

THE CITY UNIVERSITY OF NEW YORK
POLICY ON SEXUAL MISCONDUCT and SEX DISCRIMINATION

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I. Policy Statement

Every member of The City University of New York community, including students, employees and visitors, deserves the opportunity to live, learn and work free from sex discrimination, sexual harassment, gender-based harassment and sexual violence.

It is the policy of the University—applicable to all colleges and units— to recruit, employ, retain, promote, and provide benefits to employees (including paid and unpaid interns) and to admit and provide services for students without discriminating on the basis of sex. Sex is broadly defined to include sexual orientation, gender and gender identity (including transgender status) as well as pregnancy, childbirth and related conditions. Sexual harassment, gender-based harassment and sexual violence, collectively referred to as “sexual misconduct”, are forms of sex discrimination specifically prohibited by this policy.

Accordingly, CUNY is committed to:

- 1) Defining conduct that constitutes prohibited sex discrimination and sexual misconduct;
- 2) Providing clear guidelines for students, employees and visitors on how to report incidents of sex discrimination and sexual misconduct;
- 3) Promptly responding to and investigating allegations of sex discrimination and sexual misconduct, pursuing disciplinary action when appropriate, referring the incident to local law enforcement when appropriate, and taking action to investigate and address any allegations of retaliation;
- 4) Providing ongoing assistance and support to students and employees who make allegations of sex discrimination and sexual misconduct;
- 5) Providing awareness and prevention information on sex discrimination and sexual misconduct, including widely disseminating this policy, as well as a “students’ bill of rights” and implementing training and educational programs on sex discrimination and sexual misconduct; and
- 6) Gathering and analyzing information and data that will be reviewed in order to improve safety, reporting, responsiveness and the resolution of incidents.

This is the sole policy at CUNY addressing sex discrimination and sexual misconduct, and is applicable at all college and units at the University. In accordance with federal, state and local law, discrimination based on numerous other protected characteristics is prohibited under CUNY’s Policy on Equal Opportunity and Nondiscrimination. In addition, the CUNY community should be aware of the following CUNY policies that apply to workplace violence and domestic violence that affect the workplace:

- The CUNY Campus and Workplace Violence Prevention Policy addresses workplace violence.
- The CUNY Domestic Violence in the Workplace Policy addresses domestic violence in or affecting employees in the workplace. <http://www2.cuny.edu/wp->

content/uploads/sites/4/page-assets/about/administration/offices/legal-affairs/CUNY-Campus-and-Workplace-Violence-Prevention-Policy-2.28.11-and-amended-9.26.2011.pdf

In addition, campus crime statistics, including statistics relating to sexual violence, which CUNY is required to report under the Jeanne Clery Act, are available from the Office of Public Safety at each college and/or on its Public Safety website.

II. **Prohibited Conduct**

A. **Sex Discrimination, Sexual Harassment, Gender-Based Harassment and Sexual Violence**

This policy prohibits sex discrimination and sexual misconduct (sexual harassment, gender-based harassment and sexual violence) against any CUNY student, employee or visitor.

Sex discrimination is treating an individual differently or less favorably because of sex, including sexual orientation, gender or gender identity (including transgender status), as well as pregnancy, childbirth and related conditions.

Sexual harassment includes unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities.

Gender-based harassment is unwelcome conduct of a nonsexual nature based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities.

Sexual violence is an umbrella term that includes: (1) sexual activity without affirmative consent, such as sexual assault, rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking/cyberstalking ("stalking") as defined in this policy.

The complete definitions of these terms, as well as other key terms used in this policy, are set forth in Section XI below.

- B. **Retaliation.** This policy prohibits retaliation against any person who reports sex discrimination or sexual misconduct, assists someone making such a report, participates in any manner in an investigation or resolution of a sex discrimination or sexual misconduct complaint, or opposes in a reasonable manner an act or policy believed to constitute sex discrimination or sexual misconduct.

- C. **Certain Intimate Relationships.** This policy also prohibits certain intimate relationships when they occur between a faculty member or employee and any student for whom he or she has a professional responsibility as set forth in Section X below.

III. Title IX Coordinator

Each college or unit of CUNY has an employee who has been designated as the Title IX Coordinator. This employee is responsible for compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination, including sexual harassment, gender-based harassment and sexual violence, in education programs. The Title IX Coordinator has overall responsibility for implementing this policy, including overseeing the investigation of complaints at her/his college or unit and carrying out the other functions of that position set forth in this policy. All Title IX Coordinators shall receive annual training on sex discrimination and sexual misconduct. The name and contact information for all Title IX Coordinators at CUNY can be found on the university's dedicated [Title IX website](#).

IV. Immediate Assistance in Cases of Sexual Violence

A. Reporting to Law Enforcement

Students or employees who experience any form of sexual violence on or off-campus (including CUNY-sponsored trips and events) and visitors who experience sexual violence on a CUNY campus are strongly encouraged to immediately report the incident by calling 911, contacting NYPD Special Victims Division or their local police precinct, or contacting their college public safety office, which is available 24 hours a day, 7 days a week. Each college public safety office shall have an appropriately trained employee available at all times to provide the complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. Campus public safety officers can also assist the complainant with filing a complaint both on and off-campus, and in obtaining immediate medical attention and other services.

