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

INTRODUCTION

In an effort to maintain a safe learning, living, and working environment, NYU prohibits Sexual Harassment as defined by Title IX regulations; Sexual Assault; Dating Violence; Domestic Violence; Stalking; Sexual Exploitation; and Retaliation (“Prohibited Conduct”), as set forth in the Sexual Misconduct, Relationship Violence, and Stalking Policy (the “Policy”). This document outlines NYU’s procedures for reporting, investigating, and resolving violations of the Policy following a report or Formal Complaint to NYU involving a Student as a Respondent (“Procedures”). These Procedures should be read in the context of the Policy and capitalized terms used in these Procedures, including forms of Prohibited Conduct, are defined in the Policy. As discussed below, these Procedures apply both to (1) complaints of Prohibited Conduct falling under the Title IX regulations (“Formal Complaints”) and (2) complaints of Prohibited Conduct that due to location, circumstances, and/or status of the Complainant fall outside the Title IX regulations but nevertheless fall within the scope and definitions of the Policy (“Non-Title IX Complaints”).

Anyone who wishes to make a report of Prohibited Conduct against a Student is encouraged to contact the NYU Title IX Coordinator, the NYU Office of Equal Opportunity (“OEO”), the NYU Department of Public Safety, or the NYU Office of Student Conduct and Community Standards (“OSC”). Any individual may make a report of Prohibited Conduct against a Student regardless of affiliation with the University and regardless of whether or not the person reporting is the person alleged to have experienced the conduct.

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.

I. INITIAL RESPONSE AND TITLE IX ASSESSMENT:

When a Complainant or witness reports an incident of Prohibited Conduct, NYU will take immediate and appropriate steps to respond to the report and work to resolve the matter promptly and equitably. The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant’s wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

A Complainant may request Supportive Measures only or may file a Formal Complaint. Alternatively, as described below, the Title IX Coordinator may determine that it is appropriate to file a Formal Complaint. After the filing of a Formal Complaint, the Complainant may decide to seek Administrative Resolution or a formal resolution process (investigation, hearing and appeal). The availability of reasonable Supportive Measures does not depend on whether a formal or Administrative Resolution process is initiated.

As part of the Initial Assessment, the Title IX Coordinator or designee will determine whether the
Policy applies to the report and whether the reported conduct falls within the jurisdiction and scope of the Policy and/or Title IX.

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. Conduct an individualized analysis of safety and risk for the campus community to determine whether a Student Respondent’s presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual that justifies removal.
4. Discuss the Complainant’s expressed preference for the manner of resolution and any barriers to proceeding.
5. 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.
6. Notify the Complainant of the right to seek medical treatment, including the importance of preserving evidence.
7. Provide the Complainant with written information about on-campus and off-campus resources and the range of appropriate and reasonably available Supportive Measures.
8. Advise that NYU’s policy prohibits Retaliation.
9. Notify the Complainant of the right to be accompanied at any meeting or proceeding by an advisor of choice.
10. Assess for pattern evidence or other similar conduct by the Respondent.
11. Share information with NYU Public Safety to comply with Clery Act reporting requirements and timely warning assessment.
12. Determine whether the Policy applies to the report and whether the reported conduct falls within the jurisdiction and scope of the Policy and/or Title IX.

B. **Formal Complaint:** The formal resolution process (investigation, hearing and appeal) is initiated by the filing of a Formal Complaint. A Formal Complaint is a written document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. The Formal Complaint may be submitted to the Title IX Coordinator in person, by mail, or by electronic mail, using the OEO’s Formal Complaint form. The Complainant may also contact the Title IX Coordinator directly for assistance in making a Formal Complaint. At the time of filing the Formal Complaint, the Complainant must be participating in or attempting to participate in NYU’s education program or activity.¹ Where a

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¹ However, NYU may still resolve the matter in accordance with the Investigation and Adjudication Process contained in these Procedures to the extent that the reported conduct otherwise falls within the scope and definitions of Prohibited Conduct under the Policy.
Complainant files a Formal Complaint and requests an investigation, and the reported conduct falls within the scope and jurisdiction of the Policy, NYU must pursue an investigation.

1. Dismissal of Formal Complaint

The Title IX Coordinator will determine whether the conduct alleged in the Formal Complaint, taken as true, falls within the scope of the Policy and the definitions of Prohibited Conduct. Title IX regulations require the University to dismiss some or all of the allegations in the Formal Complaint related to Sexual Harassment if: 1) the conduct alleged, even if substantiated, would not constitute Sexual Harassment as defined in the Title IX regulations; 2) the conduct did not occur within NYU’s education program or activity; or 3) the conduct did not occur against a person in the United States.

In addition, the Title IX Coordinator may dismiss a Formal Complaint, at any stage of the process, in any of the following three circumstances: (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed by NYU; (3) or specific circumstances, including a Complainant’s decision not to respond to outreach from the University, prevent NYU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

In the event that the Title IX Coordinator dismisses a Formal Complaint for the reason that it falls outside the Title IX regulations, but nevertheless determines that the report falls within the scope and definitions of Prohibited Conduct contained within the Policy, the matter will still be handled in accordance with the Investigation and Adjudication Process below as a Non-Title IX Complaint.

