

NEW YORK COLLEGE OF PODIATRIC MEDICINE
SEXUAL MISCONDUCT POLICY

1.0 POLICY

The New York College of Podiatric Medicine (“NYCPM”) pledges its efforts to ensure an environment in which the dignity and worth of all members of the community are respected. It is the policy of NYCPM that sexual intimidation of students and employees is unacceptable behavior and will not be tolerated. NYCPM will not tolerate unwelcome sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature constituting sexual harassment or sexual assault (i.e. rape, fondling, incest or statutory rape).

All supervisors and managers who receive a complaint or information about suspected sexual misconduct, observe behavior that could be considered to be sexual misconduct or for any reason suspect that sexual misconduct is occurring, are required to report such suspected sexual harassment to the Office of Institutional Compliance. In addition to being subject to discipline if they engage in sexual misconduct conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual misconduct. NYCPM will also not tolerate any supervisory and/or managerial personnel who knowingly allow such behavior to continue.

In general, it is a sex crime to engage in any sexual contact with a person who does not affirmatively consent, or to engage in sexual intercourse, deviant sexual intercourse, or sexual abuse if it is accomplished by forcible compulsion. New York State Law also defines these acts as crimes if any of them are engaged in with a person who is incapable of consent either because of the person's age or because the person is mentally defective, mentally incapacitated, or physically helpless. Therefore, sexual abuse, sodomy, and rape are sex crimes and violators will be prosecuted in accordance with New York Penal Law.

NYCPM subscribes to all federal, state and institutional laws and regulations to ensure the goal that it maintains a safe environment for all community members. This policy is meant to work in harmony with other applicable NYCPM policies and procedures that address sexual and discriminatory misconduct when relevant. In the event that conduct falls within the scope of the Title IX Grievance Policy, under the Education Amendments of 1972,

then NYCPM's Title IX Grievance policy will serve as the operating process for addressing the violation.

2.0 PURPOSE

All divisions of NYCPM seek to foster a collegial atmosphere where students are nurtured and educated through close faculty-student relationships, student camaraderie, and individualized attention. Discrimination or harassment of any kind, including sexual assault (i.e. rape, fondling, incest or statutory rape), domestic violence, dating violence, and stalking, is anathema to NYCPM's mission, history, and identity. NYCPM will resolve any identified discrimination, harassment or sexual assault in a timely and effective manner. Compliance with NYCPM's policies and procedures is a necessary step in achieving a safe environment in our educational community. The policies set forth were developed to promote a safe educational environment in compliance with Title IX and Title VII of the Civil Rights Act of 1964, the Violence Against Women Act (VAWA), New York State Law (including Article 129A and 129B), and a high-quality campus life. Those believing that they have been harassed or discriminated against on the basis of their sex, including sexual harassment, should immediately contact the Office of Institutional Compliance. When NYCPM has notice of the occurrence, NYCPM is compelled to take immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

3.0 SCOPE

This policy applies to all members of NYCPM including students, faculty, and administrators as well as third-parties (including, but not limited to, vendors, invitees, etc.). This policy applies to events that occur on-campus, off-campus, and on study abroad. Information and/or training regarding this policy are available to students, faculty, and staff. In addition, information about this policy will be available on NYCPM's website.

4.0 DEFINITIONS

- **Accused**
 - Accused means a person accused of a violation who has not yet entered an institution's judicial or conduct process.
- **Advisor**
 - Any individual who provides the accuser or accused support, guidance, or advice.

- **Awareness Programs**
 - Awareness program means community-wide or audience- specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.
- **Code of Conduct**
 - Code of conduct means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.
- **Confidentiality**
 - Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.
- **Institution**
 - Institution means any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
- **Ongoing Prevention and Awareness Campaigns**
 - Ongoing prevention and awareness campaigns means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audience throughout the institution and including information on definitions of different crimes, options for bystander intervention, and risk reduction.
- **Primary Prevention Programs**
 - Primary prevention programs means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.
- **Privacy**
 - Privacy may be offered by an individual when such individual is

unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.

- **Reporting Individual**
 - Reporting individual encompasses the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.
- **Respondent**
 - Respondent means a person accused of a violation who has entered an institution's judicial or conduct process.
- **Risk Reduction**
 - Risk reduction means options designed to decrease perpetration and bystander inaction and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.
- **Bystander**
 - Bystander means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules of an institution.
- **Campus**
 - Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and
 - Any building or property that is within or reasonably contiguous to the area identified in paragraph (i) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).
- **Campus Security**
 - A campus police department or a campus security department of an institution.
 - Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (i) of this definition, such as an individual who is responsible for monitoring entrance into

institutional property.

- Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
- An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.
- **Consent** (with regards to sexual activity)
 - 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.
 - Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
 - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - Consent may be initially given but withdrawn at any time.
 - Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
 - Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - When consent is withdrawn or can no longer be given, sexual activity must stop.

- **Dating Violence**
 - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - The existence of a social relationship is based on the “reporting party’s statement” with consideration of
 - the length of the relationship,
 - the type of relationship, and
 - the frequency of the interaction between the persons involved.
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of abuse, and does not include acts covered by the definition of domestic violence.
- **Discrimination and Harassment**
 - NYCPM’s policies, prohibit discrimination based on sex, including sexual harassment. The prohibition against discrimination extends to employment and third-parties. Sexual harassment is unwelcome conduct of a sexual nature and can include sexual advances, request for sexual favors, and other verbal, non-verbal, or physical conduct. Environmental harassment (sometimes referred to as hostile environment) is sexually harassing conduct that is sufficiently severe, persistent or pervasive to limit an individual’s ability to participate in or receive benefits, services, or opportunities at NYCPM. This can include persistent comments or jokes about an individual’s, sex; verbal behavior, including insults, remarks, epithets, or derogatory statements; nonverbal behavior, including graffiti, inappropriate physical advances short of physical violence such as repeated and unwanted touching; and assault, including physical violence or the threat of physical violence.
 - Title VII, and its implementing regulations, prohibit Discrimination “because of sex” or “on the basis of sex.” The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs.
- **Domestic Violence**
 - Domestic violence is a felony or misdemeanor crime of violence committed by any of the following individuals:
 - A current or former spouse or intimate partner of the victim; or
 - A person with whom the victim shares a child in common; or
 - A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or

- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - Any other person against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- **Pastoral counselor**
 - A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.
- **Professional counselor**
 - A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification.
- **Proceeding**
 - All activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings.
 - Does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.
- **Result**
 - Any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution.
 - The result must include any sanctions imposed by the institution and the rationale for the result and the sanctions.
- **Sexual Activity**
 - Sexual activity has the same meaning as “sexual act” and “sexual contact” as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).
- **Sexual Misconduct**
 - Unwelcome sexual advances, requests for sexual favors, and, other visual, verbal or physical conduct of a sexual nature, when:
 - An individual’s submission to or rejection of the conduct is made, either explicitly or implicitly, a term or condition of employment or of status in a course, program, or activity, or is used as a basis for employment or academic decision; or
 - The conduct has the purpose or effect of unreasonably interfering with an individual’s work performance, academic performance, or educational experience, or of creating an intimidating, hostile, humiliating, or

offensive working, educational, or living environment.

- **Sexual Offense**
 - Unwelcome sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature constituting sexual harassment.
- **Sexual Assault**
 - Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent, and including rape, fondling, incest or statutory rape as acted in the FBI's Uniform Crime Reporting program.
- **Rape**
 - Is the perpetuation of an act of sexual intercourse with a person against his or her will and consent, or when such person is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity.
 - Is the penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of a person, or when such person is incapable of giving consent.
 - Acquaintance rape is rape that involves people who know or are familiar with each other.
- **Stalking**
 - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
 - A course of conduct is two or more acts, including, but limited to:
 - Acts in which the 'stalker' directly, indirectly, or through third parties by any action, method, device, or means,
 - Follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
 - Substantial emotional distress is a significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 - A reasonable person is one under similar circumstances and with similar identities to the victim.
- **Jurisdictional Definitions of Domestic Violence, Dating Violence, Sexual Assault and Stalking**
 - *Domestic Violence*: The State of New York does not have a definition of domestic violence. However, assault, menacing, strangulation & related offenses, NY Family Court Act 842, and Penal Law 130.90 provide protections to victims of domestic and dating violence.

- Assault: A person is guilty of assault in the first degree when:
 - 1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
 - 2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or
 - 3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or
 - 4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he, or another participant if there be any, causes serious physical injury to a person other than one of the participants.
 - Assault in the first degree is a class B felony.
- Menacing: A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree or the crime of menacing a police officer or peace officer within the preceding ten years.
 - Menacing in the first degree is a class E felony.
- Strangulation & Related Offense:
 - A person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she:
 - applies pressure on the throat or neck of such person; or
 - blocks the nose or mouth of such person.
 - Criminal obstruction of breathing or blood circulation is a class A misdemeanor.
- Facilitating a Sex Offense with a Controlled Substance (Penal Law 130.90):
 - A person is guilty of facilitating a sex offense with a controlled substance when he or she:
 - knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and

- administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and
 - commits or attempts to commit such conduct constituting a felony defined in this article.
 - Facilitating a sex offense with a controlled substance is a class D felony
- Dating Violence: The State of New York does not have a definition of dating violence. See above for definitions pertaining to dating violence.
- Sexual Assault: The State of New York defines sexual assault as follows: The following definitions are applicable to this article:
 - 1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.
 - 2.
 - (a) "Oral sexual conduct" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
 - (b) "Anal sexual conduct" means conduct between persons consisting of contact between the penis and anus.
 - 3. "Sexual contact" means any touching of the sexual or other intimate parts of a person 1 for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.
 - 4. For the purposes of this article 2 "married" means 3 the existence of the relationship 4 between the actor and the 5 victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article 6 against the 7 victim.
 - 5. "Mentally 1 disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.
 - 6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct

owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.

