



New York law School

# Sexual Misconduct Policy

Effective September 1, 2016

# New York Law School Sexual Misconduct Policy

## Table of Contents

|  |    |
|--|----|
| Table of Contents .....                                      | i  |
| I. Statement of Non-Discrimination .....                     | 1  |
| II. Scope of Policy .....                                    | 1  |
| A. Prohibited Conduct .....                                  | 1  |
| B. Persons Covered.....                                      | 2  |
| C. Locations Covered .....                                   | 2  |
| D. Academic Freedom .....                                    | 3  |
| III. Title IX Coordinator and Title IX Board .....           | 3  |
| A. Title IX Coordinator.....                                 | 3  |
| B. Deputy Title IX Coordinator.....                          | 3  |
| C. Title IX Board .....                                      | 4  |
| IV. Reporting Prohibited Conduct .....                       | 5  |
| A. Emergency Reporting Options.....                          | 5  |
| B. On-Campus Reporting Options.....                          | 6  |
| C. Confidential and Anonymous Reporting .....                | 7  |
| i. Confidential Reporting.....                               | 7  |
| ii. Anonymous Reporting .....                                | 8  |
| V. The Complaint.....  | 8  |
| A. Initial Meeting and Notice of Investigation .....         | 9  |
| i. Initial Meeting.....                                      | 9  |
| ii. Notification of Investigation .....                      | 10 |
| iii. Advisor Information and Guidelines .....                | 11 |
| B. Interim Measures Pending Resolution of the Complaint..... | 11 |
| VI. Resolution of the Complaint .....                        | 13 |
| A. Informal Resolution .....                                 | 13 |
| B. Formal Resolution.....                                    | 13 |
| i. Investigation.....  | 14 |
| ii. Investigators’ Report and Recommendation.....            | 15 |
| iii. Board Decision.....                                     | 15 |
| iv. Hearing (if applicable) .....                            | 16 |

|       |   |    |
|-------|---|----|
| v.    | Case File.....  | 17 |
| VII.  | Sanctions and Remedies.....   | 17 |
| i.    | Students .....  | 18 |
| ii.   | Graduates .....   | 18 |
| iii.  | Staff, Independent Contractors, Visitors, and Other Individuals ..... | 19 |
| iv.   | Non-Tenured and Non-Long-Term Contract Faculty .....                  | 19 |
| v.    | Tenured and Long-Term Contract Faculty .....                          | 20 |
| VIII. | Appeal.....   | 20 |
| IX.   | Additional Rights .....   | 21 |
| A.    | Family Educational Rights and Privacy Act .....                       | 21 |
| B.    | Failure To Comply with Investigation or Sanctions .....               | 21 |
| C.    | Transcript Notation Requirement and Appeal Procedure .....            | 21 |
| X.    | Special Reporting Considerations .....                                | 22 |
| A.    | Amnesty for Alcohol and/or Drug Use .....                             | 22 |
| B.    | Public Awareness Events.....  | 23 |
| C.    | Reports Involving Minors .....  | 23 |
| D.    | Malicious Allegations .....   | 23 |
| E.    | Retaliation .....   | 23 |
| XI.   | Required Disclosures (Clery Act) .....                                | 24 |
| XII.  | Prevention and Awareness Programming and Training .....               | 24 |
| XIII. | Prohibited Conduct Definitions and Related Terms .....                | 24 |
|       | Appendix A - Students' Bill of Rights.....                            | 30 |
|       | Appendix B - List of Resources for Support .....                      | 31 |
| A.    | Medical Assistance .....  | 31 |
| i.    | On Campus Medical Resources .....                                     | 31 |
| ii.   | New York City Hospitals with SAFE Centers.....                        | 32 |
| B.    | Counseling, Legal, and Informational Resources .....                  | 32 |
| i.    | Safety First .....  | 32 |
| ii.   | On Campus Resources .....   | 32 |
| iii.  | Off Campus Resources.....   | 33 |
| iv.   | Legal Resources .....   | 34 |
|       | Appendix C - New York State Criminal Definitions .....                | 35 |

Adopted: September 1, 2016

## **I. Statement of Non-Discrimination**

In compliance with federal, state, and local laws, New York Law School (“NYLS” or “the Law School”) does not discriminate on the basis of race, color, religion, creed, national or ethnic origin, sex, sexual orientation, gender (including gender identity), age, or disability in the administration of any of its educational programs and activities or in its employment practices.<sup>1</sup>

Specifically, in accordance with Title IX of the Education Amendments of 1972 (“Title IX”), NYLS does not discriminate on the basis of sex in its educational programs or activities. Inquiries concerning the Law School’s application of Title IX may be referred to the Law School’s Title IX Coordinator **Aisha L. Joseph**, the Deputy Title IX Coordinator **Brian Kaszuba**, any member of the Title IX Board, and/or to the Department of Education, Office of Civil Rights (“OCR”), as identified in Section III below.

## **II. Scope of Policy**

This policy specifically addresses sexual and gender-based harassment and violence. Title IX, relevant provisions of the Violence Against Women Reauthorization Act of 2013 (“VAWA”), and New York Education Law Article 129-B require that NYLS take specific steps to stop sex and gender-based misconduct, remedy its effects, and prevent its recurrence. NYLS has enacted this Sexual Misconduct Policy (the “Policy”) to reflect and maintain its institutional values and community expectations, to provide fair and equitable procedures for determining when this Policy has been violated, and to provide recourse for individuals in response to violations of this Policy.

All other forms of discrimination based on sex, sexual orientation, gender, or gender identity are addressed by NYLS’s Non-Discrimination and Harassment Policy.<sup>2</sup> Questions about which policy governs a particular situation should be referred to the Title IX Coordinator.

### ***A. Prohibited Conduct***

This Policy prohibits all forms of sex or gender-based harassment or violence (together, “Prohibited Conduct”),<sup>3</sup> including but not limited to:

- Sexual assault
- Non-consensual sexual contact

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<sup>1</sup> In addition, NYLS does not discriminate on the basis of alienage or citizenship status, pregnancy, unemployment status, marital partnership status, familial status, caregiver status, military status, predisposing genetic characteristics, or domestic violence victim status in its employment practices.

<sup>2</sup> In addition to conduct prohibited under Title IX, NYLS also prohibits other forms of discrimination and harassment consistent with federal, state, and local laws. These laws include, but are not limited to, protections against discrimination and harassment on the basis of race, color, ethnicity, ancestry, citizenship, religion, pregnancy, national origin, age, disability, HIV/AIDS status, predisposing genetic characteristics, marital or parental status, military status, domestic violence victim status. Such conduct may be addressed in the Non-Discrimination and Harassment Policy in the [Student Handbook](#) and [Faculty Handbook](#). When a report is made that alleges harassment and discrimination based on sex or gender and also alleges some other form of discrimination, the Law School will work with both policies to address the complaint and will coordinate the investigation and resolution efforts.

<sup>3</sup> See Section XIII for definitions of Prohibited Conduct and other terms in this Policy.

- Sexual exploitation
- Stalking
- Domestic violence
- Dating violence

This Policy also prohibits retaliation against an individual for reporting Prohibited Conduct under this Policy or for participating in an investigation of an alleged violation of this Policy. This Policy also defines prohibited relationships of a sexual or intimate nature between individuals where one individual has power or authority over another. Prohibited Conduct undermines the character and purpose of NYLS and will not be tolerated.

### ***B. Persons Covered***

This Policy applies to any individuals regularly or temporarily employed, conducting business, studying, living, visiting, or having any official capacity with the Law School or on its property (“Community Members”). Community Members include:

- Students
- Admitted students
- Applicants
- Alumni
- Full-time faculty
- Adjunct, emeritus and visiting faculty
- Administration
- Staff
- Supervising attorneys for NYLS clinical and other experiential learning programs
- Volunteers
- Vendors
- Contractors
- Visitors/guests

NYLS may be limited in what actions it may take when investigating or responding to a report if an accused person is not known to NYLS, not affiliated with NYLS, or is no longer affiliated with NYLS at the time a report of Prohibited Conduct is made. In such cases, NYLS will, to the best of its ability, conduct an inquiry, take steps to prevent the recurrence of such conduct to any Community Members, and remedy the effects, if appropriate.

If one of the parties involved in a report is not affiliated with NYLS — for example, if a student is participating in a joint program with another school — NYLS may cooperate with that institution or organization to complete an investigation.

### ***C. Locations Covered***

This Policy applies to conduct that occurs:

- On-campus, including conduct which occurs on property owned or controlled by the Law School, or at any NYLS residence hall.
- In the context of NYLS’s employment, education, or extracurricular programs or activities, including, but not limited to, study abroad and NYLS-sponsored clinical or internship programs, and externship programs offered for academic credit.
- Off-campus and has continuing adverse effects on or creates a hostile environment for any Community Member on-campus or in any Law School employment or education program or activity. This may include, but is not limited to, conduct that occurs on social media and other online platforms.

#### ***D. Academic Freedom***

Nothing in this policy shall abridge academic freedom or NYLS'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 Law School courses.

### **III. Title IX Coordinator and Title IX Board**

#### ***A. Title IX Coordinator***

The Law School has designated **Aisha L. Joseph** to serve as NYLS's Title IX Coordinator. The Title IX Coordinator is responsible for:

- Ensuring compliance with Title IX.
- Overseeing anti-discrimination and harassment training and education.
- Overseeing and coordinating the response, investigation, and resolution of reports made under this Policy.
- Coordinating the timely response to complaints under this Policy, and, if necessary, approving reasonable requests for extensions of time.
- Assisting with resolving any issues related to this Policy.

