REPORTING INVESTIGATING, AND RESOLVING SEXUAL MISCONDUCT, RELATIONSHIP VIOLENCE, AND STALKING - COMPLAINTS AGAINST EMPLOYEES

INTRODUCTION

In an effort to maintain a safe learning, living, and working environment, NYU prohibits Sexual Misconduct, Relationship Violence, Stalking, and Retaliation (“Prohibited Conduct”), as set forth in the Sexual Misconduct, Relationship Violence, and Stalking Policy (the “Policy”). This document sets forth NYU’s procedures for reporting, investigating, and resolving violations of the Policy where an incident involving an Employee as a Respondent has been or will be reported to NYU (“Procedures”). These Procedures should be read in the context of the Policy and capitalized terms used in these Procedures are defined in the Policy.

Covered Persons who wish to make a report of Prohibited Conduct against an Employee are encouraged to contact the NYU Title IX Coordinator, the NYU Office of Equal Opportunity, the NYU Department of Public Safety, the NYU Office of Community Standards, or the other reporting options discussed in the Guides for Students and Employees cited below. At the same time, NYU seeks to be sensitive to those Complainants who seek access to Confidential Resources, but may not wish to report Prohibited Conduct.

The following resources can assist Complainants in identifying Confidential Resources and University reporting options:

- Students may refer to the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Students;
- Employees may refer to the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Employees; and
- Third Parties may contact NYU’s Title IX Coordinator.

These Procedures apply when a report has been made to one of the NYU offices above or to a Responsible Employee at NYU.

I. INITIAL RESPONSE AND TITLE IX ASSESSMENT:

When a Complainant or Covered Person reports an incident of Prohibited Conduct, NYU will take immediate and appropriate steps to investigate or otherwise determine what happened and work to resolve the matter promptly and equitably.

A. Assessment: Upon receipt of a report, the Title IX Coordinator will conduct an initial assessment. As part of the initial assessment, the Title IX Coordinator will:

1. Assess the nature and circumstances of the report.
2. Address immediate physical safety and emotional well-being needs.
3. Discuss the Complainant’s expressed preference for the manner of resolution and any barriers to proceeding.
4. Notify the Complainant of the right to contact law enforcement in order to file criminal charges, decline to contact law enforcement, or seek an order of protection.
5. Notify the Complainant of the right to seek medical treatment, including the importance of preserving evidence.

6. Assess for pattern evidence or other similar conduct by Respondent.

7. Assess the reported conduct for any Clery Act obligations, including entry in the crime log or issuance of a timely warning.

8. Provide the Complainant with written information about on-campus and off-campus resources and the range of appropriate and available protective measures based on the status of the Complainant.

9. Explain NYU’s policy prohibiting Retaliation.

B. Requests to Maintain Privacy or Not Seek Disciplinary Action: If a Complainant who has reported an incident of Prohibited Conduct requests that his/her name or other identifying information not be shared with a Respondent, that no investigation into a particular incident be conducted, and/or that no disciplinary action be taken against the Respondent, NYU will balance this request against NYU’s commitment to a safe learning, living, and working environment for all community members, including for the Complainant. The request may occur at any point after the report is made.

The request will be evaluated by the Title IX Coordinator in consultation with senior NYU administrators. When considering whether to honor a Complainant’s request for privacy or that no Investigation or disciplinary action be pursued, NYU will consider a range of factors, including:

- the risk that the Respondent may commit additional acts of Prohibited Conduct or other violence, taking into consideration, among other matters, any known history of arrests, violence, or other complaints of Prohibited Conduct involving the Respondent, any threats of future violence made by the Respondent, and whether multiple Respondents were involved in the reported incident;
- whether the act of Prohibited Conduct was perpetrated with a weapon, was otherwise unusually violent, or whether other aggravating circumstances exist;
- whether the report reveals a pattern of Prohibited Conduct;
- whether the Complainant is or at the time was a minor; and
- whether NYU is able as a practical matter to pursue the investigation without the participation of the Complainant (e.g., whether there is other relevant evidence of the Prohibited Conduct such as security cameras, other witnesses, or physical evidence).

