

**THE CITY UNIVERSITY OF NEW YORK**

**POLICY ON SEXUAL MISCONDUCT**

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## **PREAMBLE**

This Policy prohibits Sexual Misconduct at The City University of New York (“CUNY”). In addition to defining what constitutes Sexual Misconduct and explaining the resources available to those affected by Sexual Misconduct, this Policy details CUNY’s procedures for investigating and adjudicating allegations of Sexual Misconduct. CUNY’s process for addressing allegations of Sexual Misconduct is based on federal, state and local laws, including Title IX, the federal law that prohibits sex discrimination in education and New York State’s Education Law Article 129-B, also known as the “Enough is Enough” law. Each time there is a change in the law, CUNY must review and revise this Policy.

In May 2020, the United States Department of Education (“USDOE”) issued regulations that significantly limited the behavior that constitutes sexual harassment prohibited by Title IX—this behavior is now referred to as Title IX Sexual Harassment.

Title IX Sexual Harassment is defined by the USDOE to mean conduct on the basis of sex that occurs in CUNY’s education program or activity against a person in the United States and that satisfies one or more of the following: (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY on an individual’s participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CUNY’s education program or activity; or (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

The regulations mandate a specific procedure for the investigation, resolution and adjudication of allegations of Title IX Sexual Harassment (“Title IX grievance procedure”). The regulations state that educational institutions may still prohibit sexual misconduct that falls outside of the narrow definition of Title IX Sexual Harassment and CUNY will continue to prohibit, investigate and adjudicate such conduct - for example, conduct that has a reasonable connection to CUNY but occurs outside of CUNY’s education program or activity, conduct that occurs outside the United States or unwelcome physical or verbal conduct of a sexual nature that does not meet the severe, pervasive and objectively offensive standard.

This Policy uses Sexual Misconduct as an umbrella term that covers all conduct prohibited by the Policy— regardless of whether that conduct meets the Title IX Sexual Harassment definition or not. Sexual Misconduct that falls outside the scope of Title IX Sexual Harassment will be referred to as a Non-Title IX Sexual Misconduct matter.

While the regulations specify a strict and complex Title IX grievance procedure for Title IX Sexual Harassment matters, those procedures are not required when Sexual Misconduct falls outside the scope of Title IX and CUNY determined that it would not use the Title IX grievance procedure for Non-Title IX Sexual Misconduct matters. Therefore, to ensure compliance with Title IX, as now interpreted, as well as other federal, state and local laws, this Policy provides two different sets of procedures: Title IX Sexual Harassment matters will follow the Title IX grievance procedure required by the regulations and Non-Title IX Sexual Misconduct matters will follow a different process that largely mirrors the CUNY investigation and adjudication process that existed under previous versions of this Policy, with a few changes and updates.

## **I. POLICY STATEMENT**

CUNY students, employees and visitors deserve the opportunity to live, learn and work free from Sexual Misconduct. Accordingly, CUNY is committed to:

1. Defining conduct that constitutes Sexual Misconduct;
2. Providing clear guidelines for students, employees and visitors on how to report incidents of Sexual Misconduct;
3. Providing ongoing assistance and support to all parties after allegations of Sexual Misconduct have been made;
4. Promptly and respectfully responding to and investigating allegations of Sexual Misconduct, pursuing disciplinary action when appropriate and taking action to investigate and address any allegations of retaliation;
5. Providing awareness and prevention information on Sexual Misconduct, including widely disseminating this Policy, as well as a “Students’ Bill of Rights” and implementing training and educational programs on Sexual Misconduct to college constituencies;
6. Gathering and analyzing information and data that will be reviewed in order to improve safety, reporting, responsiveness and the resolution of allegations of Sexual Misconduct;
7. Distinguishing between the specific conduct defined as Title IX Sexual Harassment by the USDOE and the broader definition of Sexual Misconduct prohibited by this Policy; and
8. Ensuring compliance with the federal regulations under Title IX, and other federal, state and local laws.

This is CUNY’s sole policy to address Sexual Misconduct and it is applicable at all CUNY colleges and units.<sup>1</sup> This Policy 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:

1. [The CUNY Policy on Equal Opportunity and Nondiscrimination](#)<sup>2</sup> 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.
2. [The CUNY Campus and Workplace Violence Prevention Policy](#)<sup>3</sup> addresses workplace violence.
3. [The CUNY Domestic Violence and the Workplace Policy](#)<sup>4</sup> addresses domestic violence in or affecting employees in the workplace.

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<sup>1</sup> There is a separate policy for students at the Hunter College Campus Schools, consistent with federal regulations under Title IX, state and local law.

<sup>2</sup> <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/hr/policies-and-procedures/PEONon-Discrimination12.4.2014.pdf>.

<sup>3</sup> <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/legal-affairs/CUNY-Campus-and-Workplace-Violence-Prevention-Policy-2.28.11-and-amended-9.26.2011.pdf>.

<sup>4</sup> [http://policy.cuny.edu/general-policy/article-v/#policy\\_5.061](http://policy.cuny.edu/general-policy/article-v/#policy_5.061).

4. [The CUNY Procedures for Implementing Reasonable Accommodations and Academic Adjustments](https://www.cuny.edu/about/administration/offices/legal-affairs/policies-procedures/reasonable-accommodations-and-academic-adjustments/)<sup>5</sup> addresses the procedures CUNY will follow when there is a request for a reasonable accommodation 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 on each college's Public Safety website.

## **II. SCOPE OF THIS POLICY**

This Policy governs the conduct of CUNY students, employees and visitors. Visitors may report a violation of this Policy and may also be subject to restrictions for failing to comply with this Policy.

This Policy prohibits Sexual Misconduct that occurs on CUNY property and conduct that occurs off CUNY property but has a reasonable connection to CUNY.

## **III. PROHIBITED CONDUCT AND DEFINITIONS**

This Policy prohibits Sexual Misconduct (addressed in this section), Retaliation (addressed in Section VII-G and defined below), knowingly submitting false statements or information (defined below) and certain intimate relationships between students and faculty members/employees (addressed in Section XIV).<sup>6</sup>

### **The following behaviors constitute Sexual Misconduct prohibited under this Policy:**

- a. **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. Dating violence includes the threat of sexual assault or physical abuse. The existence of such a relationship is determined based on a consideration of the following factors: (1) The length of the relationship; (2) The type of relationship and (3) The frequency of interaction between the persons involved in the relationship. A relationship may be romantic or intimate regardless of whether the relationship was sexual in nature.
- b. **Domestic Violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim by a person with whom the victim shares a child, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under applicable domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under applicable domestic or family

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<sup>5</sup> <https://www.cuny.edu/about/administration/offices/legal-affairs/policies-procedures/reasonable-accommodations-and-academic-adjustments/>.

<sup>6</sup> Sex discrimination that does not constitute Sexual Misconduct is not addressed in this Policy but is covered by CUNY's Equal Opportunity and Non-Discrimination Policy. Sex discrimination is defined as 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.

violence laws. Domestic violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct.

- c. **Sexual Assault: Contact** is any sexual contact, including sexual touching for the purpose of sexual gratification of either party or degrading or abusing such person, without a person's consent. Sexual touching includes contact under or over clothing with another person's anus, breasts, buttocks, genitals, groin or inner thigh; touching another person anywhere with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person.
- d. **Sexual Assault: Penetration** is any form of vaginal, anal, or oral penetration or attempted penetration, however slight, by a penis, object, tongue, or finger without a person's consent. This term includes incest and statutory rape.
- e. **Sexual Harassment** is unwelcome verbal or physical behavior based on a person's sex (including sexual orientation, gender, gender expression and gender identity, including transgender status). Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive. This includes unwelcome conduct when: (1) a CUNY employee conditions the provision of an aid, benefit, or service of CUNY on an individual's participation in unwelcome sexual conduct (quid pro quo); and/or (2) such conduct alters the conditions of, or has the effect of 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. While it is not possible to list all circumstances that might constitute Sexual Harassment, the following are some examples of conduct that might constitute such harassment:
  - i. Suggestive body language or inappropriate or unwelcome physical contact that does not qualify as Sexual Assault: Contact;
  - 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. Making lewd or sexual comments about an individual's appearance, body, or clothing;
  - iv. Visual displays or distribution of sexually explicit drawings, pictures, or written materials;
  - v. Undue and unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive gestures; or
  - vi. Offensive comments regarding a person's sexual orientation, gender identity or gender expression, such as persistent mocking or disparagement of a person based on a perceived lack of stereotypical masculinity or femininity.
- f. **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others or (2) suffer substantial emotional distress. This Policy addresses stalking that is based on sex (including sexual orientation, gender, gender expression and gender identity, including transgender status). All other stalking will be addressed under other applicable policies.

- g. Title IX Sexual Harassment** is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex<sup>7</sup> that occurs in CUNY's education program or activity against a person in the United States and that satisfies one or more of the following: (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CUNY's education program or activity; or (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.
- h. Voyeurism** is unlawful surveillance and includes acts that violate a person's right to privacy in connection with their 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 where that person would have a reasonable expectation of privacy, 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 where that person would have a reasonable expectation of privacy, 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; or
  - 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.

**Other important terms and concepts addressed in this Policy:**

- a. Consent** means affirmative consent.
- b. 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.
- i. 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.
  - ii. In order to give consent, one must be of legal age (17 years or older in New York).
  - iii. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - iv. 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

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<sup>7</sup> "Based on sex" includes sexual orientation, gender, gender expression and gender identity, including transgender status.