Upon receiving reports of Prohibited Conduct, the Title IX Coordinator will ensure appropriate action to eliminate the conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator can be contacted by telephone, email, or in person during regular office hours:

**Aisha L. Joseph**  
**Title IX Coordinator**  
**Director, Office of Academic Planning and Career Development**  
**Deputy Diversity Officer**  
**New York Law School**  
**185 West Broadway, Room E-518 New York, NY 10013**  
**Telephone: (212) 431-2889 | Email: Aisha.Joseph@nyls.edu**

#### ***B. Deputy Title IX Coordinator***

The Law School has designated **Brian Kaszuba** to serve as NYLS's Deputy Title IX Coordinator. The Deputy Title IX Coordinator works in conjunction with the Title IX Coordinator to ensure compliance with Title IX. The Deputy Title IX Coordinator may perform the Title IX Coordinator's role and assume the Title IX Coordinator's responsibilities in the case of the Title IX Coordinator's absence or recusal, or as otherwise assigned by the Title IX Coordinator.

The Deputy Title IX Coordinator can be contacted by telephone, email, or in person during regular office hours:

**Brian Kaszuba**  
**Deputy Title IX Coordinator/Deputy Equal Opportunity Coordinator**  
**Associate Director of the Center for New York City Law and Adjunct Professor**

**New York Law School**  
**185 West Broadway, Room E-703B, New York, NY 10013**  
**Telephone: (212) 431-2817 | Email: [Brian.Kaszuba@nyls.edu](mailto:Brian.Kaszuba@nyls.edu)**

***C. Title IX Board***

The Title IX Coordinator is supported and assisted by the Title IX Board (“Board”). The Board consists of a group of NYLS faculty and administrators who are trained on issues related to this Policy. Members of the Board are responsible for:

- Serving as investigators in a Title IX complaint.
- Reviewing investigation materials and determining violations of this Policy.
- Convening hearings, if appropriate.
- Designating a member of the Board to perform the functions of the Title IX Coordinator if both the Title IX Coordinator and Deputy Title IX Coordinator are unavailable or are recused from a specific complaint.

The Title IX Coordinator will direct and oversee the performance of the Board’s duties, and the training of the Board’s members. The Title IX Coordinator will:

- Act as a non-voting Chairperson of the Title IX Board.
- Keep Board members informed of recent legal decisions and other related issues.
- Ensure that each member has been appropriately trained before serving and during their tenure on the Board.
- Ensure that Board members do not serve in conflicting roles by resolving questions or concerns regarding conflict of interest or bias. Any Board member having a real or perceived conflict of interest or bias under this Policy will be recused during the resolution of the complaint.

The Title IX Board is composed of the following individuals from NYLS:

1. George Hayes, Assistant Vice President
2. Joanne Ingham, Assistant Vice President
3. Professor Stacy-Ann Elvy
4. Professor Kim Hawkins
5. Professor Martha Hochberger
6. Professor Michael McCarthy
7. Professor William Mills
8. Professor Ari Waldman

Any inquiries concerning the Law School’s application of Title IX and its implementing regulations may be referred to the Title IX Coordinator, any member of the Title IX Board, and/or to the Department of Education, Office of Civil Rights (“OCR”):

**U.S. Department of Education, Office of Civil Rights**  
**New York – Region II**  
**32 Old Slip, 26th Floor**  
**New York, NY 10005**  
**Telephone: (646) 428-3800 | Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)**

#### **IV. Reporting Prohibited Conduct**

NYLS strongly encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident involving sexual violence, as defined in Section XIII. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

NYLS also encourages all individuals to make a report of Prohibited Conduct to both NYLS and to local law enforcement, although neither is required. These reporting options are not mutually exclusive. Both internal and external reports may be made simultaneously. The procedures under this Policy may run concurrently with any criminal justice investigation, and will only be subject to temporary delays at the specific request of law enforcement.

##### **A. *Emergency Reporting Options***

If an individual has experienced sexual violence, his or her first priority should be to get to a place of safety and dial 911. He or she should also consider seeking any necessary medical attention as soon as possible. Prohibited Conduct that violates this Policy may also violate New York State or other applicable laws.<sup>4</sup> Individuals can make a report to law enforcement at any time, and doing so does not preclude the individual from also making a report to NYLS. The best option to ensure the preservation of evidence and the timely investigation of concerns is by making a prompt report to the police. If requested, the Title IX Coordinator or Deputy Title IX Coordinator can assist an individual with filing a police report, ensuring access to a sexual assault forensic examination, obtaining an Order of Protection or equivalent restraining order, and contacting and assisting local law enforcement if an Order of Protection is violated. Nothing in this Policy shall prohibit NYLS from initiating its own report to the police.

|                    |   |
|--------------------|---|
| NYPD Emergency     | 911   |
| NYPD Non-Emergency | 84 <sup>th</sup> Precinct (Saint George Residence Hall)<br>301 Gold Street, Brooklyn, New York<br>(718) 875-6811  |
|                    | 1st Precinct (Campus)<br>(212) 334-0611   |
|                    | Rape Hotline<br>(212) 267-RAPE (7273)   |
| Nearest Hospitals  | <a href="#"><u>New York Presbyterian Lower Manhattan Hospital</u></a><br>69 Gold Street (Emergency room; between<br>Beekman Street and Spruce Street)/170 William<br>Street<br>New York, New York 10038<br>(212) 312-5070/5094/5000 |

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<sup>4</sup> See Appendix C for definitions of applicable New York State criminal laws.



|                      |   |
|----------------------|---|
|                      | <a href="#">New York Methodist Hospital</a> (for Saint George Residence Hall)<br>506 6 <sup>th</sup> Street<br>Brooklyn, NY 11215<br>718-780-3000 |
| Campus Security Desk | Law School Entrance, 185 West Broadway<br>(212) 431-2123  |

**B. On-Campus Reporting Options**

Any individual who wishes to report Prohibited Conduct by a Community Member is encouraged to report directly to the Title IX Coordinator, the Deputy Title IX Coordinator, any member of the Title IX Board, Campus Security, Residence Hall Security, or another Responsible Employee. Reports may be made in person, in writing, or by telephone. Contact information for the Title IX Coordinator, the Deputy Title IX Coordinator, and the Title IX Board is located in Section III above. Contact information for other individuals is listed below:

|  |   |
|--|---|
| Title IX Coordinator   | See Section III above.  |
| Deputy Title IX Coordinator  | See Section III above.  |
| Members of the Title IX Board  | See Section III above.  |
| Campus Security  | (212) 431-2123  |
| St. George Residence Hall Security   | (718) 552-8470  |
| Any Responsible Employee   | Any full-time faculty member, full-time administrator or staff member, or any NYLS Security Officer is a Responsible Employee. <i>See</i> Section XIII. |
| If the accused individual is an employee of NYLS, individuals may report Prohibited Conduct to NYLS Human Resources. | NYLS Human Resources<br>185 West Broadway, Office: C-344<br>(212) 431-2131<br>HumanResources@nyls.edu   |

If a report of Prohibited Conduct is made to any member of the Board, a Responsible Employee,<sup>5</sup> or Residence Hall Security, that individual is required to inform the Title IX Coordinator of the report. These individuals cannot guarantee confidentiality; they will, however, maintain the individual’s privacy to the greatest extent possible. The information an individual provides to a

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<sup>5</sup> While all employees are strongly encouraged to report Prohibited Conduct to the Title IX Coordinator, Responsible Employees are required to make such a report. If a complaint is made to anyone other than a Responsible Employee, including but not limited to adjunct faculty, dining services employees, temporary employees, and contract employees (other than Security Officers), the complainant risks the possibility that the report will not come to the attention of the proper Law School officials and may not be acted upon by the Law School.

non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. See Section IV.C, Confidential and Anonymous Reporting Options.

### ***C. Confidential and Anonymous Reporting***

#### ***i. Confidential Reporting***

Medical service providers and counselors, who serve the Law School in a privileged professional capacity, are not bound by the requirement to inform the Title IX Coordinator of a report of Prohibited Conduct. Information shared with these individuals is confidential, except as required by law.<sup>6</sup> The following resources are made available by the law school for confidential reporting:

**NYLS students** who desire strict confidentiality may contact one of the professional counselors at **Aetna Student Assistance Program**: Call 1-877-351-7889, or e-mail [AskSAP@aetna.com](mailto:AskSAP@aetna.com). Web: visit [www.aetnasap.com](http://www.aetnasap.com), then enter your school ID: NYLAW. Aetna provides off-site confidential counseling services to NYLS students.

**Mount Sinai Beth Israel** is prepared to provide medical services to **NYLS students** who have been the victims of sexual assault. Mount Sinai Beth Israel provides 24-hour emergency care (including sexual assault forensic examinations), confidential crisis intervention, counseling, and referrals. Mount Sinai Beth Israel is located at 281 1st Avenue, New York, NY 10003 (First Avenue and 16<sup>th</sup> Street in Manhattan). The Emergency Department can be contacted by phone at (212) 420-2840.

**The Violence Intervention & Treatment Program at Wyckoff Hospital** is prepared to offer medical services to **New York Law School students and faculty members** who have been the victims of sexual assault, domestic violence, and/or other related crimes. The program provides 24-hour emergency care that includes but is not limited to sexual assault forensic examinations, confidential crisis intervention, counseling, referrals, and access to a Violence Intervention & Treatment Program Advocate to support the students and/or faculty members who have experienced sexual assault, domestic violence and/or other related crimes. Wyckoff Hospital is located at 374 Stockholm Street, Brooklyn, New York 11237. For business hours, the Violence Intervention and Treatment Program can be contacted by phone at 718-906-3846. For after hours, please call Danielle Schneck (Program Coordinator) at 347-682-7297.

**NYLS employees** who desire strict confidentiality may contact one of the counselors at **LifeCare**, available 24 hours a day, 7 days a week at 1-800-697-7315 or at <http://member.lifecare.com>. NYLS works with LifeCare to provide off-site, confidential counseling services to employees.

