

Sexual and Interpersonal Violence Prevention, Policies and Procedures

The College prohibits sex discrimination, sexual assault, sexual harassment, stalking, domestic violence, dating violence or any form of interpersonal violence and encourages the reporting of these instances so that the College can investigate. The reason for this is that sexual and interpersonal violence is particularly harmful to the reporting individual and creates a hostile learning environment. Therefore, the College encourages reporting incidents of sex discrimination, including sexual and interpersonal violence so that the College can respond and maintain a safe learning environment through both prevention education and vigorous pursuit of a resolution to such a report.

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Pomeroy College of Nursing at Crouse Hospital must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy described later. The College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. For cases that do not fall within the Title IX Grievance Policy, the Sexual and Interpersonal Violence Response Policy (below) will be used.

Although we will continue using the position title “Title IX Coordinator” students can be assured that our Title IX Coordinator is also coordinating compliance with intersecting laws such as, NYS Article 129B, the Clery Act, Violence Against Women Act as well as other state and federal mandates. Crouse Health Human Resources will assist as necessary for incidents involving employees.

Non-Discrimination Statement

The College does not discriminate in the administration of educational policies or programs, admission policies, scholarship and loan programs or other school-administered programs. The College’s non-discrimination policy is inclusive of, but not limited to, race, age, color, national or ethnic origin, marital status, gender, sexual orientation, gender identity, gender expression, veteran/military status, religion, disability or political ideology.

Sexual and Interpersonal Violence Response Policy

In accordance with the Students’ Bill of Rights, reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

Reporting:

To confidentially disclose the incident to one of the following Crouse resources, who by law may maintain confidentiality, and can assist in obtaining services:

HelpPeople

Phone: 315-470-7447 – 24/7 emergency on-call services
890 7th North Street, Suite 203 | Liverpool, New York 13088
Offices open 8:00am – 4:30pm, Monday through Friday
**Free to students*

Crouse Hospital Emergency Services

Phone: 315-470-7340

736 Irving Avenue | Syracuse, New York 13210

Open 24/7

**Fees vary depending upon insurance. Students will not be denied treatment for inability to pay.*

To confidentially disclose the incident and obtain services from the New York State, New York hotlines:

<http://www.opdv.ny.gov/help/dvhotlines.html>

Additional disclosure and assistance options are catalogued by the New York State Office for the Prevention of Domestic Violence and presented in several languages:

<http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906)

These hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the College. Reporting individuals are encouraged to additionally contact a Crouse confidential or private resource so that the College can take appropriate action in these cases.

Off-campus option to disclose sexual violence confidentially include (note that this outside option does not provide any information to the College):

Vera House, Inc.

Phone: 315-468-3260 – 24/7 emergency on-call services

723 James Street | Syracuse, New York 13203

**Services are free of charge*

To disclose the incident to the following College officials who can offer privacy and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources.

- These officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the College from retaliation, and to receive assistance and resources from College officials. These College officials will disclose that they are private and not confidential resources, and they may still be required by law and College policy to inform one or more College officials about the incident, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or the district attorney:

Ryan Barker, Title IX Coordinator*

310 Marley Education Center

315-470-5710

ryanbarker@crouse.org

**Generally all sexual and interpersonal violence reports, investigations and interim remedies begin with the Title IX Coordinator who then assigns cases to the Title IX Investigators.*

Jeanne Celso, Title IX Investigator

310 Marley Education Center

jeannecelso@crouse.org

315-470-7256

David Falci, Title IX Investigator
310 Marley Education Center
315-470-5767
davidfalci@crouse.org

Kenneth Kendall, Title IX Investigator
310 Marley Education Center
315-470-7749
kennethkendall@crouse.org

Patricia Morgan, Title IX Investigator
310 Marley Education Center
patriciamorgan@crouse.org
315-470-8851

Crouse Health Security
Crouse Hospital Memorial Unit Basement
315-470-7826

To file a criminal complaint with local law enforcement and/or State police:

Syracuse Police | Abused Persons Unit | Phone: 315-435-3016

Onondaga County Sheriffs | Abused Persons Unit | Phone: 315-435-3014

New York State Police | Campus Sexual Assault Victims Unit | Phone: 1-844-845-7269

Emergency | 911

To receive assistance from the Title IX Coordinator in initiating legal proceedings in family court or civil court.

To file a report of sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance.

- Reports will be investigated in accordance with College policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may contact the Title IX Coordinator anonymously to discuss the situation and available options.

Ryan Barker, Title IX Coordinator
310 Marley Education Center
315-470-5710
ryanbarker@crouse.org

When the accused (respondent) is an employee, a reporting individual may also report the incident to Crouse Health Human Resources or may request that one of the above referenced confidential or private employees assist in reporting to Human Resources.

- Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused (respondent) is an employee of an affiliated entity or vendor of the College, College officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated

entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and College policy.

Crouse Health Human Resources
Crouse Hospital – Memorial Unit 8th Floor
315-470-7521

Students may withdraw complaints or involvement from the College process at any time.

The College shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to a College representative, the following information shall be presented to the reporting individual: “You have the right to make a report to Crouse Health Security, local law enforcement, and/or the New York State Police or choose not to report; to report the incident to Pomeroy College of Nursing administration; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College.” See the full Student’s Bill of Rights for more information.

The College will conduct a timely review of all complaints of sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking. Absent extenuating circumstances, review and resolution is expected to take place within 120 business days from receipt of the formal complaint. The preliminary review of all complaints, including any necessary interviews to be conducted and any necessary interim measures to be put in place, will usually be completed within twenty (20) days of receipt of the initial complaint. The subsequent, comprehensive review and investigation of the formal complaint, including interviews with all involved parties and gathering of evidence, is usually completed within sixty (60) days of receipt of the formal complaint. Results of the complaint, via either a formal hearing or waiver of hearing are typically issued within one hundred (100) days of receipt of the formal complaint. An appeal of the results must be submitted within (five) 5 days after days of receipt of the written result.

Resources:

HelpPeople

Phone: 315-470-7447 – 24/7 emergency on-call services
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**Free to students*

Crouse Hospital Emergency Services

Phone: 315-470-7340
736 Irving Avenue | Syracuse, New York 13210
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**Fees vary depending upon insurance. Students will not be denied treatment for inability to pay.*

Vera House, Inc.

Phone: 315-468-3260 – 24/7 emergency on-call services
723 James Street | Syracuse, New York 13203
**Services are free of charge*

Within 96 hours of an assault, students can obtain a Sexual Assault Forensic Rape Examination (commonly referred to as a rape kit) at Crouse Hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services and, in some cases, insurance may be billed for certain services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds.

More information may be found here: <https://ovs.ny.gov/victim-compensation> or by calling 1-800-247-8035.

To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

Protection and Accommodations:

When the accused/respondent is a student, to have the College issue a “No Contact Order,” consistent with College policy and procedure, meaning that continuing to contact the protected individual is a violation of College policy subject to additional conduct charges; if the accused/respondent and a protected person observe each other in a campus or public place, it is the responsibility of the accused/respondent to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with College policy. Parties may submit evidence in support of their request.

To have assistance from Crouse Health Security or the Title IX Coordinator in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order. Students may also receive assistance from Vera House, 315-468-3260 - <https://www.verahouse.org/>

To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with the Title IX Coordinator or Crouse Health Security who can explain the order and answer questions about it, including information from the Order about the accused/respondent’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s). Students may also receive assistance from Vera House, 315-468-3260 - <https://www.verahouse.org/>

To receive an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension. Contact the Title IX Coordinator, Ryan Barker at 315-470-5710 or ryanbarker@crouse.org for assistance.

To have assistance from Crouse Health Security in effecting an arrest when an individual violates an Order of Protection or to call on and assist local law enforcement in effecting an arrest for violating such an order.

When the accused/respondent is a student and presents a continuing threat to the health and safety of the community, to have the accused/respondent subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for and terms of an interim suspension by contacting the Dean, Patricia Morgan at 315-470-8851 or patriciamorgan@crouse.org. The Title IX Coordinator can assist with this request.

When the accused/respondent is not a student but is a member of the College community and presents a continuing threat to the health and safety of the community, to subject the accused/respondent to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and College/Crouse Health policies and rules.

When the accused/respondent is not a member of the College community, to have assistance from Crouse Health Security or the Title IX Coordinator in obtaining a persona non grata letter, subject to legal requirements and College policy. To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. While reporting individuals may request accommodations through any of the offices referenced in this policy, the following individual can serve as a point to assist with these measures:

Ryan Barker, Title IX Coordinator
310 Marley Education Center
315-470-5710
ryanbarker@crouse.org

Student Conduct Process:

To request that student conduct charges be filed against the accused/respondent.

Conduct proceedings are governed by the procedures set forth in the Pomeroy College of Nursing Student Handbook as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.

Throughout conduct proceedings, the accused/respondent and the reporting individual will have:

- The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and College policy.
- The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the accused/respondent, including the right to a presumption that the accused/respondent is “not responsible” until a finding of responsibility is made, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
- The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
- The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals (Respondent) will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
- The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
- The right to offer evidence during an investigation and to review available relevant evidence in the case file (or otherwise held by the College).
- The right to present evidence and testimony at a hearing, where appropriate.
- The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
- The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of sex discrimination, sexual harassment, domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
- The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
- The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.

