



## CUNY Policy on Sexual Misconduct

### I. POLICY STATEMENT

Every member of The City University of New York ("CUNY") community, including students, employees and visitors, deserves the opportunity to live, learn and work free from Sexual Misconduct (sexual harassment, gender-based harassment and sexual violence). Accordingly, CUNY is committed to:

- 1) Defining conduct that constitutes prohibited Sexual Misconduct;
- 2) Providing clear guidelines for students, employees and visitors on how to report incidents of Sexual Misconduct and a commitment that any complaints will be handled respectfully;
- 3) Promptly responding to and investigating allegations of 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 Sexual Misconduct;
- 5) Providing awareness and prevention information on Sexual Misconduct, including widely disseminating this policy, as well as a "students' bill of rights" and implementing

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training and educational programs on Sexual Misconduct to college constituencies; 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 Sexual Misconduct and is applicable at all college and units at the University. It will be interpreted in accordance with the principles of academic freedom adopted by CUNY's Board of Trustees.

The CUNY community should also be aware of the following CUNY policies:

- [The CUNY Policy on Equal Opportunity and Nondiscrimination](#) prohibits discrimination on the basis of numerous protected characteristics in accordance with federal, state and local law. That policy addresses sex discrimination other than Sexual Misconduct covered by this policy.
- [The CUNY Campus and Workplace Violence Prevention Policy](#) addresses workplace violence.
- [The CUNY Domestic Violence and the Workplace Policy](#) addresses domestic violence in or affecting employees in the workplace.
- [The CUNY Procedures for Implementing Reasonable Accommodations and Academic Adjustments](#) addresses the procedures CUNY will follow when there is a request for a reasonable accommodation and or academic adjustment.

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. SCOPE OF THIS POLICY


This policy governs the conduct of (i) all the members of CUNY's community, including employees and students, and (ii) non-members of CUNY's community who interact with members of the CUNY community (hereinafter "visitors'). Visitors are both protected by and subject to this policy. A non-member may make a complaint of or report a violation of this policy committed by a member of CUNY's community. A non-member may also be

The School of Education 

The Grove School of Engineering 

The CUNY School of Medicine

Military Science - Army Senior Reserve Officers' Training Corps


General Education Requirements (Pathways) 

Department of SEEK Counseling and Student Support Services/The Percy Ellis Sutton SEEK Program

Student Support Services Program

Academic Advisement

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subject to restrictions for failing to comply with this policy. This policy applies to conduct that occurs on and off CUNY property.

### **III. DEFINITIONS**

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 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.

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

Consent may be initially given but withdrawn at any time. When consent is withdrawn or no can longer be given, sexual activity must stop.

b. Complainant refers to the individual who alleges that she/he has been the subject of Sexual Misconduct, 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 Sexual Misconduct made under this policy.

d. Confidentiality is the commitment not to share any identifying information with others, except as required by law in emergency circumstances (such as risk of death or serious bodily harm). Confidentiality may only be offered by individuals who are not legally required to report known incidents of Sexual Misconduct to college officials. Licensed mental health counselors, medical providers & pastoral counselors may offer confidentiality.

e. Dating Violence is violence or sexual assault committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship and the frequency of the interaction between the persons involved in the relationship. Dating violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. A relationship may be romantic or intimate regardless of whether the relationship was sexual in nature. Dating violence includes the threat of sexual or physical abuse.

f. Domestic Violence is any violence or sexual assault committed by (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child; (iii) a person who cohabits or cohabited with the victim as a spouse or intimate partner; or (iv) anyone else covered by applicable domestic violence laws. Domestic violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct.

g. 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.

h. 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.

i. Intimate Partner Violence (“IPV”) includes both Domestic Violence and Dating Violence.

j. Managers are employees who have authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities.

k. Pastoral counselor. A person who is associated with a religious order or denomination, recognized by that order or denomination as someone who provides confidential counseling, and functioning within the scope of that recognition.

l. Privacy is the assurance that the college will only reveal information about a report of Sexual Misconduct to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required by law. Individuals who are unable to offer the higher standard of confidentiality under law, but who are still committed to not disclose information more than necessary, may offer privacy.

m. 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.

n. Respondent refers to the individual who is alleged to have committed Sexual Misconduct against a CUNY student, employee, or visitor.

o. Retaliation is adverse treatment of an individual as a result of that individual’s reporting Sexual Misconduct, assisting someone with a report of Sexual Misconduct, opposing in a reasonable manner an act or policy believed to constitute Sexual Misconduct, or participating in any manner in an investigation or resolution of a Sexual Misconduct 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.

p. Sexual Activity is:

- contact between the penis and the vulva or the penis and the anus;
- contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

- penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

q. Sexual Assault is any form of sexual activity that occurs without consent.

r. 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 medical conditions. Examples of sex discrimination include giving a student a lower grade, or failing to hire or promote an employee, based on their sex.

s. 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.

t. Sexual Misconduct is sexual harassment, gender-based harassment or sexual violence, as defined in this policy.

u. Sexual Violence 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; and

(4) voyeurism, as defined below.

v. Stalking is intentionally engaging in a course of conduct directed at a specific person 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 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 8

2. 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.

Where stalking is directed at an individual with whom the perpetrator has, had, or sought some form of sexual or romantic relationship, it will be addressed under this Policy.

Stalking that lacks a sexual or gender-based nexus may be addressed under the Code of Conduct.

w. Supervisors are employees who are not managers, but have a sufficient degree of control over the working conditions of one or more employees, which might include evaluating their performance and making recommendations for changes in employment status that are given particular weight.

x. Visitor is an individual who is present at a CUNY campus or unit but is not a student or an employee.

y. Voyeurism is unlawful surveillance and includes acts that violate an individual's right to privacy in connection with her/his body and/or sexual activity such as:

i. 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.

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

iii. 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;

iv. Using or installing, or permitting the use or installation of a device for the purpose of recording another person's sexual activity, intimate body parts or nakedness in a place where the person would have a reasonable expectation of privacy without that person's consent.

z. Writing. Whenever this policy requires in "writing," electronic mail satisfies the writing requirement.

## **IV. PROHIBITED CONDUCT**

### **A. Sexual Harassment, Gender-Based Harassment and Sexual Violence**

This policy prohibits sexual harassment, gender-based harassment and sexual violence (together "Sexual Misconduct") against any CUNY student, employee or visitor.

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.

