NON-DISCRIMINATION AND HARASSMENT POLICY

PREAMBLE

Discrimination and harassment interfere with the educational purpose of New York Law School and negatively affect all members of the Law School community. Faculty, staff, and students have a right to be free from discrimination and harassment, as defined below. Discrimination or harassment directed at any member of the Law School community within the context of the Law School or Law School-sponsored activities will not be permitted, and complaints will be investigated promptly and thoroughly. New York Law School is proud of its policy of maintaining a work, academic and residential environment that encourages tolerance and respect for the dignity of each individual.

Nothing in this policy shall abridge academic freedom or New York Law School's educational mission. Prohibitions against discrimination and harassment do not extend to statements or written materials that are relevant and appropriately related to the subject matter of courses.

I. Harassment and Discrimination Policy

A. Equal Employment Opportunity Policy

New York Law School has been built upon teamwork and equal opportunity. We will continue to be successful when people are treated fairly and allowed to advance and achieve their full potential. We are proud that we extend equal employment opportunities to all qualified employees and applicants for employment without regard to race, color, ethnicity, ancestry, citizenship, religion, sex, pregnancy, sexual orientation, gender identity, gender expression, national origin, age, disability, HIV/AIDS status, predisposing genetic characteristics, marital or parental status, military status, domestic violence victim status, or any other classification protected by local, state, or federal law ("Protected Classification").

This policy applies to all areas of the academic environment and all phases of employment including, but not limited to, recruiting, hiring, selection for training, promotion, demotion, discipline, rates of pay or other compensation, termination, use of all facilities, and participation in all Law School sponsored activities.

B. General Harassment and Discrimination Policy

1. Prohibition Against Discrimination

Discrimination based on a Protected Classification ("Discrimination") is strictly prohibited. Discrimination is the adverse treatment of another individual on the basis of a Protected Classification; the use of facially-neutral employment policies or practices which disproportionately disadvantage individuals on the basis of a Protected Classification; or retaliation against an individual for filing a complaint of Discrimination, participating in an investigation or opposing discriminatory practices. Any faculty or staff member who is determined to have engaged in such conduct may be subject to disciplinary action, up to and including termination of employment. Any student who is determined to have engaged in such conduct may be subject to disciplinary action, up to and including expulsion. All faculty, staff members and students are requested to act responsibly in helping New York Law School maintain a workplace, academic and residential environment that is free of Discrimination.

2. Prohibition Against Harassment

Harassment based on a Protected Classification is strictly prohibited ("Harassment"). The Law School prohibits such Harassment, whether on or off Law School premises, at Law School-sponsored social or non-social functions, events or programs. Should such Harassment occur, the Law School will take appropriate corrective action to prevent its continuation or recurrence. In addition, the Law School will endeavor to prevent the Harassment of its students by persons who are not Law School employees, but who are on the Law School's premises or who have a relationship with the Law School, including other students.

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Any student, faculty or staff member determined to have engaged in Harassment will be subject to disciplinary action, up to and including termination of employment or expulsion. All members of the New York Law School community are requested to act responsibly in helping New York Law School maintain a workplace, academic and residential environment that is free of Harassment.

Definitions

Harassment is a form of misconduct that undermines the integrity of the employment, academic and residential environment. Discriminatory Harassment is defined as subjecting an individual to humiliating, offensive, abusive or threatening conduct that creates an intimidating, hostile or abusive work, residential or academic environment; alters the conditions of employment; or unreasonably interferes with an individual's academic or work performance on the basis of that individual's Protected Classification. Harassment includes communicating, sharing or displaying written or visual materials; making verbal comments; or engaging in physical conduct that is demeaning or derogatory to a person because of a Protected Classification. Whether or not conduct is Harassment will depend on the totality of the circumstances, including the frequency and severity of the discriminatory conduct; whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and whether the conduct unreasonably interferes with the alleged victim's employment, academic or residential environment. Depending on the frequency and/or severity, prohibited conduct may include, but is not limited to:

- The use of racial or religious epithets or slurs
- "Teasing" or "joking" based on an individual's Protected Classification
- Displaying or disseminating racially or sexually offensive objects, literature or pictures, including computer images and the sending of any offensive or inappropriate e-mails
- Mimicking a person's accent or mocking or imitating a disability or stutter