- The right to written or electronic notice about the sanction(s) that may be imposed on the accused/respondent based upon the outcome of the conduct proceeding. Students who are found responsible for sexual assault may be suspended or expelled. Students found in violation of dating violence, domestic violence, sex discrimination, sexual harassment or stalking may be placed on disciplinary probation, placed on deferred suspension, suspended or expelled. Students that are placed on disciplinary probation, deferred suspension or suspended may be sanctioned intervention services, restrictions from accessing College/Crouse buildings, and educational programs
- Access to at least one level of appeal of a determination before the Appeal Hearing Board, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
- The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained by the College for at least seven years.
- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

Disclosing Sexual Violence

Pomeroy College of Nursing wants you to get the information and support regardless of whether you would like to move forward with a report of sexual violence to College officials or to law enforcement. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual or interpersonal violence. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this section is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

In this section:

- Privileged and Confidential Resources
- Non-Professional Counselors and Advocates
- Privacy versus Confidentiality
- Requesting Confidentiality - *How the College will weigh the request and respond*
- Memoranda of Understanding
- New York State Sex Offender Registry
- Campus Climate Surveys
- Education and Training for Students and College Employees
- Annual Reporting
- Policy Compliance

Privileged and Confidential Resources

Individuals who are confidential resources will not report crimes to law enforcement or College officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. At Pomeroy College of Nursing, this includes:

HelpPeople

Phone: 315-470-7447 – 24/7 emergency on-call services
 890 7th North Street, Suite 203 | Liverpool, New York 13088
 Offices open 8:00am – 4:30pm, Monday through Friday
 *Free to students

Crouse Hospital Emergency Services

Phone: 315-470-7340

736 Irving Avenue | Syracuse, New York 13210

Open 24/7

**Fees vary depending upon insurance. Students will not be denied treatment for inability to pay.*

Off-campus option to disclose sexual violence confidentially include (note that this outside option does not provide any information to the College):

Vera House, Inc.

Phone: 315-468-3260 – 24/7 emergency on-call services

723 James Street | Syracuse, New York 13203

**Services are free of charge*

On-campus Healthcare providers:

Crouse Hospital Emergency Services

Phone: 315-470-7340

736 Irving Avenue | Syracuse, New York 13210

Open 24/7

**Fees vary depending upon insurance. Students will not be denied treatment for inability to pay.*

Medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation.

More information may be found here:

<https://ovs.ny.gov/victim-compensation> or by calling 1-800-247-8035

Even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to themselves or others and the mandatory reporting of child abuse.

Privacy versus Confidentiality:

Even College employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. The College will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Requesting Confidentiality – *How the College Will Weigh the Request and Respond:*

If you disclose an incident to a College employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the College's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

The College will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. The following individual can serve as a primary point of contact to assist with these measures:

Ryan Barker, Title IX Coordinator
310 Marley Education Center
315-470-5710
ryanbarker@crouse.org

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless the College's failure to act does not adequately mitigate the risk of harm to you or other members of the College community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual (respondent). If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, the College will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused/respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking, the increased risk that the accused/respondent will commit additional acts of violence;
- Whether the accused/respondent used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If the College determines that it must move forward with an investigation, the reporting individual will be notified and the College will take immediate action as necessary to protect and assist them.

Memoranda of Understanding

If on-campus resources are not available, the College will, to the extent practicable, enter into memoranda of understanding or collaborative partnerships with existing community-based organizations, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, which may also include resources and services for a respondent.

The College will also propose and endeavor to execute memoranda of understanding in partnership with:

1. A local rape crisis center, to provide victim advocacy and support services to victims of sexual violence; and
2. Local law enforcement authorities, regarding the protocols and procedures for referring allegations of sexual violence, relationship violence, and stalking, sharing information and conducting contemporaneous investigations regarding such allegations.

Sexual Offender Registry

The federal Campus Sex Crimes Prevention Act enacted in 2000 went into effect October 28, 2002. The law requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders required to register in a State to provide notice, as required under state law, of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student.

New York State Division of Criminal Justice Services is responsible for maintaining New York's Sex Offender Registry, which provides New Yorkers information about sex offenders living in their communities. There are three levels of sex offenders – Level 1 (low risk of re-offense), Level 2 (medium

risk of re-offense) and Level 3 (high risk of re-offense); risk level is set by a judge after a court hearing. By law, only Level 2 and Level 3 sex offenders are listed on the public directory.