The decision about whether to dismiss a Formal Complaint, in whole or in part, may be made at any time in the process and will be communicated to all parties in writing. Either party may appeal the decision to dismiss the Formal Complaint by notifying the Title IX Coordinator or in writing of the appeal within five (5) business days of the dismissal of the Formal Complaint. The other party will be notified of the appeal. Appellate Review will be conducted by the Sexual Misconduct Appeals Panel (“Appeals Panel”). The Appeals Panel may consult with the Investigator, the Complainant, the Respondent, or any other individual. The parties may submit a written statement to the Appeals Panel within five (5) business days of being notified of the request for review. The Appeals Panel will render a decision in writing to both the Complainant and Respondent within ten (10) business days of the request for review.

2. Title IX Coordinator’s Discretion to File a Formal Complaint

The Title IX Coordinator has the discretion, in consultation with relevant University administrators, to file a Formal Complaint on behalf of any individual. In evaluating the appropriate manner of resolution, including whether the Title IX Coordinator will file a Formal Complaint in the absence of a Formal Complaint by the Complainant, the Title IX Coordinator will consider the following non-exhaustive list of risk factors:

- 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 committed with a weapon or was otherwise unusually violent, or whether other aggravating circumstances exist;
• whether the report reveals a pattern of Prohibited Conduct or represents an escalation in unlawful or Prohibited Conduct by the Respondent from previously noted behavior;
• whether the Complainant is or at the time of the incident 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).

NYU will seek to balance a Complainant’s request against NYU’s commitment to a safe, non-discriminatory learning, living, and working environment for all community members, including for the Complainant. In particular, NYU will take into account the extent to which a failure to investigate may not adequately mitigate a potential risk of harm to the Complainant or other members of the NYU community. Where possible based on the facts and circumstances, NYU will seek action consistent with the Complainant’s requested course of action. However, without the participation of a Complainant, NYU may 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 Supportive Measures to the Complainant.

Where NYU agrees to the Complainant’s request to maintain their privacy and/or not conduct further investigation, the matter will be considered resolved with NYU taking, as appropriate, such general steps and Supportive Measures. NYU recognizes that a Complainant may initially be hesitant to move forward, but later file a Formal Complaint or seek an Investigation. Where a report was closed because NYU agreed to the Complainant’s request to maintain their privacy and/or not conduct further Investigation, the Complainant may later file a Formal Complaint.

Where the balance of factors requires the Title IX Coordinator to file a Formal Complaint, the Title IX Coordinator 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 and will take reasonable and appropriate measures to protect and assist the Complainant. In such cases, NYU will also 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 Supportive Measures regardless of their level of participation or engagement with these Procedures.

C. Consolidation of Investigations: In its discretion, NYU may consolidate Investigations against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same set of facts or circumstances.

D. Determination after Assessment: The Title IX Coordinator may consult with senior NYU administrators during the assessment, which the University will seek to complete within ten (10) business days. The determination as to how to proceed will be communicated to the Complainant in writing. The Respondent will be notified when a Formal or Non-Title IX Complaint is filed or when NYU takes action that would impact a Respondent, such as the implementation of Supportive Measures that restrict the Respondent’s movement on campus.
Following this assessment, during an Investigation, or at any point in the Adjudication Process, NYU may seek an Administrative Resolution that, as appropriate, endeavors to prevent future Prohibited Conduct and address its effects without conducting or concluding, as applicable, a formal Adjudication Process against a Respondent. Alternatively, if appropriate, NYU may pursue the Investigation and Adjudication Process described below.

E. Supportive Measures:

During or subsequent to the assessment phase, NYU may provide one or more of the following Supportive Measures, which may be temporary or permanent, for Student Complainants or Respondents, where reasonably available and appropriate under the circumstances.

The availability and appropriateness of Supportive Measures will be determined by the specific circumstances of each report and Supportive Measures will be tailored to avoid unreasonably burdening the other party. NYU will consider a number of factors in determining which measures to take, including the needs of the individual seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether court proceedings have been initiated to protect the Complainant (e.g., protective orders).

Supportive Measures include, but are not limited to:

- Providing and/or facilitating access to counseling services and assistance in setting up an initial appointment;
- Guidance in obtaining a sexual assault forensic examination;
- Referral to resources to assist in obtaining a protective order;
- Referral to resources to assist with any financial aid, visa, or immigration concerns;
- Assistance in requesting long-term academic accommodations if the Complainant qualifies as an individual with a disability;
- Voluntary agreement by the parties to a mutual "no contact order";
- Rescheduling of exams and assignments;
- Providing alternative course completion options;
- Making changes in class schedule, including the ability to transfer course sections or withdrawal from a class without penalty
- Allowing either a Complainant or a Respondent to drop a class in which both parties are enrolled in the same section;
- Making changes to a Student’s University-sponsored or controlled housing, including assistance from staff in completing relocation;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Providing medical services;
- Providing academic support services, such as tutoring;
- Limiting an individual’s or organization’s access to certain University facilities or participation in University activities (e.g., student government, official sports teams, Greek life activities, academic honor ceremonies) pending resolution of the matter;
- Changing a University work schedule/job assignment; and/or
- Any other remedial measure that does not unduly burden the other party that can be used to achieve the goals of this policy.
Some Supportive Measures may be more restrictive in nature. NYU will only impose a Supportive Measure that is more restrictive, but constitutes a reasonable burden under the facts and circumstances, when there is an articulable factual foundation justifying the restrictive measure.

