

leadership and Counsel, and OPDV Counsel as appropriate, to address complex cases.

- v. Human Resources staff shall assist all constituent school and college managers with such responsibilities and CUNY to ensure that all employees who violate this Policy are held accountable.

d. Responsibilities of Supervisors

- i. All University supervisors charged with responsibilities hereunder shall ensure that any employee who discloses being a victim of domestic or gender-based violence is aware of this Policy.
- ii. If any employee discloses being a victim of domestic or gender-based violence, or if the supervisor suspects that the employee may be a victim of domestic or gender-based violence, the Supervisor shall refer the individual to:
 - i. The DVAL,
 - ii. EAP,
 - iii. The New York State Domestic and Sexual Violence Hotline (or the statewide hotline for workplace sexual harassment, as may be appropriate), and;
 - iv. any local programs serving victims of domestic and sexual violence.
- iii. There is no mandatory reporting of domestic or gender-based violence, unless it constitutes sexual harassment as defined within this Policy.

VI. Non-Discriminatory and Responsive Personnel Policies.

- a. CUNY policies and procedures should be trauma-informed, survivor-centered, and culturally responsive to victims' needs, and should not discriminate.
- b. Under the New York State Human Rights Law, all persons covered by this Policy are protected from discrimination in the workplace on the basis of status as a victim of domestic violence, and on the basis of sex, sexual orientation, gender identity, and gender expression.
- c. Subdivision 34 of section 292 of the Executive Law of New York State establishes persons who qualify as a "victim of domestic violence."
- d. Victims of domestic violence are a protected class under New York State Human Rights Law (Executive Law § 296(22)).

- e. CUNY may not refuse to hire or license and may not terminate someone solely based on their status as a victim of domestic violence.
- f. CUNY may not discriminate against victims of domestic violence in compensation, terms, conditions, or privileges of employment.
- g. CUNY prohibits inquiries about an applicant's status as a current or past victim of domestic violence and may not make any employment decisions based on assumptions or actual knowledge about someone's status as a current or past victim of domestic violence. CUNY may inquire about status as a victim of domestic violence in order to provide accommodations.
- h. CUNY allows any employee who has disclosed their status as a victim of domestic or gender-based violence (or disclosed that a family member is a victim of domestic or gender-based violence) and must be out of work for a reasonable time to use accrued sick leave for the following purposes:
 - i. to obtain services from a domestic violence shelter, rape crisis center, or other services program;
 - ii. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
 - iii. to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
 - iv. to file a complaint or domestic incident report with law enforcement;
 - v. to meet with a district attorney's office;
 - vi. to enroll children in a new school;
 - vii. to address issues relating to technology or financial abuse; or
 - viii. to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.
- i. Employees can choose to use appropriate leave accruals to cover any absences, if available. If the employee does not have adequate leave accruals to cover the absence or chooses not to charge leave accruals, the absence shall be treated as leave without pay.

- j. Any employee who must be absent from work to utilize accommodations in this section is entitled to the continuation of any health insurance coverage provided by CUNY to which the employee is otherwise entitled during any such absence, in accordance with any existing collective bargaining agreements, regulations, and agency policy.
- k. Employees who must be absent to utilize accommodations as listed in this section shall provide CUNY with reasonable advanced notice of the absence whenever possible.
- l. CUNY is required to grant time off, with prior day notification, and may not penalize any employee who, as a victim or witness of a criminal offense, is appearing as a witness; consulting with a district attorney; or exercising their rights as provided by law. Employees can choose to use appropriate leave accruals to cover any absences, if available. If the employee does not have adequate leave accruals to cover the absence or chooses not to charge leave accruals, the absence shall be treated as leave without pay. Any questions regarding leave that must be granted to victims or subpoenaed witnesses should be directed to applicable campus Office Human Resources.
- m. CUNY is aware that there may be occurrences when an employee is absent due to incidents of domestic or gender-based violence where they are unable to follow agency protocol to report the absence. In that situation, the employee may lack documentation, may be unable to obtain documentation or may not want to share documentation containing confidential information. CUNY may not require the disclosure of confidential information relating to an absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave.
- n. Employees who are victims of domestic violence or gender-based violence who separate from a covered family member due to an incident or incidents of domestic or gender-based violence shall be allowed to make reasonable changes in benefits at any time during the calendar year, where possible and in accordance with statute, regulation, contract, and policy.
- o. CUNY recognizes that victims of domestic and gender-based violence may experience temporary work performance difficulties or be unable to complete certain job aspects because of safety reasons. If it is found that the employee's work performance is being affected as a result of being a victim of domestic or gender-based violence, CUNY will work with the employee to try to create a satisfactory resolution, including, but not limited to, specific work plans, the ability to take leave, provision of accommodations, referrals to the DVAL, EAP, and/or the local domestic violence service provider.

