

**NEW YORK UNIVERSITY
UNIVERSITY POLICIES**

Title: Sexual Misconduct, Relationship Violence, and Stalking Policy

Effective Date: September 30, 2014

Supersedes: Policy on Sexual Assault, Harassment, and Other Forms of Sexual Misconduct dated August 15, 2013

Issuing Authority: Diane Yu, Deputy President
Marc Wais, Senior Vice President for Student Affairs

Responsible Officers: Thomas Grace, Director of Community Standards and Compliance
Mary Signor, Title IX Coordinator

I. STATEMENT OF POLICY

New York University, including its Schools and other units, Global Network University sites, and all University Affiliates (together, “NYU”) seeks to maintain a safe learning, living, and working environment. To that end, this policy prohibits Sexual Misconduct, which includes Sexual or Gender-Based Harassment, Sexual Assault, and Sexual Exploitation. This policy also prohibits Relationship Violence, Stalking, and Retaliation against an individual for making a good faith report of conduct prohibited under this policy. These prohibited forms of conduct are unlawful, undermine the character and purpose of NYU, and will not be tolerated.

NYU adopts this policy with a commitment to: (1) preventing Sexual Misconduct, Relationship Violence, Stalking, and Retaliation (together, “Prohibited Conduct”); (2) fostering a community in which such conduct is not tolerated; (3) cultivating a climate where all individuals are well-informed and comfortable in reporting Prohibited Conduct; and (4) identifying the standards by which violations of this policy will be evaluated. This policy defines Prohibited Conduct; outlines available resources and reporting options available to students and employees; and references the applicable investigative and disciplinary procedures. NYU will take prompt and equitable action to eliminate Prohibited Conduct, prevent its recurrence, and address its effects. NYU also conducts prevention, awareness, and training programs for students and employees to facilitate the goals of this policy.

NYU does not discriminate on the basis of sex or gender in its education or employment programs and activities.

This policy is designed to comply with applicable legal requirements including Title IX of the Education Amendments of 1972; relevant provisions of the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”); and, in New York with the New York State and City human rights laws.

This policy applies to all Prohibited Conduct occurring on or after the effective date of this policy. In the case of Prohibited Conduct occurring before the effective date of this policy where either (a) the report of such Prohibited Conduct is made on or after the effective date of this policy or (b) the report was made before the effective date of this policy but the report has not resolved as of the effective date of the policy, the issue of whether there was a violation of NYU policy will be determined under the policy or policies in effect at the time the conduct occurred but the procedures under this policy will apply (except that the procedures in effect immediately prior to the effective date will apply where a hearing had been scheduled prior to the effective date).

II. TO WHOM THE POLICY APPLIES

This policy applies to NYU students (“Students”); NYU employees, including faculty and visiting faculty, professional staff, and administrators (“Employees”); contractors, vendors, or other third parties within NYU’s control (“Third Parties”); and visitors or guests of NYU (together, “Covered Persons”). This policy pertains to acts of Prohibited Conduct committed by Students, Employees and Third Parties when:

- (1) the conduct occurs on NYU premises;
- (2) the conduct occurs in the context of an NYU employment or education program or activity, including, but not limited to NYU-sponsored study abroad, research, or internship programs; or
- (3) the conduct occurs outside the context of an NYU employment or education program or activity, but (i) has continuing adverse effects on NYU premises or in any NYU employment or education program or activity or (ii) occurs in close proximity to NYU premises and is connected to volatile conduct on NYU premises.

Other forms of discrimination, including discrimination based on race, religion, and disability, as well as any other form of sex-based discrimination not covered by this policy, are addressed by: (1) the Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Employees, (2) the Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Students, and (3) the Compliance Complaint Policy. This policy supersedes any conflicting information contained in those policies with respect to the definitions or procedures relating to Prohibited Conduct. A Covered Person who has a question about which policy applies in a specific instance can contact NYU’s Title IX Coordinator (212-998-2352).

