

Policy and Procedures for Sexual Assault Prevention and Reporting Sexual Misconduct



August 14, 2020
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I. Introduction

Values

The College is committed to operating with integrity and in compliance with all applicable laws, regulations, and College policies and procedures. All College community members are expected to comport themselves responsibly, and to behave in a manner consistent with the College's mission.

College policy requires that equitable consideration be given to all persons. The College does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity/gender expression, national origin, domestic violence status, marital status, predisposing genetic characteristics, pregnancy, age, citizenship status, disability, or any other protected category under applicable local, state or federal law in the administration of its admission, employment and educational policies or scholarship, loan, and other school administered programs.

The health, safety, and well-being of all members of the College community are among the College's primary concerns. In accordance with Title IX of the Education Amendments of 1972 ("Title IX") and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"), as amended by the Violence Against Women Act/Campus Sexual Violence Act ("Campus Save Act"), and New York State Education Law, the College is committed to maintaining a community free from all forms of sex discrimination, including sexual harassment and sexual misconduct. The College does not discriminate on the basis of sex in its education programs and activities. Sexual harassment and sexual violence/misconduct is gender discrimination prohibited by Title IX. Sexual misconduct includes a broad range of behaviors that will not be tolerated in the College's education programs or activities. The College strictly prohibits sexual harassment and sexual violence, including the offenses of sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity. Such behaviors are serious violations of our community values.

MCNY previously had one process for addressing sexual misconduct. Given the new Title IX Regulations promulgated in May 2020 and effective August 14, 2020, MCNY will now have two processes for addressing sexual misconduct. The Title IX regulations provide a more restrictive definition of "sexual harassment" and a more restrictive geographic scope that MCNY must investigate and adjudicate pursuant to the requirements of Title IX. The Title IX reporting, investigation and adjudication process reflected in this policy will apply only to allegations that meet the Regulations' definitions ("Title IX Category Violations").

MCNY will also address any allegations of violations of its policies, including those that do not meet the strict definitions of the Regulations. Those allegations ("College Category Violations") will be addressed through separate policy and procedures attached here as Appendix G, titled *Policy and Procedures for Reports of Non-Title IX Sexual Misconduct and Gender-Based Misconduct ("Non-Title IX Policy")*.

II. Policy and Procedure Summary

This Policy prohibits all forms of sex and gender related misconduct, referred to here as “Sexual Misconduct”. A person who has experienced Sexual Misconduct has several options:

- **A report to a Confidential Resource.** A confidential resource provides emotional and/or medical services and maintains confidentiality. A report to a confidential resource does not result in a College investigation or any other action to respond to the incident.
- **A report to a Responsible Employee.** Certain personnel at the College have the responsibility to receive reports of sexual misconduct and to take action based on those reports. A responsible employee will forward the information about the incident to the Title IX Coordinator. The Title IX Coordinator will discuss options with the reporting person. The assistance the Title IX Coordinator can facilitate includes the following:
 - **Supportive Measures.** Supportive measures are intended to support the individual who experienced sexual misconduct to continue in their involvement in the College’s program and activities. Supportive measures include no contact orders; academic accommodations; or other academic, residential or work accommodations.
 - **Informal Resolution.** An informal resolution is a resolution that the parties (i.e., the person making the allegations and the accused person) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
 - **Grievance Process.** A grievance process includes an investigation and adjudication process. The outcome of a grievance process is either that the person accused of Sexual Misconduct is found either responsible or not responsible for having committed a violation of this Policy. A violation results in appropriate sanctions and other remedies to address the violation.

Additionally, a person who experienced an incident involving criminal conduct has the option to pursue criminal charges:

- **A report to Law Enforcement.** If an incident involves criminal conduct, the victim may make a complaint to law enforcement.

The options for reporting above are not mutually exclusive, and an individual may pursue one option but not the other. An individual may obtain the services of a confidential resource and decide at that time or a later time to report to the College. An individual may report to the College and also make a report to law enforcement, or may make a report to only the College or only to law enforcement. A person seeking to understand their options pursuant to this Policy should reach out to any of the following:

- Clotilde Ibarra, Dean of Students/Title IX Coordinator, cibarra@mcny.edu
- Michael Molina, Director of Student Services, mmolina@mcny.edu
- Judith Santiago, Director of Human Resources, jsantiago@mcny.edu

III. Definitions, General:

1. **Advisor of Choice.** An advisor of choice is a person selected by the Complainant or Respondent to advise and accompany the Complainant or Respondent throughout the investigation and adjudication process. An advisor of choice may be any person, including an attorney. The College does not appoint or pay for an advisor of choice. An advisor of choice's role is limited to the functions further described in this policy.
2. **Affirmative Consent.** 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 affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
3. **Coercion.** Coercion is a threat, undue pressure, or intimidation to engage in sexual activity. Coercion is more than an effort to persuade, seduce, entice, or attract another person to engage in sexual activity. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity.
4. **Complainant.** The term Complainant refers to the person who allegedly experienced the sexual misconduct in violation of the policy whether or not a formal complaint is filed. In some cases, the Title IX Coordinator may file a formal complaint and thereby initiate an investigation and adjudication process pursuant to this policy. In that instance, the Title IX Coordinator is not the "Complainant"; the complainant remains the person who allegedly experienced the sexual misconduct.
5. **Consent.** As used in this policy, term "consent" always refers to "affirmative consent" (defined above).

By way of further explanation, consent is free and informed permission. Consent given verbally is evidenced by affirmative agreement to engage in specific sexual activity. Consent through action is active participation in the specific sexual activity. Past consent to sexual activity cannot be presumed to be consent to engage in the same sexual activity in the future. Consent can be withdrawn at any time, and, if so, the sexual activity must cease. Consent to some sexual activity (such as kissing, fondling) cannot be presumed consent for other sexual activity (such as intercourse). Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

Certain conditions prevent a person from being able to consent. 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. A person cannot consent if they are unaware of the who, what, when and how of a sexual interaction. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol or drugs or other intoxicants may be incapacitated and therefore unable to consent.

A person who has been drinking or using drugs is still responsible for ensuring that the person has the other person's affirmative consent and/or recognizing the other person's incapacity to consent. This means that, even if the accused was drunk or high and, as a result, did not realize that the other person was not consenting to or was unable to consent to sexual activity, the person who committed the non-consensual act is still responsible for having violated this policy.

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

6. **Formal Complaint.** A formal complaint refers to a written complaint filed in accordance with the grievance process below. A formal complaint is necessary to initiate an investigation and adjudication process.
7. **Institution Advisor.** A Complainant or Respondent who does not opt to be accompanied by an advisor of choice at a hearing is entitled to be appointed an advisor by the College at no charge to the party. This advisor is referred to an "institution advisor" who may be but need not be an attorney. An institution advisor's role is limited to asking cross-examination questions of the other party during a hearing. An institution advisor does not represent a party in any legal sense. The party is responsible for formulating the cross-examination questions that the institution advisor will pose during the hearing.
8. **Party.** A Complainant or Respondent may be referred to as a Party, or collectively, the Parties.
9. **Reporting Party.** The term Reporting Party refers to the person who made the report. This may or may not be the same as the Complainant, a witness, or a bystander.
10. **Respondent.** The term Respondent refers to the person alleged to have committed a violation of this policy.
11. **Sexual Misconduct.** Sexual misconduct is an umbrella term used in this policy to more conveniently refer to any form of conduct prohibited by this policy.

IV. **Definitions, Conduct Violations:**

This policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged violations. This policy applies to alleged conduct violative

of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations). ***Other violations that do not meet the strict definition of Title IX violations are addressed in IV.B. below (“College Category Violations”) and Appendix G, Policy and Procedures for Reports of Non-Title IX Sexual Misconduct and Gender-Based Misconduct (“Non-Title IX Policy”).***

A. Title IX Category Violations

Title IX of the Education Amendments of 1972 provides: “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

In accordance with Title IX as interpreted by the U.S. Department of Education, the College recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the complainant was in the United States at the time of the alleged conduct, that the complainant be participating in or seeking to participate in the College’s education program or activity at the time of the complaint, and that the conduct have occurred in the context of the College’s education program or activity:

1. **Sexual harassment.** “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
 - a. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct (commonly referred to as a “quid pro quo”);
 - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education program or activity (commonly referred to as a sexually or gender-based “hostile environment”).
2. **Sexual assault.** “Sexual assault” includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent. Sexual assault consists of the following specific acts:
 - a. Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - b. Fondling. The touching of the private body parts (genital area, anus, groin, inner thigh, buttocks or breast) of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's

will where the victim is incapable of giving consent because of his/her/their youth or because of his/her/their temporary or permanent mental or physical incapacity.

- c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
3. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (in) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.
 4. **Domestic violence.** “Domestic violence” means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
 5. **Stalking.** “Stalking” is engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. Stalking that does not occur on the basis of sex may be addressed as a College Category Violation as described below.
 6. **Sexual Exploitation.** Sexual exploitation occurs when, without affirmative consent, a person takes sexual advantage of another in a manner that does not constitute another violation under this Policy. Examples of sexual exploitation include, but are not limited to: prostitution, acts of incest, observing or recording (whether by video, still photo or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing or showering) without the affirmative consent of all involved; taking intimate pictures of another, but then distributing the pictures to others without the photographed person’s affirmative consent; engaging in voyeurism, engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; or exposing one’s genitals in non-consensual circumstances.

Retaliation. Retaliation is an adverse act perpetrated to “get back” at a person because the person reported sexual misconduct, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the College or by an external agency. An act of retaliation may

be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. A person who acts in good faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good faith; a person may provide inaccurate information believing it is accurate, which is still good faith. If a person who makes a statement knowing that it is false, the person has acted without good faith.