- p. Employees will be given clear information of performance expectations, priorities, and performance evaluations. Employees should be made aware that not all employee requests for resolutions can be accommodated.
- q. If a disciplinary process is initiated, special care should be taken to consider all aspects of the victimized employee's situation, and all available options in trying to resolve the performance problems should be exhausted, including making a referral to the DVAL, EAP, domestic violence program or other relevant services, consistent with existing collective bargaining unit agreements, statute, regulations, and agency policy.
- r. If all reasonable measures have been exhausted to resolve related performance problems of employees who are victims of domestic or gender-based violence, but the performance problems persist and the employee is terminated or voluntarily separates from employment, the employee shall be informed of their potential eligibility for unemployment insurance and CUNY shall timely respond to requests for information that may be needed in the claims process. New York State law provides that a victim of domestic violence who voluntarily separates from employment may, under certain circumstances, be eligible for unemployment insurance benefits.
- s. Sex, sexual orientation, gender identity, and gender expression are all protected classes under the New York State Human Rights Law. Sexual harassment is a form of sex discrimination and is unlawful under the New York State Human Rights Law § 296.1, Human Rights Law § 296-c (for interns), and Human Rights Law § 296-d (for non-employees working in the workplace), and Title VII, the Federal Civil Rights Act of 1964. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender (see page 2-3 for definition of sexual harassment). Gender-based violence may constitute sexual harassment when it subjects an individual to inferior terms, conditions, or privileges of employment. CUNY's Equal Opportunity and Non-Discrimination Policy govern any complaint of discrimination, including harassment, and/or retaliation, except complaints of sexual harassment or sexual violence, which are covered by CUNY's Policy on Sexual Misconduct. Investigations shall be conducted pursuant to the procedures outlined in the governing policy.
 - i. CUNY's Equal Opportunity and Non-Discrimination Policy is attached, as Attachment 1, and available online at: <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/hr/policies-and-procedures/PEONon-Discrimination12.4.2014.pdf>.
 - ii. CUNY'S Policy on Sexual Misconduct is attached, as Attachment 2, and available online at: <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/legal-affairs/policies-resources/Sexual-Misconduct-Policy.pdf>.

- t. For all forms of discrimination and harassment, if an employee, including an intern or contractor working in a workplace in the State of New York, experiences sexual harassment or discrimination on the basis of their status as a victim of domestic or other gender-based violence, or observes discrimination in the workplace, the employee may file a complaint by contacting their respective College Chief Diversity Officer.
- u. A complaint or report of potential discrimination, whether verbal or written, will be processed consistent with CUNY policy. Furthermore, any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature must report such conduct to their respective campus school or college Chief Diversity Officer. CUNY shall maintain the confidentiality of the complaint to the extent practicable and in accordance with CUNY policy.

VII. Non-Retaliation.

- a. CUNY shall not engage in any retaliatory practices against any employee that discloses they are a victim of domestic or gender-based violence, or any employee seeking accommodations or to exercise their rights under this Policy.
- b. CUNY will not retaliate, tolerate retaliation by any superiors, terminate, or discipline any employees for reporting information about alleged incidents of domestic violence that may have been committed by an employee, including those in management positions.
- c. Retaliatory practices may include, but are not limited to, fewer promotions, inappropriate jokes, snide comments, excluding employee from conversations, etc., and may be carried out by everyone, not just the original perpetrator. Retaliation includes commencing discipline against victimized employees for actions taken to promote their safety.
- d. Any employee engaging in retaliatory practices may be subject to disciplinary actions. If you believe you have been subject to retaliatory practices, please contact your respective campus school or college Chief Diversity Officer.

