**

The college will endeavor to complete an investigation within thirty (30) days. An investigation may be extended for good cause, such as witness unavailability, breaks in the academic schedule, or other similar circumstances.

### **SECTION XI – FORMAL TITLE IX HEARING PROCEDURES**

A hearing before a Hearing Officer designated by the Title IX Coordinator will be convened not less than ten days after the parties have been provided access to the final investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s).

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the name of the Hearing Officer, and how to challenge participation by the Hearing Officer for bias or conflict of interest. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the decision maker is biased).

Participants in the hearing will include the Hearing Officer, the Complainant and the Respondent, their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Hearing Officer and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated

events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

**A. Procedural Matters**

The Hearing Officer is in charge of organizing the presentation of information to be considered at the hearing. Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the investigative report will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. Absent extraordinary circumstances as determined by the Hearing Officer, no party may seek to introduce at the hearing any evidence not previously made available in accordance with the preceding sentence, other than the investigative report itself and any responses to the investigative report submitted by the parties pursuant to this policy.

The Hearing Officer will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this Policy, the Hearing Officer will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, to alter the order of the proceedings from that described above, and/or to recall parties or witnesses for additional questions as the Hearing Officer deems necessary or appropriate. The Hearing Officer may impose additional ground rules as Hearing Officer may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

**B. Advisors**

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an advisor present at the hearing, the College will provide, without fee or charge to that party, an advisor of the College's choice for the limited purpose of conducting questioning on behalf of that party as provided in this Policy.

Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Hearing Officer during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating and non-abusive manner. If the Hearing Officer determines that an advisor is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the College will assign an advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation. The Hearing Officer may be advised by and/or consult with the College's legal counsel as the Hearing Officer deems necessary or appropriate.

**C. Questioning Procedures**

The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questioning must be conducted by

the party's advisor in a respectful, nonintimidating and non-abusive manner, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the College to provide without fee or charge to that party, an advisor of the College's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Before the party or witness answers a question posed by an advisor, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The advisor posing the question may request that the Hearing Officer reconsider any decision to exclude a question and the Hearing Officer, after soliciting the other party's advisor's opinion, will render a final determination]. Such decisions by the Hearing Officer are final and not subject to further objection or reconsideration during the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the hearing by a party's advisor as described above, the Hearing Officer may not rely on any statement of that party or witness, during the hearing or otherwise, in reaching a determination regarding responsibility. The Hearing Officer will not draw an inference as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination questions.

#### **D. Hearing Determinations**

Following conclusion of the hearing, the Hearing Officer will deliberate and render a determination as to whether the Respondent is responsible or not responsible for the alleged violation(s). [The Hearing Officer will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "Preponderance of the evidence" means that the Hearing Officer must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged. Hearing Officer must determine whether, based on the evidence presented, it is highly and substantially more likely to be true than untrue that the Respondent engaged in the conduct charged.

Each party may submit a written personal impact statement to the Title IX Coordinator for consideration by the Hearing Officer in determining an appropriate sanction if there is a finding of responsibility on one or more of the charges. The parties must submit their statements to the Title IX Coordinator within 24 hours after the conclusion of the hearing. The Title IX Coordinator will provide each of the parties an opportunity to review any statement submitted by the other party.

In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- the nature and severity of, and circumstances surrounding, the violation(s);
- the Respondent's state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- the Respondent's previous disciplinary history;
- the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;
- the need to remedy the effects of the conduct on the Complainant and/or the community;
- the impact of potential sanctions on the Respondent;

- sanctions imposed by the College in other matters involving comparable conduct; and
- any other lawful factors deemed relevant by the Hearing Officer.