"Sexual Harassment" occurs when one person uses his or her position of power against another person to coerce the other person into entering a sexual relationship, or subject the other person because of their sex or by employing sexual pressure or coercion to create a hostile academic, work or residential environment. "Sexual relationship" includes, but is not limited to, involvement between persons that goes beyond the bounds of personal or academic friendship, attachment, or support and which includes any form of physical sexual intimacy between the persons. Sexual Harassment may involve a range of activities, such as nonverbal behavior, written or oral expression, and physical contact, occurring between any members of the Law School community. Prohibited conduct may include, but is not limited to:

- Unwelcome sexual flirtations, advances, questions or propositions
- Requests or demands for sexual favors
- Verbal abuse or epithets of a sexual nature
- Graphic or degrading verbal comments or questions about an individual's appearance or their sexual conduct or relationships
- Displaying or disseminating sexually suggestive or offensive objects, literature or pictures, including computer images and the sending of any offensive or inappropriate e-mails
- Making obscene or rude gestures or noises, including catcalls or whistles, or ogling or leering at someone
- Unwanted, offensive, or abusive physical contact, including pinching, brushing against the body, or blocking someone's movement
- Offensive comments, jokes, innuendos, and other sexually oriented statements

Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute Sexual Harassment when such proposals are made under circumstances implying that a person's response might result in negative academic or work decisions; such conduct is so aggravated as to contribute to an inhospitable academic, work or residential environment, or interfere with required tasks, career opportunities, or education; or such conduct is abusive of others and creates or implies a discriminatory hostility towards their personal or professional interests.

Sexual Harassment commonly occurs when one person exercises authority, supervision or control over another person. These hierarchical relationships include, but are not limited to: a faculty member and a student interaction outside of a classroom; a dean and a faculty

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member; an advisor and a contestant in a Moot Court activity; tenured faculty and non-tenured faculty; a staff member and a student; an advisor and a contestant in a Moot Court activity; a Law Review editor or officer and a student member of the Law Review; or a student supervisor of other students. However, Sexual Harassment can come from superiors, co-workers, students or others who are on the premises, and from people of the same or opposite sex. Men as well as women can be the victims of Sexual Harassment. The Law School cannot stress enough that it will not tolerate any form of Sexual Harassment. Any faculty or staff member determined to have violated this policy will be subject to disciplinary action, up to and including termination of employment. Any student determined to have violated this policy will be subject to disciplinary action, up to and including expulsion.

Sexual Relationships Between Faculty Members and Students

Any sexual relationship between a student and a faculty member who has academic responsibilities regarding that student threatens the maintenance of the atmosphere of impartiality and trust that is the foundation of any academically healthy environment. For purposes of this policy, "sexual relationship" includes, but is not limited to, involvement between persons that goes beyond the bounds of personal or academic friendship, attachment or support, and which includes any form of sexual intimacy between the persons. For purposes of this policy, "academic responsibilities" mean responsibilities that derive from a relationship in which the faculty member has a student in a class or otherwise is in a position to grade the student's performance or affect the student's standing relative to other students at the Law School, but does not include the ability, standing alone, to further the student's career through recommendation, unless such recommendation is actually delivered. Accordingly, sexual relationships between faculty and students are forbidden at any time the faculty member has academic responsibilities respecting the student and are strongly discouraged during the student's enrollment in the Law School.

A sexual relationship between a student and a faculty member having academic responsibilities for that student that exists or has existed shall constitute a violation of this policy if the persons involved in the relationship do not take appropriate measures (*e.g.*, (i) the student does not withdraw from the course or other supervision by the faculty member, (ii) the student or faculty member enters any additional situation in which the faculty member has academic responsibilities regarding the student, or (iii) the faculty member recommends the student to any person without full disclosure of the fact of the sexual relationship). Any faculty member determined to have violated this policy will be subject to disciplinary action, up to and including termination of employment.

3. Free Speech and Academic Freedom

This policy is intended to protect members of the Law School community from discrimination, not to regulate protected speech. The Law School has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship or public commentary of an individual faculty member or the educational or political expression of students in classrooms and public forums. However, freedom of speech and academic freedom do not protect speech or expressive conduct that violates federal, state or local anti-discrimination laws.