- 7. “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- 8. “Forcible compulsion” means to compel by either:
 - use of physical force; or
 - a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.
- 9. “Foreign object” means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury.
- 10. “Sexual conduct” means sexual intercourse, 1 oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.
- 11. “Aggravated sexual contact” means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis 1 , rectum or anus of a child, thereby causing physical injury to such child.
- 12. “Health care provider” means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the education law.
- 13. “Mental health care provider” 1 shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.
- Stalking: The State of New York defines stalking as follows: A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

- 1. intentionally or recklessly causes physical injury to 1 the victim of such crime; or
 - 2. commits a class A misdemeanor defined in article 1 one hundred thirty of this chapter, or a class E felony defined in 2 section 130.25, 130.40 or 130.85 of this chapter, or a class D felony 3 defined in section 130.30 or 130.45 of this chapter.
 - Stalking in the first degree is a class D felony.
- **Preponderance of the Evidence**
 - Just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true.
- **Retaliation**
 - Retaliation is any kind of reprisal, adverse action, or negative action taken against an individual because he or she has:
 - complained about alleged discrimination or harassment as defined above,
 - opposed alleged discrimination or harassment as defined above,
 - participated as a party or witness in an investigation relating to such allegations, or
 - participated as a party or witness in a proceeding regarding such allegations. Retaliation can occur contemporaneously during the complaint process or subsequent to it, once the retaliator is aware of the recipient's participation in the process.
 - Retaliation does not exist in the absence of an adverse action. An individual is protected from retaliation even when the complaint at issue is ultimately found to lack merit, as long as the complaint was made in good faith.
 - NYCPM does not allow, nor tolerate any conduct by any NYCPM community member that may be regarded as retaliatory. Retaliation against any individual, whether said person submitted a complaint through the method described below, or for any other reason will not be tolerated.
 - New York State legislation requires that every institution ensures that at the first instance of disclosure by a reporting individual to an institution representative, the following information be presented: "You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting that incident; and to receive assistance and resources from you institution."

- **Unlawful employment practices under Title VII:** It shall be an unlawful employment practice for an employer--
 - to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's sex; or
 - to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's sex.
 - to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer, indicating any preference, limitation, specification, or discrimination, based on sex, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on sex when sex is a bona fide occupational qualification for employment.
 - to willfully not post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the EEOC setting forth excerpts from or, summaries of, the pertinent provisions of Title VII and information pertinent to the filing of a complaint.

5.0 PROCEDURES

Duty to Report Violations

Any member of the NYCPM community including students, faculty, employees, and third-parties have a duty to report violations of this policy where individuals know, or should know, of accusations or actions which violate NYCPM Policy and will notify a NYCPM Compliance Officer of such violations promptly.

If you believe that you have been subjected to sexual harassment you may complete the attached complaint form found on the NYCPM website. Your complaint will then be investigated pursuant to the procedures outlined in this policy.

Formal Investigation and Resolution of Discrimination, Harassment, Sexual Assault or Retaliation Complaints

Duty to Cooperate and Facilitate

All members of NYCPM are required to cooperate fully with any investigations

of harassment. A faculty member, staff member, or student who has relevant information and refuses to cooperate with an ongoing investigation will be subject to disciplinary action for, among other things, violations of the NYCPM Code of Conduct and/or insubordination. Likewise, all NYCPM employees are required to ensure that complaints about harassment are directed to the appropriate administrative office for evaluation and investigation.

Right to Prompt, Fair, and Impartial Proceeding and Complaint Process

NYCPM is committed to conducting an inquiry that is thorough, prompt and impartial. Accused and accuser will have the opportunity to object to NYCPM participants as bias.

Victims have the option to notify proper law enforcement authorities, including on-campus security and local police, or to decline to notify such authorities. Complaints concerning sexual harassment and/or sexual discrimination should be sent to the Compliance Office at 646-565-6000 x55330 or compliance@touro.edu. Complaints should be filed as soon as possible after the date of the alleged misconduct, and a written complaint is preferable.

A written or verbal complaint, which should be submitted within the later of the following two dates: (a) thirty (30) days after the alleged misconduct; or, (b) the end of the semester in which the alleged incident occurred. A complaint should include the following information:

- Complainant's full name, home address, email, telephone number, and NYCPM Student/Employee ID number.
- Name of the person against whom the complaint was made, including job title or student status, if known.
- The protected status that is the basis for the alleged discrimination, harassment, or retaliation based on the complainant's gender.
- A clear statement of the facts that constitute the alleged discrimination, harassment, or retaliation, including dates on which the acts were committed and any information to identify witnesses.
- Complainant should include the term and year of his/her most recent active employment, academic, or student status within the university.
- A student who is seeking admission to NYCPM should include the term and year in which he/she sought admission to the university.
- The full name, address, and telephone number of complainant's advisor or supervisor, if any.
- The specific harm that resulted from the alleged act and the remedy sought.

- The complainant's signature and the date on which the complaint was submitted.

The accused will receive notice of the complaint, although the accused will be considered innocent until proven guilty of a violation. While prompt reporting is expected, complaints older than 30 days will be processed. However, if more than 365 days have elapsed since the day of the complaint, the complaint may not be processed.

Every effort is made to conduct a thorough and speedy investigation. Several factors may impact NYCPM's ability to conduct a prompt investigation, including, but not limited to: the Complainant's accessibility or unresponsiveness, witness availability or unresponsiveness, the number of witnesses, the timing of the investigation (i.e. if an investigation is being conducted at a time when students are taking final exams or on recess), etc. The process allows for extension with good cause shown. The burden to develop facts surrounding the investigation and/or prove that an incident lacked consent is on the institution, not the reporting individual. A reporting individual may withdraw a complaint or report from the institution at any time. Such individual will not be penalized for withdrawing such complaint. Please note that the institution may, consistent with other provisions of this law as well as federal law, still have obligations to investigate and/or take actions even if the complaint has been withdrawn.

Availability of Counseling

NYCPM will offer its internal counseling services to any complainant who has begun the complaint process. It is ultimately the complainant's decision of whether or not to accept the counseling service offered by NYCPM.

Accommodations and Protective Measures Available for Victims

Upon receipt of a report of domestic violence, dating violence, sexual assault or stalking, NYCPM will provide written notification to the students and employees involved about accommodations available to them, including academic, living, transportation and working situations. The written notification will include information regarding the accommodation options, available assistance in requesting accommodations, and how to request accommodations and protective measures (i.e., the notification will include the name and contact information for the individual or office that should be contacted to request the accommodations).

At the victim's request, and to the extent of the victim's cooperation and consent, College offices will work cooperatively to assist the victim in obtaining

accommodations. If reasonably available, a victim may be offered changes to academic, living, working or transportation situations regardless of whether the victim chooses to report the crime to campus police or local law enforcement. Examples of options for a potential change to the academic situation may be to transfer to a different section of a class, withdraw and take a class at another time if there is no option for moving to a different section, etc. Potential changes to living situations may include moving to a different room or residence hall. Possible changes to work situations may include changing working hours. Possible changes in transportation may include having the student or employee park in a different location, assisting the student or employee with a safety escort, etc.

Certain remedial measures may be taken to protect both parties during the pendency of the investigation, including changes to academic, living, transportation, and working situations or other protective measures. NYCPM may make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

To request changes to academic, living, transportation and/or working situations or protective measures, a victim should contact the Compliance Office at 646-565-6000 x55330. If the victim wishes to receive assistance in requesting these accommodations, she or he should contact the Compliance Office at 646-565-6000 x55330.

Notice and Timely Access and Preservation of Evidence

The proceeding will be consistent with NYCPM's policies and transparent to both the accuser and the accused. Both accuser and accused will receive timely notice of meetings at which their presence is requested. Either party may request that others be present. If allowed, other individuals will not be allowed to participate or interfere in such meeting. Both accuser and accused will receive timely and equal access to information that will be used during formal and informal disciplinary meetings or hearings (if any). Investigation interviews are not deemed disciplinary in nature. NYCPM will endeavor to protect the privacy of the participating parties and/or witnesses.

It is very important that the victim preserve any proof or evidence of any criminal offense. Such incidents will be reviewed and investigated in an expedient and professional manner.

Intake Interview

After receipt of a complaint, the Compliance Officer or his/her designee will meet with the complainant as soon as possible, usually within one week, but not later than thirty (30) days after receipt. The complainant must make himself/herself available to meet.

The meeting will be an intake interview where the Compliance Officer or his/her designee will inform the complainant about the investigation procedure and timeline. The complainant will have an opportunity to provide or present evidence and witnesses on their behalf. The complainant may sign a formal complaint form at that time (under the above guidelines) if he/she has not already done so. A complaint will proceed even in the absence of a signed written complaint.

Complaints about Students, Faculty, Other Employees or Third Parties

The College's disciplinary process includes a prompt, fair, and impartial investigation and resolution process from the initial investigation to the final result. Upon receipt of a complaint, the Compliance Officer or his/her designee shall investigate the circumstances of the complaint. This investigation will include documented interviews of the complainant, the person against whom the complaint is written, and witnesses with relevant knowledge, if any. Further, the investigation will include a review of relevant documents and any other evidence. NYCPM will use the preponderance of the evidence standard in the investigation and disciplinary action, as VAWA requires.

Investigation of Complaints

The Compliance Officer or his/her designee shall have thirty (30) days from the intake interview to complete the investigation of the event in question. Usually, the resolution of domestic violence, dating violence, sexual assault and stalking complaints are completed within 60 days of the report. However, each proceeding allows for extensions of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay. College officials involved in the investigation or adjudication of domestic violence, dating violence, sexual assault and stalking complaints are trained annually on the issues related to domestic violence, dating violence, sexual assault, and stalking as well as how to conduct an investigation and hearing process that protects the safety of the victim and promotes accountability. Such thirty (30) days may be extended in the event that one of the following occurs:

- Availability or unavailability of a witness or relevant/material documents;
- Reluctance of a witness and/or any necessary party;

- Delay or other uncooperative actions of any necessary party;
- Numerosity of witnesses;
- Holidays and vacation periods;
- Any other unforeseeable events/circumstances.

Both the complainant and respondent will have the same opportunities to have others present during any disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. NYCPM will not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding, but NYCPM may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

During any such investigation, the complainant and the accused will each reserve the right to exclude their own prior sexual history with any persons other than the party involved in the hearing during the judicial or conduct investigation process. Both will also reserve the right to exclude any mental health diagnosis and treatment during the institutional disciplinary stage which determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the stage that determines sanction.