B. Obtaining Immediate Medical Attention and Emotional Support

CUNY is committed to assisting anyone who experiences sexual violence to seek comprehensive medical attention as soon as possible to treat injuries, obtain preventative treatment for sexually transmitted diseases, and preserve evidence, among other things. For rapes in particular, immediate treatment and the preservation of evidence of the incident are important for many reasons, including facilitating a criminal investigation. In addition, individuals who have experienced or witnessed sexual violence are encouraged to seek emotional support as soon as possible, either on or off-campus.

On-campus resources include nurses and/or nurse practitioners at campus health offices and counselors at campus counseling centers. Counselors are trained to provide crisis intervention and provide referrals for longer-term care as necessary.

For off-campus resources, CUNY maintains a list of emergency contacts and resources, including rape crisis centers, available throughout New York City on its dedicated web page. This list includes a designation of which local hospitals are designated as SAFE (Sexual Assault Forensic Examiner) hospitals, which are specially equipped to handle sexual assaults and trained to gather evidence from such assaults. <http://www.svfreencyc.org/emergency-care/>

V. Reporting Sex Discrimination or Sexual Misconduct to the College

In order for the University to address allegations of sex discrimination or sexual misconduct, it has to learn about them. Accordingly, individuals who have experienced sex discrimination or sexual misconduct (referred to in this policy as “complainants”) are strongly encouraged to file a complaint with one of several designated campus officials, as outlined below. The designated officials are fully trained to intake complaints and to ensure that the complaint is investigated in accordance with this policy, and that complainants get necessary assistance.

Complainants who are complaining of sexual misconduct are encouraged to report the incident(s) to campus officials even if they have reported the incident to outside law enforcement authorities, and regardless of whether the incident took place on or off-campus (including “study abroad” programs.) Such reporting will enable complainants to get the support they need, and provide the college with the information it needs to take appropriate action. However, students should be aware that there are employees at their college/unit whom they can speak with on a strictly confidential basis before determining whether to make a report to college authorities. See Section VI below.

Complaints regarding off-campus conduct that involves a CUNY student or staff member will be treated in the same manner as complaints regarding on-campus conduct, to the fullest extent possible.

A. Where to File a Complaint on Campus

Complainants who have experienced sex discrimination or sexual misconduct should make a report to one of the following designated officials. Any report, whether oral or written, constitutes a complaint and will be addressed under this policy.

i. Students

Students should bring their complaint to one of the following campus officials/offices:

- Title IX Coordinator;
- Office of Public Safety;
- Office of the Vice President for Student Affairs and/or Dean of Students;
- Residence Life staff

ii. Employees

Employees should bring their complaint to one of the following campus officials/offices:

- Title IX Coordinator;
- Director of Human Resources;
- Office of Public Safety.

iii. Visitors

Visitors should bring their complaint to one of the following campus officials/offices:

- Title IX Coordinator;
- Office of Public Safety;
- Residence Life staff in CUNY owned or operated housing, including Resident Assistants.

<http://www1.cuny.edu/sites/title-ix/campus-websites/campus/university/>

Once any of the individuals or office representatives above is notified of an incident of sex discrimination or sexual misconduct, she/he will coordinate with the appropriate college offices to address the matter in accordance with this policy, including taking appropriate interim and supportive measures. These individuals will maintain a complainant's privacy to the greatest extent possible, and all information in connection with the complaint, including the identities of the complainant and the respondent, will be shared only with those who have a legitimate need for the information.

B. Support Assistance for Complainants Alleging Sexual Misconduct

i. Students

When a Title IX Coordinator receives a complaint of sexual misconduct from a student, she/he will work with the Chief Student Affairs Officer to identify a trained staff member to assist the complainant with support services.

ii. Employees

When a Title IX Coordinator receives a complaint of sexual misconduct from an employee, she/he will work with the Human Resources Director to assist the complainant with support services.

C. Request that the College Maintain a Complainant's Confidentiality, Not Conduct an Investigation, or Not Report an Incident to Outside Law Enforcement

After a report of an alleged incident of sex discrimination or sexual misconduct has been made to the Title IX Coordinator, a complainant may request that the matter be investigated without her/his identity or any details regarding the incident being divulged further. Alternatively, a complainant may request that no investigation into a

particular incident be conducted or that an incident not be reported to outside law enforcement.

In all such cases, the Title IX Coordinator will weigh the complainant's request against the college's obligation to provide a safe, non-discriminatory environment for all students, employees and visitors, including the complainant. A decision to maintain confidentiality does not mean that confidentiality can be absolutely guaranteed in all circumstances, but only that all efforts will be undertaken to keep information confidential consistent with law. Notwithstanding the decision of the Title IX Coordinator regarding the scope of any investigation, the college will provide the complainant with ongoing assistance and support, including, where appropriate, the interim and supportive measures set forth in Section VII of this policy.

If the Title IX Coordinator determines that she/he will maintain confidentiality as requested by the complainant, the college will take all reasonable steps to investigate the incident consistent with the request for confidentiality. However, a college's ability to meaningfully investigate the incident and pursue disciplinary action may be limited by such a request.