III. APPLICABLE PROCEDURES UNDER THIS POLICY

The specific investigative and disciplinary procedures for Prohibited Conduct under this policy are based on the status of the Respondent. Each set of procedures is guided by the principles of fairness and respect for a Complainant and a Respondent. Where a Respondent is both a Student and an Employee, (a) the Student-Respondent procedures will apply if the Respondent is a full-time Student but not a full-time Employee, (b) the Employee-Respondent Procedures will apply if the Respondent is a full-time Employee but not a full-time Student, or (c) NYU’s Title IX Coordinator will determine which of the procedures applies based on the facts and circumstances (such as which role predominates and the role most applicable in the incident). However, irrespective of which of the Student-Respondent or Employee-Respondent procedures applies in such cases, either of the sanctions applicable to Students or Employees can be imposed. Please note that the NYU Langone Medical Center has its own procedures and the procedures below do not apply to NYULMC.

NYU applies the preponderance of the evidence standard when determining whether this policy has been violated.

Procedures for Reports of Prohibited Conduct Committed by Students	Procedures for Reports of Prohibited Conduct Committed by Employees	Procedures for Reports of Prohibited Conduct Committed by Third Parties
See Appendix A to this policy, Reporting, Investigating, And Resolving Sexual Misconduct, Relationship Violence, and Stalking - Complaints Against Students	See Reporting, Investigating, And Resolving Sexual Misconduct, Relationship Violence, and Stalking - Complaints Against Employees	Contact NYU’s Title IX Coordinator who will identify the appropriate procedures that apply based on the role of the Third Party and the nature of any contractual relationship with

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IV. ENFORCEMENT

A Student or Employee determined by NYU to have committed an act of Prohibited Conduct in violation of this policy is subject to disciplinary action, up to and including separation from NYU. Third Parties who violate this policy may have their relationship with NYU terminated and/or their privilege of being on NYU premises withdrawn. NYU reserves the right to take action against a Covered Person who commits an act of Prohibited Conduct outside the scope of this policy.

V. TITLE IX COORDINATOR

The Executive Director of the Office of Equal Opportunity serves as NYU’s Title IX Coordinator. The Title IX Coordinator is charged with monitoring compliance with Title IX; providing education, training, and notifications; overseeing complaints; and coordinating NYU’s investigation, response, and resolution of all reports under this policy. The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures.

Concerns about NYU’s application of Title IX, the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Clery Act; and, in New York, the New York State and City human rights laws under this policy may be addressed to NYU’s Title IX Coordinator, the NYU Office of Equal Opportunity, the United States Department of Education, Clery Act Compliance Division, or the United States Department of Education, Office for Civil Rights, at OCR@ed.gov or (800) 421-3481.

VI. RESOURCES AND REPORTING OPTIONS

NYU offers resources for both Students and Employees, whether as Complainants or Respondents, to provide support and guidance throughout the investigation and resolution of a report of Prohibited Conduct. For comprehensive information on emergency assistance; hospitals; on-campus, community, Portal Campus and Study Away Site Confidential Resources; and available support with academics, housing, and work:

- Students should refer to the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Students.
- Employees should refer to the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Employees.
- Third Parties should contact the Title IX Coordinator to discuss available campus resources and reasonably available assistance.

A. PROTECTIVE MEASURES AND ACCOMMODATIONS:

Upon receipt of a report involving a Student or Employee Complainant, NYU will take and/or make available reasonable and appropriate measures to protect the Complainant and the Complainant’s access to NYU employment or education programs and activities, which may include protective measures before the final outcome of an investigation. Such protective measures and accommodations, which may be temporary or permanent, may include separation orders, residence modifications, academic accommodations, work schedule modifications, and other reasonable and appropriate measures. Reasonable and appropriate protective measures are available for Student and Employee Complainants regardless of whether an investigation under the applicable procedures is pursued. NYU also will take and/or make available such measures and accommodations for Student

and Employee Respondents where reasonable and appropriate under the circumstances. NYU will maintain the privacy of any accommodations or protective measures provided under this policy to the extent practicable.