Generally speaking an investigation will take approximately 60 calendar days following receipt of the complaint. This may not be practicable in every investigation and may vary depending on the complexity of the investigation and the severity and extent of the harassment. The institutional disciplinary procedures will not be conducted by officials who have a conflict of interest or bias for or against the accuser or the accused.

Notice of Determination and Further Action

The Compliance Officer or his/her designee shall report the findings of the investigation to a designated, impartial Fact Finder. The Fact Finder shall endeavor to issue a determination within fifteen day after receipt of the investigation file to determine and detail: (a) whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint, (b) a description of actions taken, if any, to prevent similar problems from occurring in the future, and (c) the proposed resolution of the complaint. Both parties will be informed of the outcome reached and sanctions imposed as a result of such investigation and determination.

Both the complainant, the party who filed the complaint or the alleged target of the sexual harassment or sexual assault, and the respondent, the accused, shall be informed of the fact finder's decision, including the outcome reached and sanctions imposed, in writing simultaneously within ten days of the conclusion of the fact finder's deliberation. They will both be notified simultaneously and in writing of the outcome of the proceeding and appeal procedures. Questions concerning these actions should be addressed to the Office of Institutional Compliance. Notification to the appropriate law enforcement officials and other assistance to the student or staff member in notifying law enforcement officials will be provided, if requested.

NYCPM will provide the victim a written explanation of her/his rights and options with respect to the report when the victim reports to NYCPM about the misconduct.

Notification to Victims of Crimes of Violence

The College will, upon written request, disclose to the alleged victim of a crime of violence, or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense. If the alleged victim is deceased as the result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

Appeals

The complainant and respondent alike will be provided with at least one level of appeals.

Both the complainant and the respondent are eligible to file an appeal to the determination based on (i) a procedural error occurred, (ii) new information exists that would substantially change the outcome of the finding, or (iii) the sanction is disproportionate with the violation.

The request for an appeal, including the grounds upon which the request is based, should be submitted in writing to the Office of Institutional Compliance within seven (7) business days following the date on the outcome letter. The Appeal should state the remedy sought by the appealing party. Each party may respond in writing to any appeal submitted by the other party. Written responses to the other party's appeal must be submitted within three (3) business days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party.

Appeals will be conducted in an impartial manner by trained College officials without conflict of interest or bias for or against either party. A party with a concern about a conflict of interest or bias should contact the Office of Institutional Compliance. The Appeals Panel can determine whether a change in the decision is warranted. If applicable, both the accuser and accused will have an opportunity to be present or have others present during any disciplinary proceedings. If a change in this decision is necessary, the Appeals Panel will review the appeal and rationale and make a final decision. Both parties will be informed of the outcome reached and sanctions imposed as a result of such proceedings.

Appeals will not be reviewed or considered beyond the Appeals Panel. Appeals decisions will be rendered within twenty (20) business days after the receipt of the formal request for appeal. The appeal decision will be provided in writing to both parties and the appeal decision is final. However, information obtained during the course of the conduct or judicial process will be protected from public release until the appeals process is final, unless otherwise required by law.

NYCPM has a grade appeal process, which is not circumvented by this policy. This procedure is not a substitute for a grade appeal. A grade appeal may be suspended until a determination has been made by the fact finder.

NYCPM will provide the victim a written explanation of her/his rights and options with respect to the report when the victim reports to NYCPM about the misconduct.

6.0 SANCTIONS FOR VIOLATIONS

Student violators may be subject to the following sanctions and remedial measures on a case-by-case basis:

- **Warning:** A written reprimand putting the student on notice that he/she has violated the Code of Conduct. A copy of this warning is placed in the student's folder.
- **No-Contact Order:** A student may be ordered to temporarily not intentionally contact a victim through any medium.
- **Probation:** A student may be placed on disciplinary probation for a definite period of time. While on probation, students may not hold office in Student Government Organizations, Clubs or Societies or represent the college in any capacity. Further violations while on probationary status

will result in suspension or expulsion from the college.

- **Restitution:** A student may be required to pay restitution to the college or to fellow students for damages and losses resulting from his/her actions.
- **Suspension:** At any time during a student's enrollment at the college he/she may be suspended and barred from attending classes for a definite period, not to exceed two years. A student who is suspended is entitled to a written clarification with specific reasons for and description of the sanction. A student may not be automatically re-enrolled at the end of his/her suspension. He/she must apply to the Student Affairs Committee for re-enrollment.
- **Expulsion:** NYCPM may terminate a student's status at the college at any time.

Faculty and staff (part-time and full-time) who violate the policy will be subject to disciplinary sanctions on a case-by-case basis as follows:

- **Censure:** A written reprimand, outlining the violation(s) of college policies, may be placed in the personnel file of individual violators.
- **Probation:** Faculty and/or staff may be placed on probation for a definite period of time up to a maximum of one year. In such instances, individuals may be required to enroll in a therapeutic counseling or treatment program.
- **Suspension:** Faculty and/or staff may be suspended from employment without pay for a period of time ranging from seven days to a maximum of one year.
- **Termination of Employment:** Faculty and/or staff may be dismissed from employment upon written notice by the Dean of Faculties (for faculty members) or the Vice President for Administration (all other employees).
- **Legal Action:** Faculty and/or staff may be turned over to law enforcement authorities for criminal prosecution and legal action.

In both cases for students, faculty and staff, the existence of a progressive system of disciplinary sanctions measures does not preclude NYCPM from levying a heavy sanction, without first resorting to a lesser sanction. By way of illustration and not exclusion, NYCPM may expel a student or terminate a staff member for a violation of policy without first issuing a warning or putting that student or employee on probation.

College-Initiated Protective Measures

In addition to those protective measures previously described, the Title IX Coordinator or their designee will determine whether interim interventions and protective measure should be implemented, and, if so, take steps to implement those protective measures as soon as possible.

When the accused or respondent is a student, to have the institution issue a “no contact order” consistent with institution policies and procedures, whereby continued intentional contact with the reporting individual would be a violation of institution policy subject to additional conduct charges; if the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. Both the accused or respondent and the reporting individual shall, upon request and consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. Institutions may establish an appropriate schedule for the accused and respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual.

Other examples of interim protective measures include, but are not limited to: a College order of no contact, residence hall relocation, adjustment of course schedules, a leave of absence, or reassignment to a different supervisor or position. These remedies may be applied to one, both, or multiple parties involved. Protective measures imposed may be temporary pending the results of an investigation or may become permanent as determined by NYCPM. Violations of the Compliance Officer’s directives and/or protective measures will constitute related violations that may lead to additional disciplinary action including interim suspension pending the outcome of a judicial or conduct process consistent with NYCPM policy. Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution’s policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of the request.

Every institution shall ensure that individuals are provided the following protections and accommodations:

- To receive a copy of the order of protection or equivalent when received

by an institution and have an opportunity to meet or speak with an institution representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons;

- When the accused is not a student but is a member of the institution's community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and rules and policies of the institution.

Policy For Transcript Notations

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), NYCPM shall make a notation on the transcript of students found responsible after a conduct process that they were "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." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." NYCPM will allow for appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. (Section 6444(6) NYS Education Law Article 129-B)

7.0 CONFIDENTIALITY

NYCPM has independent obligations to report or investigate potential misconduct, even if a complainant does not wish to initiate an official process. Therefore, absolute confidentiality cannot be promised with respect to a complaint of discrimination, harassment, sexual harassment, sexual assault (i.e. rape, fondling, incest or statutory rape) or retaliation received either through NYCPM's compliance hotline or otherwise. The phone number for the NYCPM hotline is 646-565-6000 x55330.

NYCPM wishes, however, to create an environment in which legitimate complaints are encouraged, while also protecting the privacy of all involved in an

investigation. Complaints about violations of these policies will therefore be handled in strict confidence, with facts made available only to those who need to know in order for NYCPM to promptly and thoroughly investigate and resolve the matter. NYCPM employees will explain to the reporting individual whether he or she is authorized to offer the reporting individual privacy. Even NYCPM offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Compliance Officer to investigate and/or seek a resolution.

Reporting individuals may request confidentiality and choose not to consent to an investigation by NYCPM, and the Compliance Officer must weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community. If NYCPM determines that an investigation is required, it must notify the reporting individuals and take immediate action as necessary to protect and assist them. NYCPM should seek consent from reporting individuals prior to investigating, and declining consent will be honored unless NYCPM determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to members of the community. If an individual discloses information through a public awareness event, NYCPM is not obligated to begin an investigation based on such information.

Declining to consent to an investigation shall be honored unless the institution determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. Honoring such a request may limit the institution's ability to meaningfully investigate and pursue conduct action against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the institution possesses other means to obtain evidence such as

security footage, and whether available information reveals a pattern of
petrator at a given location or by a particular group

NYCPM will complete publicly available record-keeping for purpose of Clery
Act reporting and disclosure. These reports will not include identifying
information about the victim or accused and shall maintain confidentiality of any
accommodations or protective measures provided to the victim, to the extent that
maintaining such confidentiality would not impair the ability of NYCPM to
provide the accommodations or protective measures.

The College does not publish the name of crime victims or other identifiable
information in the Daily Crime Log or in the annual crime statistics that are
disclosed in compliance with the Jeanne Clery Disclosure of Campus Security
Policy and Campus Crime Statistics Act. Furthermore, if a Timely Warning
Notice is issued on the basis of a report of domestic violence, dating violence,
sexual assault or stalking, the name of the victim and other personally identifiable
information about the victim will be withheld.

By only sharing personally identifiable information with individuals on a need-to-
know basis, without the inclusion of identifying information about the victim (to
the extent possible), the institution will maintain as confidential any
accommodations or protective measures provided to the victim, to the extent that
maintaining such confidentiality would not impair the ability of NYCPM to
provide the accommodations or protective measures.

8.0 RETALIATION

Retaliation is any kind of reprisal, adverse action, or negative action taken against
an individual because he or she has:

- Complained about alleged discrimination, harassment or sexual assault as
defined above,
- Participated as a party or witness in an investigation relating to such
allegations, or
- Participated as a party or witness in a proceeding regarding such
allegations.

Retaliation can occur contemporaneously during the complaint process or
subsequent to it, once the retaliator is aware of the recipient's participation in the
process. Retaliation does not exist in the absence of an adverse action. An

individual is protected from retaliation even when the complaint at issue is ultimately found to lack merit, as long as the complaint was made in good faith.

