

# **New York College of Podiatric Medicine**

## **Title IX and Sexual Misconduct Policy**

### **I. Introduction**

The New York College of Podiatric Medicine (“NYCPM”) is committed to ensuring that discrimination and harassment will not be tolerated in the NYCPM community. All members of the NYCPM community must be able to study and work in an atmosphere that does not tolerate discrimination and harassment. It is NYCPM’s goal to foster an environment that is free from these transgressions.

NYCPM does not discriminate on the basis of sex in its education programs and activities. Sexual harassment, sexual assault and other types of sexual misconduct are forms of sex discrimination. NYCPM maintains processes, in accordance with applicable federal and state laws and NYCPM policies, to provide remedy, assistance and support to individuals who believe they have been subjected to these acts.

Students who believe they have experienced violations of this Policy are encouraged to report the situation so that NYCPM can provide them with support, investigate and remedy the incident, and take any other necessary steps to protect and strengthen the NYCPM community.

### **II. Conduct Covered by this Policy**

This Title IX Policy applies to instances of sexual harassment, assault, and misconduct, gender-based harassment, domestic violence, stalking, and dating violence, all of which constitute forms of sex discrimination.

Any individual can experience sexual violence, harassment or misconduct regardless of sex, gender or sexual orientation.

This Policy applies whenever a student believes that he, she or they have experienced sexual violence, harassment or misconduct, regardless of whether the incident at issue occurred on or off campus.

This Policy does *not* apply to complaints against individuals who are not part of the NYCPM community. In those instances, NYCPM will support the student in reporting the incident to the Chief Human Resources Officer, or the police. Additionally, NYCPM will offer counseling and other resources to the student in accordance with this Policy.

### **III. Title IX Coordinator**

Joel A. Sturm, COO and VP for Administration is the Title IX Coordinator at NYCPM. Lisa Lee, Dean of Students Coordinates with Joel Sturm on these issues.

The Title IX Coordinator’s office is located in the Executive offices on the 2<sup>nd</sup> floor. He can be contacted by telephone at (212) 410-8047; or email at [Jsturm@nycpm.edu](mailto:Jsturm@nycpm.edu).

The Title IX Coordinator’s responsibilities include but are not limited

to:

- (1) Providing oversight for all Title IX procedures, including the filing of complaints and related disciplinary proceedings, to ensure compliance with Title IX;
- (2) Serving as a resource for students who believe they have experienced any act of sexual violence, harassment, or misconduct, as discussed in this Policy;
- (3) Identifying broader systemic issues or patterns in the NYCPM community regarding sexual misconduct that must be addressed; and
- (4) Conducting and supporting training initiatives that will educate all NYCPM community members concerning issues of sexual violence, harassment, and misconduct as well as the NYCPM Title IX policy.

#### **IV. Applicable Definitions**

##### **A. Sexual Assault**

Sexual assault is prohibited by New York law and this Policy. Sexual assault includes:

- (1) Sexual intercourse by any person upon another without consent, including oral, anal, and vaginal penetration, however slight, with any object; and
- (2) Sexual contact without consent, including any touching that is sexual in nature by any person upon another.

Sexual assault may also include dating violence and/or domestic violence, as defined below and by the Violence Against Women Act.

##### **B. Sexual Harassment**

Sexual harassment is prohibited by New York law as well as this Policy.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other unwanted verbal or physical conduct that is sexual in nature when:

- (1) Submission to or rejection of such conduct is made, either expressly or implicitly, a term or condition of employment, educational benefits, participation in services or activities, and/or a basis of educational or employment-related evaluation or other decisions; and/or
- (2) Such conduct is so severe or pervasive that it has the purpose or effect of interfering with an individual's education, academic performance or work performance and/or creating an intimidating, hostile, humiliating or offensive environment, based on a reasonable person standard.

Sexual harassment includes a range of conduct and may involve individuals of the same or different sex. Sexual harassment may also include stalking, as defined below and by the Violence Against Women Act.

### **C. Dating Violence**

Dating violence is prohibited by New York law and this Policy.

Dating violence includes violence committed by a person who is or has been in a romantic or intimate relationship with the victim. Whether the relationship is deemed a romantic or intimate relationship will be evaluated based on its length, the type of relationship, and the frequency of interaction between those involved in the relationship.

### **D. Domestic Violence**

Domestic violence is prohibited by New York law and this Policy.

Domestic violence includes felony and misdemeanor violent offenses committed by a current or former spouse or cohabitant, by a person with whom the victim shares a child in common, by a person similarly situated under domestic or family violence law and/or by any other person against a victim who is protected under the state domestic or family violence laws.