Sexual harassment is considered a form of employee misconduct and an employee who engages in such conduct, or, managerial and supervisory personnel who knowingly allow such behavior to continue, shall be subject to discipline in accordance with applicable rules, policies and collective bargaining agreements.

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, sexual assault, rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking/cyberstalking ("stalking"), and (4) voyeurism.

The complete definitions of these terms, as well as other key terms used in this policy, are in Section III above.

### **B. Retaliation**

This policy prohibits retaliation against any person who reports Sexual Misconduct, assists someone making such a report, participates in any manner in an investigation or

resolution of a Sexual Misconduct complaint, including testifying or assisting in a legal proceeding, or opposes in a reasonable manner an act or policy believed to constitute Sexual Misconduct. Federal, state, and local laws also prohibit retaliation.

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 XIII below.

## V. 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 Misconduct, in education programs, and with New York State Law Article 129B, commonly referred to as Enough is Enough, Combating Sexual Assault and Domestic Violence on College Campuses (hereafter "Enough is Enough"). 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 Sexual Misconduct as required by Title IX, the Clery Act, Enough is 10 Enough, and other civil rights law. The name and contact information for all Title IX Coordinators at CUNY can be found on the university's dedicated Title IX website.

## VI. ASSISTANCE IN CASES OF SEXUAL VIOLENCE

### A. Reporting to Law Enforcement

Students, employees and other community members 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 may, but are not required to, report to local law enforcement, and/or state police. CUNY does not require a complainant to report sexual misconduct to law enforcement; however, if a student, employee, or other community member does wish to report to law enforcement, CUNY will provide assistance. 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.

Additional information is available on the university's Title IX website.

## B. 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.

Students, employees and other community members should be aware that CUNY procedures and standards differ from those of criminal procedures. When CUNY investigates allegations of sexual misconduct or brings disciplinary proceedings for violations of this policy, the issue is whether the respondent violated CUNY policy. The standard applied in making this determination is whether the preponderance of the evidence substantiates the complaint, or, stated another way, whether it is more likely than not that the alleged conduct occurred. An individual found to have violated this policy may be sanctioned by the college and CUNY. In the criminal justice system, on the other hand, the issue is whether the accused violated state criminal law. The standard applied is proof beyond a reasonable doubt and an individual found guilty of a crime is subject to criminal penalties, such as incarceration, probation and fines. More information about relevant criminal laws is available in ['A Plain Language Explanation of Distinction Between the New York Penal Law and the College Disciplinary Processes'](#).

## C. Obtaining Immediate Medical Attention and Emotional Support

CUNY encourages anyone who has experienced sexual assault or domestic, dating or intimate partner violence to seek medical attention as soon as possible. Medical resources can provide treatment for injuries, preventative treatment for sexually transmitted diseases, emergency contraception, and other health services. They can also

assist in preserving evidence or documenting any injuries. Taking these steps promptly after an incident can be very helpful if an individual later decides to seek criminal proceedings or a protective order.

Individuals who have experienced or witnessed sexual violence are also encouraged to seek emotional support, either on or off-campus.

#### D. On-campus resources

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.

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

#### VII. IMPORTANT INFORMATION ABOUT CONFIDENTIALTY, PRIVACY and REQUIRED REFERRALS

CUNY values the privacy of its students, employees, and visitors. They should be able to seek the assistance they need without fear that the information they provide will be shared more broadly. Some individuals who serve as resources on campus are confidential resources and will not share any identifying information with others, except as required by law in emergency circumstances. Other individuals are not permitted to maintain confidentiality but will protect privacy to the greatest extent possible and share information with other staff only on a need-to-know basis.

**Confidential resources.** Individuals considered confidential resources include counselors and health care providers at the college counseling centers and health offices, pastoral counselors, and designated staff members at women's or men's centers, if they exist on campus. Students may use these resources even if they decide not to make a report or participate in University disciplinary proceedings or the criminal justice process.

**Private but non-confidential resources.** Many college employees are required by federal and state law to provide information about possible sexual misconduct to the Title IX Coordinator. Individuals designated as non-confidential but private resources will protect privacy to the greatest extent possible, but must share relevant information about sexual misconduct with the Title IX Coordinator.

More information about confidential and private but non-confidential resources is provided in Section IX, below.

Under the Clery Act, the College is required to maintain records, advise the government about reports of certain crimes, and issue timely warnings when there is a serious, continuing threat to the community. Such reports and warnings do not disclose the names of reporting individuals.

## **VIII. REPORTING SEXUAL MISCONDUCT TO THE COLLEGE**

In order for the University to address allegations of sexual misconduct, it has to learn about them. Accordingly, CUNY strongly encourages individuals who have experienced sexual misconduct to file a complaint with a designated campus official, as outlined below. The designated officials are trained to accept complaints, to ensure they are investigated in accordance with this policy, and to help complainants get necessary assistance.

Students, faculty, staff and visitors are encouraged to report incidents of sexual misconduct 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.

### **A. Complainant’s Rights**

Individuals who have experienced sexual misconduct have the right to file a complaint with the college or to decide not to do so. (The decision on whether to bring disciplinary charges, however, rests with the campus.) Students who report sexual misconduct have all of the rights contained in the Students Bill of Rights (copy attached).

Complainants also have these rights:

- To notify campus public safety, local law enforcement, and/or the state police; or to choose not to report.
- To have emergency access to a college official trained to interview victims of sexual assault and able to provide certain information, including reporting options and information about confidentiality and privacy. The official will, where appropriate, advise the reporting individual about the importance of preserving evidence and obtaining a sexual assault forensic examination ("SAFE") as soon as possible. The official will also explain that the criminal process uses different standards of proof, evidence, and that any questions about whether an incident violated criminal law should be addressed to a law enforcement official or a district attorney's office.
- To disclose the incident to a college representative who can offer confidentiality or privacy and assist in obtaining services for reporting individuals. See Section IX, below.
- 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 have complaints investigated in accordance with CUNY policy.
- To have privacy preserved to the extent possible.
- To receive assistance and resources on campus, including confidential and free on-campus counseling, and to be notified of other services available on- and off-campus, including the New York State Office of Victim Services.
- To disclose the incident to the college's Human Resources Director or designee (if the accused is a college employee) or request that a confidential or private resource assist in doing so.
- To disclose the incident confidentially and obtain services from state and local governments.
- To receive assistance from the campus or others in filing a criminal complaint, initiating legal proceedings in family court or civil court, and /or seeking an Order of Protection or

the equivalent. In New York City, this assistance is provided by Family Justice Centers located in each borough: <http://www1.nyc.gov/site/ocdv/programs/family-justicecenters.page>.