First-time users of LifeCare must first register using NYLS's [HR Self-Service Center](#):

- Navigate to the "Resources" page and select the LifeCare – Work/Life, EAP, Discounts link Register by completing the simple, one-time process

Once registered, two options are available to access LifeCare:

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<sup>6</sup> Under New York State law, counselors may be required to notify child protective services and/or local law enforcement of any report which involves ongoing suspected abuse of a minor (under the age of 18).

- Visit the [HR Self-Service Center](#) OR
- Visit directly via <http://member.lifecare.com>

Some additional resources that may be consulted by NYLS students or employees who desire strict confidentiality are included in Appendix B.

**NYLS visitors and other individuals** who desire strict confidentiality may contact one of the resources described in Appendix B, other than the Student Counseling Center and Employee Assistance Program.

ii. Anonymous Reporting

Anonymous reports may be made to Title IX Coordinator **Lisa F. Grumet** by phone at (212) 431-2171, by mail, or at her office at 185 West Broadway, Room E-414, New York, NY 10013. Individuals leaving an anonymous report should be aware that failure to disclose identifying information about the accused party, the victim of the Prohibited Conduct, or the facts and circumstances regarding the Prohibited Conduct severely limits the Law School's ability to respond and remedy the effects of the misconduct. Anonymous reports that provide enough information to constitute a criminal offense will be reported to Campus Security, less any identifying information regarding the complainant, for purposes of inclusion in the Annual Security Report and to assess for purposes of sending out a Timely Warning under the Clery Act.

## **V. The Complaint**

NYLS has established the following complaint and resolution procedure in order to provide members of the NYLS community the opportunity to seek redress from the Law School. The procedures outlined below are not intended to replace or replicate a formal judicial process.

The investigation and sanctioning procedures discussed below will supersede any contrary procedures or provisions when a report of Prohibited Conduct is made under this Policy, including but not limited to those in the Student Handbook related to Academic Responsibility Code violations, those in the Administrative Staff Human Resource Policy Guide, procedures outlined in the Faculty Standards and Procedures Manual, and any applicable rights or procedures granted under collective bargaining agreements.

## A. *Initial Meeting and Notice of Investigation*

### i. Initial Meeting

As soon as possible upon receipt of a report of potential Prohibited Conduct, the Title IX Coordinator<sup>7</sup> will conduct an initial meeting (the “Initial Meeting”) with the individual making the complaint (“Complainant”). At that meeting, the Title IX Coordinator must address the following topics:

- Assess the Complainant’s physical safety, and health and emotional needs.
- Notify the Complainant of the Students’ Bill of Rights. *See* Appendix A, Students’ Bill of Rights.
- Notify the Complainant of his or her right to report or not report the incident to law enforcement, and to the extent practicable, assist the Complainant with locating criminal justice resources.
- If requested, assist the Complainant with ensuring access to a sexual assault forensic examination; obtaining an Order of Protection, or equivalent restraining order; and contacting and assisting local law enforcement if an Order of Protection is violated.
- Provide the Complainant with information about on- and off-campus support and reporting resources, including counseling, health care, mental health assistance, victim advocacy, legal assistance, and other available services.
- Provide the Complainant with information about the on-campus resolution procedures, including the reporting process, interim remedies, the informal and formal resolution options, and other measures that can be taken regardless of whether the Complainant wishes to file a formal report with NYLS.
- Explain NYLS’s policies regarding retaliation and amnesty for substance abuse.
- Explain mandated reporting requirements (including Clery Act requirements).

The Title IX Coordinator will seek permission from the Complainant to make a formal report. Permission for a formal report may be given initially, but can be withdrawn at any time. If a Complainant declines to make a formal report, requests that the report remain confidential, and/or later withdraws permission for the formal report, the Title IX Coordinator will weigh the request against the Law School’s obligation to provide a safe, non-discriminatory environment for all members of its community. Factors that the Title IX Coordinator may consider in determining whether to proceed against the Complainant’s wishes include, but are not limited to: the accused’s history of violent or similar behavior; escalation of previous behavior; risk that the accused will commit additional acts of violence; use of a weapon or force; and involvement of a minor. If the Complainant declines to make a report, the Title IX Coordinator may still be required to make certain disclosures pursuant to applicable law. *See* Section XI – Required Disclosures.

If the Complainant permits a formal report to be filed, the Title IX Coordinator will proceed with the Law School’s resolution procedures as described below.

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<sup>7</sup> Throughout these procedures, the phrase “Title IX Coordinator” is used, however, the Deputy Title IX Coordinator may also perform the duties and assume the responsibilities of the Title IX Coordinator for a particular Complaint or, if necessary, for a portion of a Complaint.

ii. Notification of Investigation

If the Complainant chooses to make a formal report and proceed with NYLS resolution procedures (“Complaint”), the Title IX Coordinator will ask the Complainant additional questions to gain a basic understanding of the allegations. If the facts alleged, if true, describe conduct that may violate this policy, the Title IX Coordinator shall determine whether resolution can proceed through Informal or Formal Resolution (*see* Section VI, Resolution of the Complaint). A determination that Informal Resolution is inappropriate under the circumstances may not be appealed or reconsidered. The Title IX Coordinator shall concurrently notify the Complainant and the alleged violator of this Policy (“Respondent”) of the decision to proceed with the Complaint in writing within (2) business days of the Initial Meeting (the “Notification of Investigation”).

The Notification of Investigation must contain: (1) a brief description of the factual allegations; (2) the approximate date and time of the alleged violation; and (3) a summary of potential sanctions associated with the alleged violation. The Notification of Investigation shall inform the Parties of their right to bring an advisor to meetings; state that if either Party wishes to have an attorney serve as an advisor, he or she may retain counsel independently; and include the language in section V.A.iii. of this Policy concerning “Advisor Information and Guidelines.” The Notification of Investigation may also state whether Informal Resolution is inappropriate. *See* Section VI, Resolution of the Complaint. The Notification of Investigation shall further state that behavior that violates this Policy may also violate criminal law and that either Party may seek advice from independently retained legal counsel.

The Title IX Coordinator should attempt to meet with the Respondent within three (3) business days from the date of the Notification of Investigation to provide the Respondent with the Students’ Bill of Rights and other similar procedural and resource information as was provided to the Complainant during the Initial Meeting, and to answer any of the Respondent’s procedural questions. If the Respondent is unable to meet or does not respond to the Title IX Coordinator within three (3) business days, the Title IX Coordinator will mail or email the Respondent the required information.

Within three (3) business days from the date of the Notification of Investigation, the Respondent may also object, in writing, to the Title IX Coordinator’s involvement based on a real or perceived bias or a conflict of interest. The Title IX Coordinator will refer the objection to the Title IX Board to determine whether the allegation of bias or conflict is sustained. The Title IX Coordinator may also voluntarily recuse himself or herself at any point in the process if it appears that he or she may have a real or perceived conflict of interest. If the Title IX Coordinator voluntarily recuses himself or herself, or if the Title IX Board determines that the Title IX Coordinator has a real or perceived bias or conflict, the Title IX Coordinator will be recused from his or her responsibilities for the Complaint in question and the Deputy Title IX Coordinator will perform the duties of the Title IX Coordinator for the Complaint until the Complaint has been resolved.

If the Title IX Coordinator determines that the Complainant’s allegations, if true, do not describe a violation of this policy, then the Title IX Coordinator shall, within two (2) business days of the initial meeting, notify the Complainant of this determination in writing. The Complainant may appeal this determination to the Title IX Board within three (3) business days of the date of

notification of this determination. The Board shall determine within ten (10) business days whether the Complainant's allegations, if true, describe a violation of this policy. If the Board determines that the allegations state a violation of this policy, then the Title IX Coordinator shall issue the Notification of Investigation as described above, and will proceed with resolution of the Complaint. If the Board determines that the allegations do not state a violation of this policy, the Board shall affirm the determination of the Title IX Coordinator and the Complaint will not proceed under this Policy. If the allegations, taken as true, may violate the NYLS Non-Discrimination and Harassment Policy, the Title IX Coordinator shall refer the matter to the Harassment and Discrimination Review Board, If the allegations, taken as true, may violate the NYLS Code of Conduct, the Title IX Coordinator shall refer the matter to the Academic Responsibility Committee or other appropriate committee.

iii. Advisor Information and Guidelines

Any individual being interviewed by the Investigators, including the Complainant and Respondent, has the right to be accompanied to any meeting or proceeding related to this resolution procedure by an advisor of their choice. An advisor is an individual who attends as a supportive presence. An advisor may take notes and quietly confer with the individual being advised, but may not speak on behalf of the individual or in any way disrupt any meeting or the resolution procedure. Individuals who may have factual information relevant to the Complaint may not serve as advisors.

If an individual being interviewed wishes to have an attorney serve as their advisor, he or she may retain counsel independently. Attorney-advisors may participate in the resolution process to the same extent as other advisors, and will not be permitted to speak on behalf of any individual or to interfere with the resolution procedure.

Although the Parties are not required to choose an advisor or to bring their advisor to all meetings, utilizing the same advisor throughout the process, unless there are extenuating circumstances, allows the process to move forward in the most efficient fashion. In the event that a Party wants to make a change to their advisor, he or she must provide written notice to the Title IX Coordinator. Although reasonable attempts will be made to schedule proceedings consistent with an advisor's availability, the process will not be delayed to schedule the proceedings at the convenience of the advisor.

If an advisor fails to comply with the procedures set forth herein, including through a material breach of confidentiality, the Law School reserves the right to exclude the advisor from further participation in the process.

***B. Interim Measures Pending Resolution of the Complaint***

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. The Dean will determine whether and which emergency action is required, and he or she shall inform the Title IX Coordinator, who shall then proceed according to the provisions of this policy.