- 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.
- v. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  - vi. Consent may be initially given but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.
- c. **Sexual Act/Sexual Activity** is
- i. Any form of vaginal, anal, or oral penetration or attempted penetration, however slight, by a penis, object, tongue or finger.
  - ii. Any sexual contact, including sexual touching. Sexual touching includes contact under or over clothing with another person’s anus, breasts, buttocks, genitals, groin or inner thigh; touching another person anywhere with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person.
- d. **Complainant** refers to the individual who alleges that they have been the subject of Sexual Misconduct, and may be a CUNY student, employee (including all full-time and part-time faculty and staff and paid/unpaid interns) or visitor. Under this Policy, the alleged incident(s) may have been brought to the college’s attention by someone other than the complainant.
- e. **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 required to report known incidents of Sexual Misconduct to college officials. Licensed mental health counselors, medical providers and pastoral counselors may offer confidentiality. See additional discussion in Section VI.
- f. **Day** Whenever this Policy refers to a “day,” it means a calendar day other than a Saturday, Sunday or federal or state holiday.
- g. **Knowingly submitting false statements or information** means knowingly making false statements or submitting false information in connection with any allegation of Sexual Misconduct (as opposed to providing information which, even if erroneous, is provided in good faith). Anyone who knowingly makes false statements or submits false information in connection with any allegation of Sexual Misconduct will be subject to disciplinary action in accordance with CUNY Bylaws, policies and collective bargaining agreements.
- h. **Non-Title IX Sexual Misconduct Matter** is the term used to describe allegations of Sexual Misconduct that do not meet the definition of Title IX Sexual Harassment and therefore will be resolved, investigated and adjudicated pursuant to the procedures outlined in Section XII.
- i. **Party** is a complainant or respondent.
  - j. **Preponderance of evidence** is the standard of evidence used during the investigation and adjudication of Sexual Misconduct allegations under this Policy. A preponderance of the evidence means whether it is more likely than not that the Sexual Misconduct occurred.
  - k. **Privacy** is the assurance that an individual or the college will only reveal information about allegations 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. See additional discussion in Section VI.

- l. Respondent** refers to the individual who is alleged to have committed Sexual Misconduct against a CUNY student, employee, or visitor.
- m. Retaliation** is adverse treatment of an individual as a result of that individual's reporting Sexual Misconduct, assisting someone to report Sexual Misconduct, opposing in a reasonable manner an act or policy believed to constitute Sexual Misconduct, or participating in any manner (or refusing to participate) in an investigation or resolution under this Policy. Adverse treatment includes intimidation, threats, coercion or discrimination for the purpose of interfering with any right or privilege secured by this Policy. All individuals are prohibited from engaging in retaliation, including complainants, respondents and others, such as friends or relatives of the parties.
- n. Title IX Formal Complaint** is a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a respondent and requesting that the college investigate the allegations. The Title IX Coordinator may sign a Title IX Formal Complaint with or without a complainant's desire to participate in a grievance process.
- o. Title IX Sexual Harassment Matter** is the term used to describe allegations of Sexual Misconduct that meet the definition of Title IX Sexual Harassment and therefore must be resolved, investigated and adjudicated pursuant to the Title IX grievance procedures required by the USDOE and outlined in Section XI.
- p. Visitor** is any person other than a CUNY student or employee who interacts with the CUNY community. CUNY alumni are considered visitors under this Policy.
- q. Writing** Whenever this Policy requires a "writing," electronic mail satisfies the writing requirement.

#### **IV. TITLE IX COORDINATOR**

Each college or unit of CUNY has an employee who has been designated as the Title IX Coordinator.<sup>8</sup> This employee is responsible for compliance with Title IX of the Education Amendments of 1972, 20 U.S.C. chapter 38, which prohibits sex discrimination in education programs (including Title IX Sexual Harassment as it is defined above), New York State Law Article 129-B ("Enough is Enough") and other federal, state and local laws pertaining to sex discrimination and sexual misconduct. The Title IX Coordinator has overall responsibility for implementing this Policy, including overseeing the investigation of allegations of Sexual Misconduct at their college or unit (including Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters) and carrying out the other functions of that position set forth in this Policy. All Title IX Coordinators will receive annual training as required by Title IX, the Clery Act, Enough is Enough, and other civil rights laws. The name and contact information for all Title IX Coordinators at CUNY can be found on CUNY's dedicated [Title IX website](#).<sup>9</sup> Title IX Coordinator training obligations are discussed in Section XIII.

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<sup>8</sup> Any reference to the Title IX Coordinator may also include their designee.

<sup>9</sup> <http://www1.cuny.edu/sites/title-ix/campus-websites/campus/university/>.

## V. **RESOURCES AND INFORMATION FOR INDIVIDUALS AFFECTED BY SEXUAL MISCONDUCT**

CUNY is committed to providing assistance, support and resources to those affected by Sexual Misconduct. This Section discusses a complainant's option of reporting Sexual Misconduct to outside law enforcement, the differences between CUNY's process and procedures and those of outside law enforcement and how to obtain immediate medical attention and emotional support.

### A. **Reporting to Outside Law Enforcement**

Students, employees and other community members may choose to report Sexual Misconduct to local law enforcement and/or state police ("outside law enforcement"). However, CUNY does not require that a complainant report Sexual Misconduct to outside law enforcement; nor will CUNY do so without the complainant's agreement, except in exceptional circumstances. The college may report Sexual Misconduct to outside law enforcement without the complainant's consent when the college determines that the respondent poses a serious continuing threat to the physical safety of the complainant or another person.

If a student, employee or other community member chooses to report Sexual Misconduct to outside law enforcement, CUNY will provide assistance. Each college Public Safety office must 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 reporting allegations both on and off-campus and in obtaining immediate medical attention and other services.

Additional information is available on CUNY's [Title IX website](#).

### B. **Differences between CUNY's Process and Procedures and Those of Outside Law Enforcement**

In cases where the complainant reports allegations to outside law enforcement authorities as well as to the college, the college must 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 law. 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 supports a finding of responsibility, 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 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.](#)”<sup>10</sup>

### **C. Obtaining Immediate Medical Attention and Emotional Support**

CUNY encourages anyone who has experienced Sexual Assault, Domestic Violence or Dating 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 helpful if an individual later decides to pursue criminal charges or a protective order.

Individuals who have experienced or witnessed Sexual Assault, Domestic Violence or Dating Violence are also encouraged to seek emotional support, either on or off-campus.

On campus resources may 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](#)<sup>11</sup>, 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.

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<sup>10</sup> <http://www1.cuny.edu/sites/title-ix/campus-websites/campus/university/>.

<sup>11</sup> <http://www1.cuny.edu/sites/title-ix/campus-websites/resources/>.

## **VI. IMPORTANT INFORMATION ABOUT REPORTING/CONFIDENTIALITY OBLIGATIONS OF COLLEGE AND CUNY EMPLOYEES**

CUNY values the privacy of its students, employees and visitors and recognizes that they should be able to seek the assistance they need without fear that the information they provide will be shared more broadly. An individual who speaks to a college or CUNY employee about Sexual Misconduct should be aware that employees fall into three categories:

- a. Confidential Employees** have an obligation to maintain a complainant's confidentiality regarding allegations of Sexual Misconduct and will not share any identifying information with others, except as required by law in emergency circumstances;
- b. Responsible Employees** are required to report allegations of Sexual Misconduct to the Title IX Coordinator but will protect an individual's privacy to the greatest extent possible and share information with other staff only on a need-to-know basis; and
- c. All other employees** are strongly encouraged, but not required to report allegations of Sexual Misconduct to the Title IX Coordinator. These employees are otherwise encouraged to protect an individual's privacy to the greatest extent possible and share information only with the Title IX Coordinator.

**Note:** 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 identifying information.

### **A. Confidential Employees**

- a. For Students.** Students who wish to speak to someone who will keep the communications confidential should speak to one of the following:
  - i. Counselor or other staff member at their college counseling center;
  - ii. Nurse, nurse practitioner or other college health office staff member;
  - iii. Pastoral counselor (a person associated with a religious order or denomination, recognized by that order or denomination as someone who provides confidential counseling and identified by CUNY as functioning within the scope of that recognition); or
  - iv. Designated staff member, if any, in a women's or men's center, if one exists at their college.

These individuals will not report the allegations 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 injury 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 allegations or pursue disciplinary action against the respondent. Confidential employees will assist students in obtaining other necessary support.

- b. 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](#)<sup>12</sup>, which is administered by an outside company. Confidential community counseling resources are also available [throughout New York City](#).<sup>13</sup>

Complainants may use these confidential resources even if they decide not to report allegations of Sexual Misconduct or participate in an investigation, CUNY resolution process or the criminal justice process. A complainant who first speaks to a confidential resource may later decide to report allegations to the college or with outside law enforcement.

## **B. Responsible Employees**

Individuals designated as responsible employees have a duty to report allegations of Sexual Misconduct, including all relevant details, to the Title IX Coordinator. These employees are not permitted to maintain a complainant's confidentiality, but 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 should advise the complainant of the employee's reporting obligations—and if the complainant wants to maintain confidentiality, direct the complainant to confidential resources.

CUNY has designated the following individuals as responsible employees:

- a. University Title IX Director
- b. College Title IX Coordinator and staff
- c. Office of Public Safety employees
- d. Vice President for Student Affairs or Dean of Students and all staff housed in those offices (other than staff that are designated as confidential employees)
- e. Residence Life staff in CUNY owned or operated housing, including Resident Assistants
- f. Directors and Deputy Directors of Human Resources
- g. College President, Vice Presidents and Deans
- h. Athletics Staff
- i. Department Chairpersons/Executive Officers
- j. CUNY Office of the General Counsel attorneys and College/unit attorneys
- k. College/unit labor designee
- l. Faculty and staff members at times when they are leading or supervising students on off-campus trips
- m. International Education Liaisons/Study Abroad Campus Directors and Field Directors
- n. All employees at Hunter College Campus Schools
- o. College Childcare Center staff
- p. Managers or supervisors, regarding alleged Sexual Misconduct involving people who report to them
  - i. **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.

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<sup>12</sup> <https://www.cuny.edu/about/administration/offices/hr/benefits/>.

<sup>13</sup> <https://nownyc.org/womens-justice-now/get-help/>.

- ii. **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.

**C. 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.

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

In order for CUNY to address allegations of Sexual Misconduct, it has to learn about the allegations. Accordingly, CUNY strongly encourages individuals who have experienced Sexual Misconduct to report allegations to a designated campus official, as set forth in “Where to Report Allegations of Sexual Misconduct on Campus” below. The designated officials are trained to receive allegations of Sexual Misconduct, to ensure they are investigated in accordance with this Policy and to help complainants get necessary assistance. Students, employees and visitors are encouraged to report allegations of Sexual Misconduct to campus officials, regardless of whether they have reported the incident to outside law enforcement authorities and regardless of where the incident took place.

### **A. Complainant’s Rights**

Individuals who have experienced Sexual Misconduct have the right to report allegations to the college or to decide not to do so. Students who report Sexual Misconduct have all of the rights contained in the Students’ Bill of Rights (copy attached).