VIII. Workplace Safety Plans.

- a. Each campus within the CUNY system has prepared a domestic violence workplace safety response plan and each campus and worksite is prepared to provide reasonable means and personnel to assist victimized employees in developing and implementing individualized domestic violence workplace safety plans, consistent with existing collective bargaining agreements, statutes and regulations. Workplace safety response plans are on file on each campus and worksite with the relevant public safety personnel.

- b. As part of the domestic violence workplace safety response plan, CUNY has designated DVALs to ensure implementation of the Gender-Based Violence and the Workplace Policy, and to serve as a liaison with OPDV regarding the Gender-Based Violence and the Workplace Policy.
- c. CUNY has designated school or college-level DVALs on each campus to further ensure campus-level implementation of the Gender-Based Violence and the Workplace Policy, to serve as the campus-level liaison within CUNY regarding the Gender-Based Violence and the Workplace Policy.
- d. Each campus-level DVAL will be identified in university and college-level materials and his/her name, phone number and office location will be clearly posted.
- e. CUNY is committed to compliance and assistance with enforcement of all known court or CUNY-issued orders of protection, particularly orders in which a Perpetrator or abusive partner or person who causes harm have been ordered to stay away from the work site of the victim. If requested by the victim of domestic violence or law enforcement, CUNY will cooperate in situations concerning an alleged violation of an order of protection.
- f. Employees are encouraged to bring Orders of Protection (“OP”) to the attention of the applicable campus school or college Director of Campus Security/Public Safety or the Deputy Director of Campus Security/Public Safety and Human Resources. Once the OP has been brought forward, the document will be kept in a secure location.
- g. In the case of a workplace emergency requiring the presentation of the OP to law enforcement, if the applicable school or college Director of Campus Security/Public Safety or the Deputy Director of Campus Security/Public Safety is unavailable to obtain the document, a designated member in such Office of Campus Security/Public Safety will have access to the secure location.
- h. The applicable campus school or college Director of Campus Security/Public Safety or the Deputy Director of Campus Security/Public Safety and the DVAL will discuss with the employee a plan on how to best proceed to ensure the safest possible work environment for the employee and the rest of the staff. With the permission of the employee, this may include:
 - i. Providing a copy of the OP and/or photo of Perpetrator or abusive partner or person who causes harm to security or front desk personnel;
 - ii. A discussion of who should be told if there is no security or front-desk staff, including identifying a supervisor or colleagues who would be able to assist with the identification of the perpetrator

- iii. Blocking the subject/perpetrator of the OP from the workplace; and
- iv. Creating a personal workplace safety plan. A personal workplace safety plan may include the following elements:
 - 1. Allowing the employee to work staggered hours, an “off shift”, or move to a different work location, either temporarily or permanently;
 - 2. Temporary reassignment of certain duties, such as overnight travel;
 - 3. Reassignment of parking space;
 - 4. Providing the employee an escort for entry and exit from the worksite;
 - 5. Assigning a new email account or phone number if the perpetrator has been able to access the existing accounts; or
 - 6. Allowing the employee to work from an alternate work station until further action is taken, if the employee works directly with the perpetrator.
- i. The employee is responsible to notify the Director of Campus Security/Public Safety or the Deputy Director of Campus Security/Public Safety and the DVAL if there are any changes to the OP.
- j. Employees are encouraged to disclose any active orders of protection to the DVAL or designated staff member at their work site.

IX. *Accountability for Employees who Perpetrate Acts of Domestic or Gender-Based Violence.*

- a. CUNY will hold accountable any employee who is found to have engaged in behaviors including but not limited to:
 - i. Used state resources, including time, to commit an act of domestic or gender-based violence;
 - ii. Committed an act of domestic or gender-based violence from or at the workplace, or from any location conducting state business, except for locations where employees are telecommuting; or
 - iii. Used their job-related authority and/or state resources in order to negatively affect victims of domestic or gender-based violence and/or assisted perpetrators in locating a victim and/or in perpetrating an act of domestic or gender-based violence.