Based upon the nature of the Complaint, NYLS may impose immediate temporary restrictions (“Interim Measures”) after a Complaint has been made, including, but not limited to:

#### Students

- Suspension
- No contact orders
- Other campus access restrictions
- Changing or modifying schedules
- Providing alternate course completion options
- Changes in work schedule
- Changes in housing assignment
- Assistance with housing relocation
- Interim suspension
- Leave of absence
- Providing an escort to ensure safe movement on campus
- Providing academic services (including tutoring)
- Any other remedy that can be tailored to the individuals and which reasonably helps to achieve the goals of this policy.

#### Graduates

- No contact orders
- Other campus access restrictions
- Providing an escort to ensure safe movement on campus
- Any other remedy that can be tailored to the individuals and which reasonably helps to achieve the goals of this policy.

#### Staff, Independent Contractors, Visitors, and Other Individuals

- No contact orders
- Other campus access restrictions
- Changes in work schedule
- Leave of absence
- Providing an escort to ensure safe movement on campus
- Any other remedy that can be tailored to the individuals and which reasonably helps to achieve the goals of this policy.

#### Faculty

- Suspension
- No contact orders
- Other campus access restrictions
- Changing or modifying teaching schedules
- Interim suspension
- Leave of absence
- Providing an escort to ensure safe movement on campus
- Any other remedy that can be tailored to the individuals and which reasonably helps to achieve the goals of this policy.

Requests for specific Interim Measures may be discussed with the Title IX Coordinator and/or the Dean. The Title IX Coordinator may recommend to the Dean specific Interim Measures based on the Parties’ relationship with the Law School, the factual circumstances surrounding the Complaint, any measures requested by either Party, and any other factors that the Title IX Coordinator determines are relevant.

If requested, the Law School can assist the individual with filing a police report, ensuring access to a sexual assault forensic examination, obtaining an Order of Protection or equivalent restraining order; and contacting and assisting local law enforcement if an Order of Protection is violated.

Both the Respondent and the Complainant shall, upon request to the Title IX Coordinator, be afforded a prompt review of Interim Measures and either Party can submit evidence in support of the review. Interim measures imposed on the Respondent are not determinations of guilt. Failure to adhere to the parameters of any Interim Measures is a violation of the NYLS Code of Academic Responsibility, and may lead to additional disciplinary action.

## **VI. Resolution of the Complaint**

### ***A. Informal Resolution***

Recognizing that a wide spectrum of behaviors can constitute violations of this Policy, the Title IX Coordinator may offer Informal Resolution (mediation) in appropriate circumstances. Informal Resolution is not available for allegations of sexual assault and sexual violence. The Title IX Coordinator will make the determination regarding whether Informal Resolution is appropriate.

If appropriate and agreed to by all Parties, the Title IX Coordinator will initiate the Informal Resolution process within five (5) business days from the date of the Notification of Investigation has been decided. Informal Resolution may only be initiated with the agreement of both Parties and is entirely voluntary.

The nature of Informal Resolution is flexible, but in general, the Parties meet together with the Title IX Coordinator to discuss the incident(s) that led to the Complaint and potential resolutions. While fault is not determined in the Informal Resolution proceeding, the goal of Informal Resolution is for the Parties to agree on a solution or resolution together. Such resolutions may include a permanent no-contact order, academic or residential reassignment, a written apology, community service, or other alternate resolutions. Any agreement between the Parties will be reduced to writing and signed by both Parties. If the Title IX Coordinator and the Parties reach agreement, the matter will be closed. The Informal Resolution procedure must conclude within fifteen (15) business days from the date of the Notification of Investigation has been decided, unless all parties, including the Title IX Coordinator, agree to an extension of time. After the time for Informal Resolution has expired, the Title IX Coordinator shall initiate Formal Resolution.

Any Party, including the Title IX Coordinator, may elect to end Informal Resolution and proceed to Formal Resolution at any time. If Informal Resolution is ended by request or because the time for Informal Resolution expires, and Formal Resolution is initiated, any information obtained during Informal Resolution may be used in the subsequent Formal Resolution process.

### ***B. Formal Resolution***

If (1) the Title IX Coordinator decides that the Complaint must be processed through Formal Resolution; (2) any Party, at any time, does not agree to Informal Resolution or requests to end Informal Resolution; or (3) the timeline for Informal Resolution expires before the Parties have settled the matter, the Title IX Coordinator shall immediately refer the matter to the Title IX Board



for Formal Resolution. The Title IX Coordinator will notify both Parties in writing of the referral to Formal Resolution and of the identity of the members of the Title IX Board.

Both Parties will have three (3) business days to object to the involvement of any member(s) of the Board based on concerns regarding a real or perceived bias or conflict of interest. If either Party objects, the Title IX Coordinator will determine whether the objection is sustained. A Title IX Board member may also voluntarily recuse himself or herself at any point in the process if it appears that he or she may have a real or perceived conflict of interest. The Title IX Coordinator will excuse any Board member determined to have a real or perceived conflict of interest or bias.

Within five (5) business days from referral of the Complaint, the Title IX Coordinator, as Chair of the Title IX Board, will appoint a two-person investigative team (“Investigators”). The Title IX Coordinator can select the Investigators from the Title IX Board or may retain experienced external investigators to conduct the investigation.

i. Investigation

The goal of the Investigators 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 Prohibited Conduct, and to recommend appropriate action to the Board. The investigation must include interviewing the Complainant and Respondent, if possible; it may also include interviewing other relevant witnesses or individuals with relevant information, including witnesses identified or requested by the Complainant and Respondent. All Parties will have an equal opportunity to offer witnesses and other evidence. The Investigators will interview the Complainant, the Respondent, and any witnesses in separate, private sessions. The Investigators will provide the Parties with reasonable notice of any and all meetings that require their attendance.

The Investigators shall have access to all potentially relevant documents. The Investigators will request and review any relevant evidence such as emails, text messages, videos, and photographs. The Investigators may also choose to interview witnesses not identified by the Parties, or to request relevant evidence that was not presented to them. The Parties must cooperate with the Investigators by providing any additional information that the Investigators may request, however, Parties have the right to request that the Investigators exclude from evidence their own prior sexual history with persons other than the other party, or their own mental health diagnosis and/or treatment.

The Investigators will maintain notes of each witness interview and will maintain a file of all documentary evidence reviewed during the investigation.

The investigation must be concluded within ten (10) business days from the date of the Notification of Investigation. The Title IX Coordinator may grant a reasonable extension of time upon request from the Investigators. The Investigators should periodically check in with the Title IX Coordinator during the course of the Investigation to update the Title IX Coordinator on the progress of the Investigation.

ii. Investigators' Report and Recommendation

The Investigators must prepare a written report to the Board that contains: (1) a summary of the Investigators' findings of fact; (2) a recommendation as to whether a violation of the Policy occurred ("Recommendation") and (3) the rationale for the Recommendation (collectively, the "Report and Recommendation"). The Investigators may also suggest an appropriate sanction. The Recommendation can include a recommendation that the Board hold a hearing. When determining the Recommendation, the Investigators shall evaluate whether a violation of this Policy occurred under the "*preponderance of the evidence*" standard. Under this standard, it must be more likely than not that a violation of the Policy occurred.

The Investigators will present the Report and Recommendation to the Title IX Coordinator within five (5) business days of the conclusion of the investigation. A confidential record of the Complaint, the Report and Recommendation, and any evidence reviewed or interview notes maintained by the Investigators will be compiled and maintained by the Title IX Coordinator (the "investigative file").

iii. Board Decision

The Title IX Coordinator will submit the investigative file to the Board for consideration and a final determination. The Investigators may not participate in the Board's deliberations or determination, and may not be voting members of the Board for any case they investigated. After consideration of the investigative file, but within five (5) business days, the Board will make a determination regarding whether it will adopt the Recommendation of the Investigators.

Should the Board adopt the Recommendation of the Investigators, the Recommendation will become the final decision of the Board regarding whether a violation of this Policy occurred (the "Decision"). The Board shall make its decision based on a majority vote of the voting members. Within one (1) business day of the Board's Decision, the Title IX Coordinator must simultaneously deliver the Report and Recommendation to the Parties either in person, by mail, or by email, along with a statement of the Board's adoption of the Recommendation as its Decision. If there is a finding of responsibility and no hearing is convened, the Board will determine sanctions or remedies consistent with Section VII.

If the Board decides not to adopt the Recommendation of the Investigators, it may instead adopt a different Decision by a majority vote of its voting members. If the Board does not adopt the Report and Recommendation of the Investigators, it will prepare its own Report, which shall include: (1) a summary of the Board's findings of fact; (2) a recommendation as to whether a violation of the Policy occurred ("Decision") and (3) the rationale for the Decision (collectively, the "Report and Decision"). When determining the Decision, the Board shall evaluate whether a violation of this Policy occurred under the "*preponderance of the evidence*" standard. The Board will present the Report and Decision to the Title IX Coordinator within five (5) business days of Receipt of the Report and Recommendation. Whether or not the Board determines that a violation occurred, the Title IX Coordinator, within one (1) business day of the date of the Decision, must deliver the Board's Report and Decision to the Parties simultaneously, either in person, by mail, or by email. If there is a finding that the Respondent violated the policy, the Board will determine sanctions or remedies consistent with Section VII.