Under New York Law, domestic violence includes any act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and

- (i) such act or acts have resulted in actual physical or emotional injury or have created substantial risk of physical or emotional harm to person or such person's child and
- (ii) such act or acts are alleged to have been committed by a family or household member.

(As per N.Y. Soc. Serv. § 459-a.)

### **E. Stalking**

Stalking is prohibited by New York law and this Policy.

Stalking means a course of conduct directed at a specific individual that would cause a reasonable person to fear for his, her, or their safety, fear for another individual's safety, and/or suffer substantial emotional distress.

This conduct may include, but is not limited to, making unsolicited and/or unwanted telephone calls, sending unsolicited and/or unwanted letters, gifts or messages (including but not limited to texts, emails, instant messages and social media communications), spying, use of social media, spreading rumors and/or following the victim. A definition of stalking under New York

law can be found in Penal Code §§ 120.44, 120.50, 120.55 and 120.60.

#### **F. Gender-based Harassment**

Gender-based Harassment is prohibited by New York law and this Policy.

Gender-based harassment is verbal or physical acts that demonstrate hostility towards or disparages an individual due to conforming with or failing to conform to stereotypes based on gender, including an individual's perceived masculinity or femininity, and that has the purpose or effect of interfering with an individual's education, academic performance, or work performance and/or creating an intimidating, hostile, humiliating or offensive environment, based on a reasonable person standard.

#### **G. Affirmative Consent**

An individual who engages in sexual activity without affirmative consent violates New York law and this Policy.

The following definition is adapted and adopted from New York's Enough Is Enough Act:

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.

## **H. Retaliation and Intimidation**

Retaliation and intimidation is prohibited under New York law and this Policy.

Any conduct that harasses or intimidates an individual to prevent or obstruct the reporting of a violation of this Policy in response to the individual's decision to report a potential violation, file a complaint or cooperate with an investigation of such a complaint.

## **V. Confidentiality**

Students who believe they have experienced violations of this Policy are encouraged to meet with someone to receive support, obtain information about their options, and learn about available resources. **Depending on whom a student chooses to speak with, there are limits on the level of confidentiality afforded to the shared information.** Students are encouraged to consider the following information when making this decision.

### **A. Confidential Resources**

Confidential communications include conversations which, pursuant to the law, cannot be disclosed to another person without the speaker's consent, unless the communications involve an imminent threat or danger to the speaker or others.

NYCPM students have access to the Icahn School of Medicine's Dept. of Psychiatry and psychological services. Please note, however, that the health care professionals at the Icahn School of Medicine at Mt. Sinai Hospital are not NYCPM employees. Health care professionals are not required to report identifying information concerning a possible violation of this Policy to the Title IX Coordinator.

- For more information, please contact Dr. Maria Edman at [Maria.Edman@MSSM.edu](mailto:Maria.Edman@MSSM.edu)

In order to identify patterns or systemic issues related to violations of this Policy, NYCPM may collect *non-identifying* data from confidential resources. All personally identifiable information will remain confidential when provided to confidential resources.

### **B. Mandated Reporters**

Students who believe they have experienced violations of this Policy may also meet with the following NYCPM employees ("Designated Officials"):

- Chief Operating Officer
- Academic Dean
- Dean of Student Affairs
- Director of Financial Aid/Admissions
- Director of Housing/Campus Services
- Assistant Dean of Academic Administration
- Assistant Dean Clinical Clerkships and Affiliations

Excluding the confidential resources noted above, **the Designated Officials and all other NYCPM employees, including but not limited to professors, housing/campus services staff, student affairs staff including student life assistants, are considered mandated reporters, and are required to report any possible violation of this Policy to the Title IX Coordinator and to NYCPM Security.**

Any mandated reporter, including Designated Officials, must report the claims, even if the student confiding in them requests that his, her, or their conversation be kept confidential. These employees will maintain the student's privacy to the extent possible, but will be required to inform the Title IX Coordinator of any information that is necessary for an investigation of the claims. The information provided to a non-confidential resource will be relayed only as necessary for NYCPM to investigate and/or seek a resolution.

NYCPM will take reasonable steps to maintain the confidentiality of records produced in the investigation and hearing process; to the extent it is possible. However, NYCPM cannot and does not guarantee that confidentiality will remain protected. Confidentiality must be consistent with the requirements under Title IX as well as the Clery Act.