The Title IX Coordinator is responsible for ensuring the implementation of Supportive Measures and coordinating the University's response with the appropriate offices on campus. NYU will maintain the privacy of any Supportive Measures provided under the Policy to the extent practicable.

Both the Complainant and the Respondent may request review of the need for and/or modification of the terms of any Supportive Measure or directive and can submit evidence in support of any such request. Requests for review/modification should be made to the NYU Office of Equal Opportunity. Requests will be handled within five (5) business days, unless circumstances warrant extending that timeframe.

Restricted/No Contact Requests:

A Complainant who makes a report of Prohibited Conduct may request assistance in creating a safe distance between the Complainant and the Respondent. A Respondent may also request the same assistance with respect to a Complainant. There are different forms of restricted contact directives that may be sought and/or imposed.

a. Institutional No-Contact Directive: Upon request by the Complainant or Respondent, NYU may issue a directive to both parties involved in an allegation of Prohibited Conduct to refrain from engaging in any form of contact with one another. NYU may also issue such a directive on its own initiative. The purpose of such a directive is to prevent one party from harassing another in person, in writing, by phone, by email, by texts or other electronic messaging, through social media, or through another individual. The secondary benefit of a No-Contact Directive is to help prevent conflict that can occur when two parties engaged in an inter-personal dispute encounter one another.

b. Persona Non Grata Directive (PNG): NYU may issue a directive to one or both students involved in an allegation of Prohibited Conduct that prevents that student from entering a designated University building or participating in a specified portion of a University program or activity, provided the directive does not impose an unreasonable burden on the student affected. The purpose of such a directive is to provide each student with a degree of “safe space” and to prevent encounters that may give rise to conflicts.

F. Emergency Removal:

Certain circumstances may warrant removing a Student Respondent from a NYU education program or activity. The University may remove a Student Respondent on an emergency basis from NYU property or employment, education or research programs or activities. Before imposing an emergency removal, the University will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent’s presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct and justifies removal of the Respondent from the University program or activity.

The Title IX Coordinator will promptly provide the Respondent with written notice of any removal and an opportunity to challenge the removal. During any challenge, the Respondent will remain
off-campus and must comply with the notice of removal. That notice shall include a statement that
the use of any information the Respondent chooses to provide may subsequently be used in
implementing any aspect of this Policy, including the Investigation and Adjudication Process. The
Respondent will have three (3) business days to submit a written challenge to the safety and risk
analysis to the Title IX Coordinator.

II. ADMINISTRATIVE RESOLUTION:

NYU may seek a form of Administrative Resolution after the filing of a Formal Complaint and/or Non-
Title IX Complaint. Administrative Resolution is not appropriate for all cases of Prohibited Conduct,
and NYU retains the discretion to determine which cases may be appropriate for Administrative
Resolution and the type of Administrative Resolution process that may be appropriate in a specific case,
including but not limited to, a restorative resolution process (discussed further below).

Participation in any form of Administrative Resolution is voluntary and both the Complainant and
Respondent must consent to the Administrative Resolution. Administrative Resolution is not available
in cases in which an employee is alleged to have engaged in Prohibited Conduct against a student. NYU
will not compel a Complainant or Respondent to engage in Administrative Resolution in writing, will
not compel the parties to directly confront one another, and will allow a Complainant or Respondent to
withdraw from participation in Administrative Resolution at any time. NYU also reserves the right in
its discretion to terminate an Administrative Resolution process at any time.

Restorative Resolution: Restorative Resolution is a particular form of Administrative Resolution that
cultivates active accountability in which Respondents can repair harm and demonstrate responsible
behavior. This process can be tailored to meet the needs of harmed parties and campus communities
while leading to meaningful behavioral change in Respondents. The goal of a restorative process is to
eliminate the Prohibited Conduct, prevent recurrence, and remedy its effects in a manner that maintains
the safety of the overall campus community.

Other forms of Administrative Resolution may also 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; 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; imposing sanctions as set forth in the
University Student Conduct Procedures, which include Warning, Censure, Educational Assignment,
University Probation, Restitution, Suspension of Privileges, Residential Probation, Study Away Site
Probation, Residence Hall Reassignment, Deferred Suspension from University Housing, Suspension
from NYU, Suspension from Study Away Site, Dismissal from Housing, Expulsion from NYU, and
Transcript Notation; and/or any other remedy that can be tailored to the involved individuals to achieve
the goals of the Policy.