In any event, the college is required to abide by any laws mandating disclosure, such as the Jeanne Clery Act and New York's Campus Safety Act. However, notification under the Jeanne Clery Act is done without divulging the complaint's identity, and notification of sexual violence under the New York Campus Safety Act is not required and will not be done if the complainant requests confidentiality.

If the Title IX Coordinator determines that the college must report the incident to outside law enforcement, the college will cooperate with any criminal investigation, which may include providing the outside law enforcement agency with any evidence in its possession relating to the incident(s).

D. Action by Bystanders and Other Community Members

While those employees designated as "responsible" employees are required reporters as set forth in Section VI below, CUNY encourages all other community members, including faculty, students and visitors, to take reasonable and prudent actions to prevent or stop an act of sex discrimination or sexual misconduct that they may witness. Although these actions will depend on the circumstances, they include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

In addition, CUNY encourages all community members to report an incident of sex discrimination or sexual misconduct that they observe or become aware of to the Title IX Coordinator, and/or the offices of Public Safety and the Vice President of Students Affairs and/or Dean of Students at their college and, in the case of employees, the Human Resources office. Community members who take action in accordance with this paragraph will be supported by the college, and anyone who retaliates against them will be subject to disciplinary charges.

E. **Amnesty for Drug and Alcohol Use**

CUNY strongly encourages students to report instances of sexual misconduct as soon as possible, even if those reporting or the alleged victim may have engaged in the inappropriate or unlawful use of alcohol or drugs. Therefore, in accordance with CUNY's Drug/Alcohol Use Amnesty Policy, a student acting in good faith who reports or experiences sexual misconduct will not be disciplined by the college for any violation of [CUNY's Policy Against Drugs and Alcohol](#) in connection with the reported incident.

F. **Reporting Suspected Child Abuse**

Certain members of the CUNY community who interact with, supervise, chaperone, or otherwise oversee minors in programs or activities at CUNY or sponsored by CUNY are required to report immediately to the New York State Maltreatment Hotline if they have reasonable cause to suspect abuse or maltreatment of individuals under the age of 18. Information regarding mandated child abuse reporting is available on the [Office of the General Counsel web page](#). If anyone other than New York State mandated reporters has reasonable cause to believe that a minor is being or has been abused or maltreated on campus, she/he should notify either the Title IX Coordinator or Director of Public Safety. If any CUNY community member witnesses child abuse while it is happening, she/he should immediately call 911.

G. **Reporting Retaliation**

An individual may file a complaint with the Title IX Coordinator if she/he has been retaliated against for reporting sex discrimination or sexual misconduct, assisting someone making such a report, or participating in any manner in an investigation or resolution of a sex discrimination or sexual misconduct complaint. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in Section VIII of this policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

VI. Reporting/Confidentiality Obligations of College and University Employees

An individual who speaks to a college or CUNY employee about sex discrimination or sexual misconduct should be aware that employees fall into three categories: (1) "confidential" employees, who have an obligation to maintain a complainant's confidentiality regarding the incident(s); (2) "responsible" employees, who are required to report the incident(s) to the Title IX Coordinator; and (3) all other employees, who are strongly encouraged but not required to report the incident(s).

A. Confidential Employees

i. For Students. Students at CUNY who wish to speak to someone who will keep all of the communications strictly confidential should speak to one of the following:

- Counselor or other staff member at their college counseling center;
- Nurse, nurse practitioner or other staff member in the college health office;
- Pastoral counselor (i.e., counselor who is also a religious leader) if one is available at their college; or
- Staff member in a women’s or men’s center, if one exists at their college.

The above individuals will not report any information about an incident to the college’s Title IX Coordinator or other college employees without the student’s permission. The only exception is in the case where there is an imminent threat to the complainant or any other person.

A student who speaks solely to a “confidential” employee is advised that, if the student wants to maintain confidentiality, the college may be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. However, these professionals will assist the student in receiving other necessary support. A student who first requests confidentiality may later decide to file a complaint with the college or report the incident to local law enforcement and thus have the incident investigated.

ii. For Employees. Although there is no one directly employed by CUNY to whom CUNY employees can speak on a confidential basis, free confidential support services are available through [CUNY’s Work/Life Program](#), which is administered by an outside company. Confidential community counseling resources are also available [throughout New York City](#).

B. “Responsible” Employees

“Responsible” employees have a duty to report incidents of sex discrimination and sexual misconduct, including all relevant details, to the Title IX Coordinator. Such employees are not permitted under any circumstances to maintain a complainant’s confidentiality, except that the Title IX Coordinator may honor a request for confidentiality under the circumstances described in Section V (C) above. However, these employees will maintain a complainant’s privacy to the greatest extent possible, and information reported to them will be shared only with the Title IX Coordinator, the “responsible” employee’s supervisor, and other people responsible for handling the college’s response to the report.

To the extent possible, before a complainant reveals any information to a responsible employee, the employee shall advise the complainant of the employee’s reporting

obligations—and if the complainant wants to maintain confidentiality, direct the complainant to confidential resources.