- To receive assistance with effecting an arrest when an individual violates an Order of Protection, which may be provided by assisting local law enforcement in effecting such an arrest.
- To withdraw a complaint or involvement from the process at any time. Students can speak with confidential resources on a strictly confidential basis before determining whether to make a report to college authorities. See Section IX, below. Students also have the right to consult confidentially with state, local and private resources who can provide other assistance.

## B. Where to File a Complaint on Campus

Students, employees and visitors who experience sexual misconduct should bring their complaints to one of these campus officials/offices:

- Title IX Coordinator;
- Office of Public Safety;
- Office of Vice President for Student Affairs or Dean of Students (students only);
- Residence Life staff in CUNY owned or operated housing (students and residence visitors only); and
- Human Resources Director (employees only).

Contact information for these officials can be found at <https://www1.cuny.edu/sites/titleix/campus-websites/>.

There is no prescribed method for filing a complaint of sexual misconduct and the college will respond to complaints whether they are oral or written. Complainants may, but are not required to, fill out the CUNY Sexual Misconduct Complaint form (see page 38). After the form is filled out, it should be brought to one of the offices listed above.

Once any of the officials or offices above is notified of an incident of sexual misconduct, she/he will provide a copy of this Policy to the Complainant and coordinate with appropriate college offices to address the matter in accordance with this policy, including taking appropriate interim and supportive measures. These officials and offices 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.

Visitors: CUNY strongly encourages visitors to report all incidents of sexual misconduct that they observe or experience while on a CUNY campus or at a CUNY sponsored event to the Office of Public Safety, Residence Life staff, or other appropriate college officials listed above. In certain instances, CUNY may be able to offer those visitors who have experienced sexual misconduct with resources and assistance. For more information on such assistance, please visit <http://www1.cuny.edu/sites/title-ix/>.

#### C. Request that the College Maintain a Complainant's Confidentiality or Not Conduct an Investigation

After a report of an alleged incident of sexual misconduct is made to the Title IX Coordinator, a complainant may request (a) that the matter be investigated only to the extent possible without further revealing her/his identity or any details regarding the incident being divulged further (b) that no investigation into a particular incident be conducted, or (c) 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. Factors used to determine whether to honor such a request include, but are not limited to: (a) whether the respondent has a history of violent behavior or is a repeat offender; (b) whether the incident represents escalation of unlawful conduct by the accused from previously noted behavior; (c) any increased risk that the accused will commit additional acts of violence, (d) whether the accused used a weapon or force; (e) whether the complainant is a minor; (f) whether the college possesses other means to obtain evidence such as security footage; and (g) whether available information reveals pattern of misconduct at a given location or by particular group.

A decision to maintain confidentiality does not mean that confidentiality can be absolutely guaranteed in all circumstances, but that reasonable efforts will be made 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 X of this policy.

If the Title IX Coordinator determines that the college may maintain confidentiality as requested by the complainant, the college will, if possible, take 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 for confidentiality.

#### D. Filing External Complaints

Complainants who feel that they have been subjected to unlawful sexual harassment and/or violence have the right to avail themselves of any and all of their rights under law, including but not limited to filing complaints with one or more of the outside agencies listed below. - U.S. Department of Education,

Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html> -

U.S. Equal Employment Opportunity Commission

[https://www.eeoc.gov/federal/fed\\_employees/filing\\_complaint.cfm](https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm) -

New York State Division of Human Rights -

<https://dhr.ny.gov/complaint> -

New York City Commission on Human Rights

<http://www1.nyc.gov/site/cchr/about/resources.page>

#### E. Action by Bystanders and Other Community Members

While only employees designated as “responsible” employees are required reporters as set forth in Section IX 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 sexual misconduct that they may witness. Although these actions will depend on the circumstances, they may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

In addition, CUNY encourages all community members to report any incident of sexual misconduct that they observe or become aware of to the Title IX Coordinator, or the offices of Public Safety, Vice President of Students Affairs (students), Dean of Students (students) or Human Resources (employees) at their college. 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.

#### F. Amnesty for Drug and Alcohol Use

The health and safety of every student at CUNY is of the utmost importance. CUNY recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at a time that violence (including but not limited to sexual violence) occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. CUNY strongly encourages students to report sexual violence to college officials. A bystander or complainant acting in good faith who discloses any incident of sexual violence to college officials or law enforcement will not be subject to discipline under CUNY’s Policy Against Drugs and Alcohol for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the sexual violence.

This policy does not provide amnesty for drug dealers or those who use drugs or alcohol as a weapon or to facilitate assault. Under CUNY’s Amnesty for Drug and Alcohol Policy, personal drug use and possession, whether it is intentional or accidental, will not form the basis of faculty student disciplinary charges.

#### G. 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.

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

## **IX. REPORTING/CONFIDENTIALITY OBLIGATIONS OF COLLEGE AND UNIVERSITY EMPLOYEES**

An individual who speaks to a college or CUNY employee about sexual misconduct should be aware that employees fall into three categories:

- “confidential” employees, who have an obligation to maintain a complainant’s confidentiality regarding the incident(s);
- “responsible” employees, who are required to report the incident(s) to the Title IX Coordinator
- 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 confidential should speak to one of the following:

- Counselor or other staff member at their college counseling center;
- Nurse, nurse practitioner or other college health office staff member;
- Pastoral counselor, if available at the college; or
- Designated staff member in a women’s or men’s center, if one exists at their college.

These individuals will not report 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 of serious harm to the complainant or any other person.

If a student speaks solely to a “confidential” employee, the college will rarely be able to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Confidential employees will assist students in obtaining other necessary support. A student who first requests confidentiality may later decide to file a complaint with the college or with local law enforcement.

#### ii. For Employees.

Although CUNY does not directly employ individuals to whom CUNY employees can speak on a confidential basis regarding sexual misconduct, 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 – Private, but not confidential.

“Responsible” employees have a duty to report incidents of sexual misconduct, including all relevant details, to the Title IX Coordinator. Such employees are not permitted to maintain a complainant’s confidentiality, except that the Title IX Coordinator may honor a request for confidentiality under the circumstances described in Section VII 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 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 identified above.