The public directory can be found online here – <http://www.criminaljustice.ny.gov/nsor/>

Campus Climate Surveys

The College will conduct a biannual anonymous survey of students and employees to examine (1) the prevalence and incidence of sexual assault, relationship violence, and stalking, (2) the perceptions of the campus climate, (3) the general awareness and knowledge of students and employees about the provisions of the New York Enough is Enough law, and (4) student experience with and knowledge of reporting and college adjudicatory processes. Participation in the survey shall be voluntary but is encouraged.

The climate survey will be developed using standard and commonly recognized research methods, and includes questions covering the following topics:

1. The Title IX Coordinator's role
2. Campus policies and procedures addressing sexual assault
3. How and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor or witness
4. The availability of resources on and off campus, such as counseling and health services
5. The prevalence of victimization and perpetration of domestic violence, dating violence, stalking, or sexual assault on and off campus during a set time period
6. Bystander attitudes and behavior
7. Whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report
8. General awareness of the difference, if any, between the institution's policies and the penal law; and
9. General awareness of the definition of affirmative consent

The College will take steps to ensure that answers to climate assessments remain anonymous and that no individual is identified. The College will publish a summary of the climate assessment survey results on the College website, provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual is shared.

Education and Training for Students and College Employees

It is the policy of the College to offer multiple methods of educational programming to all students and employees each year to help prevent relationship violence, sexual assault (including stranger and known offender assaults), and stalking. The College has adopted a comprehensive student onboarding and ongoing education campaign to educate members of the College community about domestic violence, dating violence, stalking, and sexual assault, in compliance with applicable federal laws.

As part of this education and training campaign, The College requires all new students who enroll to receive training, during the course of their onboarding, on the following topics, using a method and manner determined by the College:

1. Sexual and interpersonal violence including resources to any victims and survivors of such violence and administrative/conduct action regarding any accused individual within the jurisdiction of the institution
2. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent
3. The equal application of policies regarding of sexual orientation, gender identity, or gender expression

4. The role of the Title IX Coordinator, Crouse Security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response
5. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact
6. Bystander intervention and the importance of taking action to prevent violence when one can safely do so
7. Risk assessment and reduction including, not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction
8. Consequences and sanctions for individuals who commit these crimes and code of conduct violations

Annual Reporting

Reports of certain crimes occurring in certain geographic locations will be included Pomeroy College of Nursing Clery Act Annual Security and Fire Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor.

The College is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents' prior year federal income tax return. Generally, the College will not share information about a report of sexual and interpersonal violence with parents without the permission of the reporting individual.

Reporting aggregate data to New York State Education Department (NYSED)

1. The College shall annually report to the department the following information about reports of domestic violence, dating violence, stalking and sexual assault:

a. The number of such incidents that were reported to the Title IX Coordinator.

b. Of those incidents in paragraph a. of this subdivision, the number of reporting individuals who sought the College conduct process.

c. Of those reporting individuals in paragraph b of this subdivision, the number of cases processed through the College conduct process.

d. Of those cases in paragraph c of this subdivision, the number of respondents who were found responsible through the College conduct process.

e. Of those cases in paragraph c of this subdivision, the number of respondents who were found not responsible through the College conduct process.

f. A description of the final sanctions imposed by The College for each incident for which a respondent was found responsible, as provided in paragraph d of this subdivision, through the conduct process.

g. The number of cases in the College conduct process that were closed prior to a final determination after the respondent withdrew from the College and declined to complete the disciplinary process.

h. The number of cases in the College conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

2. NYSED shall create a reporting mechanism for institutions to efficiently and uniformly provide the information outlined in subdivision one of this section.

Policy Compliance

Any person with a concern about the College's handling of a particular sexual misconduct matter should contact the Title IX Coordinator or if necessary, the U.S. Department of Education, Office of Civil Rights (OCR) which serves as the federal agency responsible for ensuring compliance with Title IX matters.

U.S. Department of Education | Office of Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100
Phone: 1-800-421-3481

Students' Bill of Rights

Pomeroy College of Nursing is committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College-wide and campus programs, activities, and employment. All students of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus or off-campus.

All students have the right to:

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

Options in Brief:

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation;
- Make a report to:
 - An employee with the authority to address complaints, including the Title IX Coordinator, or member of College administration
 - Crouse Health Security
 - Local or New York State law enforcement; and/or
 - Family Court or Civil Court.

Copies of this Bill of Rights shall be distributed annually to students via the Student Handbook and made available on the College's website.

Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases

The health and safety of every student at Pomeroy College of Nursing 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 incidents of domestic violence, dating violence, stalking, or sexual assault to the Title IX Coordinator. 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 College officials or law enforcement will not be subject to College 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.