Where possible based on the facts and circumstances, NYU will seek action consistent with the Complainant’s request to maintain his/her privacy and/or not conduct further Investigation. However, NYU will be limited in its ability to respond to the matter in other than potentially general ways such as providing targeted training or prevention programs or offering reasonably available protective measures or accommodations to the Complainant. Where NYU agrees to the Complainant’s request to maintain his/her privacy and/or not conduct further investigation, the matter will be considered resolved with NYU taking, as appropriate, such general steps and such protective measures or accommodations. NYU recognizes that a Complainant may initially be hesitant to move forward, but later seek an Investigation. Where a report was closed because NYU agreed to the Complainant’s request to maintain his/her privacy and/or not conduct further
Investigation, the matter may later be reopened at the discretion of the Title IX Coordinator.

Where the balance of factors requires that further investigation be conducted, that disciplinary action be taken, or that the identity of the Complainant be disclosed, NYU will inform the Complainant of its intent to investigate prior to commencing the investigation and/or of its intent to disclose the identity of the Complainant. In such cases, NYU will make reasonable efforts to protect the privacy of the Complainant consistent with the needs of the investigation and resolution of the matter; however, an investigation normally involves speaking with the Respondent and others who may have relevant information about the incident and disclosing the identity of the Complainant as necessary in those conversations.

A Complainant may receive support and safety services regardless of their level of participation or engagement with these Procedures.

C. Determination after Assessment: After the initial assessment, the Title IX Coordinator will determine whether the circumstances warrant proceeding to an Investigation. The Title IX Coordinator may consult with senior NYU administrators during the assessment. The determination as to how to proceed will be communicated to the Complainant in writing. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when NYU takes action that would impact a Respondent, such as protective measures that restrict the Respondent’s movement on campus, the initiation of an Investigation, or the decision to seek to involve the Respondent in informal resolution.

Following this assessment, during an Investigation, or at any point in the Disciplinary Process, NYU may seek an Alternate Resolution that, as appropriate, endeavors to prevent future Prohibited Conduct and address its effects without conducting or concluding, as applicable, a formal Disciplinary Process against a Respondent. Alternatively, if appropriate, NYU may pursue an Investigation and Disciplinary Process.

II. ALTERNATE RESOLUTION:

NYU may seek a form of Alternate Resolution (which for purposes of these Procedures may include the possibility of Mediation) in place of an Investigation or Disciplinary Process. Alternate Resolution is not appropriate for all cases of Prohibited Conduct, and NYU retains the discretion to determine which cases may be appropriate for Alternate Resolution and the type of Alternate Resolution process that may be appropriate in a specific case. Mediation, even where voluntary, may not be used in cases involving Sexual Assault.

Participation in Alternate Resolution (including the specific form of Alternate Resolution, such as Mediation) is voluntary. NYU will not compel a Complainant or Respondent to engage in Alternate Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from Alternate Resolution at any time. NYU also reserves the right in its discretion to terminate an Alternate Resolution process at any time. In addition, the Complainant, Respondent, and NYU must each agree before a case will be resolved through Alternate Resolution.

Alternate Resolution may involve individual and/or community remedies that are designed to address a report of Prohibited Conduct. Interventions can include, among others: remedies designed to maximize the Complainant’s access to educational, extracurricular, and/or employment activities; providing increased monitoring, supervision, and/or security at locations or activities where the
misconduct occurred or is likely to reoccur; facilitating a voluntary meeting with the Complainant and the Respondent (in cases that do not involve Sexual Assault); conducting targeted or broad-based educational programming or training for relevant individuals or groups; requiring counseling; providing housing accommodations for Student Complainants; making academic accommodations for Student Complainants or providing workplace accommodations for Employee Complainants; or imposing sanctions against Employee Respondents, including verbal or written Warnings, Suspension, No Contact Directive, Termination from NYU employment; and/or any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy.

If an agreement acceptable to each of NYU, the Complainant, and the Respondent is reached through Alternate Resolution, the matter is considered to be resolved and the terms are implemented. If an agreement is not reached, the matter will be referred for an Investigation or Hearing if appropriate.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternate Resolution, which typically will be completed within thirty days of the initial report.

III. INVESTIGATION

Upon a determination by the Title IX Coordinator that a matter is to be investigated, the Investigation will proceed as follows:

A. As a first step, the Title IX Coordinator will designate an investigator(s) from the Office of Equal Opportunity or an external agency (“Investigator”) to conduct a prompt, thorough, and impartial Investigation of the report in the manner the Investigator deems appropriate.