If the reporting student does not want to file a formal complaint, to supply a name or other identifying information when reporting a potential violation and/or to proceed with an investigation, the Title IX Coordinator must weigh the student's request against NYCPM's obligation to provide a non-discriminatory, safe environment for the NYCPM community. The Title IX Coordinator will make its determination based on these considerations. The Title IX Coordinator may decide that a student's request cannot be honored when NYCPM's failure to investigate could cause a hostile or unsafe environment, or would violate Title IX or this Policy.

## **VI. Resources for Individuals who Experience Sexual Misconduct**

There are a number of on-campus and off-campus resources available to offer assistance after an incident of sexual violence or misconduct.

NYCPM encourages all students affected by gender-based misconduct to seek immediate assistance. Seeking assistance promptly may be important to ensure a student's physical safety or to obtain medical care, emotional support, or other support; it may also be necessary to preserve evidence, which can assist NYCPM and/or law enforcement in responding effectively. Assistance is available twenty-four hours a day, seven days a week. After experiencing a traumatizing event such as sexual assault, it can be important to find a place where you feel comfortable and safe from harm and get help from a friend or NYCPM staff member or NYCPM security personnel.

- If you've been sexually assaulted, it is very important to receive medical care as soon as possible.

***Important: To preserve evidence, do not shower, bathe, brush teeth, change clothing or drink liquids before going to the hospital or the police after experiencing an act of sexual assault or other misconduct.***

(i) **Resources for Immediate Assistance:**

- **911 or NYCPM Security (212) 810-8029**

- **Wyckoff Heights Medical Center: Violence Intervention Treatment Program**

<https://www.wyckoffhospital.org/patients-visitors/services-facilities/patient-information/services-for-victims-of-violence>

The VITP at Wyckoff Heights Medical Center (WHMC) is a program serving clients who are primary or secondary victims of domestic violence, sexual assault/rape or other crime. Referrals are received from hospital departments/clinical services, individuals within the community, or other community service providers. All services are free and confidential regardless of sex, gender expression or immigration status. The program has a Rape Crisis Advocate on call service to assist in the Emergency Department during the evenings, weekends and holidays. These advocates provide emotional support, advocacy, information and assistance to the victim (age 12 and above) in the Emergency Department. They are certified by NYS Department of Health to become advocates after the completion of required training.

- The New York City Police Department at 911 can help with criminal sexual misconduct, including sexual assault, dating violence, stalking and domestic violence. If an individual reports an assault to the police, a member of the Special Victims Squad may contact him or her. You can also call the Special Victims Division directly at (646) 610-7272.
- St. Luke's Crime Victims Treatment Center (CVTC) Advocates and services can be reached by calling (212) 523-4728.
- Reports of criminal sexual misconduct may also be directed to the NYPD's sex crimes hotline at (212) 267-RAPE or the Manhattan District Attorney's hotline at (212) 335-9373.

(ii) **Counseling Resources for NYCPM:**

- The Title IX Coordinator and any of the Designated Officials listed above may also provide assistance after an incident of sexual misconduct. **Important:** as discussed above, these individuals are required to report the incident and a student's identifying information to the Title IX Coordinator and NYCPM Security. As mentioned above, NYCPM Counseling Center and its staff of therapists are completely confidential and are not required to report any conversations involving sexual harassment or assault.
  - Joel Sturm, COO and VP for Administration, is the Title IX Coordinator at NYCPM. His office is located within the executive offices on the 2<sup>nd</sup> floor. He can be contacted by telephone at (212) 410-8047; or email at [JSturm@nycpm.edu](mailto:JSturm@nycpm.edu)
  - Lisa Lee, Dean of Students, her office is located within the Student Life area on the 1<sup>st</sup> floor. She can be contacted by telephone at (212) 410-8007; or email at [LLee@nycpm.edu](mailto:LLee@nycpm.edu)

- Off-campus Resources
  - o Crime Victims Treatment Center, 411 West 114 Street at (212) 523-4728
  - o Safe Horizon Sexual Assault 24-hour Hotline at (866) 689-HELP
  - o National Domestic Violence Hotline at 1-800-656-HOPE (4673)
  - o National Teen Dating Abuse Helpline at 1-866-331-8453
  - o Stalking Resource Center at 1-202-467-8700
  - o NotAlone at <https://www.notalone.gov> (federal VAWA website)
  - o NY Hotline for reporting sexual assaults on campuses at 1-844-845-7269

## **VII. Filing a Complaint with NYCPM**

If a student believes they have experienced sexual assault, harassment and/or any other violation of this Policy, he, she or they may choose to file a complaint with NYCPM, the police, or both. Students, faculty and staff can also report an alleged incident to NYCPM even if they are not the victim.