If the Board determines a hearing is necessary, it must designate the Complaint for hearing and select a date for such hearing. The hearing shall occur within five (5) business days of the Board's receipt of the Report and Recommendation. The Title IX Coordinator will simultaneously notify each Party (in person, by mail, or by email) within one (1) business day that a hearing is being convened and the date of the hearing.

iv. Hearing (if applicable)

In any hearing before the Board, the Board may question the Parties and other witnesses, and may request and/or accept evidence. The formal rules of evidence and other judicial formalities do not apply to the NYLS hearing procedure. All Parties will have an equal opportunity to offer witnesses and other evidence. Only members of the Board may ask questions of the Parties and witnesses. Both Parties may submit written questions to the Title IX Coordinator in advance for the Board to consider asking of the other Party and of witnesses. The Board may determine which questions are relevant, and reserves the right to revise or remove submitted questions. For each written question submitted by a Party, the Board shall maintain a record as to whether the question was asked at the hearing. If the Board asks a revised version of the question at the hearing, the Board shall maintain a record of how the question was revised. The Title IX Coordinator will arrange for an audio recording of the hearing to be created; no other individual may record the hearing. To the extent practicable, the hearing should be held in one business day.

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 Law School 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.

Hearings are closed to the public. Witnesses and their advisors (other than the Complainant, the Respondent, and their advisors, as discussed below) are not permitted to observe the hearing before or after their questioning. Any witness, including the Complainant and Respondent, has the right to be accompanied to the hearing by an advisor of his or her choice. (*See* Section V.A.iii., Advisor Information and Guidelines.) Advisors may not address the Board, may not ask questions, and may not serve as witnesses. The Title IX Coordinator may remove any individual from the hearing who is disrupting the proceeding or is not abiding by the rules of the hearing.

The Complainant and Respondent (and their advisors) may, if they choose, observe the proceeding; neither Party is required to be present for the hearing, other than to provide relevant testimony. Upon timely request by either Party, the Title IX Coordinator may, in his or her discretion, accommodate concerns for a Party's personal safety, well-being, and/or fears of confrontation during the hearing by permitting the use of available technology to conduct the hearing while allowing the Complainant and Respondent to be in separate rooms.

At the conclusion of the hearing, the Board will deliberate in private to determine if there was a violation of this Policy. The Board's deliberations will not be recorded. The Board shall determine whether a violation of this Policy occurred under the "*preponderance of the evidence*" standard. Under this standard, it must be more likely than not that a violation of the Policy occurred. Based on this standard, the Board may find the Respondent responsible for a violation of this Policy or not responsible, based on a majority vote.

After deliberations, the Board shall prepare a Report and Decision, as described above. *See* Section VI.B.iii. The Board will present the Report and Decision to the Title IX Coordinator within five (5) business days of the conclusion of the hearing.

Whether or not the Board determines that a violation occurred, the Title IX Coordinator, within one (1) business day of the date of the Decision, must deliver the Board's Report and Decision to the Parties simultaneously, either in person, by mail, or by email. If there is a finding that the Respondent violated the policy, the Board will determine sanctions or remedies consistent with Section VII.

v. Case File

The Case File will be comprised of the Complaint, the Report and Recommendation, any interview notes or evidence considered by the Board in making its determination, any recording of the hearing (if applicable), any written questions or other materials submitted to the Board by the Parties in connection with a hearing (if applicable), the Board's record concerning which questions submitted by the Parties were asked at the hearing and whether any questions were revised (if applicable), the Report and Decision (if applicable), and any materials regarding an appeal, as described below (if applicable). The Title IX Coordinator will maintain the Case File. The Title IX Coordinator may redact sensitive information that is not directly relevant to the questions raised in the investigation or hearing.

Upon request, the Parties and their advisors may review the Case File. Given the sensitive nature of this information, the Title IX Coordinator will provide this information in a secure manner (*e.g.*, by providing a hard copy to be reviewed in a location designated by the Title IX Coordinator). Neither of the Parties nor their advisors may copy, remove, photograph, take notes regarding, or in any other manner duplicate or disseminate the information in the Case File.

## **VII. Sanctions and Remedies**

In addition to taking disciplinary action against the Respondent, effective corrective action may require remedies for the Complainant. The Law School may take continuing steps to ensure that it is meeting the needs of the Complainant, preventing the recurrence of Prohibited Conduct, and remedying the effects of any Prohibited Conduct by, for example, issuing a permanent no contact order, providing continuing access to counseling services, and any other appropriate ongoing remedies, including but not limited to the remedies discussed in Section V.B of this policy (concerning Interim Measures).

If the Respondent is found to have violated the Policy, the Law School will issue sanctions commensurate with the violation(s). The Board will oversee the sanctioning process.

Either or both Parties may submit a statement regarding their view of the appropriate sanction or remedy ("Impact Statement") to the Board within five (5) business days of notification of the Board's Decision. Impact Statements will become part of the Case File and will be maintained by the Title IX Coordinator. The Board will review the Case File, including any Impact Statements, in assessing the appropriate sanction, and will make a determination regarding the appropriate sanction within three (3) days after the time to submit Impact Statements has expired.

The Board has the discretion to implement a variety of sanctions consistent with the severity of the violation, the Respondent's prior history, the Respondent's role within the Law School, and sanctions assigned to other individuals with similar violations. Past findings of domestic violence, dating violence, stalking, or sexual abuse may be considered when evaluating sanctions.

The Respondent must be informed in writing of the sanction and the rationale for the sanction within one (1) business day of the sanction determination. The Complainant will concurrently be informed in writing of the finalization of the sanctioning process, and, to the extent that such disclosure would be reasonable and permissible, will be informed of the final sanction.

i. 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 file notation shall include an indication as to whether the statement should be made available to employers, employment screening groups, and similar entities in the future. Should the Respondent seek admission to a bar of any jurisdiction, information about proceedings or sanctions under this policy will be reported to the appropriate committee of that jurisdiction in accordance with the jurisdiction's requirements. Certain sanctions for students may also be subject to transcript notation. *See* Section IX.C on page 22.

Any current or future student found to have violated this Policy may also be required to complete non-disciplinary, educational initiatives designed to educate the student.

Sanctions for students may include, but are not limited to, one or more of the following:

- Warning, with appropriate documentation of the circumstances
- Restitution
- Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation
- Suspension, for a time certain
- Revocation of admission (if the individual is an admitted student)
- Removal from a journal or other student organization, or from a leadership position within such organization
- Revocation or non-renewal of credits for participation in a journal or other student organization
- Expulsion, with or without terms and conditions as to any application for re-admission
- Withholding of degree

ii. Graduates

Sanctions for graduates may include, but are not limited to, one or more of the following:

- Warning
- Restitution
- Revocation of degree
- *Persona non grata* order
- In the case of a graduate not yet admitted to practice, the Law School may withhold certification of the student to the appropriate bar admission entity

- In the case of a graduate already admitted to practice, the Law School may notify the appropriate bar disciplinary entity of the proceeding outcome

iii. Staff, Independent Contractors, Visitors, and Other Individuals

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.

Sanctions for staff, independent contractors, visitors, and other individuals may include, but are not limited to, one or more of the following (consistent with state and local law, collective bargaining agreement and any other existing contract):

- Warning, with appropriate documentation of the circumstances
- Restitution
- Suspension, with or without pay, for a time certain
- Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation
- Denial or limitation of future increases in salary, benefits, perquisites, and the like, upon specified terms and conditions
- Reduction in grade or position
- Transfer to another position
- Termination of employment
- *Persona non grata* order

iv. 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.

Sanctions for non-tenured and non-long-term contract faculty may include, but are not limited to, one or more of the following (consistent with state law and any existing contract with the faculty member):

- Warning, with appropriate documentation of the circumstances
- Restitution
- Suspension, with or without pay, for a time certain, under stated terms and conditions
- Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation
- Denial or limitation of future increases in salary, benefits, perquisites, courses, summer teaching assignments, research grants, and the like, upon specified terms and conditions
- Reduction in position
- Termination of employment

v. Tenured and Long-Term Contract Faculty

All sanctions as to tenured and long-term contract 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.

Sanctions for tenured and long-term contract faculty may include, but are not limited to, one or more of the following (consistent with state law and any existing contract with the faculty member):

- Warning, with appropriate documentation of the circumstances
- Restitution
- Suspension, with or without pay, for a time certain, under stated terms and conditions, to the extent permissible under the Standards and Procedures for Tenure, Promotion and Reappointment ("Tenure Rules")
- Probation, for a time certain, with terms and conditions set forth by the Board as to termination of probation, to the extent permissible under the Tenure Rules
- Reduction in grade or position, to the extent permissible under the Tenure Rules
- Denial or limitation of future increases in salary, benefits, perquisites, courses, summer teaching assignments, research grants, and the like, upon specified terms and conditions
- Termination of employment, to the extent permissible under the Tenure Rules. In such case, the Board shall recommend to the Law School that it commence a proceeding pursuant to Article IX of the Tenure Rules.

## **VIII. Appeal**

Both Complainant and Respondent have a limited right to appeal from the Decision and sanction or remedy. Either Party may submit a written appeal to the Title IX Coordinator within ten (10) business days of the date of the Decision or written notification of the sanction determination, whichever occurs later. An appeal of the Decision shall be based only on: (1) insufficient evidence to support the Decision and/or (2) the discovery of new, relevant evidence that was not available during the investigation and which could affect the outcome of the case. A party may appeal the sanction or remedy if the party feels that the severity of the sanction or remedy is substantially disproportionate given the details of the case. Disagreement with the finding or sanction is not, by itself, grounds for an appeal.

The Party who submits the appeal will be the "Appellant" and the other Party will be the "Appellee." Upon receiving an appeal, the Title IX Coordinator shall, within three (3) business days of receiving the appeal, convene an Appeal Panel to review the appeal. The Appeal Panel will consist of three administrators who oversee the Law School's academics, administration and/or operations, (for example, The Associate Dean of Academic Affairs or the Senior Vice President and Chief Financial Officer). Members of the Title IX Board may not serve on the Appeal Panel. Both Parties will have three (3) business days to object to any member of the Appeal Panel based on a real or perceived bias or conflict of interest. If an objection is sustained, the Title IX Coordinator shall replace any member of the Appeal Panel determined to have such a conflict of interest or bias with another similarly situated individual. The Appellee will simultaneously have five (5) business days to submit a written response to the appeal.