Complainants also have these rights:

- a. To notify campus Public Safety and/or outside law enforcement, or to choose not to report.
- b. 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 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 and 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.
- c. To disclose the incident to a college representative who can offer confidentiality or privacy and assist in obtaining services. See Section VI, above.
- d. 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 (subject to the procedures outlined in Sections XI and XII).
- e. To have allegations of Sexual Misconduct investigated in accordance with CUNY policy.
- f. To have privacy preserved to the extent possible.
- g. 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.
- h. To disclose the incident to the college’s Human Resources Director or designee (if the respondent is a college employee) or request that a confidential or private resource assist in doing so.
- i. To disclose the incident confidentially and obtain services from state and local governments.

- j. 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.
- k. 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.
- l. To withdraw allegations or involvement from the process at any time.

## **B. Where to Report Allegations of Sexual Misconduct on Campus**

Students, employees and visitors who experience Sexual Misconduct and wish to report the allegations to the college/CUNY, should notify one of these campus officials/offices:

- a. Title IX Coordinator;
- b. Office of Public Safety;
- c. Office of Vice President for Student Affairs or Dean of Students;
- d. Residence Life staff in CUNY owned or operated housing; or
- e. Human Resources Director.

Contact information for these officials can be found at CUNY's [Title IX Website](#). Complainants are encouraged, but not required, to complete the CUNY Sexual Misconduct Allegation Form. After the form is filled out, it should be brought to one of the offices listed above or submitted electronically through the college's Title IX website (where available) or by email. The college will also respond to allegations made without the form, whether oral or written.

When any of the officials or offices above is notified of allegations of Sexual Misconduct, they 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 providing appropriate supportive measures (addressed in Section VIII, below). These officials and offices will maintain a complainant's privacy to the greatest extent possible, and all information in connection with the allegations, including the identities of the complainant and the respondent, will be shared only with those who have a legitimate need for the information.

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

Whether a college may maintain a complainant's anonymity or request to not conduct an investigation, depends on whether the allegations will proceed as a Title IX Sexual Harassment matter or a Non-Title IX Sexual Misconduct matter (See Section X).

If the allegations will proceed as a Title IX Sexual Harassment matter, the Title IX Coordinator must inform the complainant that the complainant's identity may not be kept anonymous if the complainant wishes to proceed with a Title IX Formal Complaint, and that the notice to the respondent will reveal the complainant's identity. The complainant may choose whether to file a Title IX Formal Complaint when so informed. If the complainant chooses not to file a Title IX Formal Complaint, their identity will not be disclosed to the respondent.



If the allegations will proceed as a Non-Title IX Sexual Misconduct matter, a complainant may request: (a) that the matter be investigated only to the extent possible without further revealing their identity or revealing further details and/or (b) that no investigation into a particular incident be conducted. If a complainant makes such a request, 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.

The college's decision to maintain the complainant's anonymity does not mean that anonymity can be guaranteed in all circumstances; rather, the college will make reasonable efforts to keep information confidential consistent with law. Of course, a college's ability to meaningfully investigate the incident and pursue disciplinary action may be limited by such a request for anonymity. 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 supportive measures and accommodations set forth in Section VIII of this Policy.

#### **D. Filing External Complaints**

Individuals who feel that they have been subjected to Sexual Misconduct 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:

- a. [U.S. Department of Education, Office for Civil Rights](http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html)<sup>14</sup>
- b. [U.S. Equal Employment Opportunity Commission](https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm)<sup>15</sup>
- c. [New York State Division of Human Rights](https://dhr.ny.gov/complaint)<sup>16</sup>
- d. [New York City Commission on Human Rights](http://www1.nyc.gov/site/cchr/about/resources.page)<sup>17</sup>

In certain circumstances, the college or unit may close an investigation upon the filing of an external complaint. When this happens, the outside agency takes over the investigation and the college or unit will cooperate with the investigation conducted by the outside agency. If a college or unit closes an investigation for this reason, the Title IX Coordinator must notify the parties in writing.

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<sup>14</sup> <http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>.

<sup>15</sup> [https://www.eeoc.gov/federal/fed\\_employees/filing\\_complaint.cfm](https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm).

<sup>16</sup> <https://dhr.ny.gov/complaint>.

<sup>17</sup> <http://www1.nyc.gov/site/cchr/about/resources.page>.

### **E. Action by Bystanders**

CUNY encourages employees, students and visitors to take reasonable and prudent actions to prevent or stop an act of Sexual Misconduct that they may witness, unless doing so would pose a safety risk to themselves or others. Although these strategies 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 employees, students and visitors to report any incident of Sexual Misconduct that they observe or become aware of to the Title IX Coordinator or the offices referenced in Section VII-B, above. Individuals who take action in accordance with this paragraph will be supported by the college, and anyone who retaliates against them will be subject to discipline.

### **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 Sexual Misconduct 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 Misconduct to college officials. A bystander or complainant acting in good faith who discloses any incident of Sexual Misconduct to college officials or law enforcement will not be subject to discipline under [CUNY's Policy on Drugs and Alcohol](#)<sup>18</sup> for violations of alcohol and/or drug use policies occurring at or near the time of the Sexual Misconduct.

### **G. Reporting Retaliation**

An individual may report allegations of retaliation to the Title IX Coordinator if the individual has been subject to retaliation, as defined in Section III. All retaliation allegations will be investigated in accordance with the investigation procedures set forth in this Policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

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<sup>18</sup> <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/legal-affairs/policies-procedures/Policy-Against-Drugs-and-Alcohol.pdf>.

## **VIII. SUPPORTIVE MEASURES AND ACCOMMODATIONS**

Supportive measures and accommodations are non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to education and to ensure safety, prevent retaliation and avoid an ongoing hostile environment. Supportive measures and accommodations are available to complainants, respondents and other affected parties. Supportive measures are available when a college becomes aware of allegations of Sexual Misconduct (including both Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters), whether or not a complainant chooses to move forward with an investigation and/or resolution. Supportive measures may be provided on an interim or continuing basis. The college may also take reasonable measures to ensure the safety of the college community at large.

The Title IX Coordinator is responsible for coordinating and ensuring the effective implementation of supportive measures and accommodations. When a college learns of allegations of Sexual Misconduct, the Title IX Coordinator will promptly contact a complainant to discuss the availability of supportive measures and accommodations, discuss the complainant's wishes with respect to supportive measures and accommodations and inform complainant that supportive measures and accommodations are available even if the complainant does not wish to proceed with an investigation and/or resolution of the allegations. Requests for supportive measures and accommodations should be made to the Title IX Coordinator.

The Title IX Coordinator will work with the Chief Student Affairs Officer<sup>19</sup> to identify a trained staff member to assist students to obtain supportive measures and accommodations. The Title IX Coordinator will work with the Human Resources Director to assist employees to obtain supportive measures and accommodations.

### **A. Range of Supportive Measures and Accommodations**

Possible supportive measures and accommodations may include:

- a. Making appropriate changes to academic programs, including changes in class schedule, accommodations to permit students to take an incomplete or drop a course or courses without penalty, permitting students to attend a class via videoconference platform or other alternative means, providing an academic tutor, or extending deadlines for assignments;
- b. Making appropriate changes to residential housing situations or providing assistance in finding alternate housing;
- c. Changing an employee's work assignment or schedule;
- d. Providing an escort to and from class or campus work location;
- e. Arranging appropriate transportation services to ensure safety;
- f. Offering counseling services through the college Counseling Center or other appropriate office, or referral to an off-campus agency;
- g. Enforcing an Order of Protection issued by a court;
- h. Issuing a No Contact Order whereby continued intentional contact would be a violation of CUNY Policy and subject to disciplinary action (see discussion below); and

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<sup>19</sup> Any reference to the Chief Student Affairs Officer may also include their designee.

- i. Emergency removal of a respondent when they pose an imminent threat to the physical health or safety of any person (see discussion below).

## **B. No Contact Orders**

A No Contact Order is a directive issued by a college prohibiting intentional contact or communication between specified parties. An individual who intentionally violates a No Contact Order is in violation of CUNY Policy and will be subject to disciplinary action. No Contact Orders may be issued for both complainants and respondents, as well as other individuals as appropriate. No Contact Orders are issued by the Chief Student Affairs Officer (for students) and the Director of Human Resources (for employees).

## **C. Emergency Removal**

In exceptional circumstances, where a respondent presents an immediate threat to the physical health or safety of any student or other individual arising from a report of Sexual Misconduct, the college may effectuate an emergency removal of a student or take similar emergency measures against an employee, consistent with applicable CUNY Bylaws and policies.

Prior to emergency removal under this Section, the President or their designee will, in cooperation with the appropriate campus officials, conduct an individualized safety and risk analysis to determine whether a respondent presents an immediate threat to the physical health or safety of any person arising from a report of Sexual Misconduct. The college will give the student respondent notice and an opportunity to challenge the decision immediately following the removal (see Section VIII-D, below). Both parties will be notified at the same time and in the same manner of the emergency removal and if or when the emergency removal is lifted.

## **D. Process for Review of Supportive Measures and Accommodations, Including No Contact Orders and Emergency Removal**

Parties may request a prompt review of the need for and terms of supportive measures that directly affect them, including No Contact Orders and emergency removal. Issues that may be raised include possible modification or discontinuance of a No Contact Order.

If either party is a student, a request for review must be made to the college's Chief Student Affairs Officer. If neither party is a student, a request for review must be made to the college's Human Resources Director. If a case involves both a student and an employee, the Chief Student Affairs Officer will consult with the Human Resources Director before making a decision. Requests for review must be in writing and parties may submit evidence to support their request. All requests will be reviewed within seven (7) days after receipt.

## **IX. EVALUATION OF INITIAL ALLEGATIONS OF SEXUAL MISCONDUCT**

Upon learning of allegations of Sexual Misconduct, the Title IX Coordinator will evaluate whether the alleged behavior falls within the scope of Title IX Sexual Harassment. If the alleged Sexual Misconduct meets these criteria, it must proceed as a Title IX Sexual Harassment matter:

- a. the allegations, if true, meet the definition of Title IX Sexual Harassment as defined above in Section III; and
- b. at the time the allegations are made, the complainant is participating in, or attempting to participate in an education program or activity at CUNY.