CUNY has designated the following individuals as “responsible” employees:

- i. Title IX Coordinator and her/his staff
- ii. Office of Public Safety employees (all)
- iii. Vice President for Student Affairs and Dean of Students and all staff housed in those offices
- iv. Residence Life staff in CUNY owned or operated housing, including Resident Assistants (all)
- v. College President, Vice Presidents and Deans
- vi. Athletics Staff (all)
- vii. Department Chairpersons/Executive Officers
- viii. Human Resources staff (all)
- ix. University Office of the General Counsel employees (all)
- x. College/unit attorney and her/his staff
- xi. College/unit labor designee and her/his staff
- xii. Faculty members at times when they are leading or supervising student on off-campus trips
- xiii. Faculty or staff advisors to student groups
- xiv. Employees who are Managers (all)
- xv. SEEK/College Discovery staff (all)
- xvi. College Childcare Center staff (all)
- xvii. Directors of “Educational Opportunity Centers” affiliated with CUNY colleges

C. All Other Employees

Employees other than those identified in subsections “A” and “B” above are strongly encouraged but not required to report any possible sex discrimination or sexual misconduct.

It is important to emphasize that faculty members other than those specifically identified in subsection “B” above have not been designated as “responsible” employees and do not have an obligation to report the matter to the Title IX Coordinator, although they are strongly encouraged to do so.

VII. Interim and Supportive Measures

When a college becomes aware of an allegation of sex discrimination or sexual misconduct, it will take interim and supportive measures to protect the complainant and other affected parties, as well as the college community at large, to assist the complainant, and to ensure that there is no retaliation. The college’s Title IX Coordinator is responsible for coordinating all interim and supportive measures, which are available even if the complainant chooses not to file or continue to pursue a complaint. Requests for interim and supportive measures should be made to the Title IX Coordinator.

In general, when taking such interim and supportive measures, the college will seek to minimize the burden on the complainant. The complainant and the respondent shall each be afforded, upon request, a prompt review of the need for and terms of any interim or supportive measure that directly affects him or her and shall be permitted to submit evidence in support of his/her request. The request for such a review shall be made to the college's Chief Student Affairs Officer, if either the complainant or the respondent is a student or to college's Director of Human Resources if both the complainant and the respondent are employees. If a request is made in a case involving both a student and an employee, the Chief Student Affairs Officer shall consult with the Director of Human Resources.

A. Types of Interim and Supportive Measures

Interim and supportive measures may include, among other things:

- i. Making necessary changes to academic programs, including a change in class schedule, making appropriate accommodations to permit the complainant to take an incomplete or drop a course or courses without penalty, permitting the complainant to attend a class via skype or other alternative means where appropriate, providing an academic tutor, or extending deadlines for assignments;
- ii. Making necessary changes to residential housing situations or providing assistance in finding alternate housing;
- iii. Changing an employee's work assignment or schedule;
- iv. Providing the complainant with an escort to and from class or campus work location;
- v. Arranging appropriate transportation services to ensure safety;
- vi. Prohibiting contact between the complainant and the respondent ("no contact" orders);
- vii. Offering counseling services to the complainant, to the respondent, and, where appropriate, to witnesses, through the college Counseling Center or other appropriate college office, or a referral to an off-campus agency;
- viii. Providing the complainant assistance in obtaining medical and other services, including access to rape crisis centers;
- ix. Providing the complainant assistance with filing a criminal complaint and seeking an order of protection;
- x. Enforcing an order of protection;
- xi. Addressing situations in which it appears that a complainant's academic progress is affected by the alleged incident;
- xii. In exceptional circumstances, seeking an emergency suspension of a student or an employee under applicable CUNY Bylaws, rules, policies and collective bargaining agreements.

B. Process for Review of "No Contact" Orders

The complainant and the respondent shall each be afforded, upon request, a prompt review of the need for and terms of a "no contact" order (including possible modification or discontinuance of the order), and shall be allowed to submit evidence

to support their request. The request for such a review shall be made to the college's Chief Student Affairs Officer, if either the complainant or the respondent is a student, or to the college's Director of Human Resources, if both the complainant and the respondent are employees. If possible, the college shall establish an appropriate schedule for the complainant and the respondent to access college facilities when they are not being used by the other party to enable both parties to use college facilities to the maximum extent feasible, without violation of the "no contact" order.

VIII. Investigating Complaints of Sex Discrimination or Sexual Misconduct

The college will conduct an investigation when it becomes aware, from any source (including third-parties not connected to the college or university), that sex discrimination or sexual misconduct may have been committed against a student, employee or visitor, unless the complainant has requested that the college refrain from such an investigation and the college has determined that it may do so.

A. The Investigation

The college Title IX Coordinator is responsible for conducting the investigation in a prompt, thorough, and impartial manner. The college Title IX Coordinator shall coordinate investigative efforts with other college offices, and may designate another trained individual to conduct all or part of the investigation. In cases involving sexual misconduct, the college Title IX Coordinator shall coordinate with law enforcement agencies, as appropriate, after consultation with Public Safety.

Upon receipt of a complaint, the college Title IX Coordinator shall inform the complainant that an investigation is being commenced and that the respondent will receive a written summary of the allegations. The complainant shall also be informed about other information the college may be required to provide to the respondent during the course of the investigation or disciplinary process if any. In cases involving sexual misconduct, the college Title IX Coordinator shall inform the complainant of his/her right to file a criminal complaint.