Policy/Instructions on How Parties Can Review the Case File/Evidence

The College ensures that every student be afforded the following rights. Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the College code of conduct, the right to review and present available evidence in the case file, or otherwise in the possession or control of the College, and relevant to the conduct case, consistent with College policies and procedures.

Policy for Review of Interim Measures/Accommodations

Both the accused/respondent and the reporting individual shall, upon request and consistent with College policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects them, and shall be allowed to submit evidence in support of their request. Contact the Title IX Coordinator for assistance.

Policy for Review of an Interim Suspension

Both the accused/respondent and the reporting individual shall, upon request and consistent with College policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence to the Dean in support of their request.

Policy for the Review of No Contact Order

Both the accused/respondent and the reporting individual shall, upon request and consistent with College policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of their request. The College may establish an appropriate schedule for the accused and respondents to access applicable buildings and property at a time when such buildings and property are not being accessed by the reporting individual. For No Contact Orders issued by the Title IX Coordinator, contact the Title IX Coordinator for assistance.

Policy for Transcript Notations

Generally, disciplinary actions are not noted on academic transcripts. However, if a student is suspended or expelled as a result of a disciplinary action, they will have an “AD” notation in the place of a grade on every Pomeroy College of Nursing course for which they are registered in the semester/term of the effective date of the suspension or expulsion. The credits attempted for that semester/term will be included in the total number of credits attempted. The “AD” notation will become a permanent part of the student’s academic record (transcript).

Conduct involving serious crimes, including, but not limited to arson, hazing, robbery/burglary, motor vehicle theft, murder/manslaughter, physical assault, sexual and interpersonal violence, and/or conduct that leads to death or serious physical injury of another person, shall result in a permanent transcript notation of suspension or expulsion from the College. The permanent transcript notation will read: “Suspended after a finding of responsibility for a code of conduct violation on (date).” or “Expelled after a finding of responsibility for a code of conduct violation on (date).”

For the respondent who withdraws, is not enrolled due to winter/summer break, or is interim suspended from the College while such conduct charges are pending, and declines to complete the disciplinary process, a notation will go on the transcript of such students that they “Withdrew with conduct charges pending.” Appropriate disciplinary action will be taken prior to the student’s return to the College. The comment is removed if the student is readmitted after completing the conduct process.

Appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, shall be directed to the Dean. For suspensions related to serious crimes listed above, the notation will permanently remain on the transcript. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

Definitions

Accused shall mean a person accused of a violation who has not yet entered the student conduct process.

Advisor is any individual who provides the accused/respondent or victim/survivor with support, guidance and/or advice.

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in

sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.

Amnesty: The Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases states that the health and safety of every student at Pomeroy College of Nursing 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 incidents of 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 College officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Annual Fire and Security Report (Clery Act) requires colleges and universities that participate in federal financial aid programs to report annual statistics on crime, including sexual assault and rape, on or near the campus, and to develop and disseminate prevention policies.

Article 129B (Enough is Enough) requires all colleges in New York State to adopt a set of comprehensive procedures and guidelines to address sexual violence, including a uniform definition of affirmative consent, a statewide amnesty policy, and expanded access to law enforcement.

Bystander shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the College's rules or policies.

Bystander intervention is when a bystander's safe and positive actions to prevent harm or intervene when there is a risk posed to another person. Bystander intervention includes recognizing situations of potential harm, identifying safe and effective intervention options, and taking action to intervene.

Clery Act: The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act is a federal statute (20 U.S.C. §1092(f)) that requires colleges and universities that participate in federal financial aid programs to keep and disclose statistics about crime on or near their campuses. Compliance is monitored by the U.S. Department of Education.

Code of Conduct shall mean the written policies adopted by Pomeroy College of Nursing governing student behavior, rights, and responsibilities while such student is matriculated.

Coercion is defined for purposes of this section as the application of unreasonable pressure to take part in sexual activity or in any of the prohibited conduct listed in this document. Unreasonable pressure can be exerted through physical or emotional force, intimidation, misuse of authority, or outright threats. When someone makes it clear that he or she does not want to engage in sexual activity or does not want to go beyond a certain point of sexual interaction, continued pressure beyond that point may be considered coercive. Ignoring or dismissing the objections of another person may also be a form of coercion. (See full Affirmative Consent definition above).

College means Pomeroy College of Nursing at Crouse Hospital, Syracuse, New York, and collectively, those persons responsible for its control and operation.

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to College officials, in a manner consistent with State and Federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors and medical providers are examples of Crouse Health employees who may offer confidentiality.