With the voluntary consent of the parties, Administrative Resolution may also be used to impose
agreed-upon disciplinary sanctions. Any person who facilitates an Administrative Resolution will be
trained and free from conflicts of interest or bias for or against either party.

If the parties are interested in pursuing Administrative Resolution, the Title IX Coordinator or
designee will send written notices to the parties describing:
1. The allegations at issue;
2. The requirements and/or process of the Administrative Resolution;
3. The circumstances under which the parties are precluded from resuming the Adjudication Process arising from the same allegations;
4. The right to end the Administrative Resolution process at any time prior to resolution and resume the Adjudication Process;
5. The consequences resulting from participating in the Administrative Resolution, including the extent to which records and communications created or maintained as part of the Administrative Resolution process may be viewed by parties, or later used or considered in the Adjudication Process, including at a hearing.

If an agreement acceptable to NYU, the Complainant, and the Respondent is reached through Administrative Resolution, the matter is considered to be resolved and the parties will be precluded from filing another complaint arising from the same set of facts or circumstances. If an agreement is not reached, the matter will be referred for an Investigation or Hearing, as appropriate. Prior to reaching a resolution, any party can withdraw from the Administrative Resolution process and resume the Adjudication Process.

The Title IX Coordinator will maintain records of all reports and conduct referred for Administrative Resolution, which typically will be completed within thirty (30) days of the referral.

III. ROLE OF ADVISOR

Throughout the process described in this document, the Complainant and Respondent each have the right to be accompanied by an advisor of choice as well as a support person of choice (maximum of two such individuals). 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. A party’s advisor may provide support and advice to the party at any meeting and/or proceeding, but they may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings. With the exception of the advisor’s live questioning during a hearing, the advisor may observe and provide guidance or advice to the party (in a non-disruptive manner). NYU may remove or dismiss advisors who do not abide by the restrictions on their participation or who are otherwise disruptive. Generally, the Title IX Coordinator or designee, Investigator(s), and/or Adjudicator will communicate directly with the Complainant or Respondent, and any communications between NYU and an advisor may only occur after a FERPA waiver has been executed. An advisor should plan to make themselves reasonably available, and the University will not unduly delay the scheduling of meetings or proceedings based on the advisor’s unavailability.

If a party does not have an advisor for the hearing, NYU will provide an advisor, free of charge, who may be, but is not required to be, an attorney, to attend the hearing and conduct questioning on behalf of that party. In its discretion, NYU may also provide an advisor to a party who does not have one at an earlier stage in the Investigation and Adjudication Process.

IV. INVESTIGATION

After the filing of a Formal Complaint or Non-Title IX Complaint, 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, equitable, and
impartial Investigation of the report in the manner the Investigator deems appropriate. The Investigator will be impartial and have no actual bias or conflict of interest for or against the Complainant or Respondent. Any Investigator used by the university will receive annual training on issues related to Prohibited Conduct; the definition of Sexual Harassment; the scope of the University’s education program and activity; how to create an investigation report that fairly summarizes relevant evidence; and, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and all participants while promoting accountability.

B. The Investigation will begin with a Notice of Investigation. The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the following information: (1) the process for formal and administrative resolution; (2) a meaningful summary of all allegations with sufficient details regarding: (a) the identity of the Complainant and the Respondent, if known; and (b) the date/time (if known), location, and precise nature of the reported conduct; (3) specific potential Policy violation(s); (4) the name and contact information of the Investigator(s); (5) how to challenge participation by the Investigator(s) on the basis of a conflict of interest or bias; (6) information about the parties’ respective expectations and responsibilities; (7) the University’s prohibition against Retaliation; (8) the importance of preserving any potentially relevant evidence in any format; (9) information about the privacy of the investigation process; (10) information about how a party may request reasonable accommodations for a disability or language diversity during the process; (11) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the formal resolution process; (12) that the parties are entitled to an advisor of their choice, including an attorney advisor, and the advisor is permitted to review the evidence gathered in the investigation that is relevant or directly related to the investigation, and also that if parties at a hearing do not have an advisor, the University will provide one to them at no cost or charge; (13) that the University prohibits providing false or misleading information; and (14) a copy of the Policy and these procedures. If, at any time, the Investigation reveals the existence of additional or different potential violations of this policy, the Investigator will issue a supplemental notice of investigation.

C. During the Investigation, the Complainant and Respondent will have an equal opportunity to participate in the Investigation; to submit information and corroborating evidence; to identify witnesses who may have relevant information; to be accompanied by an advisor of choice to any meeting; to timely and equal access to information that will be used in disciplinary meetings and proceedings; and to timely notice of meetings at which their presence will be requested or required, including the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. 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. NYU will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence.

The Investigator, not the parties, is responsible for requesting and compiling relevant evidence. The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. In the event that a party declines to voluntarily provide material information, the University’s ability to conduct a prompt, thorough, and equitable investigation may be impacted.

The Investigator(s) will not require, allow, rely upon, or otherwise use questions or evidence that
constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. If a person voluntarily chooses to share medical or counseling records with the Investigator(s), they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond.

Parties, advisors and witnesses are prohibited from recording interviews conducted as part of an Investigation.