B. College Category Violations

The College prohibits the following behavior. For purpose of College Category violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the College’s education program or activity, or otherwise in circumstances over which the College does not have influence or control, including but not limited to during College academic breaks. The College retains discretion to not respond to, investigate or adjudicate circumstances in which no College interest is implicated.

1. **Sexual harassment.** “Sexual harassment” means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. Sexual harassment can be verbal, written, visual, electronic or physical.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a “reasonable person” standard and takes into account the totality of the circumstances. The College considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning or working community.

2. **Sexual assault.** “Sexual assault” includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent, but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity). Sexual assault consists of the following specific acts:
 - a. **Rape.** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim.
 - b. **Fondling.** The touching of the private body parts (genital area, anus, groin, inner thigh, buttocks or breast) of another person for the purpose of sexual gratification, forcibly and/or

against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving affirmative consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

- c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.
3. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
- a. the length of the relationship;
 - b. the type of relationship; and
 - c. the frequency of interaction between the persons involved in the relationship;

but that does not constitute dating violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example, because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).

4. **Domestic violence.** “Domestic violence” means violence committed by a or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).
5. **Stalking.** “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation as defined above because of basis on which it occurs or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).

6. **Sexual Exploitation.** Sexual exploitation occurs when, without affirmative consent, a person takes sexual advantage of another in a manner that does not constitute another violation under this Policy. Examples of sexual exploitation include, but are not limited to: prostitution, acts of incest, observing or recording (whether by video, still photo or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing or showering) without the affirmative consent of all involved; taking intimate pictures of another, but then distributing the pictures to others without the photographed person's affirmative consent; engaging in voyeurism, engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; or exposing one's genitals in non-consensual circumstances.
7. **Retaliation.** Retaliation is an adverse act perpetrated to "get back" at a person because the person reported sexual misconduct, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the College or by an external agency. An act of retaliation may be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. A person who acts in good faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good faith; a person may provide inaccurate information believing it is accurate, which is still good faith. If a person who makes a statement knowing that it is false, the person has acted without good faith.

V. Confidential and Non-Confidential Resources

- A. The College encourages any person who has experienced sexual assault or other forms of sexual misconduct to talk to someone about what happened, so she or he can get the support needed. There are a variety of confidential resources available to members of the College community. Some of these resources maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."
- B. A confidential resource does not reveal the information shared with him/her/them without the disclosing person's consent. (There may be instances where a confidential resource must disclose information in a criminal or civil court proceeding, but those are very limited circumstances.)
- C. The Confidential Resources (*listed in Appendix A*) are available to members of the College community.
- D. A non-confidential resource is a person who is permitted to share information with others with a need to know. A College employee who is a non-confidential resource will disclose to as few individuals as possible, but a non-confidential resource does not have the ability to promise that he/she/they will not tell others within the College about the information that has been shared with him/her/them. A "Responsible Employee" is a non-confidential resource who, at a minimum, shares all information with the Title IX Coordinator.

VI. Reporting and Formal Complaint Process

A Responsible Employee is an individual designated by the College to respond on the College's behalf to allegations of violations of this Policy. A Responsible Employee is a **Non-Confidential** Resource.

The following are Responsible Employees and offices available to receive a report of sexual misconduct:

- Title IX Coordinator
- Title IX Coordinator designee: Director of Student Services
- Director of Human Resources

An individual who reports an incident to a College employee or office other than one of the Responsible Employees and offices listed above risks that the information may not be acted upon by the College. Therefore, a person who wishes for the College to take action is strongly encouraged to report to one of the offices listed above.

A. Supportive Measures

Once a report is made under this Policy, the complainant will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. A report that triggers supportive measures need not be a formal complaint, and it may be made by a third-party (i.e., someone other than the complainant himself/herself). Once the respondent is informed of a report or a formal complaint, the respondent will be contacted by the Title IX Coordinator and offered individualized support as more fully described below.

Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the College's educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties.

Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course-related adjustments or allowing a withdrawal from a course without penalty;
- Changes to housing, transportation and campus working situations if those changes are requested by a party and reasonably available;
- Mutual "No Contact" orders and, possibly, in rare cases, such as when legal restraining orders or orders of protection have been issued, one-way no contact orders.
- Access to campus escorts or other reasonable security or monitoring measures;
- Counseling services; and
- Interim removal of a student from the College will only be done pursuant to the Emergency Removal protocol, discussed below.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various College departments and offices that may be involved. Supportive measures will be offered free of charge.

If a party's request for a supportive measure is denied, the party will be afforded an opportunity

to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, each party will, upon request, be afforded the opportunity for a prompt review of the need for supportive measures that have been implemented, including the potential modification of these measures, to the extent that the party is affected by the measure(s) being reviewed. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affects that party. Information about how to request a review will be included in a written communication that will outline the supportive measures offered and any that were requested by the party but denied.

B. Emergency Removal

In some cases, the College may undertake an emergency removal of a student respondent in order to protect the safety of the College community, which may include contacting local law enforcement to address imminent safety concerns.

Emergency removal is not a substitute for reaching a determination as to a respondent's responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual harassment allegations.

Prior to removing a student respondent through the emergency removal process, the College will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student, including the student respondent, or other individual justifies removal, then a student respondent will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed.

After determining a student respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the complainant and respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

If a student respondent disagrees with the decision to be removed from campus, the respondent may appeal the decision. The respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the VP of Enrollment Management and Student Affairs, within 10 days of receiving the notice of removal. The burden of proof is on the student respondent to show that the removal decision was incorrect.

This section applies only to student respondents. Employee respondents are not subject to this section and may be placed on administrative leave pursuant to the College's policies during the pendency of a Title IX grievance process.

C. Disability Accommodation

A Complainant or Respondent with a disability who requires accommodation in the complaint,

investigation, hearing or any other phase of the process is responsible for disclosing the need for accommodation to the Title IX Coordinator. The Title IX Coordinator will work with the Coordinator of Accessibility Services to review the disability accommodation request.

D. Amnesty

The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the College's officials or law enforcement will not be subject to the College's code of conduct action (including but not limited to action under this policy) for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

E. Grievance Process

a. Filing a Formal Complaint.

A formal complaint is necessary to initiate the College's grievance process, meaning an investigation and adjudication process. A formal complaint must be in written form and must be signed by the complainant. A third-party or anyone other than the victim of the misconduct may not file a formal complaint. However, a formal complaint may be filed by a parent or guardian of a minor person.

A formal complaint is a document filed by a complainant or signed by the College's Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation. The respondent may be either a student or an employee or a visitor, independent contractor, intern, or volunteer of the College. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail to: Clotilde Ibarra, *cibarra@mcny.edu*; (212) 343-1234 ext. 2800. ***The complaint form may be obtained here: www.domain.edu.***

In order to qualify as a formal complaint, the document must contain the complainant's physical or electronic signature, or otherwise indicate that the complainant is the person filing the formal complaint.

If a complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, or the complainant's identity is unknown, and the Title

IX Coordinator determines there is sufficient cause to file a formal complaint, the Title IX Coordinator may file a formal complaint. In such cases, the Title IX Coordinator is not considered to be a complainant or other party under this Policy.

The Title IX Coordinator will consider the wishes of the complainant not to proceed with the investigation and adjudication process. However, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that the allegations are such that it would be unreasonable not to proceed despite the wishes of the complainant.

In making this determination, the Title IX Coordinator will consider, among other factors:

- the risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, which may be assessed by evaluating:
- whether there have been other complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the College possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

Additionally, where the respondent is not enrolled at the College and is not employed by the College, the College may decline to process the complaint through the Grievance Process. The College may take the steps it deems appropriate under the circumstances.

b. Mandatory Dismissal of Title IX Category Charges

The Title IX Coordinator will review a formal complaint filed by a Complainant. In order to comply with Title IX regulations, the Title IX Coordinator must “dismiss” the Title IX Category violation(s) if it is apparent that the allegations are not within the scope of Title IX, including that the conduct alleged:

- would not constitute sexual harassment as defined in Section **A.1**, even if proved,
- did not occur in the College's education program or activity, or
- did not occur against a person in the United States

Notice of dismissal of the Title IX Category violation(s) will be in writing and issued to both the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the dismissal of a Title IX Category violation. A decision to dismiss a Title IX Category violation is immediately appealable by the complainant, pursuant to the APPEALS SECTION X of this Policy.

Even if Title IX Category violations are subject to dismissal, the College may continue to process the allegations as a *Non-Title IX Sexual Misconduct and Gender-Based Misconduct* violation, assuming that the allegations, if true, would constitute a *Non-Title IX Sexual Misconduct and Gender-Based Misconduct* violation.

c. **Discretionary Dismissal of Title IX Category Charges**

The Title IX Coordinator may, but is not required to, dismiss formal complaints in the following circumstances:

- When the complainant withdraws a formal complaint;
- When the respondent is no longer enrolled in or employed by the College; and
- Where specific circumstances prevent the College from gathering evidence (such as where a complainant refuses to cooperate but does not withdraw a formal complaint).

The decision to dismiss or not to dismiss a charge under these circumstances will depend on the totality of the situation.

VII. **Informal Resolutions Policy**

A. **Informal Resolution Process**

An Informal Resolution Process is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a complainant. An Informal Resolution prioritizes educational and conciliatory approaches over more adversarial contesting of the facts. One objective of the Informal Resolution is to provide to the parties an opportunity to hear each others' concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator.

