TITLE IX POLICY ON EQUAL OPPORTUNITY, HARASSMENT AND NONDISCRIMINATION

Effective August 14, 2020
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>TITLE IX POLICY ON EQUAL OPPORTUNITY, HARASSMENT AND NONDISCRIMINATION</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATEMENT OF EQUAL OPPORTUNITY</td>
<td>1</td>
</tr>
<tr>
<td>APPLICABLE SCOPE</td>
<td>1</td>
</tr>
<tr>
<td>TITLE IX TEAM</td>
<td>2</td>
</tr>
<tr>
<td>INDEPENDENCE AND CONFLICT-OF-INTEREST</td>
<td>2</td>
</tr>
<tr>
<td>STATE HUMAN RIGHTS LAW (HRL)</td>
<td>3</td>
</tr>
<tr>
<td>ACADEMIC FREEDOM</td>
<td>3</td>
</tr>
<tr>
<td>POLICY ON ONLINE HARASSMENT AND MISCONDUCT</td>
<td>3</td>
</tr>
<tr>
<td>POLICY ON NONDISCRIMINATION</td>
<td>3</td>
</tr>
<tr>
<td>POLICY ON DISABILITY DISCRIMINATION AND ACCOMODATION</td>
<td>4</td>
</tr>
<tr>
<td>POLICY ON ROMANTIC RELATIONSHIPS</td>
<td>4</td>
</tr>
<tr>
<td>POLICY ON DISCRIMINATORY HARASSMENT</td>
<td>5</td>
</tr>
<tr>
<td>PROCEDURES</td>
<td>8</td>
</tr>
<tr>
<td>FILING A COMPLAINT OF DISCRIMINATION, HARASSMENT AND/OR RETALIATION</td>
<td>8</td>
</tr>
<tr>
<td>TIME LIMITS ON REPORTING</td>
<td>9</td>
</tr>
<tr>
<td>REPORTING TO LAW ENFORCEMENT</td>
<td>9</td>
</tr>
<tr>
<td>SUPPORTIVE MEASURES</td>
<td>10</td>
</tr>
<tr>
<td>EMERGENCY REMOVAL AND NO CONTACT ORDERS</td>
<td>10</td>
</tr>
<tr>
<td>PROMPTNESS</td>
<td>11</td>
</tr>
<tr>
<td>PRIVACY</td>
<td>11</td>
</tr>
<tr>
<td>RETALIATION</td>
<td>11</td>
</tr>
<tr>
<td>WHEN A COMPLAINANT DOES NOT WISH TO PROCEED</td>
<td>12</td>
</tr>
<tr>
<td>FEDERAL TIMELY WARNING OBLIGATIONS</td>
<td>13</td>
</tr>
<tr>
<td>FALSE ALLEGATIONS AND EVIDENCE</td>
<td>13</td>
</tr>
<tr>
<td>AMNESTY FOR COMPLAINANTS AND WITNESSES</td>
<td>14</td>
</tr>
<tr>
<td>FEDERAL STATISTICAL REPORTING OBLIGATIONS</td>
<td>14</td>
</tr>
<tr>
<td>RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION</td>
<td>14</td>
</tr>
<tr>
<td>RECORDKEEPING</td>
<td>42</td>
</tr>
<tr>
<td>DISABILITIES ACCOMODATION IN THE RESOLUTION PROCESS</td>
<td>42</td>
</tr>
<tr>
<td>STATEMENT OF RIGHTS OF THE PARTIES</td>
<td>42</td>
</tr>
<tr>
<td>VIOLENCE RISK ASSESSMENT (VRA)</td>
<td>45</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>RESOURCES AND SUPPORT</td>
<td>46</td>
</tr>
<tr>
<td>MEDICAL ATTENTION AND EVIDENCE PRESERVATION</td>
<td>46</td>
</tr>
<tr>
<td>HOSPITALS</td>
<td>46</td>
</tr>
<tr>
<td>PRIVILEGED AND CONFIDENTIAL RESOURCES</td>
<td>47</td>
</tr>
<tr>
<td>REVISION</td>
<td>48</td>
</tr>
<tr>
<td>APPENDICIES</td>
<td></td>
</tr>
<tr>
<td>APPENDIX A: COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS</td>
<td>49</td>
</tr>
<tr>
<td>PROMOTING EQUAL OPPORTUNITY, PROHIBITING DISCRIMINATION</td>
<td