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and that further infractions of any College policy, procedure, or directive may result in more severe disciplinary action.
- **Probation:** A written reprimand for violation of the Policy, providing for more severe disciplinary sanctions in the event that the Respondent is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified privileges, exclusion from extracurricular activities, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Cessation of student status for a definite period of time and/or until specific criteria are met.
- **Expulsion:** Permanent termination of student status.
- **Withholding Degree and/or Diploma:** The College may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities.
- **Other Actions:** In addition to or in place of the above sanctions, the Hearing Officer may assign any other sanctions as deemed appropriate, including but not limited to the following:
  - A "no contact" directive (including but not limited to continuation of a no contact directive imposed as a supportive measure) prohibiting contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact directive may include additional restrictions and terms.
  - Requiring unpaid service to the campus or local community stated in terms of type and hours of service.
  - Restitution for damage to or misappropriation of property, or for personal injury, and other related costs.
  - Loss, revocation or restriction of housing privileges (e.g., exclusion from specified locations or alteration of status in the housing lottery or other selection system).
  - Monetary fines.

For those crimes of violence that the College is required by federal law to include in its Annual Security Report, the transcripts of suspended or expelled students found responsible after a hearing and appeal, if any, will include the notation "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". Transcript notations for suspensions may be removed at the discretion of the Title IX Coordinator, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion may not be removed.

#### **E. Notice of Outcome**

The Hearing Officer will issue a written determination including the following information:

- A description of the charges that were adjudicated;
- A description of the procedural steps taken from the submission of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's educational programs or activities will be provided to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Officer will provide the written determination to the parties simultaneously.

## **F. Appeals**

A respondent or complainant may appeal: (1) a determination regarding responsibility, and (2) the college's dismissal of a formal complaint or any allegations therein.

If a party wishes to appeal a determination regarding responsibility or the dismissal of a formal complaint, the party must submit written notice to the Title IX Coordinator of the party's intent to appeal within 10 days of receiving the written notification of the appealable decision.

A respondent or complainant may appeal on the following bases:

- Procedural irregularity that affected the determination regarding responsibility or dismissal of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the determination regarding responsibility or dismissal of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the determination regarding responsibility or dismissal of the matter. The professional experience of an individual need not disqualify the person from the ability to serve impartially. Furthermore, bias is not demonstrated by working in complainants' or respondents' rights organization.

In addition to the three bases for appeal, the college reserves the right to add additional bases for appeal that will be available equally to both the respondent and the complainant. Any additional bases of appeal that are added will not be applied retroactively to previous determinations and dismissals.

When a party submits a written notice of its intent to appeal to the Title IX Coordinator within 10 days of the appealable decision, college will notify the other party in writing and implement appeal procedures equally for both parties. If no written notice of either party's intent to appeal is sent, then the written determination becomes final after the time period to file an appeal (10 days) has expired.

Each party will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Each party will have at least 10 days to submit its written statement. If a party needs additional time, it can request such additional time from the decision-maker for the appeal. Such requests will be granted on a case-by-case basis. If the decision-maker for the appeal grants a request for additional time to submit a written statement, all parties will be granted the additional time.

The decision-maker for the appeal will not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result. This decision will be provided to both parties simultaneously and in writing.



Once the appeal decision has been sent to the parties, the appeal decision is final.

**SECTION XII. APPLICATION TO FACULTY AND STAFF**

One or more of the college’s personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies to any situation where a student is the complainant or respondent. In all other situations, the college reserves the right to apply this policy or another applicable college policy or process. The college will apply this policy to any situation where the college determines that Title IX requires the application of this policy.

**XIII. ACADEMIC FREEDOM**

The college is an academic institution at which academic freedom possessed by those who are teaching/conducting research and their students is necessary and valued. The college will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

**XIV. COORDINATION WITH OTHER POLICIES**

A particular situation may potentially invoke one or more college policies or processes. The college reserves the right to determine the most applicable policy or process and to utilize that policy or process.

**XV. DELEGATION OF AUTHORITY**

Any college administrator or official empowered by this policy, may delegate their authority to any other appropriate college official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a college official named in this policy from fulfilling their designated role.