The college Title IX Coordinator shall inform the respondent that an investigation is being commenced and shall provide the respondent with a written summary of the allegations of the complaint. A respondent employee who is covered by a collective bargaining agreement may consult with and have a union representative present at any interview of that employee conducted as part of such investigation.

In conducting the investigation, the college Title IX Coordinator shall interview witnesses whom might reasonably be expected to provide information relevant to the allegations, and review relevant documents and evidence. Both the complainant and respondent shall be informed that they have the right to provide relevant documents and to propose witnesses whom they reasonably believe can provide relevant information to be interviewed during the course of the investigation.

Neither the complainant nor the respondent are restricted from discussing and sharing information related to their complaints with others who may support or assist them in presenting their case.

The college Title IX Coordinator shall provide both the complainant and the respondent with periodic written status updates of the investigation.

The college Title IX Coordinator shall maintain all documents of the investigation.

The college shall make every reasonable effort to ensure that the investigation and resolution of a complaint are carried out as timely and efficiently as possible. However, the college may need to temporarily delay the fact-finding portion of its investigation during the evidence-gathering phase of a law enforcement investigation. Temporary delays may not last more than ten days except when law enforcement specifically requests and justifies a longer delay. While some complaints may require extensive investigation, whenever possible, the investigation of complaints should be completed within sixty (60) calendar days of the receipt of the complaint. If there is a delay in completing the investigation, the Title IX Coordinator shall notify the complainant and the respondent in writing.

B. Conflicts

If any administrator designated by this policy to participate in the investigation or resolution of a complaint (including but not limited to the Title IX Coordinator) is the respondent, the College President will appoint another college administrator to perform such person's duties under this policy. If the President is the respondent, the investigation will be handled by the University Title IX Coordinator or her/his designee.

C. Mediation

While mediation is not permitted in cases where sexual violence is alleged, it may be appropriate where sex discrimination, sexual harassment or gender-based harassment allegations have been made by a student or employee but there is no allegation of sexual violence. Mediation is a process whereby the parties can participate in a search for fair and workable solutions. Mediation requires the consent of both the complainant and the respondent, but does not require the complainant and respondent to meet face-to-face. Either party, however, has the right to end the mediation at any time and proceed with the investigation process. A respondent who is covered by a collective bargaining agreement may consult with and have a union representative present at any mediation session. Unless the mediation results in a resolution agreed to in writing by the complainant, the respondent and the college, within 30 calendar days after the initiation of the mediation process the college shall end the mediation and resume the investigation.

D. Action Following the Investigation or Closure of a Complaint

- (i) Within 45 calendar days following the completion of an investigation, the Title IX Coordinator shall report her/his findings to the College President in writing (“Report of Findings”). In the event the complainant or the respondent is a student, the report shall also be sent to the Chief Student Affairs Officer. A copy of the report shall be maintained in the files of the Title IX Coordinator.
- (ii) In making findings regarding the allegations, the Title IX Coordinator shall use the “preponderance of the evidence” standard. If the fact-finding portion of the investigation was temporarily delayed at the request of law enforcement, the Report of Findings shall state the date on which the college was advised to temporarily suspend its investigation and the date that the investigation was resumed.
- (iii) Following receipt of the Report of Findings, the College President shall, when warranted by the facts, authorize such action as she/he deems necessary to address the issues raised in the Report of Findings, including action to properly correct the effects of the conduct investigated or to prevent further harm to an affected party or others similarly situated. This may include a recommendation that disciplinary action be commenced against a respondent, as set forth in Section F below.
- (iv) Within 30 calendar days following the termination of an investigation due to resolution by mediation agreement or indefinite suspension of an investigation for some other reason, the Title IX Coordinator shall prepare a written report for the file summarizing the actions taken in response to the complaint and explaining the basis on which the investigation was suspended or closed before completion (“Complaint Closure Report.”)

E. Disciplinary Action

Should the College President recommend that disciplinary action be commenced against a respondent student or employee, the following procedures shall apply:

i. Discipline Against Students

In cases where a student is charged with a violation of this policy, including retaliation, the matter shall be referred to the college’s Office of Student Affairs and action shall be taken in accordance with [Article XV of the CUNY Bylaws](#), which contains the student disciplinary process at CUNY. Under the student disciplinary process, complainants have the same right as respondents to receive notice of the charges, to review documents and tangible evidence, to

attend and participate fully in a disciplinary hearing, to be represented by an attorney or advisor of their choice, to receive written notice of the outcome of the decision of the faculty-student disciplinary committee (i.e., whether the allegations were substantiated and what, if any, penalty was imposed), and to appeal. Penalties for students instituted after a hearing before the faculty-student disciplinary committee range from a warning to suspension or expulsion from the University.

For more information the Student Disciplinary process, please refer to Article XV of CUNY's Bylaws.

http://policy.cuny.edu/bylaws/article_xv/text/#Navigation_Location

ii. Discipline Against Employees

In cases where an employee is charged with a violation of this policy, including retaliation, the matter shall be referred for disciplinary action in accordance with the applicable CUNY policies, rules and collective bargaining agreements. Penalties for employees include reprimand, suspension or termination of employment following applicable disciplinary procedures. For many respondent employees, these procedures may include a hearing before a non-CUNY fact-finder, as required by collective bargaining agreements.

iii. Action Against Visitors

In cases where the person accused of violating this policy is neither a CUNY student nor a CUNY employee, the college's ability to take action against the accused is extremely limited. However, the college shall take all appropriate actions within its control, such as restricting the visitor's access to campus. In addition, the matter shall be referred to local law enforcement for legal action where appropriate.