The intent of an Informal Resolution Process is for the parties to undertake a facilitated discussion regarding the matters at issue related to the allegations to see if they can reach agreement on a resolution that leaves both parties feeling satisfied with that resolution.

The Informal Resolution Process is not available if the respondent in a sexual misconduct complaint is a faculty or staff member of the College and the complainant is a student. The Informal Resolution Process is also not available in a complaint involving more than two parties unless (1) all parties consent to use the Informal Resolution Process, (2) there is an understanding among all parties about what happens when the right of any party to stop the Informal Resolution process and return or proceed to the formal grievance and hearing process is invoked, and (3) there is an understanding among all parties about whether some parties, but not all, can agree to a resolution.

Supportive measures as noted in Section VI.A. are available to both parties in the same manner as

they would be if the formal complaint were proceeding under the formal grievance and hearing process.

B. Steps Prior to the Informal Resolution Process

The Title IX Coordinator will offer the Informal Resolution Process to the parties after a formal complaint is filed by a complainant. Both parties must consent to use the Informal Resolution process. Either party in an Informal Resolution process may terminate it at any time and the complaint will proceed to the formal grievance and hearing process. In some instances, as detailed below, the facilitator in the Informal Resolution process may terminate the process as well.

A written notice will be given to both parties before entering an Informal Resolution Process, and both parties must consent to the process in writing. No party should feel intimidated, coerced or threatened to participate in an Informal Resolution Process, or to withdraw from an Informal Resolution Process.

If both parties consent to participate in the Informal Resolution process, the College will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be trained on how to perform the role. The facilitator will also be screened to ensure that such person is free from conflicts of interest and bias.

C. How the Process Works

The facilitator will schedule one or more meetings with the parties. The facilitator will assist the parties in communicating information and opinions to the facilitator and each other regarding the allegations in an effort to find common ground and a resolution of the allegations that is satisfactory to both parties. The facilitator may meet separately with each party to explore the party's views about the allegations and desired outcome from the process. Either party can elect to have any meeting occur so that the parties are in different rooms and the facilitator "shuttles" between the parties.

Informal Resolution may be appropriate if the parties are willing to openly exchange views and reach a resolution acceptable to both parties. The parties to this process should have a clear understanding of the allegations in the complaint and the issues that are in dispute since the investigation phase of the formal grievance and hearing process will not occur if an Informal Resolution is reached.

D. Role of the Facilitator

The facilitator's role is to conduct the Informal Resolution process in a way that is impartial and does not favor one party over the other. If the facilitator believes at any point in the Informal Resolution process that one party is not behaving in a way that allows for a productive resolution between the parties, the facilitator will discuss the matter in confidence with the Title IX Coordinator and either another facilitator will be appointed or the College will require that the Informal Resolution process be cancelled and the complaint will return to the formal grievance and hearing process.

E. Confidentiality

For the Informal Resolution process to have the best chance for success, the parties should be free to express themselves. As a result, the information received from both parties during the Informal Resolution process will be kept confidential by the facilitator but the facilitator may share information with the Title IX Coordinator if, in the judgement of the facilitator, there is merit to the disclosure.

In addition, the facilitator will not be permitted to be a witness in any hearing that may occur should either party terminate the Informal Resolution process before a resolution is reached. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties and is not listening or taking notes for any purpose other than assisting the parties.

Should the Formal Complaint be returned to the formal grievance and hearing process of this policy, the parties and any support persons may not disclose information shared by the other party during the process in the hearing. All persons participating in the Informal Resolution process must sign a confidentiality agreement that provides that no information revealed by a party in the Informal Resolution process will be used against that party in a hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise (but not learned through a violation of the confidentiality agreement).

F. Support Persons During Informal Resolution Process

Each party may have a support person accompanying them to any Informal Resolution meeting. A support person is someone who provides support to a party during the Informal Resolution process. This role should be distinguished from the role of an Advisor under the formal grievance and hearing process of this policy. For instance, the support person will not cross-examine the other party.

A support person can help a party understand or explain the issues under discussion or simply help the party feel more comfortable during the Informal Resolution process. A support person should be someone the party feels comfortable with. A party may need to tell their support person sensitive things related to the facts and circumstances surrounding the allegations. The support person may be a friend or relative or any other person the party trusts.

A support person cannot be someone who has been involved in the facts and circumstances in the allegations in any way. In addition, the other party and the facilitator must agree to the support person attending. The facilitator can also exclude a support person if their presence is disruptive during the Informal Resolution process.

A party should let the facilitator know if they would like a support person to attend any Informal Resolution meeting and the name of the support person and that person's relationship to the party. The facilitator will check with the other party to confirm that such party agrees to continue with the Informal Resolution with the support person present.

Support can be provided in several ways. Support people do not necessarily have to be included in an Informal Resolution session. Support people can be available to offer support in a nearby area and the facilitator can schedule breaks so that a party can talk with their support person outside the meeting. The support person can attend the Informal Resolution meeting but may not participate or speak during it. The support person can ask

for a break if the person wishes to confer with the party.

G. Possible Outcomes of the Process

A resolution is reached only if both parties agree. The facilitator will not impose an outcome, although they may assist the parties in suggesting resolutions that appear to meet the parties' needs. If there is no agreement on a resolution, the complaint is returned to the formal grievance and hearing process outlined in this policy. A party may terminate the informal process at any time before the final written resolution is signed.

The facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This written and signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or to pursue the formal grievance and hearing process.

After a written resolution has been finalized, the College will keep a record of the parties' written consent to the Informal Resolution process and the written resolution.

H. Consequences if Informal Resolution Process Does Not Result in an Agreed-Upon Resolution

The Informal Resolution process should proceed with due promptness. The College imposes no specified timeframe for the process but the facilitator may choose to terminate the Informal Resolution Process (and either party may elect to terminate the Informal Resolution) if insufficient progress is being made.

If an Informal Resolution Process does not result in an agreed-upon resolution, the complaint returns to the formal grievance and hearing process outlined in this Policy. Any investigation of the allegations in the complaint will resume and the formal grievance process will proceed from there. The College encourages terms of resolution that meets the parties' needs, and may include a disciplinary sanction. In unusual circumstances, the Title IX Coordinator may determine that the parties' agreed upon resolution cannot be approved by the College.

The College and the facilitator will maintain confidentiality concerning the Informal Resolution process. The parties and any support persons may not disclose information shared by the other party during the process in the hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise (but not learned through a violation of the confidentiality agreement).

VIII. Investigation Procedures

I. Appointment of Investigator

Where a formal complaint has been filed, and in the absence of an informal resolution, the College will appoint an investigator to conduct an investigation into the allegations in the

formal complaint. The College may appoint any qualified investigator, who may be a person internal or external to the College. The College also may appoint more than one investigator in its sole discretion. The investigation is an impartial fact-finding process.

J. Temporary Delay Due to Concurrent Law Enforcement Investigation

The College’s investigation may be temporarily delayed where there is a concurrent law enforcement investigation if necessary to avoid interference with the law enforcement investigation. Any such delay shall not exceed ten (10) days unless the law enforcement agency requests and justifies a longer delay.

K. Notice of Investigation

The Complainant and Respondent shall receive a notice of investigation referencing the violation(s) of this policy alleged to have been committed and the range of possible disciplinary sanctions and remedies following any determination of responsibility. The notice of investigation will include, to the extent known:

- the identities of the involved parties;
- the date, time, location and factual allegations concerning the alleged violation;
- the policy provisions allegedly violated;
- a description of the investigation and adjudication process;
- potential sanctions;
- the right to an advisor of their choice, who may be, but is not required to be, an attorney;
- their right to inspect and review evidence in accordance with this policy;
- notice that knowingly making false statements or knowingly submitting false information is prohibited; and
- that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process

If, in the course of the investigation, the College decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator or designee will provide notice of the additional allegations to the parties.

L. Notice of and Opportunity to Object to Investigator

The Complainant and Respondent will be provided with notice of the name of the appointed investigator [and an opportunity of not more than three (3) days after the notice to raise an objection to the investigator based on any alleged conflict of interest known to the party.] If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator.

M. Meetings and Interviews to Gather Information

The Complainant and Respondent will be provided with advance written notice of the date,

time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate. The Complainant and Respondent have a right to be accompanied by an advisor of their choice, who may be an attorney. The College does not appoint an Advisor for a party during the investigation phase of the process.

The Complainant and the Respondent will be given an equal opportunity to present information. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the College. The investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the complainant with a person other than the respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The investigator will determine the order and method of investigation.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or interviews. If the investigator elects to audio and/or video record interviews, all involved parties involved in the meeting or interview will be made aware that audio and/or video recording is occurring.

N. Opportunity for Inspection and Review of Evidence

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to the conclusion of the investigative report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Respondent will be provided with at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps.

O. Investigative Report

At the conclusion of the investigation, the investigator will complete a written investigative report that fairly summarizes the relevant evidence. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator.

At least ten (10) days prior to a hearing to determine whether the Respondent is responsible

for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

P. Consolidation of Cases

The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single complainant against a respondent, or multiple complaints by a single complainant against multiple respondents.

Q. Investigation Timeframe

The College will endeavor to complete an investigation within thirty (30) days. An investigation may be extended for good cause, such as witness unavailability, breaks in the academic schedule, or other similar circumstances.

IX. Hearing Procedures

A. General

A hearing before a Hearing Officer designated by the Title IX Coordinator will be convened not less than ten days after the parties have been provided access to the final investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s). The [Hearing Officer may be a member of the campus community or may be external to the College, as determined by the Title IX Coordinator.