Appeals are not intended to be a full rehearing of the Complaint. The Appeal Panel will have the opportunity to review the Case File. The findings of fact contained in the Report and Decision are presumed to have been decided reasonably and appropriately. The Appellant carries the burden of proof to demonstrate that the Decision, sanction or remedy, or both were improper. The Appeal Panel shall determine, by a simple majority vote, whether it believes a violation of the Policy occurred. If the Appeal Panel believes that a violation of the Policy has occurred, the Appeal Panel may also review the propriety of the sanction or remedy determination. The Appeal Panel may recommend either to uphold the Board's sanction or remedy, or may implement a new sanction or remedy.

The Appeal Panel shall forward its recommendations to the Dean, who will review the Appeal Panel's recommendation and take appropriate action. Appellant and Appellee will be notified in writing of the outcome of the appeal and the rationale for the Appeal Panel and Dean's decision within ten (10) business days of receipt of Appellee's response statement. The appeal decision is final and is not subject to further appeal. A copy of the Appeal Panel and/or Dean's decision will be sent to the Title IX Coordinator and made a part of the Case File.

## **IX. Additional Rights**

### ***A. Family Educational Rights and Privacy Act***

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of an individual's medical and related records may be protected by the Health Insurance Portability and Accountability Act ("HIPAA"), excepting health records protected by FERPA. Similarly, access to an employee's personnel records may be restricted by applicable New York and federal law.

While there are certain limitations on privacy, all information obtained during the course of the resolution procedure will be protected from public release until the appeals panel makes a final determination, unless otherwise required by law. The Law School generally will not release the names of the Complainant or Respondent to the general public without express written permission or absent another exception consistent with the law, including FERPA and the Clery Act. Further, to the extent that it is practical and permissible by law, the Law School will maintain records created under this Policy in a manner which excludes personally-identifiable information on victims. Note, however, that NYLS does not place restrictions on the right of Parties to disclose the outcome of matters resolved under these procedures.

### ***B. Failure to Comply with Investigation or Sanctions***

If an individual fails to comply with the procedures in this Policy, including through a material breach of confidentiality or by a refusal to abide fully with any assigned sanctions, NYLS reserves the right to bring additional charges of misconduct against the individual. The Title IX Coordinator is responsible for interpreting and applying this provision.

### ***C. Transcript Notation Requirement and Appeal Procedure***

Students suspended or expelled for committing an act of sexual assault, domestic violence, dating violence, stalking or a "violent crime," as defined by the Clery Act, will have a notation placed on



their transcript as follows: “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” A transcript notation will not be removed prior to 1 year after conclusion of the suspension. Expulsion notations will not be removed in any case. If a finding of responsibility is later vacated for any reason, a corresponding transcript notation will be removed.

If a student who has been charged with a violation withdraws from the Law School while charges are pending and declines to complete the disciplinary process, the following notation will be placed on his/her transcript: “withdrew with conduct charges pending.”

Suspension and expulsion transcript notations are applied at the conclusion of the conduct proceedings and appeals processes. If a student withdraws with charges pending, but conduct proceedings are nonetheless completed, any final transcript notation will be based on the outcome of those proceedings. A student who withdraws from the Law School prior to an outcome of a pending conduct case should understand that the investigation and proceeding may continue, even without their participation. Pending completion of those proceedings, the transcript will carry the above withdrawal notation.

Transcript notations for a suspended student are required by law to remain on the transcript for a period of at least one year following completion of the suspension. By law, expulsion notations are not subject to removal. By Law School policy, a withdrawal notation will remain on a transcript for at least one year following the withdrawal. Subject to these minimum periods, a student may request to have a suspension/withdrawal transcript notation removed by submitting a petition in writing to the Title IX Coordinator, who will share the request with the Dean. The petition must contain the rationale for requesting removal of the notation and documentation of the successful completion of any terms imposed in the underlying conduct proceeding.

The Title IX Coordinator and the Dean will make all decisions about notation removal. Petitions will be reviewed and a decision will be provided in writing, generally within thirty days of submission. A student may submit multiple petitions, however, the time period between such petitions will be considered in evaluating the merits of the petition.

## **X. Special Reporting Considerations**

### **A. *Amnesty for Alcohol and/or Drug Use***

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

## **B. *Public Awareness Events***

Consistent with guidance from the Office for Civil Rights of the Department of Education, public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, or other forums in which community members disclose incidents of Prohibited Conduct do not initiate the Law School’s Title IX obligations, including its obligation to investigate reports of sexual harassment or sexual violence. Such events may, however, inform the need for campus-wide educational and prevention efforts, and the Law School may implement broad community initiatives in response to such events where appropriate.

## **C. *Reports Involving Minors***

Under New York law, Law School employees must make a mandatory report of suspected child abuse and neglect, including sexual assault when that individual, in their professional capacity or within the scope of their employment, has knowledge of or observes a minor under the age of 18 whom the individual knows or reasonably suspects has been the survivor of child abuse or neglect. All Law School employees are required to immediately report any suspected child abuse and neglect to the Title IX Coordinator and the Chief of Building Operations and Security. In addition to notifying these individuals, any individual can make a direct report to 911 if a child is in immediate danger, or to the Child Protection Hotline at 1-800-342-3720.

The source of abuse does not need to be known in order to file a report. The Law School will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or the New York State Office of Children and Family Services (“OCFS”). It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse.

## **D. *Malicious Allegations***

False and malicious reports of Prohibited Conduct can place a permanent stigma on members of the NYLS community, regardless of the ultimate outcome of any investigation. Accordingly, NYLS prohibits malicious allegations of Prohibited Conduct. If at any point during the investigation or resolution process it appears reasonably likely that a Complainant, witness, or other individual acted in bad faith, deliberately and knowingly filed a false report or complaint, or provided false testimony, such individuals may be subject to discipline. Note that a Decision that an individual did not violate the Policy, by itself, will not be treated as a malicious allegation; only information provided in bad faith or which the individual reasonably knows to be false will be determined to be a malicious allegation.

## **E. *Retaliation***

NYLS will not tolerate retaliation (as defined in Section XIII). Retaliation is prohibited by Title IX and this Policy. An individual reporting Prohibited Conduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven. The Law School will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate.

Any employee may pursue any charge of discrimination or harassment with the New York State Division of Human Rights (“DHR”), the New York City Commission on Human Rights (“CHR”), and/or the federal Equal Employment Opportunity Commission (“EEOC”), as appropriate. It is unlawful to retaliate against any employee for opposing the practices prohibited by the EEOC or

comparable state or local agency, or for filing a complaint with, or for otherwise participating in, an investigation, proceeding, or hearing conducted by the DHR, CHR, or EEOC.

## **XI. Required Disclosures (Clery Act)**

In compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) the Law School records and reports certain information about campus safety, including the number of incidents of certain crimes on or near campus, some of which constitute sexual and gender-based misconduct investigated under these procedures. The Title IX Coordinator works in collaboration with Campus Security to insure such incidents are captured for statistical reporting purposes while protecting the identity of the victim of such crimes. These notifications may include the classification and location of the reported crime but do not identify the students involved. The Clery Act also requires the Law School to issue a “timely warning” when it receives a report of certain crimes that pose a serious or continuing threat to the community. The Law School may disclose aggregate information regarding incidents investigated and related outcomes. Such reports will not contain identifying information.

## **XII. Prevention and Awareness Programming and Training**

As part of its commitment to the prevention of Prohibited Conduct, NYLS offers education and awareness programs. Incoming students and new faculty and staff receive prevention and awareness programming as part of their orientation, and all students, faculty, and staff receive ongoing training and related programs on an annual basis. For a description of NYLS’s Prohibited Conduct prevention and awareness programs, contact the Title IX Coordinator.

## **XIII. Prohibited Conduct Definitions and Related Terms**

- **Confidentiality** generally means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual.
  - The confidentiality of information shared by an individual with designated campus or community professionals generally is governed by New York law, including restrictions on disclosure of information by mental health providers, ordained clergy, rape crisis counselors, and attorneys, all of whom have legally-protected confidentiality. These individuals are generally prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.
- **Consent** under this policy means affirmative consent. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.
  - a. 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.

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

- **Dating Violence** means violence by a person who has been in a social romantic or intimate relationship with the Complainant (victim). The existence of such a relationship shall be 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.
  - Dating violence can be a single act or a pattern of behavior in relationships. Dating violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another within a dating relationship. Dating Violence may also include taking away a person's cell phone during an argument so the person cannot call a friend or the police for help, or threatening to self-harm if another does not do what is asked. Dating violence does not include acts covered under the definition of Domestic Violence.
  - Examples of dating violence may include, but are not limited to: slapping, kicking, pinching, biting, pulling hair, punching, threatening to hit, harm, or use a weapon on a partner or a partner's family, hurting or threatening to hurt a partner's pet or children.
- **Discrimination** occurs when one experiences negative or adverse conduct based on characteristics protected in this policy and/or applicable local, state, and federal laws, where such conduct has the effect of denying or limiting one's ability to benefit from and fully participate in educational programs or activities or employment opportunities.
  - **Sex or Gender-Based Discrimination** refers to the disparate treatment of a person or group because of that person's or group's sex, sexual orientation, actual or perceived gender, gender identity, or gender expression.
- **Domestic Violence** includes assorted violent misdemeanor and felony offenses committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the victim shares a child in common; (3) a current or former cohabitant who is or has previously been in an intimate relationship with the victim; (4) a person similarly situated to a spouse under domestic or family violence law; or (5) anyone else protected under domestic or family violence law.