**XVI. POLICY ENFORCEMENT**

The person responsible for the implementation of this policy internally is:

Elaine T. White, Assistant Vice President of Student Affairs/Dean of Students

Inquiries and complaints may be made externally to:

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202-1100

Customer Service Hotline #: 800-421-3481

Facsimile: 202-453-6012 TDD#: 877-521-2172

E-mail: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov/ocr>

**SECTION XVII – PREVENTION AND EDUCATION**

**A. Educational Programs**

Vaughn College provides resources for education about and prevention of Sexual and Gender-Based Misconduct. They include:

- Alcohol and Drug Workshops
- Sex Signals
- Life Reality Skit Demonstration
- Meeting of Minds Workshop; Understanding the Differences
- Rape Aggression Defense Training
- Know Your Campus
- The Do's and Don'ts of Dating
- Sexuality, Sexual Preference and Anatomy
- Title IX Awareness and Understanding
- Women's Health Fair
- Adjusting to College Life

**B. Training**

Sexual and Gender-Based Misconduct prevention training, which includes training with respect to sexual offenses, is required for members of the College campus community according to the following schedule:

- All students on an annual basis;
- Student athletes;
- Student organization leaders;
- New faculty and staff;
- All faculty and staff biennially;
- Key students, camp counselors and program leaders prior to performing the duties or participating in the qualifying activity; the College's training includes, but is not limited to, information on (a) Title IX and a review of the College's prohibition against Dating Violence, Sexual Assault, Domestic Violence and Stalking, (b) how to file a formal Title IX Complaint with the College, (c) resources available to Sexual and Gender-Based Misconduct victims such as counseling, health services and interim measures, (d) Bystander Intervention Training; and (e) options for reporting an incident of Sexual or Gender-Based Misconduct to campus or local law enforcement. In addition, all incoming students are educated regarding the legal definitions for dating violence, sexual assault, domestic violence, stalking and affirmative consent in the State of New York.

**SECTION XVIII – ANNUAL REPORTING**

The Title IX Coordinator maintains an annual report documenting: (1) the number of reports or Complaints received pursuant to this Policy; (2) the categories of those involved in the allegations; (3) the number of Policy violations found; and (4) examples of sanctions imposed for Policy violations.

## APPENDIX A

### IMMEDIATE ASSISTANCE FOLLOWING A SEXUAL OR GENDER-BASED MISCONDUCT INCIDENT

Vaughn College recognizes that deciding how to respond to an incident of Sexual or Gender-Based Misconduct can be difficult and encourages all individuals to seek the immediate support of and use all available resources on- and off-campus, regardless of when or where the incident occurred. Confidential and non-confidential care and support resources, which are listed below, are available both on and off campus on an immediate and ongoing basis.

#### **A. IMMEDIATE ASSISTANCE AND RESOURCES**

It is the College's goal to empower individuals who believe they have experienced an incident of Sexual or Gender-Based Misconduct to make the decisions that are best for them. Various campus and community advocates, counselors, and emergency first responders are available to offer assistance in this regard. Moreover, seeking assistance and advice promptly from one of these resources may also be important to ensure one's physical safety or to obtain medical care or other support. It may also be necessary to preserve evidence, which can assist the College and/or law enforcement in responding effectively. Assistance is available 24 hours a day, 7 days a week. The Resource Table below provides contact information for the various campus and community advocates, counselors, and emergency first responders available to provide assistance.

**Get to a Safe Place:** First and foremost, an individual who is the victim of Sexual Assault (non-consensual sexual contact and non-consensual sexual intercourse), Domestic Violence, Dating Violence, Stalking or other violent actions is urged to get to a safe place away from the perpetrator or from any other potential danger as soon as possible. Individuals on campus that are not in a safe place should contact Vaughn College Security Department at **718 505-1024** or **718-429-6600: Main Building - Ext. 130; Library – Ext 301; Residence Hall - Ext. 300; Astoria- Ext. 270** (24 hours) or Local Law Enforcement at 911 immediately (24 hours). Individuals off campus should contact Local Law Enforcement at 911 immediately (24 hours).