If the alleged Sexual Misconduct does not meet the above criteria, the allegations will proceed as a Non-Title IX Sexual Misconduct matter. For allegations that involve multiple incidents of Sexual Misconduct, some of which qualify as a Title IX Sexual Harassment matter and some of which qualify as a Non-Title IX Sexual Misconduct matter, the allegations will proceed as a Title IX Sexual Harassment matter. Allegations of discrimination covered by CUNY's Equal Opportunity and Non-Discrimination Policy will continue to be referred to the Chief Diversity Officer and handled pursuant to separate procedures outlined in that policy.

Rights and procedures that apply to all Sexual Misconduct matters are addressed in Section X. Procedures for the investigation, resolution and/or adjudication of Title IX Sexual Harassment matters are addressed in Section XI. Procedures for the investigation, resolution and/or adjudication of Non-Title IX Sexual Misconduct matters are addressed in Section XII.

**X. RIGHTS AND PROCEDURES THAT APPLY TO ALL SEXUAL MISCONDUCT MATTERS**

The following rights and procedures apply to all allegations of Sexual Misconduct, regardless of whether the allegations will proceed as a Title IX Sexual Harassment matter or a Non-Title IX Sexual Misconduct matter.

**A. Rights of Parties during any Investigation and Resolution**

Parties will have the following rights when an investigation or resolution is initiated under either Section XI or XII of this Policy:

- a. To an investigation and process that is fair, impartial, timely, thorough and provides a meaningful opportunity to be heard;
- b. To have the allegations 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;
- c. To have the allegations investigated, resolved and/or adjudicated by individuals who are free from a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent;
- d. 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. Temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay;
- e. To an investigation process where the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the college and not on the parties;
- f. To receive reasonable advance written notice of any meeting they are required to or eligible to attend;
- g. To exclude their own prior sexual history with persons other than the other party in the investigation or conduct process and their own mental health diagnosis and/or treatment, subject to certain exceptions described in Sections XI and XII;
- h. To offer evidence during the investigation;
- i. To have irrelevant evidence excluded from any hearing;
- j. To review documents and tangible evidence, consistent with the Family Educational Rights and Privacy Act ("FERPA") and other laws (see Sections XI or XII for additional details);
- k. To be accompanied by an advisor of their choice (who may be an attorney), who may assist and advise throughout the process, including during all related meetings and hearings. Advisors must comply with applicable CUNY policies and procedures;<sup>20</sup>
- l. To simultaneous notice of the outcome of proceedings, including written notice of findings of fact, decisions and sanctions if any, as well as the rationale for the decision and any sanction;

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<sup>20</sup> For Title IX Sexual Harassment matters, CUNY will provide an advisor to any party who does not have one, for the limited purpose of conducting cross examination at a hearing. See Section XI-E-c-ii for more information.

- m. To access to a full and fair record of any hearing;
- n. To protection against retaliation as defined in Section III; and
- o. To protection against the provision of false statements and evidence, as defined in Section III.

## **B. Informal Resolution**

Informal Resolution is an alternative to the formal investigation and adjudication procedures outlined in Sections XI and XII and may include administrative resolution (such as a mutual agreement to abide by a No Contact Order), acceptance of responsibility and penalty, mediation or other alternative dispute resolution. In some cases, informal resolution may represent a beneficial outcome for both parties by providing an alternative to the formal investigation and adjudication process.

This informal resolution process is available in matters proceeding as Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters, except in cases involving Title IX Sexual Harassment allegations by a student against an employee.

Informal resolution may take place at any point prior to a determination of responsibility. For Title IX Sexual Harassment matters, informal resolution is available after a Title IX Formal Complaint is filed. The Title IX Coordinator must consider every eligible case for informal resolution. When the Title IX Coordinator determines that it is appropriate to refer a matter for informal resolution, the Title IX Coordinator will provide the parties with written notice that an informal resolution is being offered to resolve the allegations. This written notice will include:

- a. A description of the allegations;
- b. The requirements of the informal resolution process, including the circumstances under which an informal resolution will preclude the parties from resuming an investigation and formal resolution arising from the same allegations;
- c. Potential consequences resulting from participating in the informal resolution process, including what records will be maintained or could be shared with the other party; and
- d. Notice that either party has the right to withdraw from the informal resolution process and resume an investigation and formal resolution process at any time prior to agreeing to an informal resolution.

Both parties must agree to begin the informal resolution process. The time frame for investigations will be tolled while the parties engage in the informal resolution process. The Title IX Coordinator must reevaluate the parties' progress towards informal resolution every thirty (30) days and has the discretion to terminate the informal resolution process and resume the investigation at any time.

Upon referral by the Title IX Coordinator, the informal resolution process is conducted by a qualified staff or faculty member designated by the Title IX Coordinator, in coordination with the Chief Student Affairs Officer or a designated Human Resources representative, as applicable. Either party has the right to end the informal resolution process at any time prior to finalizing an informal resolution agreement.

Any agreement reached through informal resolution must be acceptable to both parties and the college. If a resolution is reached, the parties will be notified in writing, and a written memorandum

will memorialize the agreed upon resolution. Both parties must provide their voluntary, written consent before an informal resolution agreement is finalized. Once finalized, the obligations in the agreement will be binding and the allegations of Sexual Misconduct (and for Title IX Sexual Harassment matters, the Title IX Formal Complaint) will be deemed resolved. Once finalized, this memorandum will be maintained for seven (7) years, in compliance with recordkeeping requirements outlined in Section X-J.

Information learned as a direct result of the informal resolution process will not be documented in an investigatory report or subsequent adjudication. However, information learned from another source will not be excluded from an investigatory report or subsequent adjudication merely because it was discussed or raised during the informal resolution process. The staff or faculty member conducting the informal resolution process is precluded from participating as a witness in the investigation or participating as a witness or presenter in a subsequent adjudication. Violations of informal resolution agreements will be referred for discipline or other appropriate action in accordance with CUNY Bylaws, policies and collective bargaining agreements.

### **C. CUNY-wide Sexual Misconduct Panel and Committee Structure**

CUNY will constitute a CUNY-wide Sexual Misconduct Panel (“the Panel”) comprised of faculty members, Higher Education Officer series employees (“HEO”), and students from its constituent campuses, from which members will be drawn to serve as the decision-maker at hearings (Adjudication Committee) and the decision-maker of appeals (Appeal Committee) for both Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters. CUNY will consult with each College President to help constitute the Panel. When selecting faculty members, the President shall consult with the faculty member who is the head of the appropriate campus governance body or where the President is the head of the governance body, the faculty members of its executive committee. Each Panel member should be specially trained annually on the relevant law and this Policy.

Each Adjudication and Appeal Committee shall be comprised of three members of the Panel. Panel members will be selected on a rotation basis and will serve CUNY-wide, but will not serve on cases from their home campus. For cases in which the respondent is a student, each Committee will consist of one (1) faculty member or one (1) HEO, one (1) student member and a chairperson, who will be a faculty member or HEO. For cases in which the respondent is a faculty member, each committee will consist of two (2) faculty members and a chairperson, who may be a faculty member or HEO. For cases in which the respondent is an HEO, each committee will consist of two (2) HEOs and a chairperson, who may be a faculty member or HEO. For all other cases in which the respondent is an employee, each committee will consist of two (2) faculty members or one (1) faculty member and one (1) HEO and a chairperson, who may be either a faculty member or HEO.

The chairperson of each Committee will preside at all meetings and decide and make all procedural rulings for the Committee. The Committee will collectively decide by majority vote whether the respondent is responsible for the alleged Policy violation(s). Hearings will be scheduled promptly (including during the summers) at a convenient time and efforts must be made to ensure full student and faculty representation.



In the event that any Committee member, including the chairperson, cannot continue, the University Title IX Director will appoint another Committee member from the Panel to fill the vacant seat.

Panel members will not participate in a case if they have been involved in the investigation, will be participating in the hearing as a witness or if they have a direct interest in the outcome of the matter. Panel members will not serve on a Committee if they have previously participated in a case involving the same parties.

#### **D. Conflict/Bias**

If a party believes that any individual involved in the investigation, resolution, adjudication or appeals process has a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, either party may make a request to have that conflicted or biased individual removed from the process. Requests for removal must be made in writing within five (5) days of the notification that the individual is to be involved and include a detailed description of the conflict or bias. Requests for removal of a member of the Adjudication Committee must be made at least one (1) day before a hearing. All requests for removal must be directed to the University Title IX Director. After receiving a request for removal, the University Title IX Director will ask the individual with the alleged conflict or bias to provide a short, written response to the request for removal and consider that response before making a determination. If a conflict or bias exists, the University Title IX Director will take immediate steps to replace that investigator, informal resolution facilitator or Committee member to ensure an impartial and fair process.

If any administrator designated by this Policy to participate in the investigation or resolution of Sexual Misconduct allegations 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 Director or designee. In other appropriate cases in which a high-level administrator is the respondent, the investigation may be referred for investigation to the University Title IX Director or designee.

#### **E. Appeals From the Adjudication Committee's Determination of Responsibility**

A party may appeal the Adjudication Committee's determination of responsibility and/or the penalty imposed on the following grounds:

- a. Procedural irregularity that affected the outcome of the matter
- b. New evidence that was not reasonably available at the time of the hearing, which could affect the outcome of the matter
- c. The Title IX Coordinator, investigator or Adjudication Committee had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;<sup>21</sup> or
- d. The disproportionate nature of the penalty.

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<sup>21</sup> Allegations of conflict or bias will be considered waived unless they are raised in a timely manner, pursuant to Section X-D, above.

The Appeal Committee may modify the penalty or remand the matter for a new hearing.

Parties intending to appeal under this section must send a written Notice of Appeal to the University Title IX Director within fifteen (15) days after the delivery of the written determination of responsibility. The University Title IX Director will notify the non-appealing party in writing within five (5) days of receipt of the Notice of Appeal and will instruct the college to provide the hearing recording to the parties. The college will provide the hearing recording to the parties in a timely manner.

The appealing party must submit their written appeal to the University Title IX Director within fifteen (15) days after the delivery of the hearing recording. The University Title IX Director will provide the appealing party's submission to the non-appealing party within five (5) days of submission. The non-appealing party will have the opportunity to submit a written response to the appeal, due within fifteen (15) days after the delivery of the appealing party's submission.