NYCPM does not allow, nor tolerate any conduct by any NYCPM member that may be regarded as retaliatory. Retaliation against any individual, whether said person submitted a complaint, will not be tolerated.

Upon the first instance of disclosure by a reporting individual to a NYCPM representative, the individual will be informed:

“You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting that incident; and to receive assistance and resources from your institution.”

Reporting individuals or bystanders who report an incident of sexual assault in good faith will receive amnesty for drug and alcohol use. The following is NYCPM’s Alcohol and/or Drug Amnesty Policy:

“The health and safety of every student at the NYCPM is of utmost importance. NYCPM 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. NYCPM 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 NYCPM officials or law enforcement will not be subject to NYCPM’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.”

Employees, faculty and students who violate NYCPM’s policies may be subject to disciplinary action. Individuals, who retaliate against someone who files a complaint, or against a witness, representative, or advocate for a complainant, will be subject to further disciplinary action.

9.0 ASSISTANCE FOR VICTIMS: RIGHTS & OPTIONS

Regardless of whether a victim elects to pursue a criminal complaint or whether the offense is alleged to have occurred on or off campus, the College will assist victims of sexual assault, domestic violence, dating violence, and stalking and will provide each victim with a written explanation of their rights and options. Such written information will include:

- the procedures victims should follow if a crime of dating violence, domestic violence, sexual assault or stalking has occurred;
- information about how the institution will protect the confidentiality of victims and other necessary parties;
- a statement that the institution will provide written notification to students and employees about victim services within the institution and in the community;
- a statement regarding the institution's provisions about options for, available assistance in, and how to request accommodations and protective measures; and
- an explanation of the procedures for institutional disciplinary action

Rights of Victims and the Institution's Responsibilities for Orders of Protection, "No Contact" Orders, Restraining Orders, or Similar Lawful Orders Issued by a Criminal, Civil, or Tribal Court or by the Institution

NYCPM complies with New York law in recognizing orders of protection. Any person who obtains an order of protection from New York or any reciprocal state should provide a copy to Campus Security and the Office of Institutional Compliance. A complainant may then meet with Campus Security to discuss the order, its consequences, and/or develop a Safety Action Plan, which is a plan for campus police and the victim to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to: escorts, special parking arrangements, providing a temporary cellphone, changing classroom location or allowing a student to complete assignments from home, etc.) The College cannot apply for a legal order of protection, no contact order or restraining order for a victim from the applicable jurisdiction(s). However, the individual may receive assistance from police or campus security, or have them call the appropriate agency in order to effect an arrest when an individual violates an order of protection.

The College may issue an institutional no contact order if deemed appropriate or at the request of the victim or accused. If the College receives a report that such an institutional no contact order has been violated, the College will initiate disciplinary proceedings appropriate to the status of the accused

(student, employee, etc.) and will impose sanctions if the accused is found responsible for violating the no contact order.

It is very important that the victim preserve any proof or evidence of the criminal offense. Such incidents will be reviewed and investigated in an expedient and professional manner. The employee or student can also file a grievance as per NYCPM's grievance policy described in the Administrative Handbook.

The federal laws require that both accuser and accused have the opportunity to object to NYCPM Participants as impartial.

Every institution shall ensure that every student be afforded the following rights:

- Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, the right:
 - To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
 - To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
 - To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.

Procedures the College Will Follow When a Crime of Domestic Violence, Dating Violence, Sexual Assault and Stalking is Reported

The College has procedures in place that serve to be sensitive to victims who report sexual assault, domestic violence, dating violence, and stalking, including informing individuals about their right to file criminal charges as well as the availability of counseling, health, mental health, victim advocacy,

legal assistance, visa and immigration assistance, student financial aid, and other services on and/or off campus as well as additional remedies to prevent contact between a complainant and an accused party, such as housing, academic, transportation and working accommodations, if reasonably available. The College will make such accommodations, if the victim requests them and if they are reasonable available, regardless of whether the victim chooses to report the crime to the Campus Security department or local law enforcement. Students and employees should contact the Office of Institutional Compliance at 646-565-6000 x55330

The following Student Bill of Rights is a summary of many of the procedures listed above in Section 5. Under this 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.

If a report of domestic violence, dating violence, sexual assault or stalking is reported to the College, the College will follow the procedures above in Section 5.

10.0 VICTIM ASSISTANCE

In cases of rape and/or sexual violence, there are many sources of support available to victims.

ON CAMPUS

- Emergency Assistance
- Employee on staff is available to work with the NYCPM community to meet immediate need.
- Accompaniment
- Security is available to provide support and escort around campus, and in certain instances to assist the individual in getting home.
- Other available community resources may be provided based on client's individual needs.

OFF CAMPUS

NEW YORK

- <https://ovs.ny.gov/>
- www.svfreenyc.org
 - (212) 229-0345
- www.avp.org
 - (212) 714-1141

NATIONAL

- www.womenslaw.org
 - (707) 784-6844
- www.rainn.org
 - (800) 656-HOPE (4673)

ISRAEL

- www.1202.org.il/English/
 - +972-2- 623 2451

24 HOUR HOTLINES

- Nycagainstrape.org for all city hotlines, emergency rooms with trained rape crisis counselors and examiners, and referrals for on-going support.
- NYC Gay & Lesbian Antiviolence Project: (212) 714-1141
- DAYONE – Not 24 hours but free legal assistance for teens under 23
- RAINN – Rape, Abuse, and Incest National Network: 1-800 656-HOPE
- Safe Horizon: (212) 577-7777
- Victims Services Agency: (212) 577-7777
- Sexual Assault Victim’s Counseling Program: (212) 227-3000
- Victim Assistance Services, Westchester County: (914) 345- 9111
- Coalition Against Domestic Violence Nassau County Hotline: (516) 542-0404
- Victim Information Bureau of Suffolk Hotline: (631) 360-3606
- Orange County, New York (Middletown) Helpline: (800) 832- 1200

SEXUAL ASSAULT SERVICES AT MEDICAL CENTERS

- Bellevue Hospital, Rape Crisis Coordinator: (212) 562-3435
- Beth Israel Medical Center, Victim Services Director: (212) 420-4516
- Long Island College Hospital, Rape Crisis Director: (718) 780-1459
- Mt. Sinai Medical Center, Rape Crisis Director: (212) 423-2140
- North Central Bronx Hospital, Rape Crisis Coordinator: (718) 519-4912
- National Domestic Violence Hotline: 1-800-621-HOPE
- St. Luke’s Roosevelt Hospital: (212) 523-4728

NYPD Special Victims Division: (646) 610-8718 is committed to providing a safe learning and working environment, and in compliance with federal law has adopted policies and procedures to prevent and respond to incidents of sexual violence including sexual assault, domestic violence, dating violence and stalking. These guidelines apply to all students, faculty, staff, contractors, and visitors.

Information on New York state criminal statutes can be found at:

<http://codes.lp.findlaw.com/nycode/PEN/THREE/H/130>

11.0 EXTERNAL REPORTING

NYCPM will conduct a campus climate assessment every other year to ascertain general awareness and knowledge of the provisions of this policy, including student experience with and knowledge of reporting and college adjudicatory processes, which shall be developed using standard and commonly recognized research methods. The aggregate results of these campus climate assessments shall be posted on NYCPM's website with no identifying information about respondents. NYCPM will also annually submit to the New York State Education Department aggregate data and information about reports of domestic violence, dating violence, stalking, and sexual assault. The assessment shall include questions covering, but not be limited to, the following:

- The Title IX Coordinator's role;
- Campus policies and procedures addressing sexual assault;
- How and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor or witness;
- The availability of resources on and off campus, such as counseling, health and academic assistance;
- The prevalence of victimization and perpetration of domestic violence, dating violence, stalking, or sexual assault on and off campus during a set time period;
- Bystander attitudes and behavior;
- Whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report;
- The general awareness of the difference, if any, between the institution's policies and the penal law; and
- General awareness of the definition of affirmative consent

Every institution shall take steps to ensure that answers to such assessments remain anonymous and that an individual is identified. Institutions shall publish results of the surveys on their website provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual shall be shared.

Information discovered or produced as a result of complying with this section

shall not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private party against an institution, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.

Members of NYCPM are always subject to local, state, and federal laws, and nothing in these procedures is intended to limit or postpone the right of an individual to file a complaint or charge with appropriate federal, state, or local departments or agencies.

It is the rights of victims and the responsibilities of all members of the community to comply with protective orders issued by a criminal, civil or tribal court or by NYCPM.

U.S. Department of Education Office for Civil Rights

Among other options, individuals may contact the Office for Civil Rights of the U.S. Department of Education for inquiries concerning the application of Title IX as well as the implementation of its regulations. The Office for Civil Rights can be contacted using the following information:

U.S. Department of Education
Office for Civil Rights
32 Old Slip, 26th Floor
New York, New York 10005
Phone (646) 428-3800
Fax (646) 428-3843
Email: OCR.NewYork@ed.gov

New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.

Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to NYCPM does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

NYS Division of Human Rights,
One Fordham Plaza, Fourth Floor,
Bronx, New York 10458
Phone (718) 741-8400
Website www.dhr.ny.gov

Contact DHR at (888) 392-3644 or visit hr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

United States Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 180 days after the alleged harassment occurred and notice of such charge (including the date, place and circumstances of the alleged harassment) shall be served upon the person against whom such charge is made within ten days thereafter, except in a case where the complainant has initially instituted proceedings with a State or local agency with authority to grant or seek relief or institute criminal proceedings, such charge shall be filed by or on behalf of the complainant within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal

court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

If an employee believes that he/she has been discriminated against at work, he/she can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed.

EEOC

Phone 1-800-669-4000 (1-800-669-6820 (TTY))

Website www.eeoc.gov

Email info@eeoc.gov

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights.

Law Enforcement Bureau of the NYC Commission on Human Rights
40 Rector Street, 10th Floor,
New York, New York;
Phone 311 or (212)306-7450;
Website www.nyc.gov/html/cchr/html/home/home.shtml

Contact the Local Police Department

If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

12.0 POLICY ON MONITORING CRIMINAL ACTIVITY

NYCPM monitors and records criminal activity by students at non-campus locations of student organizations officially recognized by NYCPM, including student organizations with non-campus housing facilities through local police agencies. NYCPM has a memorandum of understanding with the New York Police Department that they are to provide NYCPM with any information regarding issues that may affect NYCPM.