**Preserve Evidence:** Collecting evidence does not obligate an individual to any particular course of action but can assist law enforcement should criminal charges ultimately be pursued. For evidence collection purposes, it is important that, if possible, victims do not shower, bathe, wash, comb their hair, use the toilet, smoke, brush their teeth, eat or drink, and wash clothes, sheets, blankets or other items. Anything of evidentiary value should be placed in a paper bag (plastic bags are discouraged). Also, victims are urged to photograph visible injuries. Pictures should be taken zoomed in and panned out to show location. A credit card, coin, or dollar bill should be used for reference of size.

**Confidential Counselor or Healthcare Providers:** Individuals who believe that they or someone they know has been a victim of Sexual or Gender-Based Misconduct may seek medical, counseling, support and reporting information from any of the College or off-campus confidential resources listed in the Resources Table below. Discussing a matter with these offices or individuals is not considered a report to the College or a request that any action be taken by the College in response to a Sexual or Gender-Based Misconduct incident, unless specifically requested by the victim. Conversations with these resources are confidential, except as described in the Resources Table below.

The confidential counselors and healthcare members listed in the Resources Table can provide individuals with both immediate and long-term help. They will listen and help access additional assistance and explain options for obtaining additional support from the College and others. They can also arrange for medical care and accompany victims, or arrange for someone to accompany individuals, to seek such care. In addition, they can provide assistance in filing a complaint with local law enforcement. These resources may be used regardless of whether the victim wants to file an official report or participate in College investigation and

resolution proceedings or the criminal process. They are familiar with the College's investigation and resolution process, can explain what to expect, and provide support while College or legal processes are pending, all on a confidential basis.

**College Resources (Non-Confidential):** In addition to confidential resources, any individual who has experienced or witnessed an incident of Sexual or Gender-Based Misconduct has the option and is encouraged to contact any of the *non-confidential* College resources listed in the Resource Table below for immediate assistance.

Upon the receipt of the initial report, the victim's immediate health and safety needs will be assessed by the First Responder (usually a Vaughn College Security Department Officer). The First Responder will outline all of the options for the Complainant, including but not limited to medical treatment, access to an on-campus safe room, the importance of preserving relevant evidence or documentation, and filing a report with the appropriate law enforcement authority. Additionally, the First Responder will advise the Complainant that the College has a duty to investigate the report in order to remedy the effects of any hostile environment created for the Complainant and the campus community.

**Local Law Enforcement (Non-Confidential):** Any member of the College community who has experienced an incident of Sexual or Gender-Based Misconduct involving potential criminal conduct has the option to report the conduct to local law enforcement. If the conduct is reported to the College, a victim will be informed of his or her option to also report any potential criminal activity to local law enforcement. A criminal complaint and a report with the College may be filed at the same time, however, individuals may pursue a Complaint with the College without pursuing criminal charges and vice versa. Because the standards for finding a violation of criminal law are different from the standards in this Policy, criminal investigations or reports are not determinative of whether or not Sexual or Gender-Based Misconduct under this Policy has occurred. Any of the College resources listed in the Resource Table can provide assistance in filing a complaint with local law enforcement and obtaining an order of protection.

**Health Care Options:** Whether a member of the College community who has experienced an incident of Sexual Assault (non-consensual sexual contact and non-consensual sexual intercourse), Domestic Violence, Dating Violence, or other violent actions, elects to report the incident or not, it is important that medical attention be sought as soon as possible. This will allow the individual to get care for any injuries that may have resulted from the assault, receive medications in order to prevent sexually transmitted infections in the event of a Sexual Assault and to properly collect and preserve evidence, if the patient consents to do so. A medical examination as soon as possible (ideally within 72 hours) is critical in preserving evidence of Sexual Assault and proving a criminal or civil case against a perpetrator.

A listing of local hospitals that have rape kits and/or Sexual Assault Nurse Examiners (SANE), which will assist law enforcement should criminal charges ultimately be pursued by the victim, are set forth in the Resources Table.