- b. Acts of domestic or gender-based violence that occur outside of the workplace can subject a person to administrative and/or disciplinary action.
- c. If an employee has committed any act of gender-based violence, including making threats or harassment at or from the workplace using any state resources such as work time, state owned telephones or cell phones, e-mail, or by any other means, the Supervisor, in conjunction with applicable campus Office of Human Resources, shall take any and all steps necessary to hold the employee accountable through administrative and/or disciplinary action in accordance with existing collective bargaining agreements, applicable statutes and/or regulations.
- d. CUNY shall determine if corrective action or disciplinary action is warranted, in accordance with existing collective bargaining agreements, relevant statutes, and regulation if the agency has received verification that an employee is responsible for any gender-based violence related offense, or is the respondent on any order of protection, including temporary, final, and/or out of state orders because of a gender-based violence related offense, and said employee has any job functions that include:
 - i. the authority to take actions that directly impact victims of gender-based violence domestic violence; and/or
 - ii. actions which may protect perpetrators from appropriate consequences for their behavior.
- e. Any employee who intentionally uses the authority of their employment and/or misuses any state resources in order to:
 - i. negatively impact any victim of gender-based violence;
 - ii. assist a perpetrator in locating a victim;
 - iii. assist a perpetrator in perpetrating any act of gender-based violence;
or
 - iv. protect a perpetrator from receiving appropriate consequences.

shall be subject to corrective or disciplinary action, in accordance with existing collective bargaining agreements; applicable statutes, and regulations.

- f. Any employee who would like to report information about an alleged act of gender-based violence committed by an employee may do so by contacting Human Resources, the Anti-Discrimination Investigations Division at the NYS Office for Employee Relations (<https://antidiscrimination.oer.ny.gov/>) or the NYS

Inspector General's Office by calling the toll-free hotline at 1-800-367-4448 where trained staff will discuss the specifics of your complaint.

X. Training.

- a. Domestic Violence Agency Liaisons ("DVALs"):
 - i. DVALs must complete a Gender-Based Violence and the Workplace training provided by OPDV.
 - ii. DVALs must complete an initial one-day training provided by OPDV.
 - iii. DVALs must attend quarterly meetings hosted by OPDV, which will provide ongoing training and technical assistance to them.
- b. Human Resources: All employees who are employed in human resources positions or who work in a human resources office must participate in the following two annual trainings provided by OPDV:
 - i. Gender-Based Violence and the Workplace training, and
 - ii. Gender-Based Violence Workplace Safety Planning training.
- c. Supervisors: All employees who are supervisors must participate in an annual Gender-Based Violence and the Workplace training provided by OPDV.

XI. *Data Collection and Reporting to OPDV*

- a. Information regarding employees who are a victim of domestic or gender-based violence, as well as those who are disciplined for violating this Policy, shall be maintained by the DVALs and reported to OPDV on a bi-annual basis, and at any time, upon request from OPDV.
- b. Reporting to OPDV shall be done in aggregate form without any personally identifying information. Data from January through June will be due no later than July 30, and data from July through December will be due no later than January 30.
- c. The following information shall be collected:
 - i. All incidents of gender-based violence that take place at a workplace, or while the employee is on work time, shall be documented to the best of CUNY's ability, consistent with applicable law and agency policy, categorized by domestic violence and sexual violence;
 - ii. The general nature of the incidents that occurred in the workplace;

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PREAMBLE

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

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

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

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

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

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

I. POLICY STATEMENT

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

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

This is CUNY’s sole policy to address Sexual Misconduct and it is applicable at all CUNY colleges and units.¹ This Policy will be interpreted in accordance with the principles of academic freedom adopted by CUNY’s Board of Trustees.

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

1. [The CUNY Policy on Equal Opportunity and Nondiscrimination](#)² prohibits discrimination on the basis of numerous protected characteristics in accordance with federal, state and local law. That policy addresses sex discrimination other than Sexual Misconduct covered by this policy.
2. [The CUNY Campus and Workplace Violence Prevention Policy](#)³ addresses workplace violence.
3. [The CUNY Domestic Violence and the Workplace Policy](#)⁴ addresses domestic violence in or affecting employees in the workplace.

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

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

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

⁴ http://policy.cuny.edu/general-policy/article-v/#policy_5.061.