CUNY has designated the following individuals as "responsible" employees. Complainants who wish to report sexual violence are encouraged to speak with one of the responsible employees marked: \*

i. Title IX Coordinator and her/his staff

ii. \* Office of Public Safety employees (all)

iii. \* Vice President for Student Affairs or Dean of Students and all staff housed in those offices

iv. \* Residence Life staff in CUNY owned or operated housing, including Resident Assistants (all) (for students and housing visitors)

v. \* Human Resources staff (all) (for employees)

vi. College President, Vice Presidents and Deans

vii. Athletics Staff (all)

viii. Faculty Athletics Representatives ix. Department Chairpersons/Executive Officers

x. University Office of the General Counsel employees (all)

xi. College/unit attorney and her/his staff xii. College/unit labor designee and her/his staff

xiii. International Education Liaisons/Study Abroad Campus Directors and Field Directors

xiv. Faculty and staff members at times when they are leading or supervising student on off-campus trips xv. Faculty or staff advisors to student groups

xvi. Employees who are Managers or Supervisors (all)

xvii. SEEK/College Discovery staff (all) xviii. College Childcare Center staff (all)

xix. Directors of “Educational Opportunity Centers” affiliated with CUNY colleges

xx. Faculty or staff academic advisors

### 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 sexual misconduct to the Title IX Coordinator. They are also strongly encouraged to maintain individual privacy to the greatest extent possible by sharing information, including the identities of the complainant and the respondent, only with the Title IX coordinator.

It is important to emphasize that faculty members other than those specifically identified in sub Section “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. An individual who wishes to ensure that the Title IX Coordinator is notified of an incident is strongly encouraged to speak with the Title IX Coordinator or one of the other individuals identified above.

D. Special Rules Concerning Public Awareness and Advocacy Events CUNY supports public awareness events that help provide its community with information about sexual misconduct and how it can be addressed and prevented. In order to preserve the ability to participate freely in public awareness and advocacy events, if an individual discloses information about sexual misconduct at such event (for example, Take Back the Night gatherings, candlelight vigils, or protests) the college will not treat the disclosure as triggering an obligation to commence an investigation based on that information. Such individuals are encouraged to report sexual misconduct to college officials so that the college can provide resources and assistance.

## **X. NO CONTACT ORDERS AND OTHER INTERIM AND SUPPORTIVE MEASURES**

When a college becomes aware of an allegation of sexual misconduct and the complainant or other affected parties request interim or supportive measures, the college will take appropriate interim and supportive measures to protect the complainant and other affected parties, to assist the parties, and to protect against retaliation. Appropriate

interim and supportive measures may also be available to respondents. The college may also take interim measures to protect the college community at large. 19

The college's Title IX Coordinator is responsible for coordinating 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.

The Title IX Coordinator will work with the Chief Student Affairs Officer to identify a trained staff member to assist students to obtain interim and supporting measures. The Title IX Coordinator will work with the Human Resources Director to assist employee complainants to obtain interim and supporting measures.

#### A. No Contact Orders

When respondent is a student, the complainant has the right to a college-issued "no contact order" under which continued intentional contact with the complainant would violate this policy. No contact orders may be issued for both the complainant and the respondent, as well as other individuals as appropriate.

#### B. Types of Interim and Supportive Measures

Possible interim and supportive measures include:

- i. Making appropriate changes to academic programs, including changes in class schedule, accommodations to permit the complainant to take an incomplete or drop a course or courses without penalty, permitting complainant or respondent to attend a class via skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;
- ii. Making appropriate 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. Offering counseling services through the college Counseling Center or other appropriate office, or referral to an off-campus agency;
- vii. Assisting the complainant in obtaining medical and other services, including access to rape crisis centers;
- viii. Assisting the complainant with filing a criminal complaint and/or seeking an order of protection;
- ix. Enforcing an order of protection;
- x. Obtaining a copy and/or explaining the terms of an order of protection and the consequences of violating it;
- xi. Addressing situations in which it appears that a complainant's academic progress is affected by the alleged incident;
- xii. In exceptional circumstances, where a respondent is determined to present a continuing threat to the health and safety of the community, the college may seek an emergency interim suspension of a student or take similar emergency measures against an employee, consistent with applicable CUNY Bylaws, rules, policies and collective bargaining agreements. The Office of Public Safety will, in cooperation with the Title IX Coordinator 20 and appropriate other campus officials, determine whether a respondent presents a continuing threat to the health and safety of the campus, including (a) whether the respondent has a history of violent behavior or is a repeat offender; (b) whether the incident represents escalation in unlawful conduct by the accused; and (c) any increased risk that the accused will commit additional acts of violence.

### C. Interim Emergency Student Suspensions

The president or her/his designee may in emergency or extraordinary circumstances, temporarily suspend a student pending an early hearing for not more than twelve (12) calendar days, unless the student requests an adjournment. See Section B above.

Prior to the commencement of a temporary suspension of a student, the college shall give the student respondent oral notice (which shall be confirmed via email to the address appearing on the records of the college) or written notice of the charges. If the

respondent denies them, the college shall forthwith give the respondent an informal oral explanation of the evidence supporting the charges and the student may present informally her/his explanation or theory of the matter.

Both complainant and the respondent will be notified of the suspension and if or when it the suspension is lifted at the same time and in the same manner.

D. Process for Review of Interim Measures, including “No Contact” Orders and Interim Suspensions.

Upon request, the complainant and the respondent shall each be afforded a prompt review of the need for and terms of restrictive interim measures, including “no contact” orders and interim suspensions. Issues that may be raised include possible modification or discontinuance of a “no contact” order. Complainants and respondents shall be allowed to submit evidence to support their request. The request 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 Human Resources Director, if neither the complainant nor the respondent are students. If a request is made in a case involving both a student and an employee, the Chief Student Affairs Officer shall consult with the Human Resources Director. The Chief Student Affairs Officer or Human Resources Director may consult with the Title IX Coordinator and other relevant officials regarding the request. If appropriate and possible, the college may 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.

Requests for accommodations that were made under CUNY’s Procedures for Implementing Reasonable Accommodations and Academic Adjustments and do not directly affect the other party are governed by the appeals provisions set forth in those Procedures.

## **XI. INVESTIGATING COMPLAINTS OF 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 sexual misconduct may have been committed against a student, employee or visitor, unless the

information provided is insufficient to permit an investigation or the complainant has requested that the college refrain from such an investigation and the college has determined that refraining from an investigation will not result in a continuing threat to the college community. See Section VIII, above.