- Domestic violence may include emotional abuse, psychological abuse, or economic abuse. Domestic violence can be a single act or a pattern of behavior in relationships. Examples of behaviors that may constitute domestic violence include, but are not limited to: hitting, punching, pinching, slapping, choking, violating a protective order, or harming a person's children or animals.
- **Gender-Based Misconduct** comprises a broad range of behaviors focused on sex and/or gender discrimination that may or may not be sexual in nature. Sexual harassment, sexual assault, sexual exploitation, gender-based harassment, domestic violence, dating violence, and stalking are forms of gender-based misconduct under this policy. Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship (current or former). Gender-based misconduct can be committed by men or by women and it can occur between people of the same or different sex or gender identity.
- **Harassment** is certain unwelcome conduct on the basis of a protected classification. It includes 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.
  - Discriminatory harassment includes but is not limited to: epithets or slurs; negative stereotyping; denigrating jokes; and display or circulation in the working, learning, or living environment (including electronic transmission) of written or graphic material.
  - See "**Sexual Harassment**," listed below, for information on Sexual Harassment.
  - **Gender-Based Harassment** is harassment based on an individual's gender or gender identity. It includes acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on actual or perceived gender, gender identity, or gender-stereotyping that are sufficiently severe and pervasive to adversely affect an individual's participation in employment, education, or other NYLS activities. Gender-based harassment can occur when an individual or group is harassed either for exhibiting stereotypical characteristics of a particular sex or failing to conform to stereotypical notions of masculinity or femininity.
- **Incapacitation** under this Policy includes, but is not limited to, lack of consciousness, being asleep, being involuntarily restrained, or otherwise being unable to consent. Indicators of incapacitation include slurred speech, bloodshot or unfocused eyes, unsteady gait (needing assistance walking or standing), vomiting, concern expressed by others about the individual, expressed memory loss, or disorientation.

- **Non-Consensual Sexual Activity** includes any sexual contact (as defined below), however slight, with an object or bodily part, by a person upon another person that is without affirmative consent (as defined above).
- **Privacy** under this Policy generally means that information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who “need to know” in order to assist in the assessment, investigation, or resolution of the report. While not bound by confidentiality generally, the Law School will be discreet and respect the privacy of all individuals involved in the process. No information shall be released from a proceeding to enforce this Policy except as required or permitted by law and NYLS policy.
- A **Responsible Employee** is any employee: who has the authority to take action to redress sexual harassment/misconduct; who has been given the duty of reporting incidents of sexual harassment/misconduct or any other misconduct by students to the Title IX Coordinator or other appropriate designee; or who a student reasonably believes has this authority or duty. Any full-time faculty member, full-time administrator or staff member, or NYLS Security Officer is a Responsible Employee. Examples of employees who are not Responsible Employees include, but are not limited to: Adjunct Faculty; Dining Services Employees; Temporary Employees; and Contract Employees other than Security Officers.
- **Retaliation** is any action to penalize, intimidate, harass, or take adverse action against a person who makes a report of discrimination or harassment, participates in an inquiry or investigation, or otherwise asserts rights protected by non-discrimination laws. In some cases, knowingly making a false report of discrimination or harassment can amount to retaliation.
- **Sexual Assault** is any non-consensual intentional physical contact of a sexual nature, such as unwelcome physical contact with a person’s genitals, buttocks, or breasts, or any form of sexual intercourse without consent. Rape<sup>8</sup> is a form of sexual assault. Sexual assault occurs when the act (non-consensual sexual contact or non-consensual sexual intercourse) is committed by: a) physical force, violence, threat, or intimidation; b) ignoring the objections of, or without the consent of, another person; c) causing another’s incapacitation through intoxication or impairment through the use of alcohol or other drugs; and/or d) taking advantage of another person’s incapacitation by alcohol or drug use, disability, unconsciousness, or helplessness which renders them unable to give consent. In accordance with New York State law, a person under the age of 17 lacks the capacity to give consent. (See also the definition of consent, above).
- **Sexual Contact** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

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<sup>8</sup> New York criminal definitions for this and other crimes that **may also constitute** violations of this Policy can be found in Appendix C.

- **Sexual Exploitation** is non-consensual sexual abuse or exploitation of another, when such behavior does not otherwise constitute another specifically defined behavior. Examples of sexual exploitation include, but are not limited to, non-consensual use of electronics to capture, reproduce, or share images of a sexual nature without consent of parties involved, public indecency, or exposing genitals to others without consent, or engaging in ‘peeping’ (observing another when privacy would be reasonably expected) without consent.
- **Sexual Harassment** is harassment of a sexual nature. Sexual assault and requests for sexual favors that affect educational or employment decisions constitute sexual harassment. Sexual harassment may also consist of unwelcome physical contact, visual displays of degrading sexual images, sexually suggestive conduct, or remarks of a sexual nature. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal (including print or electronic communication), or sexual contact constitute sexual harassment when:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or admission to or participation in an academic program or Law School-sponsored activity; or
  - Submission to or rejection of such conduct is used as the basis for decisions affecting an individual’s employment status, grades, participation in curricular or extracurricular activities, academic standing, or post-graduate employment (including references); or
  - Such conduct has the purpose or effect of unreasonably interfering with an individual’s performance on the job or in the classroom; or
  - Such conduct has the purpose or effect of creating an intimidating or hostile work or study environment for an individual or group of individuals.

Sexual harassment can occur regardless of the relationship, position, or respective sex of the parties: same sex harassment violates this policy. Harassment because of one’s actual or perceived sexual orientation also constitutes sexual harassment under this Policy. Violation of this policy also includes sexual harassment by a student of a faculty member or a subordinate employee of his/her supervisor.

- **Sexual Misconduct** is a broad term which incorporates a range of behaviors including sexual assault, sexual harassment, domestic violence, dating violence, stalking, and any other conduct of a sexual nature that is non-consensual, or has the purpose or effect of threatening, intimidating, or coercing a person.
  - Much sexual misconduct includes non-consensual sexual contact, but this is not a necessary component. For example, threatening speech that is sufficiently severe or pervasive to constitute sexual harassment will constitute sexual misconduct. Making photographs, video, or other visual or auditory recordings of a sexual nature of another person without consent constitutes sexual misconduct, even if the activity documented was consensual. Similarly, sharing such recordings or other sexually harassing electronic communications without consent is a form of sexual misconduct. All members of our community are protected from sexual misconduct, and sexual misconduct is prohibited regardless of the sex of any party involved.

- **Sexual Violence** involves sexual contact perpetrated against an individual's will, without valid consent, or when an individual is incapable of giving consent. Examples of sexual violence include sexual assault, dating violence, or domestic violence.
- **Stalking** under this Policy means a course of conduct directed at a specific person based on their sex or gender that would cause a reasonable person to feel fear for her, his, or others' safety or to suffer substantial emotional distress. Stalking involves repeated and continued harassment made against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear and apprehension. Stalking behaviors may include: pursuing or following; non-consensual (unwanted) communication or contact – including face-to-face, telephone calls, voice messages, electronic messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation.



## Appendix A

### **Students' Bill of Rights**

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

## Appendix B

### **List of Resources for Support**

Below is a list of reporting, care, and support options, with accompanying contact information.

#### **A. *Medical Assistance***

If you have been assaulted, consider visiting an ER (where you will likely find staff such as Sexual Assault Nurse Examiners, who are trained in working with individuals who experience sexual violence). Medical professionals can help you check for injuries, be screened and educated regarding sexually transmitted infections or pregnancy, and to collect evidence.

Evidence collection in NYC does not require you to file a police report, but preserving evidence allows you options. For the purposes of evidence collection, it is recommended that you avoid eating/drinking, showering, brushing your teeth, or changing your clothes. Even if you have done any of these things, evidence can still be collected and it remains important that you seek medical attention. You may wish to bring a change of clothes with you (or have a friend bring you a change of clothes) when you do seek medical attention.

Following these steps promptly after an incident can be very helpful in later criminal proceedings and/or in seeking a civil order of protection. The medical treatment resources listed below can provide treatment for injuries and for potential exposure to sexually transmitted diseases. They also provide emergency contraception and other health services. They can assist in preserving evidence of documenting any injuries, including by helping find a Sexual Assault Nurse Examiner, who is specially trained to collect evidence.

##### i. On Campus Medical Resources

- **Mount Sinai Beth Israel** is prepared to provide medical services to **NYLS students** who have been the victims of sexual assault. Mount Sinai Beth Israel provides 24-hour emergency care (including sexual assault forensic examinations), confidential crisis intervention, counseling, and referrals. Mount Sinai Beth Israel is located at 281 1st Avenue, New York, NY 10003 (First Avenue and 16th Street in Manhattan). The Emergency Department can be contacted by phone at (212) 420-2840.
- **The Violence Intervention & Treatment Program at Wyckoff Hospital** is prepared to offer medical services to **New York Law School students and faculty members** who have been the victims of sexual assault, domestic violence, and/or other related crimes. The program provides 24-hour emergency care that includes but is not limited to sexual assault forensic examinations, confidential crisis intervention, counseling, referrals, and access to a Violence Intervention & Treatment Program Advocate to support the students and/or faculty members who have experienced sexual assault, domestic violence and/or other related crimes. Wyckoff Hospital is located at 374 Stockholm Street, Brooklyn, New York 11237. For business hours, the Violence Intervention and Treatment

Program can be contacted by phone at 718-906-3846. For after hours, please call Danielle Schneck (Program Coordinator) at 347-682-7297.

ii. Manhattan-based Hospitals with SAFE (Sexual Assault Forensic Examiner) Centers

- New York Presbyterian – Columbia  
622 W. 168th St.
- Bellevue Hospital  
462 First Ave. at E. 27th St.
- Beth Israel-Petrie Campus  
First Avenue at E. 16th St.
- Harlem Hospital  
506 Malcolm X Blvd. at W. 135th St.
- Metropolitan Hospital Center  
1901 1st Ave. at 96th St.
- Mount Sinai Medical Center  
1 Gustave L Levy Pl. (5th Ave.) at E. 98th St.
- New York-Presbyterian- The Allen Pavilion  
5141 Broadway at W. 221th St.
- New York-Presbyterian- Weill Cornell  
525 E. 68th St. at York Ave.