The University Title IX Director will facilitate the composition and scheduling of the Appeal Committee, which will be comprised of members of the CUNY-wide Sexual Misconduct Panel. The composition of the Appeal Committee is described above in Section X-C. Panel members that served on the Adjudication Committee will not serve on the Appeal Committee for the same matter.

The Appeal Committee will review the hearing materials and written submissions of the parties. The Appeal Committee will issue a written decision that indicates the final outcome and rationale for that decision within fifteen (15) days of receipt of the non-appealing party's written submission or failure to provide a submission. The written decision will be provided simultaneously to both parties.

#### **F. Hearing Recording**

The college shall make a recording of each hearing by some means such as a stenographic transcript, an audio recording or the equivalent. No other recording of the proceedings is permitted. A respondent who has been found responsible 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, the parties will be provided a copy of such a record without cost, upon the condition that it is not to be disseminated except to their advisors.

#### **G. Prohibition on Unauthorized Copying or Recording**

The parties are prohibited from recording any part of the investigation and grievance process and from unauthorized copying of documents or materials. Copying includes but is not limited to: audio or video recording, streaming, photographing, scanning, transcribing, or any other form that conflicts with the spirit of this directive. Allegations of non-compliance will be reviewed by the Office of Student Affairs, or Human Resources, as appropriate, and may result in disciplinary action.

## **H. Student Respondent Withdrawal Before Allegations are Resolved**

A student who withdraws from CUNY shall not be exempt from a Sexual Misconduct investigation or adjudication that commenced prior to withdrawal. When a student respondent withdraws from CUNY with a Sexual Misconduct investigation or adjudication pending, the respondent will be barred from attending any other college, school, or unit of CUNY until the investigation and/or adjudication is complete or the allegations are otherwise resolved. If the respondent fails to appear at a subsequent hearing, the college may proceed in absentia, and any decision and sanction shall be binding, pending appeal.

When a college is notified of a respondent's withdrawal, the college must place a notation on the respondent's transcript that the respondent "withdrew with conduct charges pending." If the respondent is subsequently found not responsible at a hearing, the transcript notation will be removed. If the respondent is subsequently found responsible at a hearing and the penalty is either suspension or expulsion, the transcript notation will be adjusted in accordance with Section X-I, below.

When a student respondent transfers colleges within CUNY while an investigation is pending, the college that instituted the investigation must complete the investigation before transferring the matter to the respondent's new institution for adjudication.

### **I. Transcript Notations**

When a student respondent is found responsible and the penalty is either suspension or expulsion, the college must 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."

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. In cases where a student respondent was expelled as a result of a Clery Act crime of violence,<sup>22</sup> including but not limited to sexual assault, the notation will not be removed. If a finding of responsibility is vacated for any reason, the notation must be removed.

### **J. Recordkeeping**

All records related to a college's response to allegations of Sexual Misconduct must be maintained by the college for 7 years from the last action on a matter, unless such records must be maintained for a longer period of time pursuant to CUNY's Records Retention and Disposition Schedule. These records include: records of any actions, including any supportive measures or accommodations taken in response to allegations of Sexual Misconduct; investigation records, materials, and documents; determinations regarding responsibility and disciplinary sanctions; remedies provided to a complainant designed to restore or preserve equal access to CUNY's

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<sup>22</sup> See 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII).

education program or activity; any appeals and the result; any informal resolution and the result; and any recordings or transcripts of hearings.

CUNY's Records Retention and Disposition Schedule requires that student disciplinary records be maintained permanently.

## **XI. PROCEDURES FOR TITLE IX SEXUAL HARASSMENT MATTERS**

The following procedures apply only to Title IX Sexual Harassment matters.

### **A. Requirement of a Title IX Formal Complaint**

The Title IX Coordinator will determine if the manner in which the initial allegations were reported meets the criteria of a Title IX Formal Complaint, which is required to initiate a grievance process or resolution.

A Title IX Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment (as defined in Section III) against a respondent and requesting that the college investigate the allegations. The Title IX Coordinator may sign a Title IX Formal Complaint with or without a complainant's desire to participate in a grievance process. A Title IX Formal Complaint may be a physical document, email or electronic submission through a campus online form, so long as it contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint.

If the manner in which the initial allegations were reported does not meet the criteria of a Title IX Formal Complaint, the Title IX Coordinator will contact the complainant to explain how to file a Title IX Formal Complaint and notify them that a Title IX Formal Complaint is required to resolve the allegations.

If no Title IX Formal Complaint is received within a reasonable time, the Title IX Coordinator may administratively close the matter. A complainant may file a Title IX Formal Complaint at any time thereafter.

### **B. Initiation of Title IX Grievance Procedure**

Upon receipt of a Title IX Formal Complaint, the Title IX Coordinator will notify the known parties that the college is commencing a Title IX grievance procedure. The notice will be in writing and will include the following:

- a. CUNY's Policy on Sexual Misconduct;
- b. Notice of the allegations, including sufficient details known at the time notice is sent, including the date, time and location of the alleged behavior, the identity of the parties and the specific act or acts that are alleged to violate the Policy's prohibition of Title IX Sexual Harassment, defined in Section III;
- c. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- d. A statement that the allegations outlined in the notice may not be the final allegations considered by the college, and notice that if the college decides to investigate additional allegations, the college will provide notice of the additional allegations in a timely manner and with sufficient time for the parties to prepare for any hearing;
- e. Notice that the parties may have an advisor of their choice, who may be an attorney;
- f. Notice that parties may inspect and review evidence, as outlined in Section XI-E-b;

- g. Notice that the parties are entitled to written notice of the date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate in any hearing, investigative interview or meeting;
- h. Notice that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the college and not on the parties;
- i. CUNY's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process, as defined in Section III; and
- j. CUNY's prohibition on retaliation, as defined in Section III.

This notice will be provided at least five (5) days before any initial interview unless a party consents to a shorter period.

**C. Informal Resolution**

A Title IX Formal Complaint may be resolved through an informal resolution process (Section X-B).

**D. Dismissal of Title IX Formal Complaint Prior to Resolution**

- a. **Mandatory Dismissals** - If, at any time after receipt of a Title IX Formal Complaint, it becomes clear that the allegations, if true, do not meet the definition of Title IX Sexual Harassment, the Title IX Coordinator must dismiss the Title IX Formal Complaint.
- b. **Discretionary Dismissals** - The Title IX Coordinator may dismiss a Title IX Formal Complaint, or any allegations therein, if:
  - i. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Title IX Formal Complaint or any allegations therein;
  - ii. The respondent is no longer enrolled or employed by CUNY; or
  - iii. Specific circumstances exist that prevent the college from gathering evidence sufficient to reach a determination as to the Title IX Formal Complaint or allegations therein.
- c. **Process following dismissal of Title IX Formal Complaint** - Upon mandatory or discretionary dismissal of a Title IX Formal Complaint, the Title IX Coordinator must determine whether the allegations will proceed as a Non-Title IX Sexual Misconduct matter. The parties will be notified of the dismissal in writing and provided an opportunity to appeal, as discussed in Section XI-D-d. This notice will include:
  - i. The basis for the dismissal;
  - ii. Whether the allegations will proceed as a Non-Title IX Sexual Misconduct matter; and
  - iii. The parties' right to appeal the dismissal and the procedures to do so.

- d. Appeal** - Either party may appeal the dismissal of a Title IX Formal Complaint on the following grounds:
- i. A procedural irregularity affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the dismissal was made, that could affect the outcome of the matter; and/or
  - iii. The Title IX Coordinator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent, that affected the outcome of the matter.

Appeals under this section must be directed to the University Title IX Director in writing within five (5) days after the delivery of the written dismissal notice.

The University Title IX Director will notify the non-appealing party in writing within five (5) days of the receipt of any appeal under this section, and will notify the non-appealing party of their opportunity to submit a written statement in support of, or challenging the dismissal of the Title IX Formal Complaint, due within five (5) days after the delivery of written notice from the University Title IX Director. The University Title IX Director will issue a written decision describing the result of the appeal and the rationale for the result within fifteen (15) days of the receipt of the appeal or within fifteen (15) days of the receipt of the opposing party's submission, whichever is longer. The University Title IX Director will provide the written decision simultaneously to both parties.

A Title IX Coordinator must wait until an appeal under this section is decided by the University Title IX Director before taking any further action as a Non-Title IX Sexual Misconduct matter.

## **E. Formal Resolution and Investigation**

### **a. Rights of the Parties**

When a Title IX Formal Complaint proceeds to formal resolution and investigation, the parties have the following rights in addition to those outlined in Section X-A:

- i. To have the Title IX Formal Complaint investigated, resolved and/or adjudicated by individuals who receive training as required by federal regulation;
- ii. To an evaluation of all relevant evidence, including both inculpatory and exculpatory evidence and credibility determinations that are not based on a person's status as a complainant, respondent or witness;
- iii. To receive reasonable advance written or electronic notice of allegations, including the date, time, location and general description of the allegations, as well as the specific conduct rule or law violated and the possible sanction;
- iv. To exclude questions and evidence about their own sexual predisposition or prior sexual behavior, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent (complainant only);
- v. To exclusion (including the college's access, consideration, disclosure or other use) of a party's records that are made or maintained by a physician, psychiatrist, psychologist or

- other recognized professional or paraprofessional, and which are made and maintained in connection with the provision of treatment to the party, unless the college obtains the party's voluntary, written consent;
- vi. To offer evidence during the investigation, including both fact and expert witnesses and other inculpatory and exculpatory evidence;
  - vii. To an investigative report that fairly summarizes relevant evidence;
  - viii. To inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Title IX Formal Complaint, including inculpatory or exculpatory evidence whether obtained from a party or other source, consistent with FERPA and other law; and to submit a written response within ten (10) days of receiving said evidence and to have that written response considered by the Title IX Coordinator prior to the investigative report being finalized;
  - ix. To review the investigative report at least ten (10) days prior to any hearing and to respond in writing prior to a hearing or other time of determination regarding responsibility; and
  - x. To a live hearing and cross examination; CUNY will provide an advisor to any party who does not have one, for the limited purpose of conducting cross examination at a hearing.