D. Both the Complainant and Respondent have the option to provide names of potential witnesses to the Investigator(s). Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be included in the written investigation report, which the parties will have the opportunity to review at the conclusion of the investigation. If either party wishes to provide expert testimony or evidence, they are solely responsible for securing attendance of any expert witness at a hearing, and for the costs or fees associated with any expert report or testimony. If NYU (i.e. the Adjudicator) determines that expert witness testimony is necessary, then the University would secure attendance and be responsible for costs.

E. The prior sexual history of the Complainant or Respondent will never be used to prove character or reputation. A Complainant’s or Respondent’s prior sexual history with persons other than the other party involved in the Investigation will generally not be considered as evidence during an Investigation or Hearing and will only be considered under the following two circumstances: (1) Where there is a current or ongoing relationship between the Complainant and the Respondent, and consent is at issue, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties, which may inform the determination whether consent was sought and given during the incident. 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. Even in the context of a relationship, consent on one occasion does not constitute consent on a subsequent occasion. (2) Prior sexual history may also be relevant to show that someone other than the Respondent committed the conduct alleged by the Complainant. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

In gathering information, the Investigator(s) may also consider other reports of, or findings of responsibility for, the same or substantially similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern, or another material fact. For example, where there is evidence of a pattern or conduct of the same or substantially similar nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be relevant and probative to the determination of responsibility and/or assigning of a sanctioning, as applicable. Similarly, prior or subsequent conduct of a party, even when it involves conduct that may violate University policy, may be considered when relevant.

F. The Investigator(s) 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. All information considered relevant by the Investigator(s) will be provided to the parties in the investigation report for their review and comment. NYU will not restrict the ability of either party to gather and present relevant evidence. Evidence is relevant if it makes a material fact more or less probable than it would be without the evidence. In general, during the
investigation phase, the Investigator(s) has the discretion to determine the relevance and probative value of information proffered or received.

G. At the conclusion of the fact-gathering, the Investigator(s) will make information gathered in the Investigation available for review by the parties and their advisors, typically in the form of a draft investigation report. The parties will have an equal opportunity to inspect and review any evidence obtained as part of the Investigation that is directly related to the allegations, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The Investigator(s) will send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have ten (10) days to submit a written response including any additional comment, information, or witnesses, which the Investigator(s) will consider prior to completion of the investigative report.

Parties and their advisors are expected and urged to maintain the privacy of Family Educational Rights and Privacy Act (FERPA)-protected and/or sensitive information gathered or learned in the Investigation. Sharing of such information in a manner that constitutes Retaliation or other Prohibited Conduct under the Policy may subject an individual to disciplinary sanctions, where appropriate.

H. The purpose of the review period is to enable the Complainant and Respondent an opportunity to review the evidence gathered, to clarify and/or expand upon information contained in the report, and to provide additional evidence. Written responses to the evidence gathered must be submitted by the Complainant or Respondent (not by an advisor). In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator at this juncture will not be considered by the Adjudicator.

I. The Investigation typically will be completed within sixty to ninety days from the date of the initiation of the Investigation. This timeframe may be extended for Administrative 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 Administrative Resolution, and the reason for the extension, will be shared with the parties in writing.

J. 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 Support Measures 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. Such delays will not last long longer than ten days, unless law enforcement requests and justifies a longer delay.

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

V. INVESTIGATION REPORT/REVIEW OF JURISDICTION ASSESSMENT

At the conclusion of the Investigation, the Investigator(s) will prepare an Investigation report that fairly summarizes the relevant information gathered, including inculpatory and exculpatory information. The Investigator(s) will include a determination whether the conduct alleged in the Formal Complaint or
Non-Title IX Complaint, the Notice of Investigation, and/or other information presented by the Complainant falls within the scope of the Policy and the definitions of Prohibited Conduct. In particular, the Investigator(s) will determine whether the reported conduct, if substantiated, would constitute Prohibited Conduct. This assessment is not a determination of responsibility, nor does it involve a determination about the credibility of the information gathered; those decisions are reserved for the Adjudicator. Rather, this evaluation accepts all information as presented by the Complainant as true in order to determine the potential Policy violations that move forward to a hearing.

In reaching this determination, the Investigator(s) may consult with senior NYU administrators and the determination will typically be reviewed by the Title IX Coordinator. Where the reported conduct, even if substantiated, would not constitute Sexual Harassment or another form of Prohibited Conduct, the complaint will be dismissed and the parties may appeal the dismissal to the Appeals Panel, as described in Section I(B). Dismissal of the complaint will be communicated to the parties simultaneously and in writing. NYU may address the reported conduct through remedial actions, coaching, education, effective conflict resolution or other Administrative Resolution pathways, and/or another University policy which may be implicated by the conduct.

Both the Complainant and the Respondent, and their advisors, will be given the opportunity to review the Investigation report in an electronic or hard copy format at least ten (10) days prior to any hearing and to submit a written response. If a party disagrees with the Investigator’s determinations about relevance, the party can make that argument in the party’s written response to the Investigation report and to the decision-maker at any hearing held.

