

# Nondiscrimination Policy and Grievance Procedures for Sex-Based Discrimination Complaints for Students and Employees



## **Metropolitan College of New York**

**Effective August 1, 2024**

### **Nondiscrimination Policy**

Metropolitan College of New York (the “College”) does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX, including in admission and employment.

### **Notice of Nondiscrimination**

The College does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to the College’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. The College’s Title IX Coordinator is Clotilde Ibarra, Title IX Coordinator, Metropolitan College of New York, 60 West Street, New York, New York 10006, [cibarra@mcny.edu](mailto:cibarra@mcny.edu), (212) 343-1234, ex. 2800.

The College’s nondiscrimination policy and grievance procedures can be located at:  
<https://www.mcny.edu/disclosures/title-ix-sex-discrimination-and-reporting-sexual-misconduct/>

To report information about conduct that may constitute sex discrimination or make a Complaint of sex discrimination under Title IX, please refer to: <https://www.mcny.edu/disclosures/title-ix-sex-discrimination-and-reporting-sexual-misconduct/>

# **GRIEVANCE PROCEDURE FOR COMPLAINTS OF SEX DISCRIMINATION OTHER THAN SEX-BASED HARASSMENT INVOLVING A STUDENT**

## **I. Effective Date**

This Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Procedure that occurred on or before July 31, 2024, will be processed through the College's policy in effect at the time that the event(s) occurred.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy. The College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

## **II. Scope of Procedure**

The College has adopted a grievance procedure that provides for the prompt and equitable resolution of sex discrimination Complaints made by students, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Sex discrimination, as defined by Title IX, includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Title IX's prohibition on sex discrimination includes sex-based harassment in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking). **For the prompt and equitable resolution of Complaints of sex-based harassment involving a student Party, the College will utilize Grievance Procedures for Sex-Based Harassment Complaints Involving Students.**

## **III. Jurisdiction of Procedure**

- This Procedure applies to all sex-based discrimination occurring under the College's Education Program or Activity in the United States.
- Conduct that occurs under the College's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the College and conduct that is subject to the College's disciplinary authority.

- The College has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's Education Program or Activity or outside the United States.

#### IV. Definitions

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by the College.
2. **Consent** means 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.
3. **Complainant** means:
  - (a) a student or employee who is alleged to have been subjected to conduct that could constitute sex-based harassment as defined in this procedure and who was participating or attempting to participate in the College's Education Program or Activity; or
  - (b) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex-based harassment under these grievance procedures and who was participating or attempting to participate in the College's Education Program or Activity at the time of the alleged sex-based harassment.
4. **Complaint** means an oral or written request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged sex discrimination at the College.
5. **Confidential Employee** means:
  - (1) an employee of the College whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) an employee of the College whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

- (3) an employee of the College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.
6. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated the College's prohibition against sex discrimination.
7. ***Education Program or Activity*** means all of the operations of a college, university, or other postsecondary institution, or a public system of higher education.
8. ***Party*** means Complainant or Respondent.
9. ***Peer Retaliation*** means retaliation by a student against another student.
10. ***Pregnancy or related conditions*** means
- (a) Pregnancy, childbirth, termination of pregnancy, or lactation;
  - (b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  - (c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
11. ***Relevant*** means related to the allegations of sex discrimination under investigation as part of this Grievance Procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
11. ***Remedies*** means measures provided, as appropriate, to a Complainant or any other person the College identified as having had their equal access to the College's Education Program or Activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the College's Education Program or Activity after the College determines that sex discrimination occurred.
12. ***Respondent*** means a person who is alleged to have violated the College's prohibition on sex discrimination.
13. ***Retaliation*** means intimidation, threats, coercion, or discrimination by any person by the College a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure.

14. ***Sex-Based Harassment*** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

(1) *Quid pro quo harassment*. An employee, agent or other person authorized by the College's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. The degree to which the conduct affected the Complainant's ability to access the College's Education Program or Activity;
2. The type, frequency, and duration of the conduct;
3. The Parties' ages, roles within the College's Education Program or Activity, previous interactions and other factors about each Party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred; and
5. Other sex-based harassment in the College's Education Program or Activity.

(3) *Sexual Assault* (as defined in the Clery Act) means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;

(4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person:

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former partner of the victim under the family or domestic violence laws of New York State, or a person similarly situated to a spouse of the victim;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shared a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York State; or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) fear for the person's safety or the safety of others; or
- (B) suffer substantial emotional distress.

15. ***Student*** means a person who has gained admission.

16. ***Supportive Measures*** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- 1) Restore or preserve that Party's access to the College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or the College's educational environment; or
- 2) Provide support during the College's Grievance Procedure for sex discrimination or during the informal resolution process.

## V. Principles for Handling Complaints of Sex-Based Discrimination:

- a) *Equitable Treatment*: the College will treat Complainants and Respondents equitably.
- b) *Conflicts and Bias*: the College requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.
- c) *Presumption*: the College presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- d) *Reasonably Prompt Timeframes*: the College has established timeframes for the major stages of the grievance procedures as set forth herein.
- e) *Extensions*: the College has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay.