#### **b. Investigation**

The Title IX Coordinator is responsible for conducting investigations in a prompt, thorough, and impartial manner. Whenever an investigation is conducted, the Title IX Coordinator must:

- i. Inform the parties that a Title IX grievance procedure and investigation is being commenced and their rights during such investigation, as outlined in Sections X-A and XI-E-a;
- ii. Coordinate investigative efforts with other appropriate offices;
- iii. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the college and not on the parties; and
- iv. Interview witnesses who might reasonably be expected to provide information relevant to the allegations, and review relevant documents and evidence.

The college must make reasonable efforts to ensure that the investigation is carried out within a reasonably prompt timeframe. While some allegations may require more extensive investigation, when possible, the investigation of a Title IX Formal Complaint must be completed within one hundred-twenty (120) days of receipt of the Title IX Formal Complaint (including the evidence review process, completion of the investigative report and report review process, as discussed below).

If there is a delay in completing the investigation, the Title IX Coordinator must notify the parties in writing and indicate the reason for the delay. The Title IX Coordinator should also note the reason for delay and projected timeline for completing the investigation in their case file. The reason for extension of the time frame of an investigation may include, but is not limited to: compliance with a request by law enforcement; a limited accommodation for the availability of parties, their advisors and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for the complexities of a specific investigation, including the number of witnesses and volume of information provided by the parties.



### **i. Post Investigation Review of Relevant Documents and Materials**

Prior to the completion of the investigative report (discussed below), the Title IX Coordinator will send the parties (either in hard copy or electronic form) all of the relevant documents and materials gathered during the investigation that are directly related to the allegations raised in the Title IX Formal Complaint. These materials include any evidence upon which the Title IX Coordinator does not intend to rely when making a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or another source. The parties may submit a written response, due within ten (10) days after the materials are provided, which will be considered by the Title IX Coordinator prior to finalizing the investigative report.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process.

The parties will have access to use and refer to these documents and materials during a hearing.

### **ii. Investigative Report**

Upon completion of the investigation, the Title IX Coordinator must prepare an investigative report, which will fairly summarize all relevant evidence gathered during the investigation. The investigative report must include:

1. Procedural history of the case;
2. Alleged Policy violations;
3. A list of individuals interviewed;
4. A list of exhibits;
5. A list of additional documents and materials (not included as an exhibit) obtained as part of the investigation and directly related to the allegations, including inculpatory or exculpatory evidence; and
6. A summary of party and witness statements and other relevant evidence, including a summary of relevant evidence pertaining to each allegation.

### **iii. Review of Investigative Report**

Upon completion of the investigative report, and at least ten (10) days prior to any hearing, the Title IX Coordinator will send the report to each party (and the party's advisor, if applicable) for their review and written response. A party's written response to the report is due within ten (10) days after the report is provided, and will be shared with the Adjudication Committee and other party prior to a hearing.

### **c. Live Hearing**

Following the completion of the investigation and investigative report, as outlined above in Section XI-E-b, all Title IX Sexual Harassment matters will proceed to a live hearing. The same process and procedures will apply regardless of whether the respondent is a student or employee, although specific information regarding employee penalties is included in Section XI-E-c-ii-3 and Section XI-E-f.

When possible, the live hearing must be completed within sixty (60) days after completion of the investigation.

Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the college's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to see and hear each other simultaneously.

### **i. Pre-hearing procedures**

#### **1. Referral for Hearing**

Following the conclusion of the investigative process, the Title IX Coordinator will notify the following parties that the matter is ready for a hearing before the Adjudication Committee:

- A. For student respondents: University Title IX Director and college Office of Student Affairs.
- B. For employee respondents: University Title IX Director; college Office of Human Resources and college Labor Designee.

The University Title IX Director will facilitate the selection and scheduling of the Adjudication Committee, which will be comprised of members of the CUNY-wide Sexual Misconduct Panel (See Section X-C). The University Title IX Director will determine an appropriate physical location for the hearing on a case by case basis. After the Adjudication Committee is selected and the hearing is scheduled, the college Office of Student Affairs or college Office of Human Resources will coordinate the hearing, including, for example, providing a location, facilitating a remote platform, recording the hearing and arranging for presenters and advisors, as needed.

#### **2. Issuance of Notice of Hearing**

The college Office of Student Affairs or Office of Human Resources/Labor Relations will issue the Notice of Hearing to both parties, which will include the date, time and location of the hearing and notice of the allegations identified in the investigative report. The Notice of Hearing must be sent by both first-class mail (or overnight mail) to the physical address or P.O. box address appearing on the records of the college and email using the party's CUNY email address, and any other email address known to the college. Notice of at least seven (7) days will be provided.

The parties are permitted one adjournment each, 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) days prior to the hearing date, and shall be granted or denied at the discretion of the chairperson of the Adjudication Committee. If either party fails to respond to the notice, appear on the adjourned date, or request an extension, the college may proceed without their presence, and any determinations of responsibility will be final, subject to appeal.

The Notice of Hearing must contain the following:

- A. A complete and itemized statement of the allegations against the respondent, including the policy the respondent is charged with violating, and the possible penalties for such violation; and

- B. A statement that the parties have the right to attend and participate fully in the hearing including the right:
  - a. To present their side of the story;
  - b. To present witnesses and evidence on their behalf;
  - c. To be represented by an advisor (who may be an attorney, at their own expense) and if the respondent or the complainant does not have an advisor at the hearing, the college must provide an advisor for the limited purpose of cross examination.
  - d. For their advisor to cross-examine witnesses presenting evidence;
  - e. For the respondent to remain silent without assumption of responsibility; and
  - f. A warning that anything said may be used at a non-college hearing.

### **3. Review of Evidence before Hearing**

At least five (5) days prior to the commencement of a hearing, the college will provide the parties and their advisors:

- A. A list of documents or other tangible evidence that the college intends to use at the hearing. In the event the college intends to use documents or other tangible evidence at the hearing that was not provided to the parties during the investigation phase, the college must provide those materials to the parties and their advisors at least five (5) days prior to commencement of a hearing; and
- B. A copy of the other party's written response to the investigative report.

At least five (5) days prior to the commencement of a hearing, the college will provide the members of the Adjudication Committee the following:

- A. The investigative report, including exhibits; and
- B. The parties' written responses to the investigative report.

### **ii. Hearing Procedures**

All hearings pursuant to this Policy are closed hearings, meaning that participation and observation is limited to the parties, their advisors, witnesses, the Adjudication Committee, the college presenter and any college or CUNY staff required to coordinate the hearing.

#### **1. Roles and Responsibilities**

The participants at the hearing are the college, the respondent and the complainant.

#### **Adjudication Committee**

The Adjudication Committee, discussed in Section X-C, serves as the decision-maker at the hearing. Prior to the hearing, the Adjudication Committee will review the investigative report, exhibits and the parties' written responses to the investigative report. During the hearing, the Adjudication Committee will listen to the testimony, review and consider evidence and ask questions of the witnesses. After the hearing, the Adjudication Committee will consider all of the information and evidence reviewed, make a decision as to responsibility and penalty (if applicable) and issue a written determination of responsibility.

### **Adjudication Committee Chairperson**

The chairperson must preside at all hearing sessions and meetings. At the commencement of the hearing, the chairperson must inform the parties of the charges, the hearing procedures, and their rights. The chairperson must then ask the respondent to state whether they are responsible or not responsible for the conduct. The chairperson shall exclude from the hearing room all persons who are to appear as witnesses, except the respondent and the complainant.

The chairperson must rule on the admissibility of evidence and must exclude irrelevant questioning, testimony and evidence.

### **College Presenter**

The college will be represented by a presenter. Each academic year, the Chief Student Affairs Officer of each campus, must appoint/identify one or more campus college employees to serve as presenters for hearings against student respondents involving their campuses. Similarly, the College Labor Designee, Director of Human Resources or a designee must appoint/designate one or more campus college employees to serve as presenters against employee respondents involving their campuses. This list should be forwarded to the University Title IX Director and the Office of the Vice Chancellor for Student Affairs prior to the first day of the academic year.

### **Advisors**

The parties may be accompanied by an advisor of their choice (who may be an attorney) who may fully participate at the hearing, including advising and representing a party. In the event a party does not have an advisor present at the hearing, the college must provide an advisor for the limited purpose of conducting cross-examination on behalf of that party.

Advisors must treat all hearing participants, including the Adjudication Committee, parties and witnesses, with respect. Advisors must also abide by the Rules of Decorum promulgated by CUNY. Any party intending to appear with an attorney must give the college five (5) days' notice of the attorney's name and contact information.

## **2. Responsibility Phase**

The college bears the burden of proving the allegations by a preponderance of the evidence.

### **Presentation of Evidence**

Evidence will be presented in the following order: college, complainant and respondent. The parties have an equal opportunity to present relevant evidence, including fact and expert witnesses and other inculpatory and exculpatory evidence to the Adjudication Committee. If a party submits documentary evidence during a hearing that was not previously shared during the investigation, the chairperson may, at the request of any other party grant and adjournment of the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the

complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Questions and evidence of the mental health diagnosis and/or treatment of any party may not be introduced, unless that party provided their voluntary and written consent for such materials to be made part of the investigation and the information is directly related to the allegations raised in the Title IX Formal Complaint.

### **Cross Examination**

Each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. A party may not conduct cross-examination personally, but must do so through their advisor. In the event a party does not have an advisor and the case proceeds to a hearing, the college must provide an advisor for the limited purpose of conducting cross-examination on behalf of that party.

Before a complainant, respondent, or witness answers a cross-examination or other question, the Adjudication Committee Chairperson must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party or witness does not submit to cross examination at the live hearing, the Adjudication Committee must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Adjudication Committee cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

### **3. Penalty Phase**

If a respondent is found responsible for violating the Policy, the Adjudication Committee will determine the penalty to be imposed; except that if the respondent is a represented employee whose discipline is subject to a collective bargaining agreement with CUNY or an employee with disciplinary rights under the New York State Civil Service Law, there will be no penalty phase, and a determination that the respondent is responsible will be referred for discipline under the applicable collective bargaining agreement or Civil Service Law.