Dating violence is any violent act or acts committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. The existence of a social relationship of a romantic or intimate nature with the victim is determined based on the reporting party's statement, the length of the relationship, the type of relationship, and frequency of interaction between the persons involved in the relationship. Domestic violence is a felony or misdemeanor crime of violence committed by any of the following individuals: current or former spouse or intimate partner of the victim; or a person with whom the victim shares a child in common; or a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or a person similarly situated to a spouse of the victim under the domestic or family laws of the jurisdiction in which the crime of violence occurred; New York domestic or family violence laws 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 New York.

Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent. (See full Affirmative Consent definition above).

Interim measures, remedies, supportive measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment.

Preponderance of the Evidence is the standard of proof used in sexual and interpersonal violence cases, which asks whether it is "more likely than not" that the violence occurred. If the evidence presented meets this standard, then the accused/respondent should be found responsible.

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate College officials.

Proceeding refers to the activities related to a College disciplinary complaint, including but not limited to fact finding investigations, formal or informal meetings, hearings and appeals.

Reporting Individual shall encompass the terms victim, survivor, complainant, claimant, witness with victim status who brings forth a report of a violation.

Respondent shall mean a person accused of a violation who has entered the student conduct process.

Responsible employee is an employee with the authority to redress sexual and interpersonal violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate College designee; or whom a student could reasonably believe has this authority or duty.

Result means any initial, interim and final decision by any College official or entity authorized to resolve disciplinary matters within Pomeroy College of Nursing.

Retaliation is adverse action against another person for reporting a violation or for participating in any way in the investigation or conduct process. Retaliation includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, adverse educational or employment consequences, and bullying.

SaVE Act: The SaVE Act is an acronym for the Campus Sexual Violence Act provision of the 2013 reauthorized Violence Against Women Reauthorization Act (VAWA). The SaVE Act provision, Section 304, requires colleges and universities to report domestic violence, dating violence, and stalking beyond the crime categories the Clery Act already mandates; adopt certain student conduct procedures, such as for notifying victims of their rights; and adopt training protocols and policies to address and prevent campus sexual violence.

Sexual act means:

- A. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- B. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- C. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- D. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 17 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Sexual activity shall have the same meaning as “sexual act” and “sexual contact” as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).

Sexual assault/violence is a physical sexual act perpetrated against a person’s will or where a person is incapable of giving consent. Such acts include, but are not limited to, rape, sexual battery and sexual coercion.

Sexual contact means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Sex discrimination includes all forms of: sexual harassment, sexual assault, and sexual violence by employees, students, or third parties against employees, students, or third parties. Students, College employees, and third parties are prohibited from harassing other students and/or employees whether or not the incidents of harassment occur on the College campus and whether or not the incidents occur during working hours. All acts of sex discrimination, including sexual harassment and sexual violence, are prohibited by College policy.

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;

- Knowingly transmitting an STI or HIV to another student;
- Exposing one's genitals in non-consensual circumstances;
- Inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Sexual harassment is unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Stalking means intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional distress. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimidate, annoy, or alarm him or her.

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

Title IX Coordinator shall mean the Title IX Coordinator and/or their designee or designees.

Title IX Investigators assist the Title IX Coordinator in responding to reports of sex discrimination, sexual harassment, sexual assault/violence, stalking, dating violence, and domestic violence.

Violence Against Women Act ("VAWA") Under The Violence Against Women Act, colleges and universities are required to: (1) report dating violence, domestic violence, sexual assault, and stalking, beyond crime categories the Clery Act already mandates; (2) adopt certain student discipline procedures, such as for notifying purported victims of their rights; and (3) adopt certain institutional policies to address and prevent campus sexual violence, such as to train in particular respects pertinent institutional personnel.

Victim/survivor: a person who suffers personal, physical, or psychological injury. These policies use "reporting individual" as encompassing the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings for a report of a violation.

Legal Definitions and Consequences

New York State Education Law and Penal Law contain the following legal provisions defining the crimes related to sexual harassment and sexual violence:

NYS Education law section 6432 – Sexual Assault Prevention Information. Each college shall inform incoming students about sexual assault prevention measures and available resources and services.

NYS Penal Law Article 130:

Section 130.20 – Sexual Misconduct. This offense includes sexual intercourse without consent and deviate sexual intercourse without consent. The penalty for violation of this section includes imprisonment for a definite period to be fixed by the court up to one year.

Section 130.25/.30/.35 – Rape. This series of offenses includes sexual intercourse with a person incapable of consent because of the use of forcible compulsion or because the person is incapable of consent due to a mental defect, mental incapacity, or physical helplessness. This series of offenses further includes sexual intercourse with a person under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed four years up to imprisonment for a period not to exceed 25 years.