#### A. Rights of the Complainant and Respondent.

Whenever an investigation takes place, the complainant and respondent shall have these rights:

- to an investigation and process that is fair, impartial, timely and thorough and provides a meaningful opportunity to be heard;
- to have the complaint investigated and/or adjudicated by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, and the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until any finding of responsibility;
- to have the college's judicial or conduct process run concurrently with any criminal justice investigation and proceeding, except for temporary delays requested by external municipal entities while law enforcement gathers evidence;
- to receive reasonable advance written or electronic notice of any meeting they are required to or eligible to attend, of the specific rule or law alleged to have been violated and in what manner;
- to exclude their own prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis and/or treatment from admittance in the stage that determines responsibility. (Past findings of sexual misconduct may be admissible in the stage that determines sanction.)
- to offer evidence during the investigation;
- to review documents and tangible evidence, consistent with FERPA and other law;
- to be accompanied by an attorney or other advisor of their choice, who may assist and advise the complainant or respondent throughout the process including during all related

meetings and hearings. Such attorneys or advisors must comply with the CUNY policies and procedures; and

- to simultaneous notice of the outcome of proceedings.

## B. The Investigation

The college Title IX Coordinator is responsible for conducting any investigation in a prompt, thorough, and impartial manner and may designate another appropriately trained administrator to conduct all or part of the investigation. Whenever an investigation is conducted, the Title IX Coordinator shall:

- coordinate investigative efforts with other appropriate offices;
- inform the complainant that an investigation is being commenced and that the respondent will receive a written summary of the allegations;
- inform the respondent that an investigation is being commenced and 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;
- interview witnesses who 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 for interview witnesses whom they reasonably believe can provide relevant information.

Neither the complainant nor the respondent is restricted from discussing and sharing information related to the complaint with others who may support or assist them. This does not, however, permit unreasonable sharing of private information in a manner intended to harm or embarrass another, or in a manner that would recklessly do so regardless of intention. Such unreasonable sharing may constitute retaliation under this Policy.

The college Title IX Coordinator shall maintain all documents of the investigation in accordance with the [CUNY Records Retention and Disposition Policy](#).

The college shall make reasonable efforts 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 will generally not last more than ten days except when law enforcement specifically requests and justifies a longer delay. While some complaints may require more extensive investigation, when 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.

#### i. Role of the Advisor

In cases involving this Policy, both the complainant and respondent may be accompanied by an advisor of their choice (including an attorney) who may advise throughout the entire process, including all meetings and hearings. While advisors may represent a party and fully participate at a hearing, they may not speak during the meetings that proceed the hearing nor give testimony as a witness at the hearing.

#### C. Conflicts

If a complainant or respondent believes that any individual involved in the investigatory or adjudication process has a conflict of interest, he or she may make a request to the Chief Student Affairs Officer (or, if no students are involved, to the Legal or Labor Designee) to have that conflicted individual removed from the process. The request for removal must be in writing within five days of the complaint or respondent's notification that the individual is to be involved and include a detailed description of the conflict. If the Chief Student Affairs Officer (or Legal or Labor Designee) determines that a conflict does exist, he or she will take immediate steps to address the conflict in order to ensure an impartial and fair process.

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.

#### D. Informal Resolution

Except in instances involving sexual assault, the Title IX Coordinator, in his or her discretion, may offer the respondent and the complainant the opportunity to participate in the informal resolution process. Informal resolution may take place after the Title IX Coordinator has completed the investigation, but before the Title IX report has been completed, in an effort to resolve the matter by mutual agreement. The informal resolution process shall be conducted by the Title IX Coordinator, or by a qualified staff or faculty member designated by Title IX Coordinator, in coordination with the Chief Student Affairs Officer.

Both the complainant and the respondent have the right to end the informal resolution process at any time. Any informal resolution must be acceptable to the complainant, the respondent, and the Title IX Coordinator. Even if both the respondent and complainant agree to a resolution, the Title IX Coordinator must also agree with the resolution for it to be final.

If a resolution is reached, the complainant and the respondent shall be notified in writing, and the Title IX Coordinator will confer with the Chief Student Affairs Officer when creating a written memorandum memorializing the agreed upon resolution and consequences for non-compliance. This memorandum will be included in the respondent's student record.

If no agreement is reached within a reasonable time, the Title IX Coordinator shall complete the Title IX report and take action in accordance with subsection E below. Information learned during and directly from the informal resolution process will not be documented in the Title IX report.

#### E. Action Following the Investigation or Closure of a Complaint.

i. Within 30 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 24 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.

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 correct the effects of the conduct investigated or 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 XII below.

iv. Within 30 calendar days following the termination of an investigation that has not been completed (for example, because it was resolved by informal resolution or the complainant withdrew cooperation); the Title IX Coordinator will summarize for the file the actions taken in response to the complaint and the basis on which the investigation was closed.

#### F. Malicious Allegations

Members of the CUNY community who make false and malicious complaints of violations of this policy of as opposed to complaints which, even if erroneous, are made in good faith, may be subject to disciplinary action.

## **XII. DISCIPLINARY PROCESS AND PROCEDURES**

### A. Disciplinary Action

If the College President recommends that disciplinary action be commenced against a respondent student or employee for violations of this Policy, the following procedures shall apply:

#### Discipline Against Students:

a. In cases where a College President recommends discipline against a student for violations of this Policy, the matter shall be referred to the college’s Office of Student

Affairs and action shall be taken in accordance with Section 11.A-C of this Policy, below. This Section provides for, among other things, a Faculty-Student Disciplinary Committee consisting of faculty members, students and in some cases staff members specially trained to hear and decide charges of violation of this Policy.

b. As described in Sections XI above, complainants have the same rights as respondents:

- to receive notice of the charges, including the date, time, location and factual allegations, concerning alleged violation of this Policy;
- to receive notice of the specific provisions alleged to have been violated and possible sanctions;
- to present evidence and testimony at any hearing, where appropriate;
- to be represented by an attorney or advisor of their choice;
- to receive access to a full and fair record of any hearing;
- to receive written notice of the decision of the faculty-student disciplinary committee, specifically whether the allegations were substantiated and what, if any, penalty was imposed;
- to make an impact statement at the point when the decision maker is deliberating on appropriate sanctions;
- To written notice of findings of fact, decisions and sanctions if any, as well as the rationale for the decision and any sanction;
- to choose whether to or discuss the outcome of a conduct or judicial process;
- to appeal to a decision maker that is fair and impartial and does not include individuals with conflicts of interest;
- to have all information obtained during the conduct process protected from public release until a decision maker on appeal makes a final determination, unless otherwise required by law.

c. Penalties for students instituted after a hearing before the faculty-student disciplinary committee range from a warning to suspension or expulsion from the University. Students

accused of crimes of violence are also subject to the university's policy on transcript notations which is discussed in this Section below.