4. [The CUNY Procedures for Implementing Reasonable Accommodations and Academic Adjustments](https://www.cuny.edu/about/administration/offices/legal-affairs/policies-procedures/reasonable-accommodations-and-academic-adjustments/)⁵ addresses the procedures CUNY will follow when there is a request for a reasonable accommodation or academic adjustment.

In addition, campus crime statistics, including statistics relating to sexual violence, which CUNY is required to report under the Jeanne Clery Act, are available on each college's Public Safety website.

II. SCOPE OF THIS POLICY

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

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

III. PROHIBITED CONDUCT AND DEFINITIONS

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

The following behaviors constitute Sexual Misconduct prohibited under this Policy:

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

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

⁶ Sex discrimination that does not constitute Sexual Misconduct is not addressed in this Policy but is covered by CUNY's Equal Opportunity and Non-Discrimination Policy. Sex discrimination is defined as treating an individual differently or less favorably because of sex, including sexual orientation, gender or gender identity (including transgender status), as well as pregnancy, childbirth and related medical conditions. Examples of sex discrimination include giving a student a lower grade, or failing to hire or promote an employee, based on their sex.

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

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

- g. Title IX Sexual Harassment** is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex⁷ that occurs in CUNY's education program or activity against a person in the United States and that satisfies one or more of the following: (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY on an individual's participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CUNY's education program or activity; or (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.
- h. Voyeurism** is unlawful surveillance and includes acts that violate a person's right to privacy in connection with their body and/or sexual activity such as:
- i. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.
 - ii. Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness where that person would have a reasonable expectation of privacy, without that person's consent;
 - iii. Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness where that person would have a reasonable expectation of privacy, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure; or
 - iv. Using or installing, or permitting the use or installation of a device for the purpose of recording another person's sexual activity, intimate body parts or nakedness in a place where the person would have a reasonable expectation of privacy without that person's consent.

Other important terms and concepts addressed in this Policy:

- a. Consent** means affirmative consent.
- b. Affirmative Consent** is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.
- i. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
 - ii. In order to give consent, one must be of legal age (17 years or older in New York).
 - iii. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - iv. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being

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

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

committed to not disclose information more than necessary, may offer privacy. See additional discussion in Section VI.

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

IV. TITLE IX COORDINATOR

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

⁸ Any reference to the Title IX Coordinator may also include their designee.

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

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

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

A. **Reporting to Outside Law Enforcement**

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

If a student, employee or other community member chooses to report Sexual Misconduct to outside law enforcement, CUNY will provide assistance. Each college Public Safety office must have an appropriately trained employee available at all times to provide the complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. Campus Public Safety officers can also assist the complainant with reporting allegations both on and off-campus and in obtaining immediate medical attention and other services.

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

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

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

Students, employees and other community members should be aware that CUNY procedures and standards differ from those of criminal law. When CUNY investigates allegations of Sexual Misconduct or brings disciplinary proceedings for violations of this Policy, the issue is whether the respondent violated CUNY policy. The standard applied in making this determination is whether the preponderance of the evidence supports a finding of responsibility, or, stated another way, whether it is more likely than not that the alleged conduct occurred. An individual found to have violated this Policy may be sanctioned by the college and CUNY. In the criminal justice system, on the other hand, the issue is whether the accused violated criminal law. The standard

applied is proof beyond a reasonable doubt and an individual found guilty of a crime is subject to criminal penalties, such as incarceration, probation and fines. More information about relevant criminal laws is available in “[A Plain Language Explanation of Distinction Between the New York Penal Law and the College Disciplinary Processes.](#)”¹⁰

C. Obtaining Immediate Medical Attention and Emotional Support

CUNY encourages anyone who has experienced Sexual Assault, Domestic Violence or Dating Violence to seek medical attention as soon as possible. Medical resources can provide treatment for injuries, preventative treatment for sexually transmitted diseases, emergency contraception and other health services. They can also assist in preserving evidence or documenting any injuries. Taking these steps promptly after an incident can be helpful if an individual later decides to pursue criminal charges or a protective order.