To file a complaint with NYCPM and initiate the discipline process, a student should contact the Title IX Coordinator at (212) 410-8047 [JSturm@nycpm.edu](mailto:JSturm@nycpm.edu) or the Dean of students at (212) 410-8007 or [LLee@nycpm.edu](mailto:LLee@nycpm.edu) where the individual will explain the complaint and discipline procedures as well as provide resources to the student. They will also assist the student in drafting the complaint, if requested.

As explained above, if a student discusses a potential violation of the Policy with any employee, the employee is required to relay the necessary information to the Title IX Coordinator for investigation.

Students are encouraged to file a complaint as soon as possible after the incident. There is no deadline for filing a complaint. However, the Respondent must be enrolled at NYCPM at the time the complaint is made and throughout the entire disciplinary process for any disciplinary action to be taken against the Respondent. If a Respondent is no longer enrolled, NYCPM will still conduct an investigation of the complaint.

In addition, a promptly filed complaint will improve NYCPM's ability to gather all relevant information, and thus, timeliness increases NYCPM's ability to fully investigate the complaint.

A student has the right to make a report to the Title IX Coordinator, NYCPM security, local law enforcement and/or state police and also has the right to choose not to report. NYCPM will take all steps available to protect the student from retaliation for reporting an incident and will provide assistance and resources to support the student.

If a student discloses information regarding a past incident of sexual violence or harassment at a public event, or on social media, such as a Facebook page, such disclosure shall not be deemed notice to NYCPM of such incident and NYCPM is not obligated to begin an investigation based on that information. Information disclosed at public events and on social media may influence NYCPM's efforts to provide educational or prevention resources.

## **VIII. Alcohol and Drug Use Amnesty**

The health and safety of every student at NYCPM is of utmost importance. NYCPM

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. NYCPM strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials.

A reporting individual or bystander, acting in good faith, who discloses any incident of domestic violence, dating violence, stalking or sexual assault to NYCPM officials or law enforcement will not be subject to NYCPM 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.

(Adapted and adopted from New York's Enough is Enough Act)

### **IX. Protection from Retaliation**

NYCPM will not tolerate any retaliation or discrimination against a person and/or his, her or their family and friends, who files a complaint, reports an alleged violation of this Policy, cooperates in an investigation, acts as a witness, or participates in the discipline process described in this Policy.

If an individual believes he, she or they have experienced retaliation due to his, her or their participation in any portion of the procedures described in this Policy, he, she or they should report the alleged retaliation to the Title IX coordinator immediately. The alleged retaliation will be investigated and, if a violation is found, the Respondent in the proceeding addressing the retaliation will be subject to disciplinary action.

### **X. Reporting to the Police**

A student may decide to file a criminal report with the New York City Police Department or other local law enforcement. If a student decides to file a criminal report, NYCPM will assist the student in contacting the appropriate law enforcement officials.

Any questions regarding whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney.

The NYCPM complaint and discipline process operates separately from the police and criminal justice system. NYCPM will investigate alleged violations of this Policy regardless of whether a student chooses to file a report with the police or to pursue charges.

Additionally, NYCPM will not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation of the allegations. NYCPM may choose or be required to delay its proceedings until a portion of the criminal investigation has been completed. This delay should not last longer than 10 days unless law enforcement requests or the situation validates a longer delay.

The standards for finding a violation of criminal law are different from the lower standards of proof which colleges and universities are required to follow. Accordingly, the outcome of a criminal investigation does not determine whether sexual misconduct has occurred under this Policy. Conduct may violate this Policy even though the DA determines that there is insufficient evidence to prosecute the alleged crime.

The below chart details the differences between the criminal justice system and the College Title IX Process.

## A Plain Language Explanation of Distinctions between the New York State Penal Law and the College Disciplinary Processes

Adopted from <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/> Published: October 28, 2015

	<b>Criminal Justice System</b>	<b>College/University Disciplinary System</b>
<b>Goals.</b>	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
<b>Governing Law.</b>	New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular colleges and universities.
<b>How to report and whether there must be action once a report is made.</b>	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various college employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the institution’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
<b>Who investigates?</b>	Police or other law enforcement officials.	Investigators employed or retained by the college or university; these individuals may work for different departments within the institution, including, but not limited to, the police/public safety department, student affairs and academic affairs.
<b>Procedures</b>	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	College/University policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures.
<b>Standard of Evidence.</b>	Crimes must be proven “Beyond a Reasonable Doubt”	A violation of disciplinary rules must be found by a “Preponderance of the Evidence” (more likely than not)
<b>Confidentiality.</b>	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Colleges and universities offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.