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the name of the Hearing Officer, and how to challenge participation by the Hearing Officer for bias or conflict of interest. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the decision maker is biased).

Participants in the hearing will include the Hearing Officer, the Complainant and the Respondent, their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may

appear at the live hearing virtually, with technology enabling the Hearing Officer and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

B. Procedural Matters

The Hearing Officer is in charge of organizing the presentation of information to be considered at the hearing. [Generally, the hearing will proceed in the following order:

- 1. Opportunity for Opening Statement by the Complainant*
- 2. Opportunity for Opening Statement by the Respondent*
- 3. Summary of the results of the investigation by the investigator(s)*
- 4. Questions for the investigator(s) by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)*
- 5. Questions for the Complainant by the Hearing Officer and, if desired, on behalf of the Respondent (as described below)*
- 6. Questions for the Respondent by the Hearing Officer and, if desired, on behalf of the Complainant (as described below)*
- 7. Questions for each witness by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)*
- 8. Opportunity for Closing Statement by the Respondent*
- 9. Opportunity for Closing Statement by the Complainant]*

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the investigative report as described in Section [the section of the Policy requiring that all evidence gathered during the investigation be shared at least ten days prior to completion of the investigative report] will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. [Absent extraordinary circumstances as determined by the Hearing Officer,

no party may seek to introduce at the hearing any evidence not previously made available in accordance with the preceding sentence, other than the investigative report itself and any responses to the investigative report submitted by the parties.

The Hearing Officer will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this Policy, the Hearing Officer will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, [to alter the order of the proceedings from that described above,] and/or to recall parties or witnesses for additional questions as the Hearing Officer deems necessary or appropriate. The Hearing Officer may impose additional ground rules as the Hearing Officer may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

C. Advisors

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an advisor present at the hearing, the College will provide, without fee or charge to that party, an advisor of the College's choice [for the limited purpose of conducting questioning on behalf of that party as provided in this Policy].

Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Hearing Officer during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating and non-abusive manner. If the Hearing Officer determines that an advisor is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the College will assign an advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation. The Hearing Officer may be advised by and/or consult with the College's legal counsel as the Hearing Officer deems necessary or appropriate.

D. Questioning Procedures

The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questioning must be conducted by the party's advisor in a respectful, nonintimidating and non-abusive manner, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the College to provide without fee or charge to that party, an advisor of the College's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Before the party or witness answers a question posed by an advisor, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. [The advisor posing the question may request that the Hearing Officer reconsider any decision to exclude a question and the Hearing Officer, after soliciting the other party's advisor's opinion, will render a final determination]. Such decisions by the Hearing Officer are final and not subject to [further] objection or reconsideration during the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

E. Hearing Determinations

*Following conclusion of the hearing, the Hearing Officer will deliberate and render a determination as to whether the Respondent is responsible or not responsible for the alleged violation(s). [The Hearing Officer will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "**Preponderance of the evidence**" means that the Hearing Officer must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.*

Each party may submit a written personal impact statement to the Title IX Coordinator for consideration by the Hearing Officer in determining an appropriate sanction if there is a finding of responsibility on one or more of the charges. The parties must submit their statements to the Title IX Coordinator prior to the hearing [or within 24 hours after the conclusion of the hearing]. The Title IX Coordinator will provide each of the parties an opportunity to review any statement submitted by the other party.

In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- *the nature and severity of, and circumstances surrounding, the violation(s);*
- *the Respondent's state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);*
- *the Respondent's previous disciplinary history;*
- *the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;*
- *the need to remedy the effects of the conduct on the Complainant and/or the community;*
- *the impact of potential sanctions on the Respondent;*
- *sanctions imposed by the College in other matters involving comparable conduct; and*
- *any other lawful factors deemed relevant by the Hearing Officer.*

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- *[Warning: A formal statement that the behavior was unacceptable and that further infractions of any College policy, procedure, or directive may result in more severe disciplinary action.*
- *Probation: A written reprimand for violation of the Policy, providing for more severe disciplinary sanctions in the event that the Respondent is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified privileges, exclusion from extracurricular activities, no-contact orders, and/or other measures deemed appropriate.*
- *Suspension: Cessation of student status for a definite period of time and/or until specific criteria are met.*
- *Expulsion: Permanent termination of student status.*
- *Withholding Degree and/or Diploma: The College may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities.*
- *Other Actions: In addition to or in place of the above sanctions, the Hearing Officer may assign any other sanctions as deemed appropriate, including but not limited to the following:*

- *Mandated counseling so the Respondent has the opportunity to gain more insight into his/her/their behavior.*
- *A “no contact” directive (including but not limited to continuation of a no contact directive imposed as a supportive measure) prohibiting contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact directive may include additional restrictions and terms.*
- *Requiring the Respondent to write a letter of apology.*
- *[For those crimes of violence that the College is required by federal law to include in its Annual Security Report, the transcripts of suspended or expelled students found responsible after a hearing and appeal, if any, will include the notation “Suspended after a finding of responsibility for a code of conduct violation” or “Expelled after a finding of responsibility for a code of conduct violation”. Transcript notations for suspensions may be removed at the discretion of the Title IX Coordinator in consultation with the VP of Enrollment Management and Student Affairs, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion may not be removed.]*

F. Notice of Outcome

The Hearing Officer will issue a written determination including the following information:

- *A description of the charges that were adjudicated;*
- *A description of the procedural steps taken from the submission of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;*
- *Findings of fact supporting the determination;*
- *Conclusions regarding the application of the Policy to the facts;*
- *A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College’s educational programs or activities will be provided to the Complainant; and*
- *The procedures and permissible bases for the Complainant and Respondent to appeal.*

The Title IX Coordinator will provide the written determination to the parties simultaneously.

X. Appeals

A respondent or complainant may appeal: (1) a determination regarding responsibility, and (2) the College's dismissal of a formal complaint or any allegations therein.

If a party wishes to appeal a determination regarding responsibility or the dismissal of a formal complaint, the party must submit written notice to the Title IX Coordinator of the party's intent to appeal within 10 days of receiving the written notification of the appealable decision.

A respondent or complainant may appeal on the following bases:

- Procedural irregularity that affected the determination regarding responsibility or dismissal of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the determination regarding responsibility or dismissal of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the determination regarding responsibility or dismissal of the matter. The professional experience of an individual need not disqualify the person from the ability to serve impartially. Furthermore, bias is not demonstrated by working in complainants' or respondents' rights organization.

In addition to the three bases for appeal, the College reserves the right to add additional bases for appeal that will be available equally to both the respondent and the complainant. Any additional bases of appeal that are added will not be applied retroactively to previous determinations and dismissals.

When a party submits a written notice of its intent to appeal to the Title IX Coordinator within 10 days of the appealable decision, the College will notify the other party in writing and implement appeal procedures equally for both parties. If no written notice of either party's intent to appeal is sent, then the written determination becomes final after the time period to file an appeal (10 days) has expired.

Each party will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Each party will have at least 10 days to submit its written statement. If a party needs additional time, it can request such additional time from the decision-maker for the appeal. Such requests will be granted on a case-by-case basis. If the decision-maker for the appeal grants a request for additional time to submit a written statement, all parties will be granted the additional time.

The decision-maker for the appeal will not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result. This decision will be provided to both parties simultaneously and in writing.

Once the appeal decision has been sent to the parties, the appeal decision is final.

XI. **Application to Faculty and Staff**

One or more of the College's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies to any situation where a student is the complainant or respondent. In all other situations, the College reserves the right to apply this policy or another applicable College policy or process. The College will apply this policy to any situation where the College determines that Title IX requires the application of this policy.

XII. **Academic Freedom**

The College is an academic institution at which academic freedom possessed by those who are teaching/conducting research and their students is necessary and valued. The College will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

XIII. **Clery Act Compliance**

The College is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Neither the names of individuals involved in incidents nor the specific details of the incidents are reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, the College will issue a timely warning to the campus, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/Complainant will not be disclosed.

XIV. **Coordination with Other Policies**

A particular situation may potentially invoke one or more College policies or processes. The College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

XV. **Designation of Authority**

Any College administrator or official empowered by this policy, may delegate their authority to any other appropriate College official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a College official named in this policy from fulfilling their designated role.