For Third Party Complainants, NYU will provide reasonable protective measures as appropriate and available, based on consideration of the role of the Third Party and the nature of any contractual relationship with NYU.

B. PRIVACY AND CONFIDENTIALITY:

NYU is committed to protecting the privacy of Covered Persons involved in a report under this policy. NYU also is committed to providing assistance to help Covered Persons make informed choices. With any report under this policy, NYU will make reasonable efforts to protect the privacy interests of Covered Persons involved in a manner consistent with the need for a careful assessment of the allegation and reasonable steps available to eliminate the reported conduct, prevent its recurrence, and address its effects.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy generally means that information related to a report of misconduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, resolution of the report, and related issues. All NYU employees who are involved in NYU’s Title IX response receive specific training and guidance about safeguarding private information in accordance with applicable laws.

The privacy of Student education records will be protected in accordance with NYU’s Guidelines for Compliance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual’s medical and related records generally are protected in the United States by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. Access to personnel records in New York is restricted in accordance with NYU’s Policy on Employee Files. Laws in other relevant jurisdictions may provide privacy protections.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual, or as otherwise permitted by law. Those campus and community professionals include medical providers, mental health providers, counselors in the Center for Sexual Misconduct Support Services, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by New York State law. These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18, or (iv) as otherwise required or permitted by law or court order. Laws in other relevant jurisdictions may provide confidentiality protections.

Employee Responsibility to Report Allegations: It is important to understand the different responsibilities of NYU Employees who respond to disclosures of incidents of Prohibited Conduct. There are three general classifications of individuals on campus with whom a Covered Person can discuss an incident of Prohibited Conduct:

- (1) Confidential Resources (individuals with legally-protected confidentiality);
- (2) Reporting Options (designated offices or individuals where a report can be made); and

- (3) Employees designated as Responsible Employees (those Employees in a leadership or supervisory position, or who have significant responsibility for the welfare of Students or Employees).

The respective ability of these categories of individuals to maintain a Complainant’s confidentiality differs. Confidential Resources can maintain the confidentiality of a Complainant’s disclosures, subject to the exceptions discussed above. While private, Reporting Options and Responsible Employees are required to immediately share all known details of incidents of Prohibited Conduct with the Title IX Coordinator.

Clery Act Reporting: Pursuant to the Clery Act, NYU includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education, but does so in a manner that does not include any identifying information about persons involved in an incident.

C. CONFIDENTIAL RESOURCES:

Confidential Resources for Students include the Wellness Exchange (212-443-9999) and the Center for Sexual Misconduct Support Services (212-443-9999). For a complete list of NYU and community-based Confidential Resources for Students, see the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Students.

Confidential Resources for Employees include the Employee Assistance Program (800-437-0911). For a complete list of NYU and community-based Confidential Resources for Employees, see the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Employees.

D. REPORTING:

NYU strongly encourages Covered Persons who become aware of an incident of Prohibited Conduct to report the incident to local law enforcement by contacting 911 (or equivalent in other jurisdictions) and to NYU by contacting one of the following NYU Reporting Options:

Title IX Coordinator 212-998-2352	Office of Community Standards 212-998-4403
The Office of Equal Opportunity 212-998-2370	Residential Life and Housing 212-998-4600
NYU Department of Public Safety 212-998-2222	Human Resources Officer of the School or Administrative Department

There is no time limit on reporting violations of this policy, although NYU’s ability to respond may be limited as evidence may be less available and memories may fade, and Respondents may no longer be affiliated with NYU. NYU prioritizes prompt reporting and generally will offer amnesty to a reporting Student for the personal ingestion of alcohol or other drugs in violation of NYU Student Conduct Policies.

Bad faith 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 determined not to be accurate.

VII. PROHIBITED CONDUCT UNDER THIS POLICY

Conduct under this policy is prohibited regardless of the sexual orientation, gender, gender identity, or gender expression of the Complainant or Respondent. Prohibited Sexual Misconduct includes the following specifically defined forms of behavior: Sexual or Gender-Based Harassment, Sexual Assault, and Sexual Exploitation. Also prohibited are Relationship Violence, Stalking, and Retaliation.