<b>Privacy.</b>	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the college, the parties, and pursuant to law.
<b>Who are the parties?</b>	The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	Varies by school—some consider the institution and the respondent to be parties, and confer on the reporting individual certain rights to participate, as the law provides. Otherwise, reporting individual and accused/respondent.
<b>Participation in the process.</b>	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual’s participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in the college process. However, a college will be limited in its ability to respond if a reporting individual does not participate.
<b>Who initiates the proceedings?</b>	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The college or university initiates proceedings. While rules vary from school to school, they most provide an active role for the reporting individual.
<b>Testimony.</b>	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	The rules are established by individual colleges and universities, but some institutions provide for alternative approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel, investigator, or representative of the reporting individual and/or respondent.
<b>Role of attorneys.</b>	Both the state and the defendant are represented by counsel; counsel may question witnesses.	Varies by school. Many permit the parties to be advised by attorneys but some limit the attorney's’ roles to quietly speaking with their clients or passing notes.
<b>Mental Health and Sexual History.</b>	In New York, a reporting individual’s prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact finding phase of the disciplinary process.
<b>Possible Results.</b>	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> <li>• plead guilty or “no contest”</li> <li>• have the case dismissed by the judge (on legal grounds)</li> <li>• be found “guilty” or “not guilty” by a judge or jury</li> </ul>	In cases that do not involve sexual assault, some schools permit mediation or similar procedures if parties agree. If there is a formal proceeding, the respondent may be found “responsible” or “not responsible” for violations of the institution’s rules. Respondents may also accept responsibility before a finding by an adjudicator.
<b>Sanctions.</b>	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating college policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the institution.

## **XI. Orders of Protection**

A student may also wish to seek an order of protection from a court. Students who decide to seek an order of protection will receive assistance from NYCPM to do so, generally with the help of a local agency.

After an order of protection is issued, both parties may meet with a NYCPM employee who will explain the terms of the order, including the potential sanctions for its violation, and answer questions regarding it. NYCPM will help to contact the New York Police Department or other local law enforcement if it becomes aware that the order has been violated.

## **XII. Informal Resolution**

NYCPM community members have the option to attempt to reach a resolution between the Complainant and Respondent through informal means unless accusations of sexual violence, domestic violence, stalking or dating violence are involved. Complaints involving allegations of sexual violence, domestic violence, stalking or dating violence must be resolved through the formal procedures. If the Complainant agrees, the Title IX Coordinator can contact the Respondent to request his, her or their participation in the mediation process. Both parties must agree to participate in the mediation.

The mediation process will be conducted by a trained individual. If the parties can reach a mutually satisfactory resolution, the matter will be considered final without a formal investigation and hearing panel determination.

If the Complainant or Respondent decides that he, she or they do not want to participate in an informal resolution at any time, the informal resolution efforts will end. The matter will then proceed to a formal investigation and hearing panel determination.

There is no appeal option after the parties reach a resolution through informal means.

## **XIII. Investigation and Hearing Panel Procedures**

### **A. Investigation**

After receiving information regarding an alleged violation of this Policy, NYCPM has the obligation to investigate the allegations and may pursue disciplinary action. The investigation will be conducted in an impartial, prompt, thorough, and respectful manner.

The Complainant may withdraw his, her or their complaint at any time. As noted above, however, if the reporting party withdraws the complaint, requests confidentiality or does not wish to pursue an investigation, NYCPM is required to balance that request against its obligation to ensure a safe, non-discriminatory environment for its entire community to determine whether an investigation will still occur.

The investigation will be conducted by the Title IX Coordinator or his/her designee. The Title IX Coordinator has received training on how to investigate in a manner that protects the safety of the parties and promotes accountability.

If there is a perceived conflict with the Title IX Coordinator or the complaint involves the Title IX Coordinator, the President and Vice President of Administration will select an alternate employee who has received acceptable training to conduct the investigation.

First, the investigator will conduct an initial review of the complaint and determine if it alleges a violation of this Policy. If the complaint does not describe a potential violation, the complaint will be dismissed. The Complainant will be informed of this outcome and his, her or their right, if applicable, to an appeal.

If the complaint describes a possible violation, the investigator will notify the Respondent that a complaint has been filed against him, her or them and provide the Respondent with a copy of the complaint. The investigator will request that the Respondent submit a written response to the complaint within a reasonable time period, as selected by him/her.

At this time, the Title IX Coordinator will meet with both parties separately to discuss the investigation and hearing panel process and procedures.

If an investigation is implemented, the investigator will gather evidence relating to the alleged violation of this Policy from various sources. The investigator will conduct interviews of the Complainant, Respondent, and, when appropriate, third-party witnesses. The investigator will also collect any other available evidence, such as relevant documents.