Section 130.40/.45/.50 – Criminal Sexual Act. This series of offenses includes oral or anal sexual conduct with a person incapable of consent because of the use of forcible compulsion or because the person is incapable of consent due to a mental defect, mental incapacity, or physical helplessness. This series of offenses further includes oral or anal sexual conduct with a person under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed four years up to imprisonment for a period not to exceed 25 years.

Section 130.52 - Forcible Touching. This offense involves the forcible touching of the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. Forcible touching includes the squeezing, grabbing, or pinching of such other person's sexual or other intimate parts. The penalty for violation of this section includes imprisonment for a period of up to one year in jail.

Section 130.55/.60/.65 – Sexual Abuse. This series of offenses includes sexual contact with a person by forcible compulsion, or with a person who is incapable of consent due to physical helplessness, or due to the person being under the age of consent. The penalties for violation of these sections range from imprisonment for a period not to exceed three months up to imprisonment for a period not to exceed seven years.

Section 130.65-a/.66/.67/.70 – Aggravated Sexual Abuse. This series of offenses occurs when a person inserts a finger or a foreign object in the vagina, urethra, penis or rectum of another person by forcible compulsion, when the other person is incapable of consent by reason of being 24 physically helpless, or when the other person is under the age of consent. The level of this offense is enhanced if the insertion of a finger or foreign object causes injury to the other person. The penalties for violation of these sections range from imprisonment for a period not to exceed seven years up to imprisonment for a period not to exceed 25 years.

Section 130.90 – facilitating a sex offense with a controlled substance. This offense occurs when a person knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance without such person's consent and with intent to commit against such person a sexual offense as defined in Article 130. Facilitating a sex offense is a class D felony punishable by a period of up to seven years.

GRIEVANCE POLICY for Addressing Formal Complaints of Sexual Harassment *Under the Title IX Regulations*

Introduction

What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how Pomeroy College of Nursing must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that the College must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment. See, 85 Fed. Reg. 30026 (May 19, 2020).

Based on the Final Rule, Pomeroy College of Nursing will implement the following Title IX Grievance Policy, effective August 14, 2020.

How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, the College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

Pomeroy College of Nursing remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Specifically, our campus has:

- A Code of Student Conduct that defines certain behavior as a violation of College policy, and a separate Sexual and Interpersonal Violence Response Policy that addresses the types of sex-based offenses constituting a violation of College policy, and the procedures for investigating and adjudicating those sex-based offenses.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the College retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Sexual and Interpersonal Violence Response Policy through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Student Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX Coordinator and reporting structure remains in place. What has changed is the way the College will handle different types of reports arising from sexual and interpersonal violence, including but not limited to sexual misconduct, as detailed in full throughout the following section.

The Title IX Grievance Policy

General Rules of Application

Effective Date – this Title IX Grievance Policy became effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior

to August 14, 2020 will be investigated and adjudicated according to the Title IX Grievance Policy if a case is not complete by that date.

Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Sexual Misconduct and Sexual Harassment Policy.

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

Definitions

Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) 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.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of 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 New York domestic or family violence laws 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 New York.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Sexual and Interpersonal Violence Response Policy.

Consent

For the purposes of this Title IX Grievance Policy, affirmative “consent” means is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.

Education Program or Activity

For the purposes of this Title IX Grievance Policy, The College’s “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that Crouse Health has substantial control over
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the College’s programs and activities over which Pomeroy College of Nursing has substantial control

Formal Complaint

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Pomeroy College of Nursing’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Complainant

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Relevant Evidence and Questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020)

Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Privacy vs. Confidentiality

Consistent with Sexual and Interpersonal Violence Response Policy, references made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Pomeroy College of Nursing employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Disability Accommodations

This Policy does not alter any College obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other College programs and activities.

Making a Report Regarding Covered Sexual Harassment to the College

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

Contact Information for the Title IX Coordinator:

Ryan Barker, Title IX Coordinator
 310 Marley Education Center
 315-470-5710
ryanbarker@crouse.org

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Confidential Reporting

The following College officials will provide **privacy**, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator
- Title IX Investigators

*Note that no Pomeroy College of Nursing employee can maintain confidentiality in any Title IX matter and must make a report to the Title IX Coordinator.

Crouse Health staff working in the following areas may provide **confidentiality**:

- HelpPeople
- Crouse Emergency Services

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from the College regardless of whether they desire to file a complaint. Supportive measures are non-disciplinary and non-punitive.

As appropriate, supportive measures may include, but not be limited to:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of class, clinical or lab schedules
- Restrictions on contact between the parties (no contact orders)
- Change in on-campus housing location
- Leaves of absence

Emergency Removal

Pomeroy College of Nursing retains the authority to remove a respondent from College programs or activities on an emergency basis, where the College (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If the College determines such removal is necessary, the respondent will be provided notice and an opportunity to appeal the decision immediately following the removal.