II. Harassment and Discrimination Complaint Procedures

Any faculty member who is subjected to any kind of unlawful Discrimination or Harassment should immediately contact the Associate Dean for Academic Affairs. In the event that the Associate Dean for Academic Affairs receives a complaint or becomes aware of an issue, he or she will make a record of the complaint and refer the complaint to a Discrimination and Harassment Advisor. In the event that the subject of the complaint is the Associate Dean for Academic Affairs, or the faculty member is uncomfortable contacting him or her, the faculty member should contact the Dean of the Law School.

Any student who is subjected to any kind of unlawful Discrimination or Harassment should immediately contact the Associate Dean for Professional Development or the Assistant Dean of Academic Affairs. In the event that the subject of the complaint is the Associate Dean for Professional Development or the Assistant Dean of Academic Affairs, or the student is uncomfortable contacting either, the student should contact the Associate Dean for Academic Affairs. In the event that the Associate Dean for Professional Development, the Assistant Dean of Academic Affairs or the Associate Dean of Academic Affairs receives a complaint or becomes aware of an issue, he or she will make a record of the complaint and refer the complaint to a Discrimination and Harassment Advisor.

Whenever a faculty member receives any Discrimination or Sexual Harassment complaint from a student, the faculty member should immediately contact the Associate Dean for Professional Development, the Assistant Dean of Academic Affairs or the Associate Dean for Academic Affairs, even if that faculty member is the subject of the complaint. Faculty members requested to receive a Discrimination

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or Sexual Harassment complaint in confidence must inform the complainant that the faculty member is required to report the nature and subject matter of the complaint, but may keep the name of the complainant confidential. However, there may be allegations that are so serious, individually or cumulatively, that the identity of the complainant cannot remain confidential.

All complaints of Discrimination and Harassment will be promptly investigated pursuant to the procedures discussed below. Confidentiality shall be maintained to the fullest extent possible. A student will not be subject to retaliation for making a good faith complaint or participating in an investigation pursuant to this policy.

If, however, after investigating any complaint of Harassment or Discrimination the Law School determines that the complaint is frivolous or that a complainant has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or who gave the false information.

The procedures discussed below do not preclude any student or faculty member from seeking redress through federal or state courts, or local, state or federal administrative agencies that investigate complaints of Discrimination or Harassment. Furthermore, seeking redress through the procedures discussed below does not toll any applicable federal, state or local statute of limitations.

A. Discrimination and Harassment Advisors.

Trained Discrimination and Harassment Advisors ("Advisors") are available to talk with members of the community who have questions or concerns about Harassment or Discrimination, or who believe they have been the victim of Harassment or Discrimination. They can also provide information about established guidelines and procedures for dealing with issues of Harassment and Discrimination and their prevention, and will help individuals pursue effective courses of action. He or she may assist in the informal resolution of a complaint or assist the complaining party in initiating a formal complaint with the Harassment and Discrimination Review Board. All Advisors shall be appointed by the Dean and shall receive training in Harassment and Discrimination issues.

B. Harassment and Discrimination Review Board.

The Harassment and Discrimination Review Board ("Board") shall consist of eight (8) members, to include one (1) student, three (3) faculty members, two (2) members of the Administration and two (2) members of the staff. Each member shall serve a one-year renewable term. All members of the Board shall be appointed by the Dean and shall receive training in Harassment and Discrimination issues.

The function of the Board, through Investigation Panels, is to conduct a thorough investigation of allegations contained in any formal complaint to determine whether any conduct alleged in the complaint occurred in the manner and under the circumstances alleged; whether the alleged conduct constitutes Harassment or Discrimination; and to recommend appropriate action to the Dean.

C. Informal Procedures.

In many instances, Harassment and Discrimination complaints can be resolved informally. The goal of this informal resolution process is to rectify the problem. This process involves having an Advisor help to resolve the issues between the complaining party and the accused individual. This informal resolution may result in solutions such as asking the accused individual to modify or stop the behavior, separating the complainant and the accused individual, or reaching another mutually acceptable agreement. If requested by the complaining party, the Advisor may try to resolve the complaint without disclosing the identity of the complaining party. This informal resolution, however, will not result in formal disciplinary action against the accused individual.

Once a student, staff or faculty member has notified the appropriate individual of an allegation of Harassment or Discrimination, the person receiving the allegation will refer the complaining student, staff or faculty member to an Advisor.