Additional SAFE-designated hospitals can be located at:

[https://profiles.health.ny.gov/hospital/designated\\_center/SAFE+Designated+Hospital](https://profiles.health.ny.gov/hospital/designated_center/SAFE+Designated+Hospital)

## ***B. Counseling, Legal, and Informational Resources***

If you believe you have experienced an assault – remember, it is not your fault.

If you experience sexual assault, the following guidance is important to consider:

i. Safety First

Get to a safe place. After experiencing a traumatizing event such as sexual assault, it can be important to find a place where you feel comfortable and safe from harm. This location could be: your room, a friend's room, a local hospital, Campus Security, or a Police station.

ii. On Campus Resources

- Mount Sinai Beth Israel is prepared to provide medical services to NYLS students who have been the victims of sexual assault. Mount Sinai Beth Israel provides 24-hour emergency care (including sexual assault forensic examinations), confidential crisis intervention, counseling, and referrals. Mount Sinai Beth Israel is located at 281 1st Avenue, New York, NY 10003 (First Avenue and 16<sup>th</sup> Street in Manhattan). The Emergency Department can be contacted by phone at (212) 420-2840.
- The Violence Intervention & Treatment Program at Wyckoff Hospital is prepared to offer medical services to New York Law School students and faculty members who have been

the victims of sexual assault, domestic violence, and/or other related crimes. The program provides 24-hour emergency care that includes but is not limited to sexual assault forensic examinations, confidential crisis intervention, counseling, referrals, and access to a Violence Intervention & Treatment Program Advocate to support the students and/or faculty members who have experienced sexual assault, domestic violence and/or other related crimes. Wyckoff Hospital is located at 374 Stockholm Street, Brooklyn, New York 11237. For business hours, the Violence Intervention and Treatment Program can be contacted by phone at 718-906-3846.

- **Student Counseling Center:** Aetna Student Assistance Program, our counseling service, is available 24 hours a day/7 days a week. Call 1-877-351-7889, or e-mail [AskSAP@aetna.com](mailto:AskSAP@aetna.com). Web: visit [www.aetnasap.com](http://www.aetnasap.com), then enter your school ID: NYLAW.
- **Employee Assistance Program (EAP):** The EAP is offered through LifeCare; LifeCare services are available through our ADP vendor. Employees can call LifeCare directly at 1-800-697-7315. To access LifeCare's website visit NYLS's HR Self-Service Center - go to the Home Tab, to the Resources Tab to LifeCare.

iii. Off Campus Resources

**Crime Victims Treatment Center** of St. Luke's Roosevelt Hospital (CVTC):

<http://www.cvtc-slr.org>

- CVTC provides respectful treatment of survivors of family and intimate partner violence, sexual assault, childhood sexual abuse, and other forms of violence and crime.

**St. Luke's (Mt. Sinai) Emergency Medical Services:**

[www.stlukeshospitalnyc.org/emergency\\_svcs\\_nyc\\_landing.aspx](http://www.stlukeshospitalnyc.org/emergency_svcs_nyc_landing.aspx)

- As the first hospital in New York to establish a specialized, highly acclaimed treatment service for victims of sexual assault, they have Sexual Assault Forensic Examiner ("SAFE") examiners available 24 hours a day. SAFE examiners devote their full attention to the victim's needs, and only with the victim's consent, collect evidence that can be used to prosecute the crime.

**Anti-Violence Project (AVP)** is a New York based resource.

- AVP provides free and confidential assistance to thousands of lesbian, gay, bisexual, transgender, queer, and HIV-affected (LGBTQH) people each year from all five boroughs of New York City through direct client services and community organizing and public advocacy. Find more information on their website at [www.avp.org](http://www.avp.org) or reach their bilingual (English/Spanish) hotline at (212) 714-1141.

**Sanctuary for Families**, PO Box 1406, Wall Street Station, (212) 349-6009

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

- Annually, Sanctuary for Families serves more than 10,000 individuals who experience some form of domestic violence, sex trafficking, and related forms of gender violence. Its services include: counseling, legal assistance, crisis and temporary shelter, community education, and advocacy, among others.

**Safe Horizon**, 2 Lafayette Street, 3rd Floor, 1 (800) 621-HOPE (4673)

<http://www.safehorizon.org/>

- Through its 57 programs, Safe Horizon provides assistance to those who have experienced domestic and intimate partner violence, child physical and sexual abuse, human trafficking, stalking, youth homelessness, and other violent crimes. Its services include: counseling, legal representation, and housing and employment assistance, among others.

**Other helpful external resources:**

- NYC Alliance Against Sexual Assault: <http://www.svfreenyc.org/survivors.html>
- NYC Gay and Lesbian Anti-Violence Project: (212) 714-1141
- Support Orthodox Victims of Rape and Incest (SOVRI) Sexual Abuse Helpline (in conjunction with The Beth Israel Victim Services Program): (212) 844-1495
- Rape, Abuse, and Incest National Network: <https://ohl.rainn.org/online/>
- Rape, Sexual Assault, and Incest Hotline: (212) 227-3000 (24 hours a day)
- Bronx Rape Crisis Program: (718) 933-1000
- Brooklyn Rape Crisis Program: (718) 827-4700
- Queens Rape Crisis Program: (718) 291-2555
- Staten Island Rape Crisis Program: (718) 720-2591

iv. Legal Resources Aetna Student Assistance Program

The New York District Attorney's office offers centralized information about options and resources, including information about protective orders, related to domestic violence. Please visit: <http://manhattanda.org/resources-victims-domestic-violence>

**A note about protective orders:** In Manhattan, the [Family Justice Center](#) or the [District Attorney's](#) office assist with the process of seeking an Order of Protection. Campus Security or the Title IX Coordinator can provide assistance in accessing these resources. The Law School will assist in appropriate planning, as it may relate to access to campus or related protections, for any individual who obtains an Order of Protection and shares it with Campus Security.

Additional New York City resources and information can be found on the city government website at: <http://www.nyc.gov/html/doh/html/living/violence-help-adults.shtm>.

## Appendix C

### **New York State Criminal Definitions**

The Violence Against Women Act (VAWA) requires NYLS to include certain New York State criminal definitions in its Annual Security Report and also requires that these definitions be provided in other materials disseminated by the Law School. Relevant New York definitions are set forth below.<sup>9</sup> Ultimately, the New York District Attorney will determine whether an act meets the criminal standard.

**CONSENT:**<sup>10</sup> Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct, or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with developmental disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

**CONSENT, ABBREVIATED:** Clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity.

**DATING VIOLENCE:** New York State does not specifically define "dating violence." However, under New York Law, intimate relationships are covered by the definition of domestic violence when the crime is committed by a person in an "intimate relationship" with the victim. *See* "Family or Household Member" for definition of "intimate relationship."

**DOMESTIC VIOLENCE:** An act which would constitute a violation of the penal law, including, but not limited to, acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching of blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent

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<sup>9</sup> For purposes of enforcing the expectations and requirements of this Policy, sexual and gender-based misconduct are defined in Section XIII. The definition listed here applies to New York state criminal laws.

<sup>10</sup> The Law School defines consent as *affirmative consent* consistent with N.Y. Educ. Law § 6441 as described in Section XIII.

accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

**FAMILY OR HOUSEHOLD MEMBER:** Persons related by consanguinity or affinity; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether such persons are married or have lived together at any time; unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

**PARENT:** means natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

**SEXUAL ASSAULT:** New York State does not specifically define sexual assault. However, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape.

**SEX OFFENSES; LACK OF CONSENT:** Whether or not specifically stated, it is an element of every sexual act committed without consent of the victim.

**SEXUAL MISCONDUCT:** When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

**RAPE IN THE THIRD DEGREE:** When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

**RAPE IN THE SECOND DEGREE:** When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree that the defendant was less than four years older than the victim at the time of the act.

**RAPE IN THE FIRST DEGREE:** When a person engages in sexual intercourse with another person (1) by forcible compulsion; or (2) who is incapable of consent by reason of being physically helpless; or (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**CRIMINAL SEXUAL ACT IN THE THIRD DEGREE:** When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

**CRIMINAL SEXUAL ACT IN THE SECOND DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.

**CRIMINAL SEXUAL ACT IN THE FIRST DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**FORCIBLE TOUCHING:** When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. It includes squeezing, grabbing, or pinching.

**PERSISTENT SEXUAL ABUSE:** When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times in separate criminal transactions for which a sentence was imposed on separate occasions of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

**SEXUAL ABUSE IN THE THIRD DEGREE:** When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.

**SEXUAL ABUSE IN THE SECOND DEGREE:** When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old.

**SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of



being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

**AGGRAVATED SEXUAL ABUSE:** For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.

**AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE:** When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.

**AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE:** When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1)(a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

**AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE:** When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

**AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

**STALKING IN THE FOURTH DEGREE:** When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety, or property of such person, a member of such person's immediate family, or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning, or initiating communication or contact with such person, a member of such person's immediate family, or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business, or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

**STALKING IN THE THIRD DEGREE:** When a person (1) commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not

been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy, or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment, or death of such person or a member of such person's immediate family; or (4) commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

**STALKING IN THE SECOND DEGREE:** When a person: (1) commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument, or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm; or (2) commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding 5 years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury, or death; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

**STALKING IN THE FIRST DEGREE:** When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.