F. Notice to the Parties of the College's Actions

Within 10 calendar days following the transmittal of the Report of Findings to the President, the college shall provide contemporaneous written notice to the complainant and respondent that the investigation has been completed, what the outcome of the investigation was, and that the Report of Findings has been sent to the President for appropriate action. In the event that the investigation was terminated or indefinitely suspended before completion, within 10 calendar days following the completion of the Complaint Closure Report, the college shall provide contemporaneous written notice to the complainant and respondent that the complaint investigation has been closed.

Within 30 calendar days following the transmittal of the Report of Findings to the President, the college shall provide contemporaneous written notice to the complainant and

respondent of any actions that the college will be taking based on the report, including whether it will be commencing disciplinary action against the respondent.

Within 10 calendar days following the filing of disciplinary charges against a student or an employee, notice that those disciplinary charges have been filed will be provided to the complainant.

Where disciplinary charges have been filed against a respondent student, the college shall provide the complainant with notice of the outcome of the disciplinary proceeding within 10 calendar days of when it is provided to the respondent.

Where disciplinary charges have been filed against a respondent student, the college shall provide contemporaneous written notice to the complainant and respondent of the President's decision with respect to any appeal of a determination made by a Faculty-Student Disciplinary Committee within 10 calendar days of the issuance of the decision.

Where disciplinary charges have been filed against a respondent student, the college shall provide contemporaneous written notice to the complainant and respondent of the decision by CUNY's Board of Trustees with respect to any appeal of the President's decision referenced in the preceding paragraph within 10 calendar days of the issuance of the decision.

For more information on the student disciplinary and appeals processes, please refer to Article XV of the Bylaws of CUNY's Board of Trustees. http://policy.cuny.edu/bylaws/article_xv/text/#Navigation_Location

When disciplinary charges have been filed against a respondent employee, or other adverse action taken against the employee, the college shall keep the complainant apprised of the status of the disciplinary proceeding or any grievance relating to the college's action against the employee. The college shall provide written notice to the complainant of the final resolution in any employee disciplinary hearing or any grievance relating to the college's action against the employee within 10 calendar days of the date the College receives the decision.

G. Malicious Allegations

Members of the CUNY community who make false and malicious complaints of sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence), as opposed to complaints which, even if erroneous, are made in good faith, may be subject to disciplinary action.

H. Relationship of CUNY's Investigation to the Action of Outside Law Enforcement

In cases where the complainant files a complaint with outside law enforcement authorities as well as with the college, the college shall determine what actions to take based on its own investigation. The college may coordinate with outside law enforcement authorities in order to avoid interfering with their activities and, where possible, to obtain information regarding their investigation. Neither a law enforcement determination whether to prosecute a respondent, nor the outcome of any criminal prosecution, is dispositive of whether the respondent has committed a violation of this policy.

I. Filing External Complaints

Complainants have the right at any time to file complaints with the Office for Civil Rights (“OCR”) of the U.S. Department of Education, alleging violations of Title IX, and to file complaints with other appropriate federal, state and local agencies that enforce laws against sex discrimination. Information on how to contact OCR and other relevant agencies is set forth on [the CUNY Title IX web page](#). The websites are listed below:

United States Department of Education, Office for Civil Rights, www2.ed.gov/ocr

U.S. Equal Employment Opportunity Commission, <http://www.eeoc.gov>

New York City Commission on Human Rights, <http://www1.nyc.gov/site/cchr>

New York State Division on Human Rights, <http://www.dhr.ny.gov>

Education and Outreach

In addition to addressing possible violations of this policy, colleges/units of CUNY have the following obligations:

J. Dissemination of Policies, Procedures and Notices

The college Title IX Coordinator, in coordination with the Office of Student Affairs, Office of Public Safety, Human Resources Department and other appropriate offices, is responsible for the wide dissemination of the following on her/his campus: (i) this Policy; (ii) CUNY’s Notice of Non-Discrimination; (iii) the Title IX Coordinator’s name, phone number, office location, and email address; and (iv) contact information for the campus Public Safety Office. Such dissemination shall include posting the documents and information on the college website and including it in any student or faculty handbooks and in residence life materials. In addition, the Students’ Bill of Rights, which is appended to and made a part of this policy, must be distributed to any individual reporting an incident of sexual misconduct at the time the report is made. It must also be distributed annually to all students, made available on the college’s website and posted in college campus centers and in CUNY owned and operated housing.