Both the Complainant and Respondent may provide other evidence to the investigator and/or recommend witnesses to her. The investigator will not consider purely character evidence.

Throughout the investigation, the Complainant and Respondent may seek advice from an advisor, including an attorney. The Complainant and Respondent may bring their advisor to their interview with the investigator. The advisor, however, may not answer questions on behalf of his or her client and may not ask questions.

Additionally, as discussed in detail below, NYCPM reserves the right to implement interim measures, as necessary, during the investigation and hearing panel process. At a minimum, the Complainant and Respondent will be instructed not to contact each other during the process.

After gathering the relevant evidence, the investigator will issue a report, and present it to the hearing panel. This report will include: the investigation's scope, a summary of findings, recommended charges, and, where appropriate, recommended restorative measures.

## **B. Hearing Panel Determination**

The hearing panel will consist of three persons, chosen from a pool of designated and trained faculty and staff at NYCPM based on availability (and excluding any members with a conflict of interest). The participants on the hearing panel will have received training on how to proceed with the process in a manner that protects the safety of the parties and promotes accountability.

Once it receives the investigator's report, the hearing panel will review it. The hearing panel may consult with NYCPM counsel or appropriate administrative officials regarding whether the

investigation was sufficient. If it deems it to be insufficient, it may request that the investigator continue the investigation.

Before making its decision, the hearing panel will provide the investigator's report to both the Complainant and the Respondent, simultaneously, so they may review it. The hearing panel must give the Complainant and Respondent a reasonable opportunity to submit written comments—generally within ten (10) business days—regarding the investigation, charges, and the investigator's recommendations.

The Complainant and Respondent also must be given the opportunity to address the hearing panel orally regarding the same. When the Complainant and Respondent address the hearing panel, they may bring their respective advisors if they so choose. The Complainant and Respondent will not be permitted to question or cross-examine each other at any time during this process.

The hearing panel also may, but is not required to, collect additional evidence and/or call additional witnesses after reviewing the investigator's report and considering the Complainant's and Respondent's statements.

Based on its review of the evidence, including the parties' written and oral statements, the investigator's report, and any additional information it has gathered, the hearing panel will determine whether the Respondent is responsible for violating this Policy.

The standard of proof for determining whether a violation has occurred is the "preponderance of the evidence" standard—whether it is more likely than not a violation occurred.

If the hearing panel determines that the Respondent committed a violation of this Policy, it will determine the appropriate sanctions. The possible sanctions are described in greater detail, below.

The Complainant and Respondent will be informed, in writing, of the hearing panel's decision. The parties will be notified of the outcome simultaneously. This notification will comply with the requirements of the Federal Education Right to Privacy Act (FERPA).

**Please refer to the Appendix to this Policy for additional information relating to the investigation and hearing procedures, including:**

- **The Students' Bill of Rights; and**
- **The Rights of the Complainant and Respondent.**

#### **XIV. Timeframe for the Disciplinary Process**

NYCPM will make every effort to complete the investigation and reach its decision regarding an alleged violation of this Policy within sixty (60) calendar days after the complaint is filed. Both parties will receive a response regarding the outcome of the complaint within five (5) business days of the hearing panel's determination, unless otherwise notified.

If circumstances occur in which more time is needed to complete the investigation or reach a responsibility determination, including but not limited to unavailable witnesses or the effect of a criminal investigation, NYCPM will notify both the Complainant and the Respondent of the

reasons for the delay and the expected resolution date.

Both the Complainant and the Respondent may request status updates from the Title IX Coordinator at reasonable intervals.

#### **XV. Interim Measures**

During an investigation and/or hearing, NYCPM has the right to impose certain interim measures if they are deemed necessary by the Title IX Coordinator. The Title IX Coordinator must consider the objective of ensuring equal access to NYCPM's education programs and activities to all students with any perceived need to protect the Complainant.

The interim measures implemented and the procedures for implementing them will differ based on the facts of each case and what measures may be possible or appropriate. Interim measures may include, but are not limited to:

- Prohibiting contact between the Complainant and Respondent;
- Providing counseling or academic support;
- Restricting the Respondent from areas of campus or residential areas;
- Changing class schedules and/or on-campus work schedules;
- Altering transportation arrangements; and/or
- Enforcing an interim suspension.

If NYCPM issues a "no contact" order, continued intentional contact between the Complainant and the Respondent will be prohibited. If the parties observe each other in a public place, the Respondent must leave the area immediately without contacting the Complainant.