NYCPM shall ensure that reporting individuals have the following:

- Information regarding institutional crime reporting including, but not limited to: reports of certain crimes occurring in specific geographic locations that shall be included in NYCPM's annual security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual; that the institution is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual; that a reporting individual shall not be identified in a timely warning; that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows institutions to share information with parents when i. there is a health or safety emergency, or ii. when the student is a dependent on either parent's prior year federal income tax return; and that generally, the institution shall not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual.

13.0 PROGRAMS

All new students, including transfers, student leaders, student athletes, and officers of student organizations, will attend a program about the provision of this policy and how to prevent, and best protect themselves and others against sexual assault, domestic violence, dating violence, and stalking prior to receiving recognition or registration, and NYCPM shall require that each student-athlete complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to participating in intercollegiate athletic competition. On at least an annual basis, the Office of the Dean of Students or the Vice-President of Division of Graduate Studies at each of the College's campuses/sites will provide a formal educational program to increase awareness of sexual offenses, including rape, acquaintance rape,

dating violence, domestic violence, sexual assault, stalking and other forcible and non-forcible sexual offenses. Students should receive training on the following topics:

- NYCPM prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction;
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
- The role of the Title IX Coordinator, university police or campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;
- Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact

NYCPM engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault and stalking that:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

The programs will include discussion of what constitutes these offenses, penalties for these offenses, definition of consent, prevention and awareness programs and ongoing prevention and awareness campaigns; risk reduction for students and faculty, safe and positive options for bystander intervention and security measures to protect against the occurrence of these offenses. NYCPM will advertise the date, time and content of these educational programs on posters displayed in those areas regularly used by students and employees of NYCPM.

NYCPM shall use multiple methods to educate students about violence prevention and shall share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students.

Presentations will be made by guest speakers and appropriate members of NYCPM's faculty and staff. The training programs' topics are as follows:

- Protect Your Possessions and Identity
 - Most property is lost due to people being inattentive. We will instruct them that opportunist will take advantage of an easy grab. Not to leave items lying around, locking up your room, proper techniques to protect your property while walking around. To be aware of your surroundings and those around you, i.e. ATM usage. We will also discuss Online/telephone scams to protect ones identity. Never giving out ones information to strangers or bogus request from online scams and or telephone solicitation. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
 - Operation ID
- Everyday Safety
 - We will elaborate that you should be aware of your surroundings and that you could be safer while out enjoying the scenes. We provide tips on safety while in elevators, subway, buses, and in dorms etc. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
- Common-Sense Defense
 - We may not all be fighters or large individuals, but there are tactics that could be used to allow you to survive a dangerous interaction. These methods will be shown and instructed. We focus on the art of verbal communication. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
- Forming Healthy Relationships
 - We discuss methods on how to read another's actions and determine if this is a good or bad relationship. We offer tips on healthy relationships and how do deal with an unhealthy relationship. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - Online Video (Portal)

- We have the capability of inviting agencies such as RAINN, NYPD Domestic Violence Officer
- Dating Violence/Domestic Violence
 - We discuss warning signs, tips, available agencies to assist our community and reporting of such incidents. Offered as follows:
 - Campus Security Lecture
 - DVR for site training
 - Online Video (Portal)
 - We have the capability of inviting agencies such as RAINN, NYPD Domestic Violence Officer
 - Controlling Behavior
- Controlling Behavior
 - We discuss the signs that a person maybe displaying in a controlling situation. We discuss the psychological issues that arise in these relationships and how you can defend yourself or others from this behavior. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - Online Video (Portal)
 - We have the capability of inviting agencies such as RAINN, NYPD Domestic Violence Officer
- Racism, Classism, Religious, and Sexual orientation and Gender Identity (Discrimination)
 - We discuss discrimination and how it affects us. We will identify the trends that are presently being observed and how to combat them. We will instruct those on how to report incidents involving discriminations occurring here at NYCPM. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
 - Sexual Misconduct/Assault
- Sexual Misconduct/Assault
 - We discuss our Policy, Protocol, Procedure and Prevention. We will identify what is Sexual Misconduct/Assault and how to report if an incident should occur. How to attend to those who have been victimized and how these incidents will be investigated. Present what resources there are for those who have been victimized. We also offer tips on how to prevent these incidents and what to do if you become a victim or know someone who is a victim. We discuss buddy system

and we encourage our students to contact us if they are in a situation that they can't handle. Offered as follows:

- Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
 - We have the capability of inviting agencies such as RAINN, NYPD Domestic Violence Officer
- Stalking
 - Familiarize those with what stalking actually is and how it could affect their daily lives. With the Internet and Social Media, those who seek knowledge about others are easily obtained. We will discuss ways of protecting oneself from this intrusion. We also discuss on what to do if you are a victim of Stalking. Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
 - Bystander Intervention
 - The goal of Bystander Intervention is to block bad behavior before it goes too far. We will educate our NYCPM community of their role and how they can prevent this behavior. We offer tips on what they can do to prevent any of the behaviors identified.
 - Tips for a Bystander
 - Be honest and direct talk about the consequences of their actions.
 - Don't let resentment prevent you from stepping in.
 - Don't turn a blind eye.
 - Don't wait for someone else to act.
 - Give the person an out "Call their cell phone, distract the other person.
 - If it doesn't feel safe to say something you can call the police or any other person of authority.
 - If the person is your friend, communicate by either asking the person "Are you okay", "Is he bothering you".
 - If you are attending a social gathering with a friend remember the same principles applied in every scenario be mindful of your friend make sure you come and go together and if you don't leave together that your friend is able to make decisions on her/himself.

- If you see someone at risk, get involved.
 - Solicit help from other bystanders.
 - Offered as follows:
 - Campus Security Lecture
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
- Active Shooter Awareness
 - We train our College community on what to do in the event of an active shooter, how to report these types of incidents and what behaviors we need to report. Offered as follows:
 - Campus Security Lecture
 - Consultant Lectures
 - DVR for Site Training
 - NYPD Lecture
 - Online Video (Portal)
- Suspicious Package/Mail Awareness
 - We train our people on how to identify/detect suspicious packages, particularly to Mail Room Staff. Offered as follows:
 - Campus Security Literature
 - NYPD Lecture
 - Postal Inspector also available for Lecture and review of our mailrooms.
- Faculty Orientation
 - We utilize the time allotted to inform new employees of Security measures and policies in place. i.e., the need and use of ID badges, Panic alarms, aware of their surroundings work place violence policies, Emergency Contact numbers. Offered as follows:
 - Campus Security Literature
 - Portal on line training
- Student Orientation
 - During these Orientations we process the students into using/wearing their ID badges. We also go through Clery Compliance requirements including but not limited to VAWA, alcohol/drug usages, self-safety awareness, property and identification protection. Offered as follows:
 - Campus Security Literature
 - DVDs available
 - NYPD lectures
- Resident Assistants Orientation
 - We emphasize their role as Resident Assistants. We instruct them as to

their responsibilities as guardians of the students and facilitate emergencies as they arise. They are processed as “College Security Authority” (CSAs). Offered as follows:

- Campus Security Lectures/Literature
- CSA Online required training
- DVDs available
- Portal General Training
- Work Place Violence
 - We are looking into material and training aids. Possible resources:
 - Consultant training
 - DVDs
 - Literature
 - NYPD Lecture
- Risk reduction
 - NYCPM have Officers at 95% of our campuses/sites, in addition to CCTV and access control measures. When any incidents/crimes have been reported to NYCPM, Security staff would work with the person(s) involved to assure that all their needs (i.e. escort to mode of transportation, weekly calls to follow-up, referrals to agencies, etc.).

14.0 RESOURCES FOR SEXUAL HARASSMENT VICTIMS

NYCPM will provide resources for sexual harassment victims, regardless of whether the victims choose to report the crime to campus police or local law enforcement. NYCPM will provide written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations. These resources include but are not limited to:

- Crisis Intervention Counseling
 - In-person or telephone services which support clients and their families in their effort to cope with the trauma of victimization and provide assistance in the recovery process.
- Emergency Assistance
 - Counselors will work with clients to determine and meet immediate needs for mental health counseling, medical care, etc.
- Accompaniment
 - Security is available to provide support and escort around campus, and in certain instances to assist the individual in getting home.
- Others
 - Victims will have access to a sexual assault forensic examination with

a nurse.

- Available community resources will be provided based on client's individual needs.

15.0 REGISTERED SEXUAL OFFENDERS

NYCPM makes available to the public over the Internet information about certain sex offenders required to register under Megan's Law.

The federal Campus Sex Crimes Prevention Act, enacted on October 28, 2000, requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders already required to register in a State to provide notice, as required under State law, of each institution of higher education in that State at which the person is employed, carries on a vocation, volunteers services or is a student. The sex offender registry for New York can be found at the following address:

www.criminaljustice.state.ny.us/

16.0 IMPLEMENTATION

This policy shall be implemented by the Department of Human Resources and the Office of Campus Security.

17.0 SOURCE DOCUMENTS

- 34 CFR 106.8 and 106.9
- 34 CFR 668.46
- Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, or Third Parties, dated January 19, 2001
- "Dear Colleague Letter" from the Assistant Secretary, U.S. Department of Education, Office of Civil Rights, dated April 4, 2011.
- "Dear Colleague Letter" from the Assistant Secretary, U.S. Department of Education, Office of Civil Rights, dated July 14, 2014.
- NYCPM Title IX Policy

18.0 APPROVAL

This policy has been approved by the Human Resources Department, the Officer of Campus Security and the Office of Institutional Compliance.

19.0 COMPLAINT FORM

If you wish to file a complaint, please use the Title IX and Sexual Misconduct Policy Complaint Form located on the NYCPM website.

NEW YORK COLLEGE OF PODIATRIC MEDICINE TITLE IX GRIEVANCE POLICY

1.0 POLICY

New York College of Podiatric Medicine (hereinafter collectively referred to as “NYCPM”), seek to maintain a safe learning, living, and working environment for all members of its community. In addition, as individual educational institutions, NYCPM subscribes to all federal, state, and institutional laws and regulations necessary to ensure that goal.