K. Training and Educational Programming

The college Title IX Coordinator, in coordination with other applicable offices, including Public Safety, Human Resources and Student Affairs, is responsible for ensuring that the college provides training to college employees on their obligations under this policy; provides education on this policy and on sex discrimination and sexual misconduct (including domestic violence, dating violence, stalking and sexual assault) to new and continuing students; and promotes awareness and prevention of sexual misconduct among all students and employees. Specific required trainings include the following:

i. Training For Responsible and Confidential Employees

The college shall provide training to all employees who are required to report incidents of sex discrimination or sexual misconduct under this policy, as well as those employees who have been designated as confidential employees.

ii. Student Onboarding and Ongoing Education

Each college shall adopt a comprehensive student onboarding and ongoing education campaign to educate students about sex discrimination and sexual misconduct, including domestic violence, dating violence, stalking, and sexual assault. During the student onboarding process, all new first-year and transfer students shall receive training on this policy and on a variety of topics relating to sex discrimination and sexual misconduct. In addition, each college shall offer and administer appropriate educational programming to residence hall students, athletes, and student leaders. Each college shall also provide such educational programming to any other student groups which the college determines could benefit from education in the area of sex discrimination and sexual misconduct. The college shall also share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students.

L. Campus Climate Assessments

Each college of the University shall conduct, no less than every other year, a climate assessment using an assessment instrument provided by the University central office, to ascertain its students' general awareness and knowledge of the University's policy and procedures regarding sexual misconduct, including but not limited to student experiences with and knowledge of reporting, investigation and disciplinary processes. The assessment instrument shall include all topics required to be included under applicable law, including Section 129-B of the New York State Education Law. The University shall publish the results of the surveys on its Title IX web page. The published results shall not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

IX. Rules Regarding Intimate Relationships

A. Relationships between Faculty or Employees and Students

Amorous, dating or sexual activity or relationships (“intimate relationships”), even when apparently consensual, are inappropriate when they occur between a faculty member or employee and any student for whom he or she has a professional responsibility. Those relationships are inappropriate because of the unequal power dynamic between students and faculty members and between students and employees who advise or evaluate them, such as athletic coaches or workplace supervisors. Such relationships necessarily involve issues of student vulnerability and have the potential for coercion. In addition, conflicts of interest or perceived conflicts of interest may arise when a faculty member or employee is required to evaluate the work or make personnel or academic decisions with respect to a student with whom he or she is having an intimate relationship. Finally, if the relationship ends in a way that is not amicable, the relationship may lead to charges of and possible liability for sexual harassment.

Therefore, faculty members and other employees are prohibited from engaging in intimate relationships with students, for whom they have a professional responsibility, including undergraduates, graduate and professional students and postdoctoral fellows.

For purposes of this section, professional responsibility for a student means responsibility over academic matters, including teaching, counseling, grading, advising for a formal project such as a thesis or research, evaluating, hiring, supervising, coaching, making decisions or recommendations that confer benefits such as admissions, registration, financial aid, other awards, remuneration, or fellowships, or performing any other function that might affect teaching, research, or other academic opportunities.

B. Relationships between Supervisors and Employees

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are strongly discouraged. Supervisors shall disclose any such relationships to their supervisors in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have an intimate relationship. Mitigation may involve the transfer of either the supervisor or employee, reassigning the responsibility to evaluate the employee to a different supervisor, or other appropriate action.

For purposes of this section, supervising an employee means supervising in an employment setting, including hiring, evaluating, assigning work, or making decisions or recommendations that confer benefits such as promotions, raises or other remuneration, or performing any other function that might affect employment opportunities.

X. Definitions of Terms in this Policy

- A. **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 may be initially given but withdrawn at any time. 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.

In order to give consent, one must be of legal age (17 years or older). Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. 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 lack of consciousness or being asleep, being involuntarily restrained, or if the 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.

When consent is withdrawn or can longer be given, sexual activity must stop.

- B. **Complainant** refers to the individual who alleges that she/he has been the subject of sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence), and can be a CUNY student, employee (including all full-time and part-time faculty and staff), or visitor. Under this policy, the alleged incident(s) may have been brought to the college's attention by someone other than the complainant.
- C. **Complaint** is an allegation of sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence) made under this policy.
- D. **Dating, Domestic and Intimate Partner Violence** is a pattern of coercive behavior that can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an intimate partner. Such violence may occur in all kinds of intimate relationships, including married couples, people who are dating, couples who live together, people with children in common, same-sex partners, and people who were formerly in a relationship with the person abusing them.
- E. **Forcible Touching/Fondling** is intentionally touching the sexual or other intimate parts of another person without the latter's consent for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire.
- F. **Gender-Based Harassment** is unwelcome conduct of a nonsexual nature based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to

adversely affect an individual's participation in employment, education or other CUNY activities. The effect will be evaluated based on the perspective of a reasonable person in the position of the complainant. An example of gender-based harassment would be persistent mocking or disparagement of a person based on a perceived lack of stereotypical masculinity or femininity.

- G. **Managers** are employees who have the authority to either (a) make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities; or (b) make recommendations on tangible employment decisions that are given particular weight. Managers include vice presidents, deans, directors, or other persons with managerial responsibility, including, for purposes of this policy, department chairpersons and executive officers.
- H. **Rape and Attempted Rape** is the penetration or attempted penetration, no matter how slight, of any body part by a sex organ of another person, without the consent of that person.
- I. **Respondent** refers to the individual who is alleged to have committed sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence) against a CUNY student, employee, or visitor.
- J. **Retaliation** is adverse treatment of an individual as a result of that individual's reporting sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence), assisting someone with a report of sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence,) or participating in any manner in an investigation or resolution of a sex discrimination or sexual misconduct (sexual harassment, gender-based harassment or sexual violence) report. Adverse treatment includes threats, intimidation and reprisals by either a complainant or respondent or by others such as friends or relatives of either a complainant or respondent.
- K. **Sexual Activity** is
- penetration, however slight, of the vulva or the anus by the penis, hand/fingers or other object;
 - contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person; or
 - intentional touching, either directly or through the clothing of any other body part, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.
- L. **Sexual Assault** is any form of sexual activity that occurs without consent.