If the Respondent poses a continuing threat to the health and safety of the NYCPM community, the Respondent may be subject to an interim suspension pending the outcome of the disciplinary process. This interim suspension will comply with all other NYCPM policies and procedures.

The failure to comply with these interim measures may be considered a violation of the Title IX Policy, and the violator will be subject to a conduct charge for his, her or their violation.

Upon the student's request and in accordance with NYCPM's policies, a student has the right to prompt review of the need for/terms of a "no contact" order, housing change, and/or interim suspension. A student may also ask for review of a request for additional interim measures, and submit evidence in support of the request.

#### **XVI. Sanctions**

If the hearing panel finds the Respondent responsible for violating this Policy, it may impose one or more of the following sanctions. The sanctions imposed will depend on the severity of the conduct and the number of violations that occurred.

Sanctions that may be imposed against a student include:

- A written warning or probation;
- Referral for Counseling, anger management, or substance abuse treatment (typically off- campus private providers);
- Required community service;
- Changes to his, her or their class schedule;
- Reassignment of housing;
- Removal from housing permanently or for a certain time period;
- Reassignment of campus employment or employment responsibilities;
- Removal from campus employment;
- Suspension; and/or
- Expulsion.

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), NYCPM will make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For a Respondent who withdraws from NYCPM while such conduct charges are pending, and declines to complete the disciplinary process, it will make a notation on the transcript of such students that they “withdrew with conduct charges pending.”

A student has the right to appeal such transcript notation to request its removal in the event of a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. (Adapted and adopted from the New York Enough is Enough Act)

## **XVII. Remedial Measures**

NYCPM may provide accommodations for the Complainant as part of the remedy, when appropriate. These accommodations may include, depending on the circumstances:

- Providing medical services;
- Providing counseling;
- Enforcing a no-contact order;
- Providing academic accommodations or support, such as tutoring; and/or
- Providing an escort to assist the Complainant in moving between classes and extracurricular activities.

NYCPM may also implement training, education or prevention programs for the NYCPM community, if appropriate.

## **XVIII. Appeal**

The Respondent and the Complainant may appeal the hearing panel's decision. This appeal must be made in writing within five (5) business days after notification of the hearing panel's decision and sent to the Title IX Coordinator.

An appeal may be made for only the following reasons:

- A procedural error significantly prejudiced the outcome for the appealing student;
- New information or evidence that was unavailable or unknown to the appealing student at the time of the investigation/hearing panel evaluation has been discovered and the consideration of this information or evidence may materially alter the outcome; and/or
- The sanctions were inappropriate for the Policy violation at issue.

The appeal will be considered by a three-member appeals panel consisting of employees at NYCPM, selected based on availability and excluding any member with a conflict of interest. An individual who was involved in the investigation or resolution process cannot be part of the appeals panel. The participants on the appeal panel will have received training on how to proceed with the process in a manner that protects the safety of the parties and promotes accountability.

If either party files an appeal, the other party will be notified and will have the opportunity to also submit a written response for the appeals panel to consider. This must be provided to the appeals panel within a reasonable time period, as decided by the panel.

The appeals panel will render a written decision based on the information in the parties' written statements on appeal, and the written record of the case, and will include in its decision the basis for such ruling. The appeals panel has the power to modify the outcome of the disciplinary proceedings or the sanctions imposed by the hearing panel, if it finds such actions are appropriate.

This decision will be issued within thirty (30) days of filing the appeal. The Complainant, Respondent, and hearing panel will be notified of this decision, in writing, simultaneously. This decision is final.

## **XIX. Policy on Consensual Relationships between Faculty and Students**

### **DEFINITIONS**

**Consensual relationship:** sexual relationship to which both parties have given their consent.

**Employee:** as used in this policy, the term includes all who are employed by the College, including but not limited to all categories of faculty, administrators, and staff, and those persons who are under contract or assignment by the College.

**Faculty:** as used in this policy, the term includes all teaching staff at the College, and senior members of the College's administration, including all department heads or heads of

functional areas, such as facilities, finance, operations, student services, and similar positions.

**Student:** as used in this policy, the term refers to currently enrolled individuals who are enrolled at the College.

## **TERMS OF THE CONSENSUAL RELATIONSHIP POLICY**

New York College of Podiatric Medicine (“College” or “NYCPM”) is characterized by its commitment to inclusion and openness. The College's tightly-knit social structure promotes a sense of community and collegiality between and among students, faculty, and employees. The College is committed to developing within the context of community the intellectual depth of individuals of all gender/sexual identities and expressions.