### Discipline Against Employees

In cases where the college President recommends discipline against an employee, the matter shall be referred for disciplinary action in accordance with the applicable CUNY policies, rules and collective bargaining agreements. Penalties for employees include, depending on the employee's title, reprimand, suspension, demotion, fine, 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 the particular collective bargaining agreement.

For additional information on the disciplinary process in specific cases, complainants should consult their campus Title IX Coordinator, who will work with campus Human Resources Director to provide information. Respondents should consult their union representative, if any, or campus Human Resources Director.

### Action Against Visitors

In cases where the person accused of sexual misconduct is not a CUNY student or employee, the college's ability to take action against the accused is usually extremely limited. However, the college shall take all appropriate actions within its control, such as restricting the visitor's access to campus. In addition, subject to Section VI, above, the matter may be referred to local law enforcement for legal action, including seeking Orders of Protection and/or reporting to local law enforcement, where appropriate. College Public Safety will assist both students and employees in enforcing Orders of Protection on the campus.

### No Disciplinary Action

In cases where a determination is made not to bring disciplinary action, the Title IX Coordinator shall inform the complainant and respondent of that decision at the same time, in writing, and shall offer any appropriate support services, including counseling, to both.

## B. Student Disciplinary Procedures

## Referral of Violation for Disciplinary Action

If the President decides that discipline is warranted, the President will refer the matter to the Chief Student Affairs Officer for further action. The chief student affairs officer may rely on the investigation and determination of the Title IX Coordinator and prefer disciplinary charges.

In instances where a respondent is alleged to have violated this Policy as well as other CUNY policies, rules or bylaws, the entire matter will be heard before the Faculty Student Disciplinary Committee and will follow the rules and procedures outlined in this Policy.

## Respondent Withdrawal Before Completion of the Process

In the event that a respondent withdraws from the college before a decision is rendered on the charges, the respondent is required to participate in the disciplinary hearing or otherwise to resolve the pending charges and shall be barred from attending any other unit of the university until a decision on the charges is made, or the charges are otherwise resolved.

Immediately following such withdrawal, the college shall place a notation on the respondent's transcript that the respondent "withdrew with conduct charges pending." If the respondent fails to appear, the college may proceed with the disciplinary hearing in absentia, and any decision and sanction shall be binding, and the transcript notation, if any, resulting from that decision and penalty shall replace the notation.

## Issuance of Charges & Notice of Hearing

Notice of the charge(s) and of the time and place of the hearing shall be sent to the respondent by both first-class mail and email to the address appearing on the records of the college. Notice shall also be sent in a similar manner to the complainant to the extent that charges relate to the complainant. The Chief Student Affairs Officer is also encouraged to send the notice of charges to any other e-mail address that he or she may have for the respondent and the complainant.

The hearing shall be scheduled within a reasonable time following the filing of the charges or the mediation conference. Notice of at least seven (7) calendar days shall be given to the respondent in advance of the hearing unless the respondent consents to an earlier

hearing. The respondent is permitted one (1) adjournment, for a reasonable amount of time under the circumstances, without specifying a reason. Additional requests for an adjournment must be made at least five (5) calendar days prior to the hearing date, and shall be granted or denied at the discretion of the chairperson 27 of the Faculty Student Disciplinary Committee. If the respondent fails to respond to the notice, appear on the adjourned date, or request an extension, the college may proceed without the respondent present, and any decision and sanction shall be binding.

#### Content of Notice of Charges and Hearing

The notice shall contain the following:

A. A complete and itemized statement of the charge(s) being brought against the respondent including the policy, rule and/or bylaw the respondent is charged with violating, and the possible penalties for such violation.

B. A statement that the respondent and the complainant have the right to attend and participate fully in the hearing including the right:

i. to present their side of the story;

ii. to present witnesses and evidence on their behalf;

iii. to cross-examine witnesses presenting evidence, the exception being that the complainant and respondent may not cross-examine each other as discussed below;

iv. for the respondent to remain silent without assumption of guilt; and

v. to be represented by an advisor or legal counsel at their expense; if the respondent or the complainant requests it, the college shall assist in finding a legal counsel or advisor.

vi. A warning that anything the respondent says may be used against the respondent at a non-college hearing.

#### Review of Evidence before Hearing:

At least five (5) calendar days prior to the commencement of a student disciplinary hearing, the college shall provide the respondent and the complainant and/or their

designated representative, with similar and timely access to review documents or other tangible evidence that the college intends to use at the disciplinary hearing, consistent with the restrictions imposed by the Family Educational Rights and Privacy Act ("FERPA"). Should the college seek to introduce additional documents or other tangible evidence during the disciplinary hearing, the respondent and the complainant shall be afforded the opportunity to review the additional documents or tangible evidence. If during the hearing the complainant or the respondent submits documentary evidence, the chairperson may, at the request of any other party grant, adjournment of the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

#### Admission & Acceptance of Penalty

After the charges have been preferred by the chief student affairs officer, but prior to the commencement of a disciplinary hearing, the respondent may admit to the charges and accept the penalty that the chief student affairs officer or designee determines to be appropriate to address the misconduct. If required by this Policy, the agreed-upon penalty 28 shall be placed on the respondent's transcript consistent with CUNY's policy on Transcript Notations (see below). Before resolving a complaint in this manner, the chief student affairs officer, or designee, shall first consult with the complainant and provide the complainant with an opportunity to object to the proposed resolution, orally and/or in writing. If a resolution is reached over the complainant's objection, the chief student affairs officer or designee shall provide the complainant with a statement of the reasons supporting such resolution, and the complainant may appeal the resolution to the college President.

#### C. Faculty Student Disciplinary Committee Structure:

Each faculty-student disciplinary committee shall consist of two (2) faculty members or one (1) faculty member and one (1) member of the Higher Education Officer series (HEO), and two (2) student members and a chairperson, who shall be a faculty member. A quorum shall consist of the chairperson and any two (2) members, one of whom must be a student. Hearings shall be scheduled promptly (including during the summers) at a convenient time and efforts shall be made to insure full student and faculty representation.