Whether a Covered Person has violated this policy is determined based on all of the available facts and circumstances including but not limited to: statements of the Complainant and Respondent; statements by any witnesses to the alleged incident(s); documentary or physical evidence; the presence or absence of corroborating information; and relevant information about pre-and post-incident behavior and/or actions.

A. Sexual or Gender-Based Harassment: Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when one or more of the following conditions are present:

- (i) Submission to or rejection of such conduct is either an explicit or implicit term or condition of an individual's employment or advancement in employment, evaluation of academic work or advancement in an academic program, or basis for participation in any aspect of a NYU program or activity (quid pro quo);
- (ii) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual (quid pro quo); or
- (iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's learning, working, or living environment; in other words, it is sufficiently severe, pervasive, or persistent as to create an intimidating, hostile or offensive learning, working, or living environment under both an objective - a reasonable person's view - and subjective - the Complainant's view - standard (hostile environment).

Gender-Based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature.

Examples of conduct that may constitute Sexual or Gender-Based Harassment include but are not limited to:

- Sexual Assault, Sexual Exploitation, Relationship Violence, or Stalking as defined by this policy;
- Physical conduct, including unwelcome touching or sexual advances within the working, living, or learning environment;
- Verbal conduct, including lewd or sexually suggestive comments, jokes, or innuendoes or

unwelcome comments about an individual's sexual orientation or gender identity; or

- Written conduct, including letters, notes, or electronic communications containing comments, words, jokes, or images that are lewd or sexually suggestive or relate in an unwelcome manner to an individual's sexual orientation or gender identity.

B. Sexual Assault: Sexual assault is having or attempting to have sexual contact with another individual by force or threat of force, without consent, or where that individual is incapacitated.

Sexual contact includes but is not limited to:

- Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, however slight; or
- Sexual touching (fondling) or intentional contact with the breasts, buttocks, groin, or genitals.

C. Sexual Exploitation: Sexual Exploitation refers to specific forms of Sexual Misconduct that involve non-consensual use of another individual's nudity or sexuality, excluding behavior that constitutes one of the other Sexual Misconduct offenses.

Examples of Sexual Exploitation include but are not limited to:

- Voyeurism (such as watching or taking pictures, videos, or audio recordings of another person engaging in a sexual act without the consent of all parties);
- Disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without the person's consent;
- Administering alcohol or drugs to another person for the purpose of making that person vulnerable to non-consensual sexual activity;
- Exposing one's genitals to another person without consent;
- Prostituting another individual; or
- Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

D. Relationship Violence: Relationship Violence includes any act of violence or threatened act of violence, including Sexual Misconduct, Stalking, or Physical Assault, against a person who is, or has been involved in a sexual, dating, domestic, or other intimate relationship with that person. Physical Assault includes threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person.

E. Stalking: Stalking occurs when a person engages in a course of conduct toward another person under circumstances that would cause a reasonable person to fear bodily injury or experience substantial emotional distress.

Course of conduct means two or more acts including but not limited to unwelcome 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 means significant mental suffering or anguish.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

- F. Retaliation:** Retaliation means any adverse action taken against an individual for making a good faith report of Prohibited Conduct or participating in any investigation or proceeding under this policy. Retaliation includes threatening, intimidating, harassing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy.

VII. RELATED DEFINITIONS: CONSENT, FORCE, AND INCAPACITATION:

- A. Consent:** Consent is the affirmative agreement to engage in a specific sexual activity with another person. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in a sexual activity.

Consent cannot be obtained through: (1) the use of force or coercion; or (2) by taking advantage of the incapacitation of another individual.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to the extent to which a Complainant affirmatively gives words or actions indicating a willingness to engage in sexual activity; whether a reasonable person in the Respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating an incapacity to consent.

Silence, passivity, or the absence of resistance does not imply consent, and relying solely on nonverbal communication may result in a violation of this policy. It is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and clarifies, verbally, the willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be freely sought and given for each instance of sexual activity.