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX’s prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student’s ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, NYCPM will implement the following Title IX Grievance Policy, effective August 14, 2020.

As such, this policy is meant to work in harmony with other applicable NYCPM policies and procedures that address sexual and discriminatory misconduct. In the event that the alleged violation falls within the scope of Title IX, this policy serves as the operating process for addressing the violation while also subscribing to any regulations or reporting requirements of other federal and state laws addressed in the NYCPM Sexual Misconduct Policy.

2.0 PURPOSE

NYCPM seeks to foster a collegial atmosphere where students are nurtured and educated through close faculty-student relationships, student camaraderie, and individualized attention. Sexual Harassment of any kind, is detrimental to NYCPM’s mission, history, and identity. NYCPM will resolve any Covered Sexual Harassment in a timely and effective manner. Compliance with NYCPM’s policies and procedures is a necessary step in achieving a safe environment in our educational community.

The policy set forth were developed to promote a safe educational environment in compliance with Final Rule under Title IX of the Educational Amendments of 1972. Those believing that

they have been subject to Sexual Harassment, as defined in the Final Rules under Title IX, should immediately contact the Title IX Coordinator. When the Title IX Coordinator has received a Formal Notice of the occurrence, NYCPM is compelled to take immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

3.0 SCOPE

This policy applies to all of NYCPM, including students, faculty, and administrators as well as third-parties (including, but not limited to, vendors, invitees, etc.).

This policy applies to events that occur in the United State in any on-campus premises, any off-campus premises that NYCPM has substantial control over or in any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of NYCPM's programs and activities over which NYCPM has substantial control.

4.0 PROCEDURES

4.1 HOW DOES THE TITLE IX GRIEVANCE POLICY IMPACT OTHER CAMPUS DISCIPLINARY POLICIES?

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, NYCPM must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. ***Only*** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

NYCPM remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

- A **Code of Conduct** that defines certain behavior as a violation of campus policy, and a separate **Sexual Misconduct Policy** that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Code of Conduct or Sexual Misconduct Policy through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this

Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

4.2 GENERAL RULES OF APPLICATION

Effective Date

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the Title IX Grievance Policy if a case is not complete by that date.¹

Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Code of Conduct, Sexual Misconduct Policy or any other relevant policy.

How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full below.

4.3 MAKING A REPORT REGARDING COVERED SEXUAL HARASSMENT

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator is as follows:

Joel A. Sturm,
53 East 124th Street
New York, NY 10035
212-410-8047
jsturm@nycpm.edu

¹ This specific provision may be subject to additional guidance from OCR (if issued).

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

4.4 INITIAL ASSESSMENT

Note: Until it is determined whether the alleged misconduct falls under the Title IX policy, NYCPM's Sexual Misconduct policy, or other relevant policy or procedure the "Responsible Administrator" can be the Title IX Coordinator, Compliance Officer or any other individual designated to investigate claims. When a determination is made such that the alleged misconduct meets the relevant requirements under the Title IX policy, only the term Title IX Coordinator will be used. In addition, an individual who makes a report of alleged misconduct is referred to as the "Potential Complainant" until he or she makes a written, formal complaint, as required by the Title IX regulations, at which point only the term "Complainant" will be used under this Title IX Grievance policy.

Whenever the Responsible Administrator receives notice of alleged misconduct, they will promptly contact the Potential Complainant regarding the alleged misconduct for an initial assessment. At that point, the Responsible Administrator will (in no particular order):

- assess the nature and circumstances of the report;
- assess immediate concerns including physical safety and emotional well-being of the Potential Complainant;
- discuss the Potential Complainant's right to contact law enforcement and right to seek medical treatment;
- provide the Potential Complainant information about resources (on-campus and off-campus) and the availability of appropriate and supportive measures;
- advise on NYCPM's policy regarding confidentiality and retaliation; and
- explain the process and requirements for filing a formal complaint under Title IX.

By law, a formal written complaint must be made before the Title IX process can begin. Before a Potential Complainant can file a formal complaint under Title IX, the Responsible Administrator will determine whether:

- the alleged misconduct can be classified under Title IX;
- the Title IX Coordinator has the ability to file a formal complaint on behalf of the Potential Complainant;
- the alleged misconduct should be handled under a separate college policy or procedure.

4.5 NON-INVESTIGATORY MEASURES AVAILABLE UNDER THE TITLE IX GRIEVANCE POLICY

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from NYCPM regardless of whether they desire to file a complaint. Supportive measures are non-disciplinary and non-punitive and may include, but are not limited to, the following as appropriate:

- Counseling
- extensions of deadlines or other course-related adjustments

- modifications of work or class schedules
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

Emergency Removal

NYCPM retains the authority to remove a respondent from NYCPM program or activity on an emergency basis, where NYCPM (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If NYCPM determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

Administrative Leave

NYCPM retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

4.6 DETERMINATION OF TITLE IX RESPONSE

Definition of Sexual Harassment

If a complaint is to be addressed under Title IX, the alleged misconduct must first meet the definition of Covered Sexual Harassment, as defined under Title IX, which includes any conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
- Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
- Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
- Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under

applicable state and local domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State or local jurisdiction.

- Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to--
(A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the NYCPM Code of Conduct or other relevant policy.

If the alleged misconduct meets the Title IX definition of Sexual Harassment provided above, the Title IX grievance process below then applies to the conduct of members of the NYCPM community, including students, employees, and third parties, who are located in the United States, and occurred in:

- Any on-campus premises
- Any off-campus premises that NYCPM has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of NYCPM's programs and activities over which NYCPM has substantial control.

For Avoidance of doubt, the Title IX process will apply when ***all*** of the following elements are met, in the reasonable determination of the Responsible Administrator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in NYCPM's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If the alleged misconduct meets these requirements, then the Title IX grievance process applies and the Potential Complainant may file a Formal Complaint or their prior Complaint submission will become a Formal Complaint.

If the alleged misconduct does not meet these Title IX requirements, it requires a mandatory dismissal under Title IX, but it may be addressed by the broader NYCPM Sexual Misconduct Policy or another applicable NYCPM policy. In the event of a dismissal, the Responsible Administrator will provide written reasoning for the dismissal determination to the Potential Complainant with information on how to appeal, if desired.

4.7 DISMISSAL OF COMPLAINTS

Under Title IX, there are instances when complaints are dismissed. These dismissals fall into two categories: (1) mandatory dismissals and (2) discretionary dismissals.

Mandatory Dismissal

A mandatory dismissal occurs in the event that the conduct:

- (1) is alleged to have occurred before August 14, 2020;

- (2) does not meet the Title IX definition of Sexual Harassment;
- (3) did not occur in NYCPM's education program or activity; or
- (4) did not occur against a person in the United States.

If any of these three situations are present, then NYCPM must dismiss the complaint under Title IX. NYCPM will provide notice of dismissal to the Parties, including information on how to appeal the dismissal. At the same time, if applicable, the alleged conduct may be addressed under another NYCPM policy.

Discretionary Dismissal

A discretionary dismissal may occur in a few situations:

- (1) the Complainant wishes to withdraw or does not submit the formal complaint,
- (2) the Respondent is no longer enrolled at or employed by NYCPM, or
- (3) the specific circumstances prevent NYCPM from gathering sufficient evidence to investigate or make a determination toward the allegations; or
- (4) Does not follow the process or protocols established in this Title IX Grievance policy.

In these events, NYCPM may choose to dismiss the complaint. NYCPM will provide notice of the dismissal to the parties currently involved and information on how to appeal the dismissal.

4.8 FORMAL COMPLAINT

Filing a Formal Complaint

If the alleged misconduct meets the Title IX requirements, the Responsible Administrator cedes responsibility of the Title IX complaint process to the Title IX Coordinator.² The Title IX Coordinator will then advise the Potential Complainant on the process to proceed with a Formal Complaint.

For the purposes of this Title IX Grievance Policy, "Formal Complaint" means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within NYCPM's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, provided that the Process may be extended in situations that, include but are not limited to, the absence of a party, a party's Process Support Person, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of NYCPM, including as an employee. For complainants

² The Responsible Administrator role shall no longer be used once a determination of the appropriate process has been made. If the Title IX Coordinator was previously serving as the Responsible Administrator, the individual shall continue with the process.

who do not meet this criteria, the College will utilize existing policy in the Code of Conduct, Sexual Misconduct Policy or any other relevant policy.

If a Potential Complainant chooses not to file a Formal Complaint and the matter is determined to fall under Title IX, the Title IX Coordinator may, in their sole discretion, choose to file a Formal Complaint on the individual's behalf. The Title IX Coordinator must determine that failure to file the Formal Complaint would be clearly unreasonable and not in the best interests of the NYCPM community. NYCPM will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in this Title IX Grievance Policy or the Code of Conduct, Sexual Misconduct Policy or any other NYCPM policy prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Notice of Formal Complaint

If a Potential Complainant chooses to file a Formal Complaint in a Title IX matter, their status will be adjusted to Complainant. NYCPM will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate. The notice of the Formal Complaint will be sent promptly to all relevant parties, as soon as practicable, after the institution receives a Formal Complaint of the allegations if there are no extenuating circumstances, which includes:

- the identities of the parties involved in the alleged incident, if known;
- the alleged conduct constituting Sexual Harassment;
- the date and location of the alleged incident, if known;
- the prospective grievance process and next steps;
- a statement that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at conclusion of the grievance process;
- a statement informing both parties that they may choose a Process Support Person, who will be their advisor, who may be, but is not required to be an attorney;
- any measures taken by NYCPM that affects both parties;
- a notice informing parties of any provisions of other NYCPM policies that prohibit knowingly making false statements, or knowingly submitting false information; and
- a notice of NYCPM's retaliation policy.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

After notice of the Formal Complaint has been received by both parties, and NYCPM has provided sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview, the Title IX Coordinator, or their designee, will initiate the Title IX informal review process or investigation process.

4.9 *INFORMAL RESOLUTION PROCESS*

At any time after a Formal Complaint is filed, the Title IX Coordinator or their designee may, in their discretion, choose to offer and facilitate an Informal Resolution process, so long as both Parties give voluntary, informed, written consent to attempt Informal Resolution. NYCPCM may not require the Parties to participate in an Informal Resolution process or require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal Investigation and adjudication of Formal Complaints of Title IX Prohibited Conduct. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure.