The president shall select in consultation with the head of the appropriate campus governance body or where the president is the head of the governance body, its executive committee, three (3) members of the faculty of that college to receive training upon appointment and to serve in rotation as chairperson of the disciplinary committee. The following schools shall be required to select two (2) chairpersons: CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism. If none of the chairpersons appointed from the campus can serve, the president, at her/his discretion, may request that a chairperson be selected by lottery from the entire group of chairpersons appointed by other colleges. The chairperson shall preside at all meetings of the faculty-student disciplinary committee and decide and make all rulings for the committee. She/he shall not be a voting member of the committee but shall vote in the event of a tie.

The faculty members shall be selected by lot from a panel of six (6) elected biennially by the appropriate faculty body from among the persons having faculty rank or faculty status. Members of the panel shall be trained on an annual basis in compliance with the law and this Policy. CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism shall be required to select four (4) faculty members. The HEO members shall be selected by lot from a panel of six (6) HEO appointed biennially by the president. CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism shall be required to select four (4) HEO's. The student members shall be selected by lot from a panel of six (6) elected annually in an election in which all students registered at the college shall be eligible to vote. CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism shall be required to select four (4) students. In the event that the student or faculty panel or both are not elected, or if more panel members are needed, the president shall have the duty to select the panel or panels which have not been elected.

In the event that the chairperson cannot continue, the president shall appoint another chairperson. In the event that a seat becomes vacant and it is necessary to fill the seat to  
29 continue the hearing, the seat shall be filled from the respective faculty, HEO, or student panel by lottery

Each academic year, the chief student affairs officer, and her or his designee, shall appoint/identify one or more college employees to serve as presenters for the hearings. This list shall be forwarded to the Office of the Vice Chancellor for Student Affairs, and the Office of the General Counsel and Sr. Vice Chancellor for Legal Affairs prior to the first day of the academic year

Persons who are to be participants in the hearings as witnesses or have been involved in preferring the charges or who may participate in the appeals procedures or any other person having a direct interest in the outcome of the hearing shall be disqualified from serving on the committee

### Roles and Responsibilities of Individuals during the Hearing

#### a. Role and Responsibilities of Panel Chairperson:

The chairperson shall preside at the hearing. The parties to the hearing are the college, the respondent, and if the complainant chooses to participate, the complainant. At the commencement of the hearing, the chairperson shall inform the respondent of the charges, the hearing procedures, and her or his rights. After informing the respondent of the charges, the hearing procedures, and respondent's rights, the chairperson shall ask the respondent to state whether he or she is responsible or not responsible for the conduct. Prior to accepting testimony at the hearing, the chairperson shall rule on any motions questioning the impartiality of any committee member or the adequacy of the notice of the charge(s). Subsequent thereto, the chairperson shall rule on any motions regarding the admissibility of evidence and may exclude irrelevant, unreliable or unduly repetitive evidence. The chairperson shall exclude from the hearing room all persons who are to appear as witnesses, except the respondent and the complainant.

The chairperson shall preside at all hearing sessions and meetings and make all rulings for the panel. The chairperson has discretion to limit the number of witnesses and the length of testimony for the presentations by any party and/or their representative. All hearings pursuant to this Policy shall be closed hearings. The chairperson shall not be a voting member of the panel but shall vote in the event of a tie. In the event that the chairperson cannot continue, the President, or his or his designee, shall appoint another chairperson from the committee. In the event that a seat on the panel becomes vacant

and it is necessary to fill the seat to continue the hearing, the seat shall be filled from the respective faculty, HEO, or student committee members by lot.

b. Presenters:

Each academic year, the chief student affairs officer at each College or designee shall identify one or more college employees to serve as presenters for the hearings. This list will be forwarded to the Offices of the Vice Chancellor for Student Affairs and General Counsel and Vice Chancellor for Legal Affairs prior to the first day of the academic year. The employee who serves as presenter during the hearing shall be from the same institution as the respondent.

c. Recording of Proceeding

The college shall make a recording of each fact-finding hearing by some means such as a stenographic transcript, an audio recording or the equivalent. No other recording of the proceedings shall be permitted. A respondent who has been found to have committed the conduct charged after a hearing is entitled upon request to a copy of such a record without cost upon the condition that it is not to be disseminated except to the respondent's advisor. In the event of an appeal, both the respondent and the complainant are entitled upon request to a copy of such a record without cost, upon the condition that it is not to be disseminated except to their advisors.

Basic Hearing Rules:

If, at the commencement of the hearing, the respondent admits the conduct charged, the respondent shall be given an opportunity to explain her/his actions before the hearing panel and the college shall be given an opportunity to respond and present evidence regarding the appropriate penalty. If the respondent denies the conduct charged, the college shall present its evidence. At the conclusion of the college's presentation, the respondent may move to dismiss the charges. If the motion is denied by the committee, the complainant, if the complainant chooses to participate, shall be given an opportunity to make a presentation. After the college's, and, if complainant chooses to participate, complainant's presentation, the Respondent shall be given an opportunity to make a presentation.

The college bears the burden of proving the charge(s) by a preponderance of the evidence. The role of the hearing panel is to listen to the testimony, ask questions of the witnesses, review the testimony and evidence presented at the hearing and the papers filed by the parties and make a decision as to responsibility. In the event the respondent is found responsible for the conduct, the committee shall then determine the penalty to be imposed.

The college, the respondent and the complainant are permitted to have advisors act on their behalf during the pendency of a hearing, which shall include the calling and examining of witnesses, and presenting evidence. Any party intending to appear with an attorney shall give the other party five (5) calendar days' notice of such representation.

Neither the respondent nor the complainant shall be permitted to cross-examine the other directly. Rather, if they choose to, the respondent and the complainant shall cross-examine each other only through an advisor. If either or both of them do not have an advisor, the college shall assist them to find an advisor to conduct such cross-examination. In the alternative, the complainant and respondent may provide written questions to the chairperson to be posed to the witness, in the chairperson's discretion.

#### Responsibility Phase

The following rules apply to the introduction of evidence at the hearing:

Evidence of the mental health diagnosis and/or treatment of a complainant, respondent, or witness may not be introduced; and b) evidence of either party's prior sexual history may not be introduced except that (i) evidence of prior sexual history between complainant and respondent is admissible at any stage of the hearing, and (ii) past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the stage of that hearing related to penalty.