- B. Force or Coercion:** Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.

Coercion is conduct, including intimidation and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual activity.

- C. Incapacitation:** An individual who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily

or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one's own conduct. Physically helpless means a person is physically unable to communicate unwillingness to an act.

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred or incomprehensible speech, vomiting, unsteady gait, combativeness, or emotional volatility. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have been aware of the Complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position. Being intoxicated or impaired by drugs or alcohol is never an excuse for committing Prohibited Conduct and does not diminish one's responsibility to obtain informed and freely given consent.

VIII. VIOLATIONS OF LAW:

Behavior that violates this policy also may violate the laws of the local jurisdiction in which the incident occurred and subject a Respondent to criminal prosecution by the presiding authority.

The New York State Penal Code describes prohibited Sex Offenses in [§§ 130.00 to 130.91 and 130.95 to 130.96](#) and prohibited Stalking Offenses in [§§ 120.45 – 120.60](#). Covered Persons studying, working, or engaging in other activities at one of NYU's portal campuses, Global Network University sites, or other locations outside of New York State are governed by the applicable laws regarding sexual assault and other criminal offenses implicated by this policy. NYU's education and prevention programs related to its portal campuses and Global Network University sites will include definitions of prohibited conduct and consent in the applicable jurisdiction.

Behavior that violates this policy also may subject a Respondent to civil liability.

IX. CONSENSUAL RELATIONSHIPS:

Sexual behavior that is welcome or consensual by all involved parties does not constitute Prohibited Conduct. However, consensual sexual relationships in situations where one individual has power or authority over another may result in claims of Prohibited Conduct, and/or may give rise to complaints by others of disparate treatment. Examples of such relationships may include: a professor and his/her Student, a supervisor and a subordinate Employee, or a coach and team member. If such a consensual relationship occurs, any situation of authority should be discontinued immediately.

X. PREVENTION AND AWARENESS PROGRAMS:

NYU is committed to the prevention of Prohibited Conduct through education and awareness programs. Incoming first year students and new employees receive primary prevention and awareness programming as part of their orientation and returning staff and students receive ongoing training and related programs. For a description of NYU's Prohibited Conduct prevention and awareness programs, including programs on minimizing the risk of incidents of Prohibited Conduct and bystander intervention, Students should refer to the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Students and Employees should refer to the Sexual Misconduct, Relationship Violence, and Stalking Resource Guide for Employees.

XI. ADDITIONAL POLICY DEFINITIONS:

“Complainant” means the Covered Person who presents as the victim of any Prohibited Conduct under the policy, regardless of whether that individual makes a report or seeks action under the policy.

“Confidential Resource” means an NYU employee or community resource with statutorily protected confidentiality. This includes medical providers, mental health providers, rape crisis counselors, and ordained clergy.

“NYU” means the Schools and other units of NYU, NYU’s Global Network University sites, and all University affiliates.

“Preponderance of the Evidence” means that it is more likely than not that a policy violation occurred.

“Reporting Option” means individuals or departments designated by NYU to receive reports of Prohibited Conduct.

“Respondent” means the Covered Person(s) who has been accused of violating the policy.

“Responsible Employee” means those Employees in a leadership or supervisory position, or who have significant responsibility for the welfare of Students or Employees. This includes the NYU Title IX Coordinator; Public Safety Officers; senior staff members in Residence Life, Student Affairs, Student Activities, and Athletics; administrators in the Office of Community Standards; senior administrators in each of the Schools within NYU; Resident Assistants (RAs), and athletic team coaches.

“School” for purposes of this policy means each NYU school, college and institute that functions similarly to a school or college (e.g., IFA, ISAW, Courant, and CUSP), each NYU portal campus (e.g., New York and Abu Dhabi), and other global sites as designated by the Provost.

XII. RELATED POLICIES:

Bullying, Threatening, and Other Disruptive Behavior Guidelines

Code of Ethical Conduct

Compliance Complaint Policy

Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Employees

Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Students