B. During the Investigation, the Complainant and Respondent will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. The Investigator will notify and seek to meet with all involved parties separately (e.g., the Complainant, the Respondent, and identified witnesses) and also will gather other evidence and information relevant to the determination as to whether or not a Policy violation has occurred. Witnesses cannot participate solely to speak about an individual’s character; they must have information deemed relevant to the Investigation by the Investigator.

C. Where there is evidence of a pattern of similar conduct by the Respondent or of violent acts or other related conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a Policy violation, this information may be deemed relevant to the determination of a Policy violation and/or in assigning a sanction. The determination of relevance will be based on an assessment of whether the previous or subsequent incident was substantially similar to the conduct cited in the report, indicates a pattern of behavior and substantial conformity with that pattern, or is otherwise associated with the conduct cited in the report. Prior or subsequent conduct of the Respondent also may be admissible to prove intent, motive, or absence of mistake.

D. In general, a Complainant’s prior sexual history is not relevant and will not be considered as evidence during an Investigation. However, where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will be permitted only under limited circumstances, such as to prove intent, motive, absence of mistake,
or to explain an injury or physical finding; or where prior acts of Prohibited Conduct are relevant.

E. The Investigator has the discretion to determine the relevance of any proffered evidence and may determine that certain types of evidence should be included or excluded in the determination of responsibility.

F. Throughout the process, each of the Complainant and Respondent has the right to be accompanied by an advisor of his/her choice. The advisor may be present at any meeting related to resolution of a report under the Policy, and may be anyone of the individual’s choosing who is not otherwise a party or witness involved in the Investigation. While the advisor may be present, the advisor may not speak or otherwise participate in the meetings and must comport him/herself in a manner that is not disruptive to the meetings.

G. At the conclusion of the Investigation, the Investigator will prepare a draft Investigation report, without findings, that summarizes the information gathered and outlines the contested and uncontested information. Both the Complainant and the Respondent will be given the opportunity to review the draft Investigation report, submit any additional comment or information to the Investigator, and identify any additional information or witnesses. The Investigator will designate a reasonable time for review and response.

H. Upon receipt of any additional comments or information, the Investigator will issue a determination as to whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the Policy. In reaching this determination, the Investigator may consult with senior NYU administrators.

I. If the Investigator determines that there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the Policy, the report will be submitted as follows:

- In the case of a Faculty member Respondent, to the Dean of the Faculty member’s School and to the designated official in the Provost’s Office responsible for receipt of such reports. The Dean and the designated official in the Provost’s Office will jointly determine appropriate sanctions. The Dean and the designated official in the Provost’s Office may consult with senior NYU administrators.

- In the case of other Employees, to the designated administrator in the Department of Human Resources, who will determine appropriate sanctions in consultation with the relevant School or administrative unit. The designated administrator in the Department of Human Resources may consult with senior NYU administrators.

If the Investigator determines that there is not sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the Policy, the matter is considered to be resolved.

J. The Investigation typically will be completed within forty-five days from the date of the initiation of the Investigation. This timeframe may be extended for Alternate Resolution and also may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for NYU breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or
for other legitimate reasons. Any extension of the timeframes, other than for Alternate Resolution, and the reason for the extension, will be shared with the parties in writing.

K. At the request of law enforcement, NYU may agree to defer its Title IX Investigation until after the initial stages of a criminal investigation. NYU will nevertheless communicate with the Complainant regarding the availability of protective measures and accommodations and available courses of action under the Policy and these Procedures. NYU will promptly resume its Title IX Investigation as soon as it is notified by law enforcement that there is no longer a need to delay.

L. The Investigator may consult with senior NYU administrators during the Investigation.

IV. THE INVESTIGATORY FILE

Every complaint will trigger the creation of an investigatory file. The investigatory file will consist of the initial complaint, the final investigative report, including a record of the remedial action to be taken, if any, and any documents created or used during the investigation.

For the duration of the investigation, the OEO will maintain the investigatory file. The OEO will record and maintain complaints in a database management file consistent with the NYU fiscal year (September 1st – August 31st). The OEO will maintain records of all complaints for a period of seven years after the conclusion of an investigation.

V. POST-ADJUDICATION PROCESS

Nothing in these Procedures abrogates post-adjudication rights that (1) a union Employee may have under an NYU collective bargaining agreement or (2) a Tenured or Tenured Track Faculty member may have under the NYU Faculty Handbook.

VI. FALSE REPORTS

Submitting a false report or providing false or misleading information in bad faith or with a view to personal gain in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanction. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not substantiated.