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

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

CUNY also maintains a [list of off-campus emergency contacts and resources](#)¹¹, including rape crisis centers, available throughout New York City on its dedicated web page. This includes a list of local hospitals designated as SAFE (Sexual Assault Forensic Examiner) hospitals, which are specially equipped to handle sexual assaults and trained to gather evidence from such assaults.

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

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

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

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

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

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

A. Confidential Employees

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

These individuals will not report the allegations to the college's Title IX Coordinator or other college employees without the student's permission. The only exception is in the case where there is an imminent threat of serious injury to the complainant or any other person.

If a student speaks solely to a confidential employee, the college will rarely be able to conduct an investigation into the allegations or pursue disciplinary action against the respondent. Confidential employees will assist students in obtaining other necessary support.

- b. For Employees.** Although CUNY does not directly employ individuals to whom CUNY employees can speak on a confidential basis regarding Sexual Misconduct, free confidential support services are available through [CUNY's Work/Life](#)

[Program](#)¹², which is administered by an outside company. Confidential community counseling resources are also available [throughout New York City](#).¹³

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

B. Responsible Employees

Individuals designated as responsible employees have a duty to report allegations of Sexual Misconduct, including all relevant details, to the Title IX Coordinator. These employees are not permitted to maintain a complainant's confidentiality, but will maintain a complainant's privacy to the greatest extent possible, and information reported to them will be shared only with the Title IX Coordinator and other people responsible for handling the college's response to the report.

To the extent possible, before a complainant reveals any information to a responsible employee, the employee should advise the complainant of the employee's reporting obligations—and if the complainant wants to maintain confidentiality, direct the complainant to confidential resources.

CUNY has designated the following individuals as responsible employees:

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

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

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

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

C. Special Rules Concerning Public Awareness and Advocacy Events

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

VII. REPORTING SEXUAL MISCONDUCT TO THE COLLEGE

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

A. Complainant’s Rights

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

Complainants also have these rights:

- a. To notify campus Public Safety and/or outside law enforcement, or to choose not to report.
- b. To have emergency access to a college official trained to interview victims of sexual assault and able to provide certain information, including reporting options and information about confidentiality and privacy. The official will, where appropriate, advise about the importance of preserving evidence and obtaining a Sexual Assault Forensic Examination (“SAFE”) as soon as possible. The official will also explain that the criminal process uses different standards of proof and evidence, and that any questions about whether an incident violated criminal law should be addressed to a law enforcement official or a district attorney’s office.
- c. To disclose the incident to a college representative who can offer confidentiality or privacy and assist in obtaining services. See Section VI, above.
- d. To describe the incident only to those campus officials who need the information in order to properly respond and to repeat the description as few times as practicable (subject to the procedures outlined in Sections XI and XII).
- e. To have allegations of Sexual Misconduct investigated in accordance with CUNY policy.
- f. To have privacy preserved to the extent possible.
- g. To receive assistance and resources on campus, including confidential and free on-campus counseling, and to be notified of other services available on and off campus, including the New York State Office of Victim Services.
- h. To disclose the incident to the college’s Human Resources Director or designee (if the respondent is a college employee) or request that a confidential or private resource assist in doing so.
- i. To disclose the incident confidentially and obtain services from state and local governments.

- j. To receive assistance from the campus or others in filing a criminal complaint, initiating legal proceedings in family court or civil court, and/or seeking an Order of Protection or the equivalent. In New York City, this assistance is provided by Family Justice Centers located in each borough.
- k. To receive assistance with effecting an arrest when an individual violates an Order of Protection, which may be provided by assisting local law enforcement in effecting such an arrest.
- l. To withdraw allegations or involvement from the process at any time.

B. Where to Report Allegations of Sexual Misconduct on Campus

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

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

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

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

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

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

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

If the allegations will proceed as a Non-Title IX Sexual Misconduct matter, a complainant may request: (a) that the matter be investigated only to the extent possible without further revealing their identity or revealing further details and/or (b) that no investigation into a particular incident be conducted. If a complainant makes such a request, the Title IX Coordinator will weigh the complainant's request against the college's obligation to provide a safe, non-discriminatory environment for all students, employees and visitors, including the complainant. Factors used to determine whether to honor such a request include, but are not limited to: (a) whether the respondent has a history of violent behavior or is a repeat offender; (b) whether the incident represents escalation of unlawful conduct by the accused from previously noted behavior; (c) any increased risk that the accused will commit additional acts of violence, (d) whether the accused used a weapon or force; (e) whether the complainant is a minor; (f) whether the college possesses other means to obtain evidence such as security footage and (g) whether available information reveals pattern of misconduct at a given location or by particular group.