**Getting to the Hospital:** For victims with injuries that require emergency medical care, it is imperative that Vaughn College Security Department be called at **718 505-1024 or 718-429-6600: Main Building - Ext. 130; Library - Ext 301; Residence Hall - Ext. 300; Astoria- Ext. 270** or that Emergency Medical Services be contacted at 911 to request emergency transport.

**Transportation Assistance:** If there are no pressing medical needs, the individual may make arrangements for travel to the hospital or contact any of the College or off-campus resources listed in the Resource Table for assistance in seeking medical attention off campus.

## **B. ONGOING ASSISTANCE**

### **1. Counseling, Advocacy and Support**

The counseling and support programs listed in the Resource Table are available for victims of Sexual or Gender-Based Misconduct at any time, whether or not the victim chooses to make an official report or participate in a College disciplinary or criminal process.

## **2. Interim Measures & “No Contact” Orders**

Upon learning of an incident of Sexual or Gender-Based Misconduct involving a member of the College community, the Title IX Coordinator will take immediate steps and interim measures to ensure the safety and well-being of the victim, such as the ability to move dorm room, change work schedules, alter academic schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring).

An additional Interim Measures that will be implemented if the accused is a student is the issuance of a “no contact” order. Continued intentional contact with the reporting individual is a violation of institution policy and may be subject to additional conduct charges. It is the accused’s responsibility to leave the area if the reporting individual and the accused observe each other in a public place. Both the accused and the reporting individual may request a review and modification of a “no contact” orders.

## **APPENDIX B**

### **Student Alcohol and Drug Use Amnesty Policy**

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 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 a College official or law enforcement will not be subject to a 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.

It is the College's intention to partner with students in promoting health and safety. The College will provide students with the assistance needed to respond to high risk drinking and other drug abuse.

In a crisis, students are encouraged to seek such assistance by contacting:

#### **Campus Security Department at**

**718 505-1024 or**

**718-429-6600**

**Main Building - Ext. 130**

**Library – Ext. 301**

**Residence Hall - Ext. 300**

**Astoria- Ext. 270**

## APPENDIX C

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

#### **Confidential College reporting options:**

- Office of Counseling and Wellness at Vaughn College 718 429-6600, Ext. 350

**APPENDIX D**

**RESOURCE TABLE**

- Queens Hospital Center  
82-68 164<sup>th</sup> Street  
Jamaica, NY 11432  
(718) 883-3000
  
- Elmhurst Hospital Center  
79-01 Broadway  
Elmhurst, NY 11373  
(718) 334-4000
  
- Long Island Jewish/North Shore  
Behavioral Health College Partnership Program  
Dr. Laura Braider - Director  
Dr. Lalima – (718) 470-8894
  
- Plaza Del Sol Family Center  
37-16 108<sup>th</sup> Street  
Corona, NY 11368  
(718) 561-4000
  
- Family Justice Center  
Domestic Violence (confidential)  
126-02 82<sup>nd</sup> Avenue  
Kew Gardens, NY 11415  
(718) 575-4500
  
- Get Help Now
- 1 (800) 352-2919 or 1 (877) 222-8387 (Veteran Affairs)
- 1 (800) SUICIDA (Spanish Speaking suicide hotline)
- 1 (800) PPD-MOMS (Post-partum depression hotline)
  
- Catholic Charities Mental Health Treatment Center  
67-29 Myrtle Avenue  
Glendale, NY 11385  
(718) 779-1234
  
- Advance Center for Psychotherapy  
110-20 71<sup>st</sup> Road  
Forest Hills, NY 11375  
(718) 793-3133