Sex Discrimination is treating an individual differently or less favorably because of sex, including sexual orientation, gender or gender identity (including transgender status), as well as pregnancy, childbirth and related conditions. Examples of sex discrimination include giving a student a lower grade, or failing to hire or promote an employee, based on their sex.

M. **Sexual Harassment** is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct of a sexual nature when:

i. submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo);

or

ii. such conduct is sufficiently serious that it alters the conditions of, or has the effect of substantially interfering with, an individual's educational or work experience by creating an intimidating, hostile, or offensive environment (hostile environment). The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.

Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive.

While it is not possible to list all circumstances that might constitute sexual harassment, the following are some examples of conduct that might constitute sexual harassment depending on the totality of the circumstances:

- i. Inappropriate or unwelcome physical contact or suggestive body language, such as touching, groping, patting, pinching, hugging, kissing, or brushing against an individual's body;
- ii. Verbal abuse or offensive comments of a sexual nature, including sexual slurs, persistent or pervasive sexually explicit statements, questions, jokes or anecdotes, degrading words regarding sexuality or gender, suggestive or obscene letters, notes, or invitations;
- iii. Visual displays or distribution of sexually explicit drawings, pictures, or written materials; or
- iv. Undue and unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive gestures.

For purposes of this policy, sexual harassment also includes acts that violate an individual's right to privacy in connection with her/his body and/or sexual activity such as:

- i. Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;

- ii. Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure;
 - iii. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.
- N. **Sexual Misconduct** is sexual harassment, gender-based harassment or sexual violence, as defined in this policy.
- O. **Sexual Violence** is an umbrella term that includes: (1) sexual activity without affirmative consent, such as sexual assault rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking as defined below.
- P. **Stalking** is intentionally engaging in a course of conduct directed at a specific person with whom the perpetrator currently has, previously has had, or desires to have, some form of sexual or romantic relationship, that:
- 1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
 - 2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
 - 3. is likely to cause such person to reasonably fear that her/his employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.
- Q. **Visitor** is an individual who is present at a CUNY campus or unit but is not a student or an employee.

The City University of New York
Students' Bill of Rights

CUNY students who experience campus-related sexual or gender-based harassment or sexual violence, including sexual assault, stalking, domestic violence, intimate partner violence or dating violence, are entitled to the following rights:

- To report the incident to your campus.
- To report the incident to the University or campus public safety department and/or to file a criminal complaint with the NYPD, or to choose not to report.
- To receive assistance from your campus or others in filing a criminal complaint, which may include seeking an Order of Protection.
- To describe the incident only to those campus officials who need the information in order to properly respond and to repeat the description as few times as practicable.
- To request that the campus file conduct charges against the respondent(s). The decision on whether to bring charges rests with the campus.
- To be protected by your campus from retaliation for reporting the incident, and to have any allegations of retaliation addressed by the campus.
- To receive assistance and resources from your campus, including confidential and free on-campus counseling, and to be notified of other available services on- and off-campus, including, among other resources, the New York State Office of Victim Services.
- To receive assistance in seeking necessary medical services or treatment, including a Sexual Assault Forensic Examination (SAFE exam), on or off campus.
- To obtain, where appropriate, changes with respect to campus academic and living arrangements, no-contact orders, and other interim remedial measures to enable you to continue your education without undue stress or trauma.
- To have your complaints handled respectfully by the campus, and to be informed about how the campus will protect your privacy and confidentiality.
- To have your complaint investigated in a prompt, impartial and thorough manner by individuals who have received appropriate training in conducting investigations and the issues related to sexual harassment and sexual violence, and to be accompanied by a person of your choice at all meetings or hearings related to the process.
- To have your complaint against a student adjudicated by individuals who have received appropriate training on issues related to sexual harassment and sexual violence.
- To report incidents of sexual harassment or sexual violence that you experience while under the influence of alcohol or drugs without receiving discipline for your alcohol or drug use.
- To have the same opportunity as the respondent(s) to participate in a student disciplinary hearing before a faculty-student disciplinary committee, including the right to be present, to be assisted by a person of your choice, including an attorney, to present evidence, call witnesses, cross-examine witnesses, have your prior sexual history with persons other than

the respondent(s) excluded from the hearing, have your prior mental health diagnosis and/or treatment excluded from the hearing, receive written notice of the outcome of the hearing, and to appeal from the decision.

- To participate in the investigative and disciplinary processes of the campus without interference with your civil rights or practice of religion.

Questions about CUNY's sexual misconduct policy and procedures may be directed to [your campus Title IX Coordinator](#).

Information on resources and the process for filing a complaint is available on [CUNY's Title IX web page](#).