Withdrawing from an Informal Resolution Process

At any time prior to agreeing to an Informal Resolution, any Party has the right to withdraw from the Informal Resolution process and resume the process with respect to the Formal Complaint.

Matters Not Eligible for Informal Resolution

- No Informal Resolution process will be offered before a Formal Complaint is filed.
- No Informal Resolution process will be offered to resolve Formal Complaints involving a student as Complainant and a staff or faculty member as Respondent.

4.10 INVESTIGATION

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Covered Sexual Harassment under Title IX after issuing the Notice of Allegations.

NYCPCM cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. NYCPCM will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Process

As a first step in the investigation process, a Title IX Investigator will be designated to conduct a prompt, thorough, and impartial investigation into the alleged conduct identified in the Formal Complaint.

The Title IX Investigator will, at a minimum, interview both the Complainant and the Respondent who will each have an equal opportunity to:

- speak about the complaint;
- to submit any inculpatory or exculpatory evidence or information; and
- to identify witnesses who may have information directly related to the alleged conduct.

The Title IX Investigator may also interview any relevant witnesses and interested parties, and re-interview the Complainant or Respondent, if appropriate.

Both parties may also have a Process Support Person of their choice present with them during any phase of the investigation.³ NYCPM may, at its discretion, establish restrictions on a Process Support Person’s participation. The restrictions must apply equally to both parties including, but not limited to, barring a Process Support Person’s participation during the interview process.

Relevant Evidence and Questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege (e.g., attorney-client privilege).
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

Investigation – Review of Information

Upon completion of the investigation, but prior to completing the investigative report, the Title IX Investigator will provide both the Complainant and Respondent evidence and information gathered directly related to the alleged misconduct in the Formal Complaint. The evidence and information will be provided in a manner equally accessible to both parties.

Both parties will then be given a ten (10) business day review period to examine the evidence and information. At the conclusion of the ten (10) business day review period, each party has the right to submit a written response to the Title IX Investigator commenting on the evidence and information that can be considered before completing the draft investigative report.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the relevant evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

³ NYCPM is not obligated to provide a Process Support Person to either party at the investigation stage of the Title IX process.

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

Investigation – Investigative Report

After both parties have had an opportunity to review directly related evidence and information, the Title IX Investigator will then draft an investigative report that compiles and fairly summarizes all of the relevant evidence.

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

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

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

Both the Complainant and Respondent will then be given a ten (10) business day review period to examine the draft of the investigative report. At the conclusion of the ten (10) business day review period, each party has the right to submit a written response to the Title IX Investigator to comment on the investigative report.

The Title IX Investigator will prepare the final investigative report for the adjudication phase of the grievance process.

Confidentiality/Destruction of Evidence, Information and Documents

Each Party is responsible to keep private (by not disseminating beyond Support Persons) documents, materials, and information received from NYCPM during this process. Failure to comply will be considered a violation of NYCPM policy and may incur separate sanctions. Additionally, The responsibility to destroy, when so directed by NYCPM, evidentiary materials and/or writings submitted by the other Party as party of the process.⁴

4.11 DECORUM AND PERMISSIVE CONDUCT OF PROCESS SUPPORT PERSON

Both the Complainant and Respondent have the right to choose a Process Support Person. The Process Support Person will be the advisor of choice for such Party.

⁴ A Party or Witness may not distribute materials obtained through the process and may not engage in Retaliatory or Intimidating conduct aimed at any other participants in the process. NYCPM will investigate allegations of a person engaging in any of these prohibited acts. NYCPM recognizes, however, that it cannot otherwise prevent individuals from speaking openly about their experience and the Title IX process.

NYCPM has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by a Process Support Person of choice to any meeting or hearing to which they are required or are eligible to attend.

While all parties involved in the Title IX grievance process may have a Process Support Person present (including at investigative interviews and scheduled live hearings) and, aside from questioning parties or witnesses during the live hearing, a Process Support Person may not actively participate at any other point in the process. Any Process Support Person who violates these expectations may not be permitted to participate further in the process. All questioning by the parties must be conducted through a Process Support Person.

NYCPM will not intentionally schedule meetings or hearings on dates where the Process Support Person of choice for all parties are not available, provided that the Process Support Person act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Only one Process Support Person will be allowed to accompany a Party to meetings with Investigators or at the Hearing (including meetings that occur using technology, such as Zoom).

Each Party may elect to identify an attorney to serve as a Process Support Person. An attorney acting in this role has no different role in the process and serves in the same capacity as a non-attorney.

If a Party arrives at the Hearing without a Process Support Person, NYCPM will designate a Process Support Person to conduct the oral cross-examination on behalf of the Party. The oral cross-examination questions will be provided to the Process Support Person by the Party they are designated to assist. NYCPM is not obligated to provide a Process Support Person to either party at the investigation stage of the Title IX process. Additionally, any Process Support Person provided by NYCPM is solely provided for the purpose of asking questions requested by the party during the cross-examination stage of the Hearing. A Process Support Person provided by NYCPM does not represent either party in any legal, strategic or other advisory capacity and, as such, are not responsible for any outcomes or consequences related to their involvement. Under no circumstances, is any attorney-client, fiduciary or other duty-bound relationship formed by the NYCPM's provision of a Process Support Person during the Hearing.

4.12 ADJUDICATION/HEARINGS

General Rules of Hearings

NYCPM will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at NYCPM's sole discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom or other appropriate video conferencing tools available at the time. This technology will enable participants simultaneously to see and

hear each other. At its discretion, NYCPM may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through either recording and/or transcript. The choice of medium is at NYCPM's sole discretion.

Prior to obtaining access to any evidence, the parties and their Process Support Person must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn. Failure to sign or adhere to this agreement may result in a negative inference against the party and the immediate withdrawal of that Process Support Person from the Title IX grievance process.

Notice of Hearing

Upon completion of the investigation, and after the investigative report is complete, the Complainant and Respondent will be notified in writing of:

- the date, time, and location of the live hearing;
- the applicable grievance process;
- that both Parties can have a Process Support Person of their choice;
- that they may inspect and review evidence obtained in the investigation;
- the allegations and conduct that potentially constitute Sexual Harassment;
- the identities of the Parties involved (if known); and
- the date and location of the alleged offense (if known).

Depending on the circumstances and, at the sole discretion of NYCPM, the hearing may be conducted in-person or virtually, but will always be conducted in real-time. Permission to postpone a hearing may be granted provided that the request to postpone is reasonable.

Prior to the scheduled hearing, a trained Decision-maker will be appointed to be the fact-finder of responsibility for the alleged conduct. The Title IX Investigator will provide the Decision-maker with the finalized investigative report for review prior to the hearing.

While the Complainant, Respondent and witnesses are expected to be present and fully participate in the hearing (including being subject to questioning by a Process Support Person), it is the right of any and all parties to choose not to participate in the hearing of the alleged conduct. In the event that any party chooses not to participate fully in the hearing process, their statements (including those made in the investigation stage) may not be considered in the Decision-maker's determination of responsibility.

If the hearing is held in-person (not virtually), by request of either the Complainant or Respondent, questioning by a Process Support Person can be conducted in separate rooms with technology available that enables the other party to see and hear the questioning in real-time. The entire hearing will be recorded, either by electronic means or transcription. The recording will be made available, upon request, for inspection and review to both Parties. This recording will be kept on file by NYCPM in accordance with applicable rules and regulations.

Continuances or Granting Extensions

NYCPM may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, NYCPM will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable

Before the Hearing

Prior to the Hearing, each party will be required to submit any questions, that have not already been addressed in the investigation, that they wish to ask at the oral-cross examination to the Title IX Coordinator no later than twenty-four (24) hours before the Hearing is scheduled to begin.

The Title IX Coordinator will provide the questions to the Decision-maker, who will determine the relevancy of each of the questions. If deemed relevant, the question is permissible to be asked during the hearing. If the Decision-maker determines that a question is not relevant, they will provide a brief reasoning for that decision and the question will not be permitted to be asked during the Hearing. Parties may appeal the relevance determinations at the beginning of the Hearing. The Decision-Maker will endeavor to provide their relevancy determinations at least one hour prior to the Hearing, but no later than the commencement of the Hearing.

Understanding Relevance:

For these adjudications, the basic test for relevance is whether the question posed is probative to the question of responsibility. This includes a Process Support Person asking questions that addresses the credibility of the party. However, there are some topics that are presumptively never relevant unless an exception applies or a party has waived a privilege. These topics include questions and evidence:

- about the Complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the Respondent committed the alleged conduct;
- that concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, unless offered to prove consent;
- that would traditionally be protected by a legally recognized privilege (e.g., attorney-client privilege), unless the party has waived the privilege;
- in reference to a party's psychological or medical records unless the party has given voluntary, written consent.

Participants in the Live Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
- NYCPM will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.

- If a party does not submit to cross-examination, the Decision-Maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.

The Decision-maker

- The hearing body will consist of a single Decision-Maker.
- The Decision-Maker will also not have served as the Title IX Coordinator, Title IX investigator, or Process Support Person to any party in the case, nor may the Decision-Maker serve on the appeals body in the case.
- The Decision-Maker will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Decision-Maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a Decision-Maker’s actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Process Support Person

- Both the Complainant and Respondent have the right to choose a Process Support Person. The Process Support Person will be the advisor of choice for such Party at the Hearing and may be, but does not have to be, an attorney. An attorney acting in this role has no different role in the process and serves in the same capacity as a non-attorney.
- The Process Support Person of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties themselves are not permitted to conduct cross-examination; it must be conducted by the Process Support Person. As a result, if a party does not select a Process Support Person, the institution will select a Process Support Person to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The Process Support Person is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Process Support Person is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party’s Process Support Person may appear and conduct cross-examination on their behalf.
- If neither a party nor their Process Support Person appear at the hearing, NYCPM will provide a Process Support Person to appear on behalf of the non-appearing party.