- f) *Privacy*: the College will take reasonable steps to protect the privacy of the Parties and witnesses during its grievance procedure. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedure. The Parties cannot engage in retaliation, including against witnesses.
- g) *Objectivity*: the College will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- h) *Impermissible Evidence*: The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
  - i) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - ii) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the College obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and
  - iii) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## VI. Disability Accommodations

This Procedure does not alter any institutional obligations under federal and state disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with [Office of Accommodation and Accessibility Services](#) to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of any supportive measures.



## VII. Reporting Sex Discrimination to the College

### *A. Complaints*

The following people have a right to make a **Complaint of sex discrimination**, including Complaints of sex-based harassment, requesting that the College investigate and make a determination about alleged discrimination under Title IX:

- A “Complainant,” which includes: a student or employee of the College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- A person other than a student or employee of the College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the College’s Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or the College’s Title IX Coordinator.

With respect to **Complaints of sex discrimination other than sex-based harassment**, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee of the College’s or
- Any person other than a student or employee who was participating or attempting to participate in the College’s Education Program or Activity at the time of the alleged sex discrimination.

Types of Complaints that may be addressed under these Grievance Procedures include, but are not limited to, sex discrimination other than sex-based harassment involving a student, such as:

- Complaints of retaliation;
- Complaints of sex-based harassment not involving a student;
- Complaints of sex discrimination that do not involve sex-based harassment;
- Complaints regarding failure to make reasonable modifications to policies, practices or procedures as necessary to ensure equal access and prevent sex discrimination on the basis of parental, family or marital status, including pregnancy or related conditions; or
- Complaints that the College’s policies or procedures discriminate on the basis of sex.

Complaints may be submitted in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

### ***Contact Information for the Title IX Coordinator at the College:***

Name: Clotilde Ibarra

Title: Title IX Coordinator

Office Address: Metropolitan College of New York, 60 West Street,  
New York, New York 10006  
Email Address: [cibarra@mcny.edu](mailto:cibarra@mcny.edu)  
Telephone Number: (212) 343-1234, ex. 2800

### ***B. Confidential Reports***

The following officials at the College will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s);
- Officials with Authority to institute corrective measures under Title IX.

The following officials at the College may provide confidentiality:

- MCNY Social Worker, Rebecca Marbach, [\(212\) 343-1234 ext. 2845](mailto:rmarbach@mcny.edu)

### ***C. Public Awareness Events***

When the College's Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX or this policy that was provided by a person during a public event to raise awareness about sex-based harassment that was held on the College's campus or through an online platform sponsored by it, the College is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases the College must use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

Nothing in Title IX or this policy obligates the College to require its Title IX Coordinator or any other employee to attend such public awareness events.

## **VIII. Supportive and Interim Measures**

### ***A. Providing Supportive Measures***

Complainants who report allegations of sex-based harassment have the right to receive supportive measures from the College regardless of whether they file a Complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at the College.

As appropriate, supportive measures may include but not be limited to:

- Counseling services;

- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services, as available;
- Restrictions on contact applied to one or more Parties (no contact orders)
- changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus; or
- Training and education programs related to sex-based harassment.

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or the College's educational environment, or to provide support during the College's sex-based harassment grievance procedure under this policy.

The College may modify or terminate supportive measures at the conclusion of the grievance procedure or may continue them beyond that point within the College's discretion.

The College will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to the College's Education Program or Activity, or there is an exception that applies, such as:

- The College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute sex-based harassment under Title IX in the College's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

### ***B. Process for Review of Supportive Measures***

The College provides for a Complainant or Respondent to seek modification or reversal of the College's decision to provide, deny, modify or terminate a supportive measure.

This review will be done by [insert title of reviewer]. The reviewer will have the authority to modify or reverse the decision if they determine that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedure as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

### ***C. Emergency Removal***

The College retains the authority to remove a Respondent from the College's Education Program or Activity on an emergency basis, where the College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex-based harassment justifies removal.

The College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal by submitting an appeal in writing to the President or designee.

### ***D. Administrative Leave***

The College retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Procedure, consistent with the Employee Handbook.

Note on student employees: when a Complainant or Respondent is both a student and an employee of the College, the College must make a fact-specific inquiry to determine whether these procedures apply to that student employee. If the Complainant or Respondent's primary relationship with the College is to receive an education and whether the alleged sex-based harassment occurred while the Party was performing employment-related work.

## **IX. The Grievance Procedure for Sex-Based Discrimination**

### ***A. Filing a Complaint***

*Who can make a Complaint?*

- A Complainant, which includes: a student or employee of the College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of the College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the College's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Title IX Coordinator.