XVI. **Policy Enforcement**

The person responsible for the implementation of this policy internally is:

Clotilde Ibarra
Title IX Coordinator
Metropolitan College of New York
60 West Street
New York, New York 10006
(212) 343-1234, ext. 2800; cibarra@mcny.edu

Inquiries and complaints may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: 800-421-3481
Facsimile: 202-453-6012 TDD#: 877-521-2172
E-mail: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

APPENDIX A

RESOURCES TO FILE A REPORT OR PROVIDE SUPPORT

Public Safety

Campus Security - 212-343-1234, ext. 2100

NYPD Sex Crimes Report Line - 212-267-RAPE (7273)

Private, Not Confidential

Clotilde Ibarra, Dean of Students and Title IX Coordinator; 60 West Street, New York, New York 10006; (212) 343-1234, ext. 2800; cibarra@mcny.edu

Michael Molina, Director of Student Services, 60 West Street, New York, New York 10006; (212) 343-1234, ext. 2801; Mmolina@mcny.edu

Elaine Robles, Director, Human Resources, 60 West Street, New York, New York 10006; (212) 343-1234, ext.3306; erobles@mcny.edu

On Campus, Confidential

Rebecca Marbach, Social Worker, Coordinator of Health and Wellness, 60 West Street, New York, New York 10006; (212) 343-1234, ext. 2845; rmarbach@mcny.edu

Off Campus, Confidential

The Healing Center

718-238-5138

www.thehealingcenter.org

7304 5th Avenue, PMB #272, Brooklyn, NY 11209

New York City Alliance Against Sexual Assault

212-514-7233

www.svfreenyc.org

32 Broadway, Suite 1101, New York, NY 10004

DOVE – Domestic & Other Violence Emergencies, New York

212-305-9060 or dove@nyp.org

<https://www.nyp.org/clinical-services/social-work/domestic-and-other-violence-emergencies/dove-contact-us>

622 West 168 Street, New York, NY 10032

Safe Horizon's Rape, Sexual Assault & Incest Hotline

212-227-3000

1-800-621-HOPE (4673)

www.safehorizon.org

<https://www.safehorizon.org/get-help/rape-and-sexual-assault/#signs-of-abuse/>

Multiple locations in all five boroughs

Mt. Sinai/St. Luke's Crime Victim's Treatment Center

212-523-4728

<https://www.cvtcnyc.org/>

West 113 Street & Amsterdam Avenue, New York, NY 10025

NYC Gay & Lesbian Anti-Violence Project

212-714-1141

<https://avp.org/about-us/>

116 Nassau Street, 3rd Floor

NYC Family Justice Centers - General

<https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>

NYC Family Justice Center - Manhattan

212-602-2800

<https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>

80 Centre Street, New York, NY 10013

NYC Family Justice Center - Bronx

(718) 508-1222

<https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>

198 East 161st Street, Bronx, NY 10451

New York-Presbyterian Hospital - Main number

212-305-9060

<https://www.nyp.org/about-us>

New York-Presbyterian Allen Hospital

212-932-4000

<https://www.nyp.org/allenhospital>

5141 Broadway, New York, NY 10034

New York-Presbyterian Brooklyn Methodist Hospital

718-780-3000

<https://www.nyp.org/brooklyn>

506 6th Street, Brooklyn, NY 11215

New York-Presbyterian / Columbia University Medical Center

212-305-2500

<https://www.nyp.org/locations/newyork-presbyterian-columbia-university-medical-center>

622 West 168th Street, New York, NY 10032

New York-Presbyterian David H. Koch Center

<https://www.nyp.org/locations/david-h-koch-center>

1283 York Avenue, New York, NY 10065

CAMBA

718-940-6311

camb.org

<https://camba.org/programs/domestic-violence-services/>

20 Snyder Avenue, Brooklyn, NY 11226

APPENDIX B
Students' Bill of Rights

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

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 College;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the College, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the 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 College

APPENDIX C STAYING SAFE ON CAMPUS

Security Procedures and Sexual Assault Prevention

The Laws of New York State require every post-secondary institution to provide specific information to students about sexual assault prevention. The College does not operate any residential facilities, remains committed to ensuring the security of its students and staff, and to maintaining its enviable safety record.

An organization such as ours must be proactive in maintaining a safe learning environment. We are proud of our safety record. By law, we are required to provide annual statistics related to the security of our institution. While the safety procedures outlined below may seem an annoyance to some, our commitment to the security of our community should take precedence over the small inconveniences that the procedures sometimes cause us all. Student cooperation in this is expected and appreciated.

Listed below are items to help ensure your safety while you are at the College:

- Security is on duty during all hours that the College is open
- All students entering the College **must** produce and show identification cards to Security
- Students **must** have their ID cards visible at all times.

If you forget your College ID card, you must show other identification and sign in with Security.

Any incidents of illegal behavior, including sexual assault, should be reported immediately to the security guard on duty, or in his or her absence, to one of the Deans or the College administrator responsible during evenings and weekends. The building security officer and the local police department must be called without delay.

All students must leave the building when Security makes the final evening check.

An additional list includes some suggestions that can help you protect yourself while you are off campus:

- If you attend evening classes, leave the building with a group rather than alone
- When walking, try to stay in well-lit, populated areas. Do not walk close to doors or in alleyways. Stay as close to the street as possible
- If you are dependent on subway transportation to go to and from the College, do not stand in an isolated area of the subway platform. Stand near other people or the attendant booth
- Be careful when walking down subway stairs alone

Public Safety

MCNY's annual security report includes statistics for the previous three years concerning reported crimes that occurred on campus, in off-campus building or property owned or controlled by the College; and on public property within, or immediately adjacent to and accessible from the campus. The report also includes institutional policies concerning alcohol and drug abuse, crime prevention, the reporting of crimes, sexual assault and other matters. You can obtain a copy of this report by contacting Admissions (ext. 5001), Student Services (ext... 5009) or Security (ext. 2000), or by accessing our website at mcny.edu.

Stay Safe

Get to a Safe Place. If you are being stalked, threatened, or are concerned about your personal safety, call Campus Security ext. 2000 or the NYC Police Department at 911 (off-campus) or go to a police station or hospital.

Call for Assistance. Call Campus Security ext. 2000 or the NYC Police. Or call Sexual Violence Response and Race Crisis/Anti-Violence Support Center, **(212) 854-HELP**, for crisis intervention and to discuss options for reporting and medical help. An advocate can accompany students to resources such as emergency rooms.

Seek Medical Attention from one of the listed resources or at an Emergency Room.

Preserve Evidence for Law Enforcement. Preserve any physical evidence. You can decide whether to file charges later, but you can only preserve physical evidence now.

Go to the nearest hospital and ask for a Sexual Assault Forensic Examiner (SAFE)

Emergency Care

If you have been raped within the past 96 hours...

- Get to a safe place. (For example -- someone's home, the nearest hospital or police precinct)
- Call 911 to be taken to an emergency room for medical care and/or for immediate police protection and assistance. A complete medical evaluation will include a physical examination, treatment, evidence collection, and/or counseling. Remember, you will not be made to do anything you do not want to do and may decline any of the elements of this evaluation.

If you have been raped, it is important to seek medical care, especially if you have been physically injured. Even if you do not have any visible physical injuries from the assault, there may be physical injuries that you cannot see, and medical and health centers can provide additional services such as testing for sexually transmitted diseases and emergency contraception.

- When you call 911, explain what has happened and request to be sent to an emergency

department that is a certified SAFE Center of Excellence. (See "What is a 'SAFE Center of Excellence")

- In the meantime, do not change clothes, bathe, douche, or brush your teeth. This is important for the evidence collection process that will occur at the hospital.

If you seek to place a report with the police or press charges, it is best for evidence collection to occur within 96 hours of the rape. Keep in mind, though, that evidence collection does not require you to place a report with the police or press charges, it just preserves these options for the future.

- Or, go directly to the nearest SAFE Center of Excellence Emergency Department. If you go to the nearest emergency department that is not a designated SAFE Center, you can be transferred to the nearest SAFE Center of Excellence.

What is a "SAFE Center of Excellence"?

Sexual Assault Forensic Examiner (SAFE) services are considered the best and most victim-centered approach to acute health care for sexual assault patients. The New York State Department of Health certifies Emergency Departments as SAFE Centers of Excellence.

SAFE Centers provide sexual assault patients with:

- 1) Sensitive, victim-centered, medical and forensic health care performed by a specially trained Sexual Assault Forensic Examiner (SAFE). A SAFE is a healthcare provider such as a doctor, nurse, physician's assistant or nurse practitioner.
- 2) Care that is timely, compassionate, and patient-centered, in a designated and appropriately equipped private room.
- 3) Assurance about the quality of collection, documentation, preservation and custody of physical evidence by utilizing a trained and New York State Department of Health-certified sexual assault forensic examiner to perform exams. These examiners are available to provide expert testimony if patients choose to report crimes to law enforcement.
- 2) Psycho-social and legal support by a specially trained Rape Crisis Advocate or Counselor.
- 3) Reliable referrals to mental and physical health care and follow-up services.

APPENDIX D
Hospitals in New York City with SAFE Centers

Manhattan

St. Luke's Hospital (CHP)
Amsterdam Ave & W 113th St

Roosevelt Hospital (CHP)
1000 10th Ave

Beth Israel-Petrie Campus (CHP)
1st Ave & E 16th St

Beth Israel Medical Center
Rape Crisis & Domestic Violence Intervention Program
317 E 17th St.
New York, NY 10003

Bellevue Hospital (HHC)
1st Ave & E 27th St

Harlem Hospital (HHC)
506 Lenox Ave

Metropolitan Hospital Center (HHC)
1901 1st Ave

Mount Sinai Medical Center (Mount Sinai)
1 Gustave L Levy Pl

New York Presbyterian Hospital-Columbia (NYP)
622 W 168th St

New York-Presbyterian Hospital- The Allen Pavilion (NYP)
5141 Broadway

New York-Presbyterian Hospital-Weill Cornell (NYP)
525 East 68th Street

Brooklyn

Woodhull Medical and Mental Health Center (HHC)
760 Broadway

Coney Island (HHC)
2601 Ocean Pkwy

Kings County Hospital Center (HHC)
451 Clarkson Ave

Bronx

North Central Bronx (HHC) E 210th St & Kossuth Ave

Lincoln Medical and Mental Health Center (HHC)
234 E 149th St

Jacobi Hospital (HHC) Eastchester Rd & Pelham Pkwy

Queens

Queens Hospital Center (HHC)
82-68 164th St

Elmhurst Hospital (HHC)
79-01 Broadway

Staten Island

Richmond University Medical Center (IN)
355 Bard Ave

APPENDIX E

State Laws Regarding Sex Offenses

The College is committed to educating the campus community about sexual harassment and sexual assault. This includes raising awareness about the nature of the conduct, advising about the consequences of such behavior, and outlining the procedures to follow in the event of an instance. In addition to College sanctions, there are potential criminal penalties that can be imposed, as sexual assault is prosecuted criminally in New York State. The New York State Legislature has mandated that colleges make this information available to students as part of an ongoing effort to raise awareness, educate students, and combat sexual assault. Sex offenses are defined in the New York State Penal Code and include: rape, sodomy, sexual abuse, aggravated sexual abuse, and sexual misconduct. These offenses are ranked and carry different punishments ranging from a few months imprisonment for misdemeanors, to up to 25 years imprisonment for felonies.