VI. ACCEPTANCE OF RESPONSIBILITY

A Respondent may choose to accept responsibility for a violation of the Policy at any point during the Investigation or thereafter. In the event that the Respondent accepts responsibility for a violation of the Policy, the OSC will determine whether further investigation is warranted. OSC will then issue a finding of responsibility and determine appropriate sanctions. The Complainant and/or the Respondent may appeal OSC’s decision in accordance with the procedures set forth below in section V.D. (Right to Appeal), although the only available ground for appeal in this circumstance is that the sanction is substantially disproportionate to the violation.

VII. HEARING AND APPEAL

At the conclusion of the Investigation, and following the jurisdictional assessment, the Investigation report, along with a written notice of hearing, will be sent to the parties, their advisors, and the Adjudicator, The Hearing and Appeal process consists of: (A) Pre-Hearing Steps; (B) a Hearing; (C) a Determination of Violation and Sanctions; and (D) the Right to Appeal.

A. Pre-Hearing Steps:

1. **OSC Review of Investigation report:** OSC will receive and review the Investigation report. The OSC Administrator may accept the report as rendered or may request that an Investigator conduct additional interviews or seek out other evidence as deemed to be appropriate and relevant. Any additional Investigation, and a supplemental report, should be completed promptly and will be shared with the parties in a timely manner.

2. **Selection of Adjudicator:** The hearing will be adjudicated by an external adjudicator or an internal administrator designated by the University (the internal administrator and external adjudicator are both referred to as the “Adjudicator”). All persons serving as an Adjudicator
must have training or experience with respect to the adjudication of Prohibited Conduct, including the definition of Prohibited Conduct; the scope of the University’s education program or activity; how to conduct a hearing; how to serve as an informed and impartial decision-maker, by avoiding prejudgment of the facts at issue; conflicts of interest and bias; issues of relevance of questions and evidence; an understanding of impacts of trauma; and any technology to be used at a live hearing. The Adjudicator must also be impartial and free from bias or conflict of interest.

3. **Notice of Hearing:** The Complainant and Respondent will be notified in writing of the date, time, and location of the hearing; the charges to be reviewed by the Adjudicator, including the date, time, location and factual allegations concerning the violation; the provisions of the Policy alleged to have been violated; the name of the Adjudicator; how to challenge participation of the Adjudicator on the basis of conflict of interest or bias; the right to have an advisor present at the hearing and conduct questioning on the party’s behalf; that NYU will provide an advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing if the party does not have an advisor present for the hearing; how to request that witnesses be present at the hearing; information about the hearing format; and the sanctions that may be imposed. The Respondent and Complainant will be provided the Notice of Hearing at least ten days prior to the date of the hearing. The time frame in which the hearing is conducted may be extended for good cause at the discretion of the OSC Administrator. Good cause may include the availability of the parties, the availability of witnesses, the timing of semester breaks, or any other extenuating circumstances. Hearings may be scheduled whenever the University is officially open (including Summer and Winter breaks).

4. **Witnesses:** The Adjudicator will identify any witnesses that they wish to hear from at the hearing based on a review of the Investigation report. The Complainant and Respondent each have the right to request the presence of any additional witnesses at the hearing. The University will take steps to secure the presence of identified witnesses, where appropriate; however, the University cannot compel the attendance of any witness. Typically, only witnesses who were identified and interviewed as part of the Investigation may be called at the hearing. Under very limited circumstances, the Complainant, Respondent or Investigator may identify a witness with relevant information who has not previously been interviewed. In such case, the Adjudicator will determine if the new witness’s participation at the hearing is relevant and appropriate under the circumstances, and if so, will refer the matter to the Investigator for additional investigation, and a supplemental report, which may delay the timing of the hearing.

5. **Request to Postpone Hearing:** Permission to postpone a hearing may be granted provided that the request to do so is based on a compelling emergency and where possible is provided to the OSC Administrator at least 48 hours prior to the time of the hearing.

B. **Hearing:**

1. **Format:** Hearings will be conducted either in-person or virtually with technology that enables the Adjudicator and parties to simultaneously see and hear the party and witnesses speaking. Upon request, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Adjudicator and parties to simultaneously see and hear the party or the witness answering questions.

2. **Timing:** Typically, a hearing will be held within thirty (30) days from the conclusion of the Investigation. This timeframe may be extended for Administrative 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 to address other legitimate reasons. Any extension of the timeframes other than for Administrative Resolution, and the reason for the extension, will be shared with the parties in writing.