The panel of Advisors shall include both male and female persons. The panel should include at least two (2) people from each of the following groups: Administration, Faculty and Senior Staff. Advisors will be selected by the Dean for renewable terms of two years. A list of Advisors is available on the NYLS website and in the Student Affairs and Academic Affairs offices.

If attempts at an informal resolution are unsuccessful, if the complainant is dissatisfied with the informal process or if the complainant wishes to move directly to formal complaint procedures, he or she may file a formal complaint with the Harassment and Discrimination Review Board. An Advisor will assist the complaining party in the process of filing the formal complaint.

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D. Formal Procedures.

A person who believes that he or she has been subjected to unlawful Harassment or Discrimination may choose, either initially or after having sought informal resolution through consultation with an Advisor, to lodge a formal complaint. The procedures for the handling and disposition of a complaint are designed to consider the privacy of all persons involved in the complaint. Every effort will be made to preserve confidentiality.

A formal investigation is initiated when a complainant lodges a complaint with the Chair of the Harassment and Discrimination Review Board ("Board"). The complaint can be written or oral and must include the relevant allegations against the accused individual and request an investigation under the procedures provided below.

Within ten (10) business days of receiving a formal complaint, the Chair of the Board shall convene an investigation panel ("Panel"). An investigation panel shall consist of three (3) members of the Board. Each panel shall include a member of the faculty, a member of the administration and a member of the same classification as the complainant. The function of the Panel is to conduct a thorough investigation of the allegations in the complaint to determine whether any conduct alleged in the complaint occurred in the manner and circumstances alleged; whether the alleged conduct constitutes Harassment or Discrimination; and to recommend appropriate action to the Board. The investigation may include interviews with the complainant, the accused, and witnesses or references identified or requested by the complaining party or the accused. The Panel will interview the complainant, the accused and any witnesses in separate, private sessions.

Within fifteen (15) business days after a Panel has been convened by the Chair of the Board, the Panel shall report to the Board, the complaining party and the accused the timeline for the specific investigation based on the nature of the allegations and the timing of the complaint.

In the conduct of its investigation, the Panel shall have access to all potentially relevant documents. The Panel shall make available to the complaining party and the accused individual the documentation in its possession that the panel regards as relevant to the complaint. The Panel, however, shall have the right to limit access to documentation that may contain confidential or embarrassing information about individuals not directly involved in the dispute. All information provided before, or elicited during, the investigation is to be regarded as confidential and treated accordingly.

After concluding its investigation, the Panel shall record its findings and recommendations in a written report to be submitted to the Board for consideration and adoption. Among the recommendations that can be made by the panel, the Panel may recommend that the Board hold a hearing. Should the Board adopt the findings and recommendations of the Panel, the report will be forwarded to the Dean of the Law School. In the event that the Board decides in its sound discretion not to adopt the recommendation of the Panel and to designate a complaint for hearing, it will select a date for such hearing and announce that date within fifteen (15) days from receiving the report and recommendations of the Panel.

At a hearing, a complaining party or accused individual may appear pro se or through a representative of his or her choice, including but not limited to counsel. In any proceeding before the Board, the complaining party and the accused individual may present witnesses and offer evidence of any kind. Both parties and the members of the Board may examine or cross-examine any witnesses put forward by the parties. The Board will use its best efforts to ensure the appearance of witnesses and the production of documents relevant to any matter before it. The Administration will cooperate with the Board and will use sanctions at its disposal in ensuring the appearance of witnesses and the production of documents in all proceedings before the Board.

Within fifteen (15) business days after the close of the hearing, the Board will issue a decision and recommend action which it will refer to the Dean of the Law School for appropriate action, provided, however, that the Board may extend this period for good cause shown.

Depending on the nature and seriousness of the allegations in a complaint, the Board may refer the complaint to outside counsel for the law school for investigation or may seek the assistance of outside counsel during the course of its own investigation.

E. Annual Report.

Advisors and the Board shall provide the Dean of the Law School with an annual confidential report detailing the number and disposition of the incidents, allegations and complaints of Sexual Harassment that have come to their attention.

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F. Emergency Action by The Dean.

Notwithstanding the procedures discussed above, the Dean may take action to deal with situations of an emergency nature posing a threat to the safety or health of the Law School community or the integrity of its programs. Such emergency action may include suspension of a student, faculty member or staff member for a period of time deemed appropriate by the Dean. If the Dean determines that emergency action is required, he or she shall inform the Chair of the Board of such actions and the Chair shall then proceed according to the provisions of this policy.