In New York, a person can be found guilty of rape in the first, second, or third degree, all of which are punishable as felony crimes that carry prison sentences of up to 25 years. Rape in the first degree occurs when a person engages in non-consensual intercourse with another by physical force, coercion or threat, or with a person who is incapable of consent by reason of being physically helpless or under age. Under the law, the term sexual intercourse has as its common meaning penile - vaginal - and occurs upon any penetration, however slight. It is a first-degree rape if the victim is mentally incapacitated by the influence of drugs, or alcohol is administered without consent.

Consent is an element of every sexual offense defined in the penal code, with the exception of consensual sodomy. In these sexual offenses, the sexual act was committed without consent of the victim. Lack of consent results from: forcible compulsion; incapacity to consent; or where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or implied, acquiesce in the actor's conduct. Non-consensual sodomy, in its varying degrees, is a felony or misdemeanor crime, punishable by up to 25 years imprisonment. Sodomy occurs when a person engages in deviant sexual intercourse with another. Deviant sexual intercourse is defined as sexual conduct between persons not married to each other consisting of various contact between the mouth, sexual organs, and rectum.

Sexual abuse, in its varying degrees, can be a felony crime, and occurs when a person subjects another to sexual contact by forcible compulsion or when the other person is incapable of consent. Sexual contact means any touching of the genitals or other intimate parts of a person for the purpose of gratifying sexual desire. Convictions for sexual abuse include penalties ranging from three months to seven years imprisonment. Aggravated sexual abuse occurs when a person inserts a finger or foreign object into the vagina, urethra, penis or rectum of another person without the person's consent causing physical injury. Convictions for aggravated sexual assault include penalties of up to 25 years imprisonment.

Sexual misconduct occurs when there is sexual intercourse or sodomy without the consent of the victim. By law, a person under seventeen is considered incapable of giving consent. Sexual misconduct is a class A misdemeanor. A person is deemed incapable of consent when one is: less

than 17 years old; or mentally defective; or mentally incapacitated or physically helpless.

For your reference, the penal code provides the following definitions: Mentally defective means that a person suffers from a mental disease or defect, which renders one incapable of appraising the nature of one's conduct. Mentally incapacitated means that a person is rendered temporarily incapable of appraising one's conduct owing to the influence of narcotic or intoxicating substance administered without one's consent, or to any other act committed upon the person without consent. Physically helpless means that a person is unconscious or any other reason, physically unable to communicate a willingness to act.

Forcible compulsion means to compel by either: use of physical force; or a threat, express or implied, which places a person in fear of immediate death or physical injury to himself or another person, or in fear that he, she or another person will immediately be kidnapped. Alcohol or drug use will not be a defense against a charge of rape or sexual assault.

APPENDIX F

Federal Campus Sex Crimes Prevention Act and New York State Article 129B

Campus Sex Crimes Prevention Act

The federal Campus Sex Crimes Prevention Act, enacted on October 28, 2000, went into effect October 28, 2002. The law requires institutions of higher education to issue a statement advising the campus community of where law enforcement agency information provided by a state concerning registered sex offenders may be obtained. It also requires sex offenders already required to register in a state to provide notice, as required under state law, of each institution of higher education in that state at which the person is employed, carries a vocation, volunteers services or is a student. The New York State Division of Criminal Justice Services maintains the state's Sex Offender Registry, which contains information about individuals convicted of certain sex offenses. The information is available by visiting www.criminaljusticestate.ny.us.

Definition of Affirmative Consent to Sexual Activity

Affirmative consent is knowing, voluntary, and mutual decision among all participant to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions created 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.

- 1) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to other sexual act
- 2) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- 3) Consent may be initially given but withdrawn at any time
- 4) 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 of being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- 5) Consent cannot be given when it is the result of coercion, intimidation, force or threat of harm.
- 6) When consent is withdrawn or can no longer be given, sexual activity must stop.

Bystander Intervention Options

Your safety is most important and you should intervene only if you feel comfortable intervening.

Direct: Address the situation directly. Use this when the person that you're trying to stop is someone who knows and trusts you. Consider other intervention methods when drugs or alcohol are being used.

Distract: Distract either person in the situation to intervene. Interject yourself into a conversation where another person seems unsafe.

Delegate: Find others who can help you to intervene in the situation. This might include asking a friend to distract one person in the situation while you distract the other to separate the individuals, or asking someone to go sit with them and talk.

Delay: You may not be able to do something right in the moment. If you're feeling unsafe or if you're unsure whether or not someone in the situation is feeling unsafe, you may just want to check in with the person. In this case, you can ask the person to accompany you somewhere like the bathroom or to get a drink.

APPENDIX G

POLICY AND PROCEDURES FOR REPORTS OF NON-TITLE IX SEXUAL MISCONDUCT AND GENDER-BASED MISCONDUCT

Application

This policy and its procedures apply to students as well as faculty, staff, and third party conduct.

Values

The College honors its special commitment to persons who might otherwise find it difficult or impossible by reason of age, race, national origin, gender, sexual orientation, or income to obtain an education in keeping with their aspirations and abilities.

MCNY previously had one process for addressing sexual misconduct. Given the new Title IX Regulations promulgated in May 2020 and effective August 14, 2020, MCNY will now have two processes for addressing sexual misconduct. The Title IX regulations provide a more restrictive definition of “sexual harassment” and a more restrictive geographic scope that MCNY must investigate and adjudicate pursuant to the requirements of Title IX. The Title IX reporting, investigation and adjudication process reflected in the Title IX Policy, (titled Policy and Procedures for Sexual Assault Prevention and Reporting Sexual Misconduct) will apply only to allegations that meet the Regulations’ definitions (“Title IX Category Violations”).

MCNY will also address any allegations of violations of its policies, including those that do not meet the strict definitions of the Regulations. Those allegations (“College Category Violations” in the Title IX Policy) will be addressed through this separate policy and process, titled Policy and Procedures for Reports of Non-Title IX Sexual Misconduct and Gender-Based Misconduct.

Notice of Nondiscrimination

MCNY is committed to providing a learning and working environment not impaired by unlawful discrimination. MCNY prohibits discrimination or harassment by students, employees, or third parties against any person on the basis of race, color, sex, gender, pregnancy, religion, creed, marital status, partnership status, age, sexual orientation, gender identity, gender expression, national origin, disability, military status, or any other legally protected category in the admission to and administration of its educational programs or the employment of individuals in College administered programs and activities.

Sexual harassment and sexual violence are forms of sex discrimination prohibited by Title IX of the Education Amendments of 1972 (“Title IX”). Consistent with Title IX and other federal, state and local laws, including Article 129-B of the New York State Education Law, and MCNY policy, the College is committed to maintaining a community that prohibits sex discrimination, including sexual harassment, sexual violence, and gender-based misconduct.

Inquiries or complaints regarding any form of discrimination or harassment may be directed to:

Clotilde Ibarra
Title IX Coordinator
Metropolitan College of New York
60 West Street
New York, New York 10006

(212) 343-1234, ext. 2800; CIBarra@mcny.edu

U.S. Department of Education
Office for Civil Rights, New York—Region II
32 Old Slip, 26th Floor
New York, NY 10005
(646) 428-3800; OCR.NewYork@ed.gov

The College is committed to operating with integrity and in compliance with all applicable laws, regulations, and College policies and procedures. All College community members are expected to comport themselves responsibly, and to behave in a manner consistent with the College's mission.

The College recognizes that freedom of academic inquiry and the transmission of knowledge are the foundations of higher learning. However, any assertion of rights or freedoms must be balanced by a readiness to assume corresponding responsibilities. These include respecting the rights of others in the academic community and accepting responsibility for one's own behavior.

Students may be subject to College discipline and sanctions for violations of this Policy that take place off-campus. The College may address such violations if the off-campus conduct impairs college-related activities or creates a risk of harm to any member or members of the college community. The Title IX Coordinator will determine whether the activities in question have sufficient connection to, or impact on, College activities to merit investigation and disciplinary action by the College under this Policy.

Policies and Procedures for Reporting, Investigation, and Adjudication of Misconduct

I. Definitions

Harassment

Harassment is conduct directed toward an individual or group based on membership in a protected class, including gender, sexual orientation or gender identity, including harassment of an individual in connection with a stereotyped characteristic of a protected class, or because of that person's identification with a protected class. Such harassment is any conduct, verbal, nonverbal, or physical, on or off campus, that has the effect, because of its severity and/or persistence, of unreasonably interfering with an individual or group's educational or work performance or that creates an intimidating or hostile educational, work, or living environment.

Sexual Harassment

Sexual harassment is a type of gender discrimination and is prohibited by Title IX, other state and federal laws, and by College policy. Sexual harassment may include unwelcome sexual advances, requests to engage in sexual conduct or for sexual favors, or other behavior of a sexual nature where:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment;
- Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual; and/or
- Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or demeaning educational or employment environment.

The College strictly prohibits sexual harassment of and by any member of the College community, whether such harassment is aimed at students, faculty, or other employees. Violators will be subject to disciplinary action. All College employees and students are responsible for adhering to this policy.