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

D. Filing External Complaints

Individuals who feel that they have been subjected to Sexual Misconduct have the right to avail themselves of any and all of their rights under law, including but not limited to filing complaints with one or more of the outside agencies listed below:

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

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

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

¹⁵ https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm.

¹⁶ <https://dhr.ny.gov/complaint>.

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

E. Action by Bystanders

CUNY encourages employees, students and visitors to take reasonable and prudent actions to prevent or stop an act of Sexual Misconduct that they may witness, unless doing so would pose a safety risk to themselves or others. Although these strategies will depend on the circumstances, they may include direct intervention, calling law enforcement or seeking assistance from a person in authority.

In addition, CUNY encourages employees, students and visitors to report any incident of Sexual Misconduct that they observe or become aware of to the Title IX Coordinator or the offices referenced in Section VII-B, above. Individuals who take action in accordance with this paragraph will be supported by the college, and anyone who retaliates against them will be subject to discipline.

F. Amnesty for Drug and Alcohol Use

The health and safety of every student at CUNY is of the utmost importance. CUNY recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at a time that Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. CUNY strongly encourages students to report Sexual Misconduct to college officials. A bystander or complainant acting in good faith who discloses any incident of Sexual Misconduct to college officials or law enforcement will not be subject to discipline under [CUNY's Policy on Drugs and Alcohol](#)¹⁸ for violations of alcohol and/or drug use policies occurring at or near the time of the Sexual Misconduct.

G. Reporting Retaliation

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

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

VIII. SUPPORTIVE MEASURES AND ACCOMMODATIONS

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

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

The Title IX Coordinator will work with the Chief Student Affairs Officer¹⁹ to identify a trained staff member to assist students to obtain supportive measures and accommodations. The Title IX Coordinator will work with the Human Resources Director to assist employees to obtain supportive measures and accommodations.

A. Range of Supportive Measures and Accommodations

Possible supportive measures and accommodations may include:

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

¹⁹ Any reference to the Chief Student Affairs Officer may also include their designee.

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

B. No Contact Orders

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

C. Emergency Removal

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

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

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

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

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

IX. EVALUATION OF INITIAL ALLEGATIONS OF SEXUAL MISCONDUCT

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

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

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

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

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

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

A. Rights of Parties during any Investigation and Resolution

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

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

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

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

B. Informal Resolution

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

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

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

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

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

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

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

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

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

C. CUNY-wide Sexual Misconduct Panel and Committee Structure

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

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

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

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

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

D. Conflict/Bias

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

If any administrator designated by this Policy to participate in the investigation or resolution of Sexual Misconduct allegations is the respondent, the College President will appoint another college administrator to perform such person's duties under this Policy. If the President is the respondent, the investigation will be handled by the University Title IX Director or designee. In other appropriate cases in which a high-level administrator is the respondent, the investigation may be referred for investigation to the University Title IX Director or designee.

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

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

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

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

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

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

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

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

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

F. Hearing Recording

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

G. Prohibition on Unauthorized Copying or Recording

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

H. Student Respondent Withdrawal Before Allegations are Resolved

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

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

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

I. Transcript Notations

When a student respondent is found responsible and the penalty is either suspension or expulsion, the college must place a notation on the respondent's transcript stating that respondent "was suspended [or expelled] after a finding of responsibility for a code of conduct violation."

For all other cases, after four years from the date of the conclusion of the disciplinary proceeding, or one year after the conclusion of any suspension, whichever is later, the respondent has the right to request that a transcript notation from a finding of responsibility be removed. In cases where a student respondent was expelled as a result of a Clery Act crime of violence,²² including but not limited to sexual assault, the notation will not be removed. If a finding of responsibility is vacated for any reason, the notation must be removed.

J. Recordkeeping

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

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