Consensual relationships are particularly perilous when the faculty member exercises a direct supervisory role over a student with whom she/he is romantically or sexually involved. Moreover, NYCPM has a relatively small faculty, and its curriculum specifies required courses, typically taught by specified members of its faculty the College is especially mindful that faculty members are in a position to impact a student’s vocational, academic, professional, and personal development.

**Therefore, New York College of Podiatric Medicine prohibits consensual relationships between faculty and students.**

Consensual relationships may indeed have positive aspects, heightening mutually supportive relationships between two persons. However, they may end in destructive ways. On occasion, the termination of a consensual relationship can evoke acrimony and rancor. Such emotions can negatively affect the student and/or the faculty member and disrupt the community. Thus, this policy is designed to promote the treatment of each member of the College with dignity and respect, and to eliminate the possibility of negative repercussions.

If, contrary to policy, a consensual relationship exists or develops between a faculty member and student, both the faculty member and student are required to disclose the nature of the relationship to a designated member of the administration (i.e., the President, the Academic Dean, the Assistant Dean of Academic Administration, Human Resources Director, Title IX Coordinator or the Dean for Student Affairs).

The president and academic dean are responsible for deciding the consequences for violating this policy on consensual relationships. Immediately upon the disclosure or discovery that a faculty member engaged in a consensual relationship with a student, she/he will be prohibited from any direct or indirect supervisory role vis-à-vis the student. In all such deliberations, administrators will proceed in a confidential, sensitive, and judicious manner, seeking the wellbeing of all involved.

Should a charge be made to a designated member of the administration or a Faculty member that this policy has been or is being violated; the College will investigate the charge and determine how to address any violation. The College will then determine whether to initiate processes outlined in this *Title IX and Sexual Misconduct Policy* or The Policies and Procedure Guidelines for All Employees sections 6.1.6, 6.1.7, 6.1.8, of the *Faculty Manual*.

Students aware of a potential violation of this policy or who have questions or concerns about the application of this policy should promptly contact the Title IX Coordinator.

## **XX. Education, Training and Prevention**

The Title IX Coordinator oversees legal compliance with prevention, education and training relating to sexual misconduct and violations of this Policy. The frequency and types of training will be determined each year by the Title IX Coordinator. This decision may depend on the circumstances at NYCPM that year.

All students and employees of NYCPM will be fully informed of the Title IX policy, reporting obligations, and the disciplinary procedure as well as education in prevention and intervention.

All individuals involved in the investigation and hearing panel procedure will receive training on Title IX issues in accordance with the law.

NYCPM provides an assortment of educational and training programs for students, faculty, and staff regarding sexual misconduct, assault and harassment. Examples of these programs include:

- Annual mandatory new student orientation;
- Training for general staff,
- Training for Student life staff
- Video Training programs, are also available in the Office of the COO

## **XXI. Reporting**

The Title IX Coordinator will maintain a confidential record of complaints regarding alleged violations of this Policy, including but not limited to reports of alleged sexual assault, sexual harassment, domestic violence, dating violence, and stalking for ten (10) years after a final decision is made, and may keep the records longer in his or her discretion.

The Title IX Coordinator will also keep records of investigation reports, decisions, and sanctions for ten (10) years after a final decision is made, and may keep the records longer in his or her discretion.

In compliance with the Clery Act and VAWA, NYCPM publishes an annual statistical report regarding crime on-campus, in non-campus buildings or properties and near campus. This report is available on the NYCPM website. NYCPM also issues warnings to the community regarding safety and security concerns and crimes that occurred near campus.

**APPENDIX**  
**Students' Bill of**  
**Rights**

All students have the right to:

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

(adopted from New York's Enough is Enough Act)

## **Rights of the Complainant and Respondent**

1. The right to request that student conduct charges be filed against the accused in proceedings governed by this article and the procedures established by the institution's rules.
  
2. The right to a process in all student judicial or conduct cases, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct that includes, at a minimum:
  - (i) notice to a Respondent describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;
  
  - (ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and
  
  - (iii) access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate an appeal, a Respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual must be similarly provided to a Respondent and any rights provided to a Respondent must be similarly provided to a reporting individual.
  
3. Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, the right:
  - (i) For the Respondent, accused, and reporting individual to be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process. Rules for participation of such advisor shall be established in the code of conduct.
  
  - (ii) To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the Respondent, including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
  
  - (iii) To an investigation and process that is fair, impartial and provides a meaningful

opportunity to be heard and that is not conducted by individuals with a conflict of interest.

(iv) To have the institution's judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

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

(vi) To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

(vii) To receive written or electronic notice, provided in advance pursuant to the college or university policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.

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

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

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

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

(xii) To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

(adopted from New York's Enough is Enough Act)