The following activities are examples of possible sexual harassment. Each of these activities alone, if sufficiently severe, may warrant immediate discipline, discharge, or expulsion. These examples are intended to be illustrative rather than exhaustive:

- Threatening retribution or promising benefits in return for sexual favors, whether implicitly or explicitly;
- Unwanted verbal, physical or visual conduct - the person who is the target of the conduct determines what is unwanted;
- Unwanted sexual advances;
- Sexual violence and sexual assault;
- Comments concerning an employee's or a student's sexual habits, sexual preference, or sexual desirability, whether generally stated or, specifically at an individual;
- Offensive talk about sex or sexuality;
- The use of demeaning or offensive words when referring to people of a particular gender, sexual orientation or gender identity;
- The display of pornographic or other offensive material, including circulating written or graphic material including e-mail messages that denigrates or shows hostility or aversion toward an individual or group.

It makes no difference if the harassment is "just joking" or "teasing" or "playful." Depending on the context and impact jokes may amount to harassment.

Sexual Exploitation

Sexual exploitation is non-consensual sexual abuse or exploitation of another. Examples of sexual

exploitation include, but are not limited to, non-consensual use of electronics to capture, reproduce or share images of a sexual nature without consent of parties involved, public indecency or exposing genitals to others without consent, or engaging in ‘peeping’ (observing another when privacy would be reasonably expected) without consent.

Domestic Violence

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim or by any other person against an adult or youth victim who is protected from that person’s acts.

Domestic violence can also consist of actions by one person to control another person in an intimate relationship. The shift in power can happen very slowly, over a period of time, so that the other person cannot remember when it happened. Or it can happen very quickly after there is some sort of commitment or some change in the level of intimacy.

Physical abuse is not the only form of domestic violence. There are many ways that your partner might try to gain power and control in your relationship.

Ways a person might try to gain power and control over their partner include:

- **Isolation** - making it hard for you to see your friends and family; telling you that your friends and family cause problems in the relationship or are trying to “come between you.”
- **Economic abuse** - having complete control over the money; making you account for every penny you spend; taking your money from you.
- **Verbal, emotional, psychological abuse** - calling you names; putting you down or embarrassing you in front of other people; criticizing your abilities as a partner or parent.
- **Intimidation** - making you afraid with a look, action, or gesture; getting you to do something by reminding you about “what happened last time.”
- **Coercion and threats** - showing you a weapon and threatening to use it on you; threatening to “out” you to family, friends, or employers if you are gay or lesbian; threatening to harm your family, friends, or anyone you might go to for help.
- **Physical abuse** - pushing, grabbing, hitting, slapping, punching, or kicking you.
- **Sexual abuse** - forcing you to have sex when you don’t want to; making you engage in sexual acts that make you uncomfortable; forcing you to engage in prostitution.
- **Using children** - undermining your authority with your children; threatening to take the children away from you by kidnapping or getting custody of them; “pumping” your children for information about you.
- **Minimizing, denying, blaming** - making you think the abuse is your fault; saying the abuse was caused by stress, alcohol, or problems at work; denying that the abuse happened at all.

Sexual Assault

Sexual Assault is any non-consensual sexual act. Sexual assault includes:

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight and with any object or body part, that is without consent (as defined in this Policy) and/or by threat, intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. This includes intentional contact with breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Non-Consensual Sexual Intercourse (Rape): the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without affirmative consent or where the victim is incapable of affirmative consent due to mental or physical incapacity. Statutory rape is non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

Dating Violence

Dating violence is violence committed by a person who is or has been in a romantic or intimate relationship with the victim. The existence of such a relationship will be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking

Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. Stalking may include contact through a third party, the monitoring of an individual online or through the use of social media, email or other technology.

Examples of stalking include:

- Unwelcome and repeated visual or physical proximity to a person;
- Repeated oral or written threats;
- Extortion of money or valuables;
- Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, and messages on on-line bulletin boards;
- Unwelcome/unsolicited communications about a person, their family, friends, or coworkers;
- Sending/posting unwelcome and/or unsolicited messages with another username;
- Implicitly threatening physical conduct or any combination of these behaviors directed toward an individual person.

A stalker can be a stranger or someone the victim knows including a partner, an ex-partner, or a family member.

If you are a victim of domestic abuse or stalking, you may be able to obtain protection through the court system through an Order of Protection. Some abusive behavior including stalking is also a violation of criminal laws and subject to prosecution. Victims of domestic abuse or stalking should see Student Services regarding

resources for counseling and other support services.

Affirmative Consent (“Consent”)

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.

Please note that to comply with the above definition of affirmative consent, you should be guided by the following principles:

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given, but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given sexual activity must stop.

Incapacitation

Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Evaluating incapacitation requires an assessment of an individual’s:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and
- Level of consciousness.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a knowing, reasonable decision about whether to engage in sexual activity is in violation of this Policy.

Hazing

College policy and New York State Law prohibit all forms of hazing. Hazing is defined as any action taken or situation created which, regardless of location or consent of the participants, recklessly or intentionally endangers mental or physical health or involves forced consumption of alcohol or other drugs for the purpose of initiation into or affiliation with any organization at the College. All instances of hazing should be immediately reported to a College official, such as the Campus Security Staff or the Dean of Students. All allegations of hazing shall be fully investigated. Individual violators are subject to disciplinary actions by the College, up to and including dismissal from the College. All students, faculty, staff and campus visitors or invitees are subject to these rules. In addition, violators may also be subject to criminal sanctions.

Violence

The College prohibits any act of intimidation, threat of violence, or act of violence against or by any person affiliated with the College.

- **Intimidation:** A physical or verbal act toward another person, the result of which causes that person to reasonably fear for his/her safety or the safety of others.
- **Threat of Violence:** A physical or verbal act, which threatens bodily harm to another person or damage to the property of another.
- **Act of Violence:** A physical act, whether or not it causes actual bodily harm to another person or damage to the property of another.

Retaliation

Retaliation is any action to penalize, intimidate, harass, or take adverse action against a person who makes a report of misconduct, cooperates or participates in an inquiry or investigation, or otherwise asserts rights protected by the laws or this policy. Retaliation is prohibited by College policy and could result in new or additional misconduct charges.

II. Reporting Misconduct

Any instance of misconduct should immediately be reported to a College official such as the Title IX Coordinator or to Campus Security Staff. Students, faculty, administrators, staff, and campus visitors including independent contractors and vendors may request that conduct charges be filed against the accused according to the procedures established by this policy. Individuals may also notify law enforcement authorities, including the NYPD, regardless of whether or not a report has been made to the College. College officials can help individuals notify and cooperate with external authorities.

If an allegation is against an employee of the College, the Title IX Coordinator may refer the matter to the Director of Human Resources for a separate or coordinated investigation.

If an allegation is against a third party such as a visitor, vendor, independent contractor, etc., the Title IX Coordinator may impose an appropriate sanction after an investigation that permits the third party notice of the

allegations and an opportunity for him or her to be heard.

If the reporting individual asks that the College not investigate a report, the College will weigh that request against its obligation to provide a safe environment for members of the College community. In all cases, information will be shared only with necessary parties to the investigation, discipline process, or supervisory process. The College will accept complaints by third parties, such as witnesses/bystanders, but the College's ability to investigate such complaints may be limited without cooperation of the alleged victim.

A reporting individual may file a report with law enforcement authorities at the local NYPD precinct, regardless of the status or outcome of the College investigation. The College's investigation and adjudication process will run concurrently with any criminal justice investigation and proceeding, except for temporary delays at the written request of law enforcement. Temporary delays will generally not last more than ten days except at the specific request of law enforcement.

The College investigation and adjudication process will be fair, impartial, and free from conflicts of interest. All parties will have a meaningful opportunity to be heard. Accused individuals are presumed to be "not responsible" until a finding of responsibility is made pursuant to these procedures.

Amnesty for Reporting Individuals

The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to College officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

III. Filing a Complaint

Any member of the faculty, administration, staff, or student body as well as campus visitors including independent contractors and vendors may file a complaint requesting that conduct charges be filed against an individual by following the procedure below. Complaints should be made, in writing, to the Title IX Coordinator. Reporting individuals may meet with the Title IX Coordinator before making a written report. Reports must be typed or legibly hand-written, dated, and signed (electronic signature is sufficient). The complaint must clearly describe the incident, including specific time and date of the occurrence and all persons involved. Reporting parties should include any relevant materials with the complaint. The complaint is to be delivered to Clotilde Ibarra, Title IX Coordinator, 60 West Street, New York, New York 10006. [Email:](#)

CIBarra@mcny.edu. Phone: 212-343-1234 extension 2800.

Confidentiality and Privacy

This Policy distinguishes between *privacy* and *confidentiality*. If a reporting individual discloses an incident to a College employee, but wishes to maintain confidentiality or does not consent to the institution's full investigation, the College will consider that request in light of its obligation to provide a safe, non-discriminatory environment for all members of the community.

Privacy

Information disclosed by a reporting individual will only be shared with a small circle of individuals who are directly involved in the resolution of a report. These individuals will be discreet and respect the privacy of all involved.

Confidentiality

Certain professionals off campus have been designated as confidential resources. This means that any information shared with a confidential resource will not be shared with the College without the permission of the person that shares the information.

In rare circumstances, a confidential resource may need to share information with the police or other authority if, for example, there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor.

IV. Investigations

After the receipt of a report of sexual misconduct, the Title IX Coordinator or one of the designees will meet with the reporting individual to gather as much information as possible. Reporting individuals may offer evidence during an investigation. The Title IX Coordinator and/or her designee will also meet with witnesses or individuals who may have information about the conduct at issue, as appropriate. The Title IX Coordinator or her designee will counsel the reporting individual and the person accused of misconduct on available interim measures such as no contact orders, academic support, and counseling.