III. Sanctions

In the event that the Board finds a violation of the Code, it may recommend that the Administration impose appropriate sanctions. Any party to the proceeding may make a written presentation to the Dean of the Law School, as to the appropriate sanction, if any, in the proceeding. Sanctions may include the following:

A. Students.

All sanctions as to students will be noted in the student's academic file, along with a concise written statement as to the circumstances. The statement shall be written by the Dean of the Law School. Such notation shall include an indication as to whether the statement should be made available to bar admission committees, employment screening groups, and similar entities in the future, and as to whether such notation shall be expunged at a specified later date. Such sanctions may include, but are not limited to the following:

1. A warning, with appropriate documentation of the circumstances;

2. Suspension, for a time certain;

3. Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation;

4. Removal from a journal or other student organization, or from a leadership position within such organization;

5. Revocation or non-renewal of credits for participation in a journal or other student organization; or

6. Expulsion, with or without terms and conditions as to any application for re-admission.

B. Graduates.

In the event that a student has graduated before the Board's determination, the Board may recommend that the Administration:

1. In the case of a graduate not yet admitted to practice, advise the graduate that if he or she does not participate in the Board's proceeding, the Law School will withhold certification of the student to the appropriate bar admission entity, or take such other action as may be appropriate; or

2. In the case of a graduate already admitted to practice, advise the graduate that if he or she does not participate in the Board's proceeding, the Law School will notify the appropriate bar disciplinary entity of the pending proceeding, or take such other action as may be appropriate.

C. Staff.

All sanctions as to staff will be noted in the employee's file, along with a concise written statement as to the circumstances. The statement will be written by the Dean of the Law School. Such notation shall include an indication as to whether the statement should be made available to future employers and the like, and as to whether such notation shall be expunged at a specified later date. Such sanctions shall include but not be limited to the following, consistent with State law, the collective bargaining agreement and any other existing contract with the employee:

1. A warning, with appropriate documentation of the circumstances;

2. Suspension, with or without pay, for a time certain;

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3. Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation;

4. Denial or limitation of future increases in salary, benefits, perquisites, and the like, upon specified terms and conditions;

5. Reduction in grade or position; or

6. Termination of employment.

D Non-Tenured and Non-Long-Term Contract Faculty.

All sanctions as to non-tenured faculty will be noted in the faculty member's file, along with a concise written statement as to the circumstances. The statement will be written by the Dean of the Law School. Such notation shall include an indication as to whether the statement should be made available to future employers and the like, and as to whether such notation shall be expunged at a specified later date. Such sanctions shall include but not be limited to the following, consistent with State law and any existing contract with the teacher:

1. A warning, with appropriate documentation of the circumstances;

2. Suspension, with or without pay, for a time certain, under stated terms and conditions.

3. Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation;

4. Denial or limitation of future increases in salary, benefits, perquisites, courses, summer teaching assignments, research grants, and the like, upon specified terms and conditions;

5. Reduction in position; or

6. Termination of employment.

E. Tenured and Long-Term Contract Faculty.

All sanctions as to tenured and long-term contract faculty will be noted in the teacher's file, along with a concise written statement as to the circumstances. The statement will be written by the Dean of the Law School. Such notation shall include an indication as to whether the statement should be made available to future employers and the like, and as to whether such notation shall be expunged at a specified later date. Such sanctions shall include but not be limited to the following, consistent with State law and any existing contract with the teacher:

1. A warning, with appropriate documentation of the circumstances;

2. Suspension, with or without pay, for a time certain, under stated terms and conditions, to the extent legally permissible under the Standards and Procedures for Tenure, Promotion and Reappointment (hereinafter "Tenure Rules");

3. Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation, to the extent legally permissible under the Tenure Rules;

4. Denial or limitation of future increases in salary, benefits, perquisites, courses, summer teaching assignments, research grants, and the like, upon specified terms and conditions;

5. Reduction in grade or position, to the extent legally permissible under the Tenure Rules;

6. Termination of employment, to the extent legally permissible under the Tenure Rules. In such case, the Board shall recommend to the Administration that it commence a proceeding pursuant to Article IX of the Tenure Rules.