Following the responsibility phase of the hearing, the complainant, respondent, and college, will have the opportunity to introduce evidence and make arguments related to what the appropriate penalty should be, in the event the respondent is found responsible for violating the Policy. 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 responsibility for Domestic Violence, Stalking, 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 Adjudication Committee will consider the disciplinary records, as well as any documents or character evidence introduced by the respondent, the complainant, or the college, in determining an appropriate penalty.

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

#### **d. Determination of Responsibility**

Following the hearing, the Adjudication Committee will determine whether there is a preponderance of evidence that the respondent violated the Policy, which may be based on information contained in the investigative report and the testimony and evidence presented at the hearing.

The Committee will issue a written Determination of Responsibility, which must include the following:

- i. Identification of the allegations potentially constituting Sexual Misconduct;
- ii. A description of the procedural steps taken from the receipt of the Title IX Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding the application of this Policy to the facts;
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- vi. If a student respondent is found responsible, any disciplinary sanctions that will be imposed on the respondent or, if an employee is found responsible, a statement that the matter will be referred for discipline under the applicable collective bargaining agreement or Civil Service Law, as applicable;
- vii. A statement of whether remedies designed to restore or preserve equal access to CUNY's education program or activity will be provided to the complainant; and
- viii. Procedures and permissible bases for the parties to appeal.

The college will send the written determination of responsibility to the parties simultaneously, within fifteen (15) days of the conclusion of the hearing. The determination of responsibility will be sent by both first-class mail (or overnight mail) to the physical address or P.O. box address appearing on the records of the college and email using the party's CUNY email address, and any other email address known to the college. In cases involving two or more complainants or respondents, the college has twenty (20) days from the conclusion of the hearing to send the decision. The decision is final subject to any appeal.

#### **e. Remedies for Complainants**

In the event the respondent is found responsible for violating the Policy, the Title IX Coordinator will implement remedies for the complainant, designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include a continuation of the same supportive measures and accommodations described in Section VIII, but need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

## **f. Sanctions for Respondents**

### **Range of Sanctions for Student Respondents**

Sanctions for student respondents range from a warning to suspension or expulsion from CUNY. When a disciplinary hearing results in a penalty of expulsion or suspension for one term or more, the respondent must be barred from admission to, or attendance at, any other unit of CUNY while the penalty is being served.

Students may also be subject to CUNY's policy on transcript notations which is discussed in Section X-I.

### **Range of Sanctions for Employees**

As discussed above in Section XI-E-c-ii-3, there will be no penalty phase for employees who is subject to a disciplinary process contained in a collective bargaining agreement with CUNY or an employee with disciplinary rights under the New York State Civil Service Law; instead, a determination that the respondent is responsible will be referred for discipline under the applicable collective bargaining agreement or Civil Service Law. For all other employees, sanctions range from a reprimand to suspension to termination of employment.

## **XII. PROCEDURES FOR NON-TITLE IX SEXUAL MISCONDUCT MATTERS**

The following procedures will apply to Non-Title IX Sexual Misconduct matters.

When the college becomes aware that Sexual Misconduct may have been committed by or against a student, employee or visitor, the college must conduct an investigation 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 VII-C.

### **A. Rights of the Parties**

Whenever an investigation of Non-Title IX Sexual Misconduct takes place, the parties have the rights described in Section X-A.

### **B. Informal Resolution**

A Non-Title IX Sexual Misconduct matter may be resolved through an informal resolution process (Section X-B).

### **C. Investigation**

The Title IX Coordinator is responsible for conducting any investigation in a prompt, thorough, and impartial manner. Whenever an investigation is conducted, the Title IX Coordinator must:

- a. Coordinate investigative efforts with other appropriate offices;
- b. Provide the parties written notice that an investigation is being commenced, including notice of the allegations and sufficient details known at the time notice is sent, including the date, time and location of the alleged behavior and the specific act or acts that are alleged to violate the Policy's prohibition on Sexual Misconduct;
- c. 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 must be informed that they have the right to provide relevant documents and to propose witnesses whom they reasonably believe can provide relevant information. 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; and
- d. Create an investigative report that fairly summarizes relevant evidence and makes findings as to whether, in the investigator's opinion, there is a preponderance of evidence that the respondent is responsible for the allegation(s).

The college must make reasonable efforts to ensure that the investigation and resolution of allegations of Sexual Misconduct are carried out within reasonably prompt timeframes. While some allegations may require more extensive investigation, when possible, the investigation of allegations of Sexual Misconduct (including completion of the investigative report) must be completed within one hundred-twenty (120) days of the receipt of the allegations.



If there is a delay in completing the investigation, the Title IX Coordinator must notify the parties in writing and indicate the reason for the delay. The Title IX Coordinator should also note the reason for delay and projected timeline for completing the investigation in their case file. The reason for extension of the time frame of an investigation may include, but is not limited to: compliance with a request by law enforcement; a limited accommodation for the availability of parties, their advisors and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for the complexities of a specific investigation, including the number of witnesses and volume of information provided by the parties.

Upon completion of the investigation, the Title IX Coordinator must prepare an investigative report, which will fairly summarize and evaluate relevant evidence gathered during the investigation. The investigative report will include:

- a. Procedural history of the case;
- b. Alleged Policy violations;
- c. A list of individuals interviewed;
- d. A list of exhibits;
- e. Summary of party and witness statements and other relevant evidence;
- f. Analysis of evidence, including credibility assessments; and
- g. Factual findings regarding whether, in the investigator's opinion, there is a preponderance of evidence that the respondent is responsible for the allegation(s).

#### **D. Action Following the Investigation or Termination of an Investigation**

##### **a. Students**

If the complainant is a student, the Title IX Coordinator must provide the investigative report to both parties within five (5) days of the completion of the report. If the allegations are unsubstantiated, in whole or in part, the student complainant has the right to appeal the Title IX Coordinator's determination to an Appeal Committee. Appeals may be based on the following grounds:

- i. Procedural irregularity that affected the outcome of the matter
- ii. New evidence that was not reasonably available at the time of the investigation, which could affect the outcome of the matter; or
- iii. The Title IX Coordinator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The complainant must submit their written appeal to the University Title IX Director within fifteen (15) days after the delivery of the investigative report. The University Title IX Director will provide the complainant's appeal to the respondent within five (5) days of submission. The respondent will have the opportunity to submit a written response to the appeal, due within fifteen (15) days after the delivery of the complainant's appeal.

The University Title IX Director will facilitate the composition and scheduling of the Appeal Committee, which will be comprised of members of the CUNY-wide Sexual Misconduct Panel, as outlined in Section X-C. The Appeal Committee will review the investigative report, the

complainant's appeal and the respondent's response, if any. The Appeal Committee will issue a written decision within fifteen (15) days of receipt of the respondent's written submission or failure to provide a submission. The written decision will be provided simultaneously to both parties.

If the Appeal Committee grants the appeal, it may remand the matter for appropriate action, which may include, but is not limited to, the evaluation of new evidence or a new investigation.

Following the appeal, if any, the Title IX Coordinator shall send the investigative report, as well as any decision on appeal, to the College President. If either party is a student, the investigative report must also be sent to the Chief Student Affairs Officer. A copy of the report and any decision on appeal must be maintained in the files of the Title IX Coordinator.

Following receipt of the investigative report, the College President must, when warranted by the facts, authorize such action as they deem necessary, 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-E below, or for unsubstantiated findings, authorization to close the matter.

Within thirty (30) days following the termination of an investigation (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 allegations and the basis on which the investigation was closed.

#### **b. Employees**

The Title IX Coordinator must provide the investigative report to the College President. Following receipt of the investigative report, the College President must, when warranted by the facts, authorize such action as they deem necessary, 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-E below, or for unsubstantiated findings, authorization to close the matter.

Within thirty (30) days following the termination of an investigation (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 allegations and the basis on which the investigation was closed.

### **E. Disciplinary Process and Procedures**

#### **a. Disciplinary Action**

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

### **i. Discipline Against Students**

When a College President recommends discipline against a student for violations of this Policy, the matter is referred to the college Office of Student Affairs and action must be taken in accordance with Section XI-E-b/c, below.

Sanctions for student respondents following a disciplinary hearing range from a warning to suspension or expulsion from CUNY. When a disciplinary hearing results in a penalty of expulsion or suspension for one term or more, the respondent must be barred from admission to, or attendance at, any other unit CUNY while the penalty is being served. Students may also be subject to CUNY's policy on transcript notations, discussed in Section X-I.

In addition to the rights described in Section X-A, the parties have the following rights at a disciplinary hearing:

1. To receive notice of the charges, including the date, time, location and factual allegations, concerning alleged violation of this Policy;
2. To receive notice of the specific provisions alleged to have been violated and possible sanctions;
3. To make an impact statement at the point when the Adjudication Committee is deliberating on appropriate sanctions;
4. To choose whether to disclose or discuss the outcome of a conduct or judicial process;
5. To appeal a determination of responsibility before a panel that is fair and impartial and does not include individuals with conflicts of interest;
6. 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.

### **ii. Discipline Against Employees**

In cases where the College President recommends discipline against an employee, the matter is 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 applicable collective bargaining agreement.

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

### **iii. 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 respondent is usually limited. However, the college will take appropriate actions within its control, such as restricting the visitor's access to campus.

### **iv. No Disciplinary Action**

In cases where the College President decides not to bring disciplinary action, the Title IX Coordinator must inform the parties of that decision at the same time, in writing, and must offer any appropriate support services, including counseling, to both.

#### **b. Student Discipline – Pre Hearing Procedures**

##### **i. Referral of Violation for Disciplinary Action**

If the College 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 Adjudication Committee and will follow the rules and procedures outlined in this Policy.

##### **ii. Issuance of Notice of Charges and Hearing**

Notice of the charge(s) and of the time and place of the hearing must be sent by both first-class mail (or overnight mail) to the physical address or P.O. box address appearing on the records of the college and email using the party's CUNY email address, and any other email address known to the college.

The hearing must be scheduled within a reasonable time following the filing of the charges or the mediation conference. Notice of at least seven (7) days must be given to the parties in advance of the hearing unless the respondent consents to an earlier hearing. The parties are permitted one adjournment each, 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) days prior to the hearing date, and shall be granted or denied at the discretion of the chairperson of the Adjudication Committee. If either party fails to respond to the notice, appear on the adjourned date, or request an extension, the college may proceed without that party present, and any determination of responsibility or sanction will be binding.