3. **Hearing Guidelines:** At any hearing under these Procedures, the following guidelines below will apply:

   a. **Advisors:** The Complainant and Respondent each have the right to be accompanied at the hearing and any meetings by an advisor and/or support person of choice (maximum of two such individuals). The advisor and/or support person may be anyone, including an attorney. During the hearing, each party will have the opportunity to question the other party, the witnesses, and the Investigator through their advisor of choice directly, verbally, and in real-time. With the exception of the questioning of the other party and witnesses, the advisor may not speak or otherwise participate in the hearing and must comport him/herself in a manner that is not disruptive to the hearing.

   b. **Presence at Hearing:**

      i. A Complainant or Respondent is not required to participate in person at the hearing in order for the hearing to proceed. However, as noted below, statements that are not subject to cross-examination may not be considered by the Adjudicator. This means that in reaching a decision as to responsibility, the Adjudicator cannot rely on any statements made during the Investigation by a Complainant or Respondent who chooses not to appear for cross-examination.

      ii. A Complainant or Respondent may request alternative testimony options that would not require physical proximity to the other party, including testifying via a remote electronic method. This request should be made no less than five (5) business days prior to the hearing.

      iii. If despite being notified of the date, time, and location of the hearing, the Respondent or Complainant is not in attendance, the hearing may proceed and sanctions may subsequently be imposed in the event the Respondent is found responsible for a violation. The Adjudicator may not draw any inference from the decision of a party or witness to not participate at the hearing. If a party and their advisor do not appear, the University must provide an advisor to conduct questioning on that party’s behalf, and the Adjudicator will consider the available testimony and evidence. In the absence of clear evidence that emergency circumstances beyond the control of the Complainant or Respondent prevented such person from being present, the decision of the Adjudicator will stand subject to the parties’ right to appeal.

      iv. Other individuals who may be present at the hearing include, but are not limited to, staff designated to manage the proceedings such as calling witnesses and making a recording of the hearing and counsel for the University.

   c. **Questioning:** The Complainant and Respondent will not be permitted to directly question one another. Each party will have the opportunity to question the other party, the witnesses, and the Investigator(s) through their advisor directly, verbally, and in real-time. NYU will make all evidence directly related to the allegations, as shared in the evidence review, available to the parties at the hearing, including for the purposes of cross-examination.
Only relevant questions may be asked of a party or witness. Before a Complainant, Respondent, or witness responds to a question, the Adjudicator will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant as defined above. If a party or witness does not submit to questioning by the other party’s advisor at the hearing, the Adjudicator may not rely on any statement of that party or witness in reaching a determination regarding responsibility.

d. **Hearing Format:** The Adjudicator has the discretion to designate the hearing format. The following hearing format is presented as a general example:

i. The Adjudicator will explain the hearing process, provide an opportunity to all parties to ask questions about procedures, and read the charges.

ii. The Investigator will provide a brief statement summarizing the Investigation. The Adjudicator may then pose questions to the Investigator, followed by questioning by the Complainant’s advisor and then the Respondent’s advisor.

iii. The Adjudicator may pose questions to the Complainant. The Complainant may then supplement the information provided to the Adjudicator with a brief statement. Following that, the Respondent’s advisor may pose questions to the Complainant, as described above.

iv. The Adjudicator may pose questions to the Respondent. The Respondent may then supplement the information provided to the Adjudicator with a brief statement. Following that, the Complainant’s advisor may pose questions to the Respondent, as described above.

v. The Adjudicator will then hear from witnesses determined by the Adjudicator to have information that is relevant to the matter. Each witness will be questioned by the Adjudicator, the Complainant’s advisor, and the Respondent’s advisor.

vi. At the conclusion of the presentation of all witnesses, the Complainant and the Respondent will each be given a brief final opportunity to address the Adjudicator regarding any outstanding issues of fact and/or submit for their consideration the facts, inferences and conclusions which they contend may be properly drawn from the evidence presented.

e. **Audio Recording:** An audio recording will be made of the hearing. The recording will be maintained by NYU for at least seven years from the date of the hearing. A written transcript of the hearing will not be prepared. Requests to listen to the audio recording of a hearing should be made to OSC. Parties, advisors, and witnesses are prohibited from recording the hearing.

These hearing guidelines may be supplemented as determined appropriate by the OSC Administrator or the Adjudicator.

C. **Determination of Violation and Sanctions; Notice of Outcome.** At the conclusion of the hearing, the Adjudicator will determine whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the Policy. A Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the resolution process. The Adjudicator will (1) determine if there is a violation and (2) if so, the Adjudicator will determine the appropriate sanction(s).

In determining the appropriate sanction(s), the Adjudicator will consider a number of factors, including:
• the nature of the conduct at issue, including whether it involved violence;
• the impact of the conduct on the Complainant;
• the impact or implications of the conduct on the NYU community;
• any previous conduct violations by the Respondent, both at NYU or elsewhere, as well as any criminal convictions;
• whether the Respondent has accepted responsibility for the conduct;
• maintenance of a safe and respectful environment conducive to learning; and
• any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The Adjudicator may also consider restorative outcomes that, taking into account the safety of the NYU community as a whole, allow a Respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant and the community, and identify how to prevent or change the behavior. Sanctions may be issued individually, or a combination of sanctions may be imposed.

The potential sanctions for a violation of the Policy, as set forth in the University Student Conduct Procedures, include: Warning, Censure, Educational Assignment, University Probation, Restitution, Suspension of Privileges, Residential Probation, Study Away Site Probation, Residence Hall Reassignment, Deferred Suspension from University Housing, Suspension from NYU, Suspension from Study Away Site, Dismissal from Housing, Expulsion from NYU, and Transcript Notation. Potential sanctions for a violation of the Policy also include requiring the Respondent to engage in a course of counseling, education or training.