*Title IX Coordinator initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of sex-based discrimination. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of sex-based discrimination would occur if a Complaint were not initiated;
- The severity of the alleged sex-based discrimination, including whether the sex-based discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sex-based discrimination and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged sex-based discrimination, including information suggesting a pattern, ongoing sex-based discrimination;
- The availability of evidence to assist a decisionmaker in determining whether sex-based discrimination occurred; and
- Whether the College could end the alleged sex-based discrimination and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in Section VI of these procedures.

### *Format of Complaint*

As defined in IV (4) of these procedures, a Complaint can be an oral or written request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged sex discrimination at the College.

### *Who can I report a Complaint to?*

Name: Clotilde Ibarra

Title: Title IX Coordinator

Office Address: Metropolitan College of New York, 60 West Street,  
New York, New York 10006

Email Address: cibarra@mcny.edu

Telephone Number: (212) 343-1234, ex. 2800

### ***B. Consolidation of Complaints***

The College may consolidate Complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

### ***C. Allegations Potentially Falling Under Two Policies***

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment involving a student and conduct that would not constitute covered sexual harassment involving a student, the Grievance Procedures for Sex-Based Harassment Complaints Involving Students will be applied in the investigation and adjudication of all of the allegations.

### ***D. Notice of Allegations***

Upon initiation of the College's grievance procedure, the College will notify the Parties of the following:

- The College grievance procedure and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- That Retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, the College decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, the College will notify the Parties of the additional allegations.

### ***E. Investigation***

The College will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on the College—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. The College will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The College will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

The College will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.

#### *Investigative Report:*

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the Parties.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

The College will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and

The College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are authorized.

#### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by the College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the College obtains that Party's or witness's voluntary, written consent for use in its grievance procedure; and

- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex discrimination or preclude determination that sex discrimination occurred.

### ***Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility***

When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of sex discrimination, the investigator and/or decisionmaker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.

The investigator/decisionmaker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of sex discrimination. This will occur during individual meetings with a Party or witness.

### ***F. Determination Regarding Responsibility***

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the College will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the evidence, under the applicable standard, that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the Parties in writing of the determination whether sex discrimination occurred, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;
- Not impose discipline on a Respondent for sex discrimination unless there is a determination at the conclusion of the grievance procedure that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a Complainant and other people the College identifies as having had equal access to the College's Education Program or Activity limited or denied by sex discrimination;



- Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the College's Education Program or Activity.
- Comply with the grievance procedure before the imposition of any disciplinary sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

### ***G. Dismissal of a Complaint***

#### *Bases for Dismissal*

The College may dismiss a Complaint of sex discrimination for any of the following reasons:

- The College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the College's Education Program or Activity and is not employed by the College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under the bases described in these procedures, and the College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX or these grievance procedures even if proven; or
- The College determines that the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX or these procedures. Note the College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

#### *Notice of Dismissal*

Upon dismissal, the College will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the College will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

The College will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the College will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

### ***H. Appeal of Dismissals and Determinations<sup>1</sup>***

To appeal, a Party must submit their written appeal within five College business days of being notified of the decision, indicating the grounds for appeal.

The College offers the following process for appeals from a dismissal or a determination whether sex discrimination occurred:

If the dismissal or determination is appealed, the College will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, the College will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the College's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the College will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals will be decided by the Appeals Panel, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or decisionmaker in the same matter.

---

<sup>1</sup> 34 C.F.R. 106.45(i).

The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Decision-making Body is final.

## **X. Retaliation**

The College prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, the College will initiate its grievance procedure or, as appropriate, an informal resolution process.

## **XI. Training**

The College must ensure that the following individuals receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties, and annually thereafter. This training must not rely on sex stereotypes.

### **1. All Employees:**

- Obligation to address sex discrimination in the education program or activity.
- Scope of conduct that constitutes sex discrimination under Title IX, including sex-based harassment.
- Applicable notification and information requirements.

### **2. Investigators, Decisionmakers, and Other Responsible Persons:**

- All training required for employees.
- Obligations under Title IX grievance procedures.
- How to serve impartially, avoiding prejudgment, conflicts of interest, and bias.
- Meaning and application of “relevant” in relation to questions and evidence, including impermissible evidence types.

### **3. Facilitators of Informal Resolution Processes:**

- All training required for employees.
- Rules and practices of the informal resolution process.
- How to serve impartially, avoiding conflicts of interest and bias.

### **4. Title IX Coordinator and Designees:**

- All training required for employees, investigators, decisionmakers, and facilitators.
- Specific responsibilities under Title IX.
- Recordkeeping system requirements and compliance coordination.

## **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](mailto: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](mailto:Mmolina@mcny.edu)

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

#### **Off Campus, Confidential**

The Healing Center

718-238-5138

[www.thehealingcenter.org](http://www.thehealingcenter.org)

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

New York City Alliance Against Sexual Assault

212-514-7233

[www.svfreenyc.org](http://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](mailto: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](http://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.cvtenyc.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](http://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; 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](http://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**

### **Miscellaneous**

#### **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.

#### **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."