Interim Suspension may be implemented by the Dean or designee when:

- The presence or alleged action of a student may pose an imminent threat to the safety of the campus community or any of its members.

For cases falling outside the Title IX Grievance Policy, interim suspensions may also occur:

- To preserve College property,

- the student poses a threat of disruption or interference with the normal operations of the College, or
- can reasonably be deemed to expose the campus community or any of its members to additional harm in a future context.

The student may request access to campus and/or information on the basis to invoke interim suspension by writing to the Dean. At the discretion of the Dean and in collaboration with, the appropriate College staff, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding student.

Administrative Leave

Pomeroy College of Nursing with support of Crouse Health Human Resources retains the authority to place an employee respondent on administrative leave during the Title IX Grievance Process, consistent with collective bargaining agreements, and/or applicable College/institution policies.

The Title IX Grievance Process

Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will generally be concluded within a reasonably prompt manner, and no longer than 120 business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Pomeroy College of Nursing, including as an employee.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The College will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy, Sexual and Interpersonal Violence Response Policy prevents a complainant from seeking the assistance of local or New York State law enforcement alongside the appropriate on-campus process.

Multi-Party Situations

The College may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Determining Jurisdiction

The Title IX Coordinator will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Pomeroy College of Nursing's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, the College will investigate the allegations according to the Grievance Process.

Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

Mandatory Dismissal

If any one of the elements above are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

Discretionary Dismissal

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Crouse Health or,
- If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the College will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

Notice of Removal

Upon dismissal for the purposes of Title IX, the College retains discretion to utilize Sexual and Interpersonal Violence Response Policy to determine if a violation of Sexual and Interpersonal Violence Response Policy has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the student conduct process.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable after the College receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A statement that misrepresentation, as cited in the Code of Conduct, prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Ongoing Notice

If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the College will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisor of Choice and Participation of Advisor of Choice

The College will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The College requires students to participate in the process (if they choose to) directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Pomeroy College of Nursing.

The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed under this Policy, and Pomeroy College of Nursing cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College.

Notice of Meetings and Interviews

Pomeroy College of Nursing will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Dean designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, or designee shall have sole judgment to grant further pauses in the investigative process. The Dean, or designee shall have sole judgment to grant further pauses in the hearing process.

Investigation

General Rules of Investigations

Title IX Investigator(s) designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

Pomeroy College of Nursing and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

The College cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information the College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the College in making a determination regarding responsibility;
2. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

The College will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. The College is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

Investigative Report

The Title IX investigator(s) designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) business days prior the hearing in an electronic format or a hard copy for each party's review and written response. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

Hearing

General Rules of Hearings

Pomeroy College of Nursing will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom or similar application. This technology will enable participants simultaneously to see and hear each other. At its discretion, the College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording. That recording or transcript will be made available to the parties for inspection and review. Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

Continuances or Granting Extensions

Pomeroy College of Nursing may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Participants in the Live Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The parties)

- The parties cannot waive the right to a live hearing.
- The College may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
 - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.
- The College will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to the institution's Rules of Decorum

The Decision-maker

- The hearing body will consist of a panel of three to five members; at no time will there be less than three members on a Board.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, The College will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the institution's Rules of Decorum, and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the institution's Rules of Decorum.

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Chair will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Board will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Board conducts its initial round of questioning; During the Parties' cross-examination, the Board will have the authority to

pause cross-examination at any time for the purposes of asking the Board's own follow up questions; and any time necessary in order to enforce the established rules of decorum.

- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Chair. A Party's waiver of cross-examination does not eliminate the ability of the Board to use statements made by the Party.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Chair and the Board will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Board may be deemed irrelevant if they have been asked and answered.

Review of Transcript or Recording

The recording or transcript of the hearing will be available for review by the parties within 10 business days, unless there are any extenuating circumstances. The recording or transcript of the hearing will not be provided to parties or advisors of choice.

Determination Regarding Responsibility

Standard of Proof

Pomeroy College of Nursing uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that the College allow parties to call "expert witnesses" for direct and cross examination. Pomeroy College of Nursing does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that the College allow parties to call character witnesses to testify. Pomeroy College of Nursing does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that the College admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness' credibility.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Student Code of Conduct, if any, the respondent has or has not violated.
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Pomeroy College of Nursing within five (5) business days of the completion of the hearing.

Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Appeals

Each party may appeal:

1. The dismissal of a formal complaint or any included allegations and/or;
2. a determination regarding responsibility.

To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the College’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the College will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals should be submitted in a typed, electronic format using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by the Appeal Hearing Board, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

Retaliation

Pomeroy College of Nursing will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.