The accused will be notified that an investigation is underway and will be afforded the opportunity to independently meet with the Title IX Coordinator or the designee to review this procedure and to have his/her rights explained. The accused will be informed of the date, time, location, and factual allegations concerning the violation, the specific code of conduct provisions to have been violated, and possible sanctions. The Title IX Coordinator or the designee(s) will also meet with the accused to gather any evidence that he or she may offer so that the College can better understand the issue. The accused will also have the opportunity to submit names of individuals with knowledge of the situation and the College will follow up with those individuals as appropriate. The College will notify both parties in writing prior to any meeting that they are required or eligible to attend and of the specific rules or laws alleged to have been violated.

During an investigation, the Title IX Coordinator or an appropriate designee may ask for written statements and other documents or evidence which may aid in the investigation. Therefore, it is important that all parties and witnesses preserve all evidence associated with the conduct or that you think might help others understand what happened. Such evidence can include text messages, Facebook or Instagram posts, photos, voicemails, emails, or items of clothing.

During the fact-finding process, upon agreement of all parties, the Title IX Coordinator or the designated representative may attempt mediation to informally resolve the issue. **Sexual assault, domestic violence, dating violence, and stalking claims will not be mediated.** If the issue is not resolved at this level, the Title IX Coordinator will refer the complaint for a disciplinary hearing.

V. Interim Measures

The College may be able to offer interim measures while the College investigates and resolves a case covered by this policy. Interim measures are designed to be temporary and may include, depending on resources and the circumstances of a case, a change in class schedule, academic counseling, housing, transportation, alternate exam schedules, and/or work arrangements. Both the accused and reporting individual will be afforded, upon request, a review of the need for and terms of any interim measures that directly affect him or her, and will be allowed to submit evidence in support of his or her request.

No Contact Orders

The parties may also request that the College issue a “no contact” order, which prohibits the parties from interacting and restricts one or both party’s access to certain areas of campus. “No contact” orders are usually not indefinite and either party may request that the Title IX Coordinator or her designee modify or revoke a “no contact” order. The College will promptly review such requests. Both parties will be allowed to submit evidence in support of his or her request. Intentional and/or repeated violations of a College-issued “no contact” order are a violation of this Policy and may result in additional disciplinary charges and sanctions. Consistent with State law, if the accused and reporting individual observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the reporting individual. The College will work with the accused and reporting individual to develop a schedule for separate access to certain College buildings if there is a chance that they will encounter each other in such buildings.

Interim Suspension

When the accused is determined to present an imminent threat to the health and safety of any individual, including him or herself, he or she may be placed on an interim suspension pending the outcome of the College’s investigation and adjudication process.

Both the accused and reporting individual will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension and will be allowed to submit evidence in support of his or her request.

VI. Assistance and Support

Advisors

Both parties may bring an advisor or support person of choice with them to any meeting or phase of proceeding discussed in this Policy. Advisors/support persons are, however, not allowed to speak or otherwise participate in any meeting or hearing.

Confidential Resources

Confidential resources are not required to report incidents to College officials. Individuals seeking confidential assistance or who are not seeking action by the College may reach out to the confidential resources listed on pages 31-33 of this Policy.

Non-Confidential Resources

These resources at the College are not confidential, but they will maintain privacy to the greatest extent possible:

- Clotilde Ibarra, Title IX Coordinator, CIbarra@mcny.edu, ext. 2800
- Michael Molina, Director of Student Services, Mmolina@mcny.edu, ext. 2801

Responsible Employees

All College employees are “responsible employees,” which means that all employees are required to report alleged violations of this Policy to the Title IX Coordinator. Pursuant to federal, state and local law, the College is required to take immediate and corrective action if an employee knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment or violence prohibited under this policy.

Employees will respect an individual’s privacy and only share information on a need-to-know basis with a small circle of individuals who are directly involved in the resolution of a report under this Policy. Employees are nonetheless required by the College to immediately share information reported to them, including the date, time, location, the names of the parties involved, and a brief description of the incident with the Title IX Coordinator or her designee.

Note about Public Awareness and Advocacy Events

The College is not obligated to begin an investigation based on information that individuals may share during public awareness or advocacy events such as candlelight vigils, protests, or other public events. The College may use information shared at these events, generally, to inform its education and prevention efforts. In addition, the College encourages affected individuals to avail themselves of the Resources listed following Appendix B herein.

VII. Hearing Process

After the completion of an investigation, and upon a threshold determination that there is sufficient evidence to move on to a formal review of the evidence, the Title IX Coordinator will convene a hearing. The hearing may be before an impartial hearing or administrative officer. The parties will be notified of the hearing ahead of time and are encouraged to attend. Both parties will have access to relevant evidence in the case file prior to the hearing. If either or both parties choose not to attend, the College reserves the right to conduct the hearing in their absence. Either party may appear at the hearing by videoconference or conference call if the party is uncomfortable or unable to appear in person. Both parties will be given an opportunity at the hearing to present evidence and testimony. A record of the hearing will be made.

Hearings will be open only to invited individuals and witnesses. The accused or complainant may bring an advisor of choice to the hearing, but the advisor may not speak or otherwise participate in the hearing process. The parties must give the Title IX Coordinator at least 24 hours' notice that the presence of an advisor is desired at the hearing.

The hearing officer will hear all testimony relevant to the complaint and may ask questions of all parties and witnesses. The accused and complainant may provide questions for the hearing officer to ask of parties and witnesses, but will not be permitted to directly question each other during the hearing. The hearing officer shall ask all relevant, reasonable and non-repetitive questions provided by the parties. Prior sexual history with persons other than the other party in the conduct process or his or her own mental health diagnosis and/or treatment may be excluded from the review of whether or not the respondent is responsible for charged conduct.

The hearing officer's determination regarding responsibility will be based on the preponderance of the evidence and will be submitted to the Title IX Coordinator. The Title IX Coordinator will notify the parties, in writing, of the decision and recommended sanction. The decision will include the findings of fact, the decision, and sanction as well as a rationale for the decision and sanction.

The parties will have 10 business days following receipt of the hearing officer's decision to appeal.

VIII. Sanctions

A. Sanctions for Students

Sanctions imposed will be determined by the severity of the violation, prior misconduct and the student's understanding and willingness to accept responsibility for the behavior. Possible sanctions include, but are not limited to:

- Verbal and or written warning
- Community and or College service
- Behavioral contract
- Monetary fines and or restitution
- Social probation (suspension from a student club, group or activity)

- Suspension from attending classes or being on College premises
- Expulsion from the College
- Notations in the student's permanent file and/or academic transcript
- Withholding degree

The College reserves the right to combine sanctions, as appropriate. Any student who is suspended or expelled will be responsible for tuition charges incurred, in accordance with the tuition liability policy.

B. Sanctions for Employees

- Written warning
- Performance Improvement Plan
- Required counseling
- Written reprimand
- Formal apology
- No-contact order
- Required Training/Education
- Required counseling
- Non-renewal of employment agreement
- Demotion
- Loss of annual pay increase
- Suspension with pay
- Suspension without pay
- Termination

C. Impact Statements for Students and Employees

Prior to the College's final determination as to sanction, the parties may submit an impact statement for consideration. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in consideration of an appropriate sanction.

Either party may make or submit an impact statement to the Title IX Coordinator during the sanctioning phase. The parties will be provided simultaneous written or electronic notification of the outcome of the conduct process, including sanction and rationale for sanction, if applicable.

IX. Appeal

Either party may appeal the decision of the hearing officer, in writing within 10 business days of receipt of the decision. Failure to submit an appeal within this period shall constitute a waiver of the right to appeal. Appeals will be before an impartial panel of three or more people, and are not an opportunity to rehear the case. Appeals will be granted only in certain circumstances. Those circumstances are when there is concern that:

- The original hearing was not conducted in a fair manner and in accordance with College policy;
- The decision was not based on a preponderance of the evidence or there was a misapplication of evidence;
- The sanctions were inappropriate for the violation; and/or
- New information that was not available at the time of the initial hearing has just become available.

Requests for an appeal must be in writing and clearly articulate the basis for the appeal. On appeal, the panel may uphold, modify or dismiss the hearing officer's decision and sanction. The appeal panel may also send the matter back to the hearing officer and/or Title IX coordinator for reconsideration or further investigation. The decision of the appeal panel is final. Students have the right to choose whether to disclose or discuss the outcome of the adjudication process. Information obtained during the investigation and adjudication process is protected by FERPA unless the law requires otherwise.

X. Student Transcript Notations

Students suspended or expelled for committing an act of sexual assault, domestic violence, dating violence, stalking or a "violent crime" as defined by the Clery Act, will have a notation placed on their transcript as follows: "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation."

The College will consider requests to remove transcript notations for those students suspended for sexual assault, domestic violence, dating violence, stalking or Clery violent crime. However, a transcript notation will not be removed sooner than one year after the conclusion of the suspension. Expulsion notations will not be removed in any case. Appeals seeking removal of a transcript notation may be addressed to the Title IX Coordinator and should include an explanation and supporting information for why a transcript notation should be removed. If a finding of responsibility is vacated for any reason a corresponding transcript notation

will be removed.

If an accused student withdraws from the College while conduct charges that include sexual assault, domestic violence, dating violence, stalking and/or a Clery crime of violence are pending, and declines to complete the disciplinary process, the following notation will be placed on his/her transcript: “withdrew with conduct charges pending.