The Notice of Charges and Hearing must contain the following:

1. 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; and
2. A statement that the parties have the right to attend and participate fully in the hearing including the right:

- a. To present their side of the story;
  - b. To present witnesses and evidence on their behalf;
  - c. To cross-examine witnesses presenting evidence, the exception being that the complainant and respondent may not cross-examine each other as discussed below;
  - d. For the respondent to remain silent without assumption of responsibility;
  - e. 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; and
3. A warning that anything said may be used at a non-college hearing.

### **iii. Review of Evidence before Hearing**

At least five (5) days prior to the commencement of a hearing, the college must provide the parties (and their advisors, if applicable), 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 FERPA. If a party submits documentary evidence during the hearing, the chairperson may, at the request of any other party, adjourn the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

### **iv. Admission & Acceptance of Penalty**

After the charges have been preferred by the Chief Student Affairs Officer, but prior to the commencement of a hearing, the respondent may admit to the charges and accept the penalty that the Chief Student Affairs Officer determines to be appropriate to address the misconduct. Before resolving allegations in this manner, the Chief Student Affairs Officer, or designee, must 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 must provide the complainant with a statement of the reasons supporting such resolution, and the complainant may appeal the resolution to the Appeal Committee.

### **c. Student Discipline - Hearing Procedures**

The participants at the hearing are the college, the respondent and the complainant. All hearings pursuant to this Policy are closed hearings, meaning that participation and observation is limited to the parties, their advisors, witnesses, the Adjudication Committee, the college presenter and any college or CUNY staff required to coordinate the hearing.

#### **i. Roles and Responsibilities**

##### **Adjudication Committee**

The Adjudication Committee serves as the decision-maker at the hearing and is comprised of members of the CUNY-wide Sexual Misconduct Panel. The role of the Adjudication Committee 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 must then determine the penalty to be imposed.

### **Adjudication Committee Chairperson**

The chairperson must preside at the hearing. At the commencement of the hearing, the chairperson must inform the parties of the charges, the hearing procedures, and their rights. The chairperson must then ask the respondent to state whether they are responsible or not responsible for the conduct. Prior to accepting testimony at the hearing, the chairperson must rule on any motions regarding the adequacy of the notice of the charge(s). Subsequent thereto, the chairperson must rule on any motions regarding the admissibility of evidence and must exclude irrelevant, unreliable or unduly repetitive evidence. The chairperson must exclude from the hearing room all persons who are to appear as witnesses, except the respondent and the complainant.

The chairperson must preside at all hearing sessions and meetings and make all procedural 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.

### **College Presenter**

The college will be represented by a presenter. Each academic year, the Chief Student Affairs Officer of each campus, must appoint/identify one or more campus college employees to serve as presenters for hearings against student respondents involving their campuses. This list must be forwarded to the University Title IX Director and the Office of the Vice Chancellor for Student Affairs prior to the first day of the academic year.

### **Advisors**

The parties may be accompanied by an advisor of their choice (who may be an attorney) who may fully participate at a hearing, including advising and representing a party. Advisors may not give testimony as a witness at the hearing. Any party intending to appear with an attorney must give the college five (5) days' notice of the attorney's name and contact information. Advisors must treat all hearing participants, including the Adjudication Committee, parties and witnesses, with respect. Advisors must also abide by the Rules of Decorum promulgated by CUNY.

#### **ii. Responsibility Phase**

The college bears the burden of proving the charge(s) by a preponderance of the evidence.

The parties will present evidence in the following order: college, complainant and respondent. At the conclusion of the college's presentation, the respondent may move to dismiss the charges. If a party submits documentary evidence during a hearing that was not previously shared during the investigation, the chairperson may, at the request of any other party, adjourn the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

Evidence of the mental health diagnosis and/or treatment of a complainant, respondent, or witness may not be introduced. Evidence of either party's prior sexual history may not be introduced except

that evidence of prior sexual history between complainant and respondent is admissible at any stage of the hearing to prove consent.

A party may not conduct cross-examination personally, but must do so through their advisor. In the event a party does not have an advisor and the case proceeds to a hearing, the college may assist them to find an advisor for the purpose of conducting cross-examination on behalf of that party.

### **iii. Penalty Phase**

If the panel finds 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, 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 must be submitted to the panel in a sealed envelope, bearing the respondent's signature across the seal, and must only be opened if the respondent has been found responsible for the conduct charged. The Adjudication Committee, to determine an appropriate penalty, must use the disciplinary records, as well as any documents or character evidence introduced by the respondent, the complainant, or the college.

If either party 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.

### **iv. Decision**

The Adjudication Committee must issue a written decision, which must be based solely on the testimony and evidence presented at the hearing, including the penalty phase. The college must send the written decision to the parties within seven (7) days of the conclusion of the hearing, by regular mail (or overnight 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) days of the conclusion of the hearing to send the panel's decision. The decision is final subject to any appeal.

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

In addition to addressing allegations of Sexual Misconduct, colleges/units of CUNY have the following obligations:

#### **A. Dissemination of Policies, Procedures, and Notices**

The 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 their campus: (i) this Policy; (ii) CUNY's Notice of Non-Discrimination; (iii) the Title IX Coordinator's name, phone number, office location, and email address and (iv) contact information for the campus Public Safety Office. Such dissemination includes posting the documents and information on the college website, and including it in residence life materials and training and educational materials.

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 Title IX Coordinators, investigators, CUNY-wide Sexual Misconduct Panel members and anyone who facilitates informal resolutions.

The 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:

##### **a. Training For Responsible and Confidential Employees**

The college must 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.

##### **b. Training For Title IX Coordinators, investigators, CUNY-wide Sexual Misconduct Panel members, and any person who facilitates an informal resolution**

CUNY will provide training on the topics below to Title IX Coordinators, investigators, CUNY-wide Sexual Misconduct Panel members, and any person who facilitates an informal resolution process. Training for Title IX Coordinators and investigators will be at least annual.

- i. The definition of Sexual Misconduct, including Sexual Harassment, Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking;



- ii. How to conduct an investigation;
- iii. How to create an investigative report that fairly summarizes relevant evidence;
- iv. The grievance process, including hearings, appeals and informal resolution processes, as applicable;
- v. Impartiality, including avoiding prejudgment of the facts, conflicts of interest, and bias;
- vi. Relevance of questions and evidence, including the fact that sexual predisposition or prior sexual acts with individuals other than the parties are generally not relevant, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a determination regarding responsibility is made at the conclusion of the applicable processes;
- vii. The scope of the college's education programs and activities;
- viii. The effects of trauma;
- ix. Other relevant CUNY policies and procedures; and
- x. Any technology to be used at a live hearing.

### **c. Student Onboarding and Ongoing Education**

Each college must 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 must 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 must 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 must 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-and-families/campus/university/>.

### **C. Campus Climate Assessments**

Each college of CUNY must conduct, no less than every other year, a climate assessment using an assessment instrument provided by CUNY's central office, to ascertain its students' general awareness and knowledge of CUNY'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 must include all topics required to be included under applicable law, including Section 129-B of the New York State Education Law. CUNY will publish the results of the surveys on its Title IX web page. The published results will not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

#### **XIV. RULES REGARDING INTIMATE RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS**

##### **A. Relationships Between Faculty or Employees and Students**

Sexual activity or amorous or dating relationships (“intimate relationships”), even when apparently consensual, are inappropriate when they occur between a faculty member or employee and any student for whom they have 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 they are having an intimate relationship.

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.

##### **B. Relationships Between Supervisors and Employees**

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are strongly discouraged. Supervisors must 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.

## **XV. IMPLEMENTATION**

This Policy will become effective on August 14, 2020 and will apply to Sexual Misconduct that allegedly occurred on or after August 14, 2020. Sexual Misconduct that allegedly took place before the effective date of this Policy will be handled in accordance with the CUNY Policy on Sexual Misconduct that was in effect at the time the behavior occurred.

Should any portion of the 2020 Title IX Regulations be stayed or held invalid by a court of law, or should the Title IX Final Regulations be withdrawn or modified to not require the elements of this Policy, the invalidated elements of this Policy (including, but not limited to Sections IX and XI), will be deemed revoked as of the publication date of the opinion or order. Should this Policy's Title IX-specific procedures be revoked in this manner, any Sexual Misconduct covered under Section XI, including any elements of the process that occur after the revocation date if a case is not complete by that date of revocation, shall be investigated, resolved and/or adjudicated under Section XII without further action by CUNY.

The City University of New York  
Students' Bill of Rights

For CUNY students who experience Sexual Violence, including Sexual Assault;  
Domestic Violence, Dating 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 on Sexual Misconduct – Revision to Provision Not Permitting Reliance on  
Statements Not Subject to Cross Examination in Title IX Hearings

As a result of a federal court ruling and subsequent update from the U.S. Department of Education, effective immediately, the portion of Section XI(E)(c)(ii)(2) of the Policy on Sexual Misconduct (PSM) relating to cross-examination at hearings for Title IX Sexual Harassment matters will no longer be in effect. This provision states: “If a party or witness does not submit to cross examination at the live hearing, the Adjudication Committee must not rely on any statement of that party or witness in reaching a determination regarding responsibility.” Accordingly, in all future Title IX Sexual Harassment hearings, members of that hearing’s Adjudication Panel may consider admissible statements made by parties or witnesses in reaching a determination regarding responsibility, even if those parties or witnesses do not participate in cross-examination at the live hearing.

The above provision regarding statements not subject to cross-examination was included in CUNY’s Policy on Sexual Misconduct because it was required by Title IX regulations that became effective in August 2020. However, on August 10, 2021, a Massachusetts federal court ruled, in *Victims Rights Law Center et al. v. Cardona*, WL 3185743 (D. Mass. July 28, 2021) that this particular requirement was arbitrary and capricious. On August 24, 2021, the U.S. Department of Education provided an update, available [here](#), stating that “[i]n accordance with the court’s order, the Department **will immediately cease** enforcement of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination. **Postsecondary institutions are no longer subject to this portion of the provision.**”

Please note that all other provisions in the 2020 amendments which are incorporated into CUNY’s policy are still in effect. No other provision in the PSM has been affected by this update. Please do not hesitate to reach out to the University Title IX Director and/or the Office of the General Counsel, with any questions.