#### Penalty Phase

If the panel has found the Respondent responsible for the conduct, then the complainant, respondent, and college, will have the opportunity to introduce evidence and make arguments related what the appropriate penalty should be. The complainant, respondent and college will also have the opportunity to introduce evidence of and comment on the

respondent's character, including any past findings of a respondent's responsibility for domestic violence, stalking, or sexual assault or any other sexual misconduct, and submit a statement regarding the impact of the conduct.

The College may also introduce a copy of the respondent's previous disciplinary records, if any, from any CUNY institution the respondent has attended, provided the respondent was shown a copy of the records prior to the commencement of the hearing. The previous disciplinary record shall be submitted to the panel in a sealed envelope, bearing the respondent's signature across the seal, and shall only be opened if the respondent has been found responsible for the conduct charged. The hearing panel, to determine an appropriate penalty, shall use the disciplinary records, as well as any documents or character evidence introduced by the respondent, the complainant, or the college.

If either the complainant or the respondent chose not to participate in the hearing, they still have the opportunity to introduce evidence and make arguments related what the appropriate penalty should be and to provide or make an impact statement.

## ii. Decision

The panel shall issue a written decision, which shall be based solely on the testimony and evidence presented at the hearing, including the penalty phase. The college shall send to the respondent a copy of the panel's decision within seven (7) calendar days of the conclusion of the hearing, by regular mail and e-mail to the address appearing on the records of the college. In cases involving two or more complainants or respondents, the college has fourteen (14) calendar days of the conclusion of the hearing to send the panel's decision. The college is also encouraged to send the decision to any other e-mail address that it may have for the respondent. The decision shall be final subject to any appeal.

In cases involving a crime of violence or a non-forcible sex offense, the complainant shall simultaneously receive notice of the outcome of the faculty-student disciplinary committee's decision as it relates to the offense(s) committed against the complainant, in the same manner as notice is given to the respondent.

When a disciplinary hearing results in a penalty of dismissal or suspension for one term or more, the decision is a faculty-student disciplinary committee penalty and the respondent

shall be barred from admission to, or attendance at, any other unit of the university while the penalty is being served.

### iii. Appeals/Review

A respondent or a complainant may appeal a decision of the faculty-student disciplinary committee to the president on the following grounds: (i) procedural error, (ii) newly discovered evidence that was not reasonably available at the time of the hearing, or (iii) the disproportionate nature of the penalty. The president may remand for a new hearing or may modify the penalty either by decreasing it (on an appeal by the respondent) or increasing it (on an appeal by the complainant). If the president is a party to the dispute, her/his functions with respect to an appeal shall be discharged by an official of the university to be appointed by the chancellor or her or his designee.

If the penalty after appeal to the president is one of dismissal or suspension for one term or more, a respondent or a complainant may appeal to the board committee on student affairs and special programs. The board may dispose of the appeal in the same manner as the president. An appeal under this section shall be made in writing within fifteen (15) calendar days after the delivery of the decision appealed from. This requirement may be waived in a particular case for good cause by the president or the board committee as the case may be. Within three (3) calendar days of the receipt of any appeal, either to the president or the board committee on student affairs and special programs, the non-appealing party shall be sent a written notice of the other party's appeal. In addition, the respondent and/or the complainant shall have the opportunity to submit a written opposition to the other party's appeal within fifteen (15) calendar days of the delivery of the notice of receipt of such appeal.

The president shall decide and issue a decision within fifteen (15) calendar days of receiving the appeal or within fifteen (15) calendar days of receiving papers in opposition to the appeal, whichever is longer. The board committee shall decide and issue a decision within five (5) calendar days of the meeting at which it hears the appeal.

### iv. Transcript Notation(s)

In cases in which the panel finds the respondent responsible and the penalty is either suspension or expulsion, the college shall place a notation on the respondent's transcript

stating that respondent was suspended or expelled after a finding of responsibility for a code of conduct violation. In cases where a student has been expelled as a result of a Clery Act crime of violence, the notation will not be removed.

For all other cases, after four years from the date of the conclusion of the disciplinary proceeding, or one year after the conclusion of any suspension, whichever is later, the Respondent has the right to request that a transcript notation from a finding of responsibility be removed. If a finding of responsibility for any violation is vacated for any reason, the notation shall be removed.

### **XIII. COLLEGE OBLIGATIONS UNDER THIS POLICY**

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

#### **a. 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 NonDiscrimination; (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 residence life materials and training and educational 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.

#### **b. Training and Educational Programming**

CUNY is responsible for providing training to college Title IX Coordinators and others who may serve as investigators. 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 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 sexual misconduct under this policy, as well as those employees who have been designated as confidential employees.

ii. Training For Title IX Coordinator and other investigators CUNY shall provide at least annual training to Title IX Coordinators and other investigators in conducting investigations of sexual misconduct, including

- the effects of trauma;
- impartiality;
- the rights of the respondent, include the right to a presumption that the respondent is "not responsible" until any finding of responsibility is made;
- relevant CUNY policies and procedures; and • other issues including what constitutes crimes of sexual misconduct.

iii. Student Onboarding and Ongoing Education

Each college shall adopt a comprehensive student onboarding and ongoing education campaign to educate students about 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 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 sexual misconduct. The college shall also share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students. This may be done by linking to <http://www1.cuny.edu/sites/title-ix/information-for-parents-andfamilies/campus/university/>

### c. Campus Climate Assessment

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.

## **XIV. Rules Regarding Intimate Relationships**

### d. 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 misconduct.

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 any 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.

#### e. 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.

The City University of New York

#### Students' Bill of Rights

For CUNY students who experience Sexual Violence, including sexual assault; domestic, dating or, intimate partner violence, stalking or voyeurism

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 institutional 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.

This Student Bill of Rights was established by the "Enough is Enough" Law, New York State Education Law Article 129-B, effective October 7, 2015.

For more information about preventing and addressing Sexual Violence at CUNY see <http://www1.cuny.edu/sites/title-ix/campus-websites>.

Information about filing a report, seeking a response, and options for confidential disclosure is available also available CUNY's Title IX web page.

Questions about CUNY's Sexual Misconduct policy and procedures may be directed to your campus Title IX Coordinator.

Policy adopted by the Board of Trustees on 12/1/2014 Cal. 4.C., with effective date of 1/1/2015. Amended by the Board of Trustees on 10/1/2015. Cal. 6.B. Adopted as revised by BOT on 6/25/2018. Cal.9.A

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