- Process Support Personnel shall be subject to NYCPM's Rules of Decorum, and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

Hearing Process

1. The hearing will begin with any appeals by the Parties to the Pre-Hearing relevancy determinations by the Decision-maker.
2. The Decision-maker will then open the hearing by establishing the rules and expectations. The Decision-maker will then read the charges.
3. The Title IX Investigator will then provide a statement summarizing the investigation findings as recorded in the investigative report.
4. Either party (Complainant or Respondent) that has provided a statement that is included in the investigative report may subsequently request to provide a brief statement of additional clarification of no more than five (5) minutes in duration.
5. Upon conclusion of any clarification statement, the Decision-Maker will ask questions of the Parties and Witnesses.
6. Parties will be given the opportunity for live cross-examination after the Decision-Maker conducts its initial round of questioning; During the Parties' cross-examination, Decision-Maker will have the authority to pause cross-examination at any time for the purposes of asking their own follow up questions; and at any time necessary in order to enforce the established rules of decorum. The Complainant, then followed by the Respondent, may have their Process Support Person ask any approved, relevant questions that have not already been addressed in the investigation or hearing. Should a Party or the Party's Process Support Person choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-Maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-Maker to use statements made by the Party.
7. Each Party will have an opportunity to submit additional questions for review by the Decision-Maker after the initial Oral Cross-Examination has concluded. Should such questions be approved, the Complainant, followed by the Respondent, may have their Process Support Person ask any additional approved, relevant questions. There will only be one round of additional questions allowed.
8. There shall be no Oral Direct Examination at any point in the hearing process. The only time it is may be allowed is if a Party identifies, and provides sufficient justification for,

an “Expert Witness” prior to the Hearing. If an “Expert Witness” is identified by one party, the other party will have an opportunity to Cross-Examine that “Expert Witness”, if they so choose.

9. Upon completion of questioning, any Party must raise any procedural, substantive, bias, conflict or other perceived irregularity to the Decision-Maker’s attention for review and consideration. Failure to do so will forever waive such complaint.

10. Thereafter the Decision-maker will conclude the hearing.

Live Cross-Examination Procedure

Each party’s Process Support Person will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the Process Support Person will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Cross-examination questions that are duplicative of those already asked, including by the Decision-Maker, may be deemed irrelevant if they have been asked and answered.

Newly-discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-Maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-Maker answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing, or at the Decision-Maker’s sole discretion an adjournment, to review the evidence or prepare for questioning of the witness.

4.13 DETERMINATION OF RESPONSIBILITY

Standard of Proof

NYCPM uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-Makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

It is well within the Decision-Maker's purview to make credibility determinations and the Decision-Maker will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that NYCPM allow parties to call "expert witnesses" for direct and cross examination. NYCPM does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that NYCPM allows parties to call character witnesses to testify. NYCPM does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision-Maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that NYCPM admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision-Maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-Maker may draw an adverse inference as to that party or witness' credibility.

Components of the Determination of Responsibility

Upon reviewing the investigative report and considering the statements and questions made by the Parties at the Hearing, within a reasonable time thereafter, the Decision-maker will make a determination of responsibility under the Preponderance of the Evidence standard. The Decision-maker will provide a written determination of whether the respondent is found to be responsible or not responsible. This written determination will be provided to both the Complainant and the Respondent simultaneously. The Decision-Maker's written determination will also include the following information:

- identification of the allegations potentially constituting Sexual Harassment;
- a description of the procedural steps taken from receipt of the formal complaint through the making of the determination;
- the findings of fact used to make the determination;
- conclusions regarding the application of NYCPM's Code of Conduct to the facts;
- a statement, and rationale for, the result of each allegation, including a determination regarding responsibility, any disciplinary sanctions, recommendation of or referral for disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to NYCPM's education program or activity will be provided to the Complainant; and
- information on the procedures and permissible bases for parties to appeal the determination.

While both the Complainant and Respondent will be made aware of the determination of responsibility and the specifics of sanctions imposed on the Respondent (if any), any remedies provided to the Complainant will only be specified in the event that the remedy implicates and affects *both* parties. Further, the Title IX Coordinator has the responsibility to ensure the effective implementation of any remedies set forth in the written determination.

The decision is considered served and delivered on the date it is transmitted electronically to the Complainant and Respondent at their NYCPM provided email address. The time to appeal shall run from and including the date of such transmission.

4.14 APPEALS

The Complainant and Respondent will both be provided with at least one level of appeal. The Complainant and Respondent are eligible to file an appeal to the final determination based on:

- a procedural irregularity that affected the outcome of the matter;
- new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- the Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter; or
- the sanction imposed is disproportionate to the violation.

The Complainant and Respondent may also appeal the mandatory or discretionary dismissal of a complaint based on the first three points listed above.

The request for an appeal must include the grounds for which the request is based and be submitted in writing to the Title IX Coordinator within seven (7) business days following the

date of the written determination. The appeal should also state the remedy sought by the appealing party. Upon receipt of the appeal, the other party will receive notification of the appeal and be provided opportunity to respond in writing. Written responses to the other party's appeal must be submitted within three (3) business days following the delivery of notice of the appeal.

In order to ensure a neutral and unbiased review, a party's request for appeal will be sent to an Appeals Panel comprised of individuals with no connection to the initial determination, which serves as a separate Decision-maker. An appeal decision will be rendered within twenty (20) business days after the receipt of the formal appeal request. The appeal decision will be provided in writing to both parties.

Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" above, or if an appeal is not filed, the date on which the opportunity to appeal expires.

5.0 RETALIATION

NYCPM will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

6.0 PRIVACY AND CONFIDENTIALITY

References made to *confidentiality* refer to the ability of identified confidential resources (e.g. priests/clergy) to not report crimes and violations to law enforcement or college officials without

permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *confidentiality* or *privacy* mean NYCPM offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. NYCPM will endeavor to limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for *confidentiality* or *privacy* cannot be honored.

Please note that NYCPM does not have any personnel that can be deemed or considered “Confidential Reporters” and, as such, all information provided to NYCPM may be disclosed to the Title IX Coordinator or other relevant administrator with Authority.

7.0 DISABILITY ACCOMMODATIONS

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

8.0 NON-DISCRIMINATION IN APPLICATION

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about NYCPM’s policy or process may contact the Department of Education’s Office for Civil Rights using contact information available at <https://ocras.ed.gov/contact-ocr>.

9.0 SPECIFIC INCORPORATIONS

NYCPM’s Title IX Policy sits within the larger NYCPM Sexual Misconduct Policy. As such, this embedded policy specifically incorporates certain sections that impact the Title IX process. Those specific sections are:

- Section 4 - Definitions
- Section 6 – Sanctions for Violations
- Section 9 - Assistance for Victims: Rights & Options
- Section 10 – Victim Assistance
- Section 11 – External Reporting
- Section 14 – Resources for Sexual Harassment Victims

In the case of any inconsistency between this Title IX policy and the Sexual Misconduct policy, the language found in the policy related to the identified (Title IX or Sexual Misconduct) conduct shall control.

11.0 TRAINING

Section 106.45(b) of the 2020 Final Title IX Rules require the sharing of “All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.” Accordingly, the following links to trainings are provided below.

Thompson Coburn – Title IX Training Series

Module 1 –Fundamentals of the Law:

<http://content.thompsoncoburn.com/video/Module-1-Fundamentals-of-the-Law.mp4>

Module 2 – Formal Complaints:

<http://content.thompsoncoburn.com/video/Module-2-Formal-Complaints.mp4>

Module 3 –Investigations & Informal Resolutions:

<http://content.thompsoncoburn.com/video/Module-3-Investigations-and-Informal-Resolutions.mp4>

Module 4 – Hearings:

<http://content.thompsoncoburn.com/video/Module-4-Hearings.mp4>

Module 5 - Determinations:

<http://content.thompsoncoburn.com/video/Module-5-Determinations.mp4>

10.0 IMPLEMENTATION

This policy shall be implemented by the Office of the Title IX Coordinator.

NEW YORK COLLEGE OF PODIATRIC MEDICINE

TITLE IX AND SEXUAL MISCONDUCT COMPLAINT FORM

In order to address concerns of sexual harassment or sexual misconduct concerning NYCPM's purview under the institution's Title IX and Sexual Misconduct Policy, complainants must complete this form and provide necessary information where known. Upon review of the information, the Office of Institutional Compliance will determine what response, if any, can be performed and the appropriate path toward addressing the information provided in the complaint.

Should it be determined that the information contained herein falls under the criteria for the Title IX grievance process, this form will be used as a Formal Complaint as defined by the Title IX regulations and NYCPM policy. A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the educational institution investigate the allegation of Sexual Harassment.

This form may be submitted via email, online or in-person to the Office of Institutional Compliance. Upon receipt, a representative from the Office of Institutional Compliance will contact and schedule an in-take interview with the complainant. In addition, a complainant may complete this form in-person, if desired. Once this form has been completed and signed by the complainant, and then signed by a designated representative of the Office of Institutional Compliance, it becomes a formal complaint recognized by NYCPM.

The information provided on this form will be kept confidential to the extent necessary and possible under applicable institutional and federal regulations. Further, NYCPM implements a strict retaliation policy that prohibits retaliation of any kind against those coming forward with a complaint of alleged sexual harassment or sexual misconduct. For additional and detailed information on NYCPM's policies on confidentiality and retaliation, please see the Title IX and Sexual Misconduct Policy that is available on the NYCPM'S website.

Once completed, please submit to:

Name of the Person Filing a Complaint (Complainant):

School ID Number: _____

Affiliation with NYCPM*:

Student Faculty Staff Contractor Other: _____

Year at NYCPM:

Email:

Phone:

Address:

Date of Occurrence/Incident*:

For the Internal Use of the Office of Institutional Compliance Only

Does the alleged misconduct meet the definition of Sexual Harassment as provided under Title IX?

YES / NO

Did the alleged misconduct occur in the United States?

YES / NO

Did the alleged misconduct occur within an employment or education program where NYCPM exhibits substantial control?

YES / NO

List any supportive measures provided to the Complainant during the initial assessment. If no supportive measures were provided, note such and provide reasoning:

If the alleged misconduct is not within the scope of Title IX, will the alleged misconduct be addressed under another policy administered by NYCPM? If yes, provide which policy. If no, provide reasoning for not addressing.

Internal File Number: _____

Office of Institutional Compliance Representative:

Name:

Date