Where the conduct found to have violated the Policy also constitutes a “crime of violence” as defined under New York State Education Law § 6444(6), and where the the sanction(s) imposed included either a suspension or expulsion, the transcript of the Student Respondent shall include the applicable notation on his or her transcript: “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.” If a Student Respondent withdraws from NYU with a charge of a violation of the Policy pending, a notation will be made on such student’s transcript that he/she “Withdrew with conduct charges pending.” If a withdrawing Respondent declines to complete the Adjudication Process and the University elects, in its discretion, to defer scheduling a hearing until the Respondent returns to NYU, the notation of withdrawal will become permanent in the event that the Respondent does not return within eighteen (18) months.

Transcript Notation Removals: If the Adjudicator’s decision provides for a transcript notation, a Respondent may request that such notation be removed, provided that he/she has met any applicable requirements listed in the Adjudicator’s decision prior to making a request. However, a transcript notation reflecting a suspension cannot be removed until one year after the conclusion of the suspension. Transcript notations of an expulsion shall not be removed. In the event that a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

Remedies: Regardless of the outcome, the Adjudicator may recommend to the Title IX Coordinator additional remedies for the Complainant to address the effects of the conduct on the Complainant, restore or preserve the Complainant’s access to NYU’s educational programs and activities, and restore to the Complainant, to the extent possible, benefits and opportunities lost as a result of the Prohibited Conduct. The Adjudicator may also identify remedies to address the effects of the conduct on the University community.
The Title IX Coordinator will review the remedies recommended by the Adjudicator and will consider the appropriateness of continuing Supportive Measures on an ongoing basis. The Title IX Coordinator is responsible for the effective implementation of remedies.

**Notification of Outcome:** The Complainant and Respondent will be notified simultaneously in writing (which may include email) of the outcome of a hearing and the options for appeal within five (5) business days of the date of completion of the hearing, unless circumstances warrant extending that timeframe. The written determination will include:

1) Whether the Respondent(s) violated the Policy by using a preponderance of the evidence or “more likely than not” standard of evidence;
2) Identification of the allegations potentially constituting Prohibited Conduct;
3) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
4) Findings of fact supporting the determination;
5) Conclusions regarding the application of the Policy to the facts;
6) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Adjudicator imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant or the broader NYU community; and
7) The procedures and permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**D. Right to Appeal.** The Complainant or Respondent may appeal the determination to the NYU Sexual Misconduct Appeal Panel within five (5) business days. Grounds for an appeal are limited to (1) procedural irregularity that affected the outcome of the matter, (2) 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; (3) The Title IX Coordinator, Investigator(s), or decision-maker(s) 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; and/or (4) the sanction being substantially disproportionate to the violation.

The Title IX Coordinator or the OSC Administrator will provide the parties with the names of the individuals serving on the Appeal Panel and allow the parties to challenge their participation on the basis of conflict of interest or bias. Each party will be notified if the other party files an appeal, and will be provided the opportunity to submit a responsive appeal statement within five (5) business days of being notified. Appeal statements should be no more than five (5) pages and must be submitted by the Complainant or Respondent (not by an advisor). The parties, however, do not appear before the Appeal Panel. The appeal will be decided by the Appeal Panel within fifteen (15) business days of the date that the responsive statement is due, regardless of whether any responsive statement is submitted, unless the circumstances of the appeal warrant an extension.
All persons serving on the Sexual Misconduct Appeal Panel must have training or experience with respect to the adjudication of Prohibited Conduct and must also be impartial and free from bias or conflict of interest. Following its review, the Appeal Panel may either (a) affirm the Adjudicator’s determination, (b) alter the sanctions rendered, if raised as a ground for appeal, or (c) send the matter back to an Adjudicator for further proceedings consistent with its decision. Unless the Appeal Panel sends the matter back to the Adjudicator for further proceedings, the decision of the Appeal Panel is final.

VIII. DOCUMENTATION AND RECORDS RETENTION POLICIES

The University will create, and maintain the following records for a period of at least seven years: records of any actions, including any supportive measures, taken in response to a report, Formal Complaint, or Non-Title IX Complaint; records of investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript created, any disciplinary sanctions imposed on a Respondent, and any remedies provided to a Complainant; any appeal and the result therefrom; any informal resolution and the result therefrom. These records will be maintained in accordance with the privacy protections set forth in Title IX, the Clery Act, FERPA, and state law.

IX. TIME FRAMES FOR RESOLUTION

NYU will seek to complete the formal resolution process in a prompt and timely manner consistent with the reasonably prompt timeframes for the major stages of the process designated in these Procedures. All time frames throughout these Procedures are approximate, and the University may extend any timeframe for good cause with written notice to the parties. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; based on the need for language assistance or accommodation of disabilities; or for other legitimate reasons, such as intervening breaks in the academic calendar, finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or other considerations that impact the timing of the investigation, hearing or appeal.