- Queens Rape Counseling Center  
71-49 Loubet Street  
Queens, NY 11315  
(718) 263-2013
- Safe Horizon (212) 227-3000
- Crime Victims/Stalking Hotline (866) 689-4357
- Domestic Violence Hotline (800) 621-4673 (English/Spanish)  
TDD Assistance (866) 604-5350
- National Sexual Assault Hotline (800) 656-HOPE (4673)
- New York State Coalition Against Sexual Assault (800) 942-6906 or (800) 818-0656
- Miles Foundation (203) 270 – 7861  
Advice and services about family violence for military personnel and their friends
- National Center for Victims of Crime Stalking Resource Center (202) 467-8700
- National Domestic Violence Hotline (800) 799-SAFE (7233)  
Support, shelter, or services - free, confidential, 24 hours
- Service Women’s Action Network (SWAN) (646) 569-5200  
SWAN supports, defends, and empowers today’s servicewomen and women veterans of all eras, through groundbreaking advocacy initiatives and innovative, healing community programs.
- NYC Anti-Violence Project (212) 714-1141  
24-hour hotline specifically for the LGBTQ Community

**APPENDIX E**

## New York Crime Definitions

The Violence Against Women Act (VAWA) and its regulations require the College to include certain New York State definitions in their Annual Security Report and also require that these definitions be provided in other materials disseminated by the College. Relevant New York definitions are set forth below.<sup>3</sup>

**CONSENT:**<sup>4</sup> Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

**CONSENT, ABBREVIATED:** Clear, unambiguous, and voluntary agreement between the participating to engage in specific sexual activity.

**DATING VIOLENCE:** New York State does not specifically define "dating violence." However, under New York Law, intimate relationships are covered by the definition of domestic violence when the crime is committed by a person in an "intimate relationship" with the victim. See "Family or Household Member" for definition of "intimate relationship."

**DOMESTIC VIOLENCE:** An act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

**FAMILY OR HOUSEHOLD MEMBER:** Person's related by consanguinity or affinity; persons legally married to one another; person formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether such persons are married

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<sup>3</sup> For purposes of enforcing the expectations and requirements of this Policy, Sexual and Gender-Based Misconduct is defined in the body of this Policy.

<sup>4</sup> For the purposes of this Policy, the College defines consent as *affirmative consent* as defined the body of this Policy, which is consistent with N.Y. Educ. Law § 6441.

or have lived together at any time; unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

**PARENT:** means natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.

**SEXUAL ASSAULT:** New York State does not specifically define sexual assault. However, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape.

**SEX OFFENSES; LACK OF CONSENT:** Whether or not specifically stated, it is an element of every sexual act committed without consent of the victim.

**SEXUAL MISCONDUCT:** When a person (1) engages in sexual intercourse with another person without such person’s consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person’s consent; or (3) engages in sexual conduct with an animal or a dead human body.

**RAPE IN THE THIRD DEGREE:** When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

**RAPE IN THE SECOND DEGREE:** When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree the defendant was less than four years older than the victim at the time of the act.

**RAPE IN THE FIRST DEGREE:** When a person engages in sexual intercourse with another person (1) by forcible compulsion; or (2) who is incapable of consent by reason of being physically helpless; or (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**CRIMINAL SEXUAL ACT IN THE THIRD DEGREE:** When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without

such persons consent where such lack of consent is by reason of some factor other than incapacity to consent.

**CRIMINAL SEXUAL ACT IN THE SECOND DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.

**CRIMINAL SEXUAL ACT IN THE FIRST DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**FORCIBLE TOUCHING:** When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. It includes squeezing, grabbing, or pinching.

**PERSISTENT SEXUAL ABUSE:** When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

**SEXUAL ABUSE IN THE THIRD DEGREE:** When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.

**SEXUAL ABUSE IN THE SECOND DEGREE:** When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old.

**SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

**AGGRAVATED SEXUAL ABUSE:** For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.

**AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE:** When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.

**AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE:** When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1)(a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

**AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE:** When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

**AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

**STALKING IN THE FOURTH DEGREE:** When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

**STALKING IN THE THIRD DEGREE:** When a person (1) commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or (4) commits the crime or stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

**STALKING IN THE SECOND DEGREE:** When a person: (1) commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, sligshot, slungshot, shirken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or (2) commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such

specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

**STALKING IN THE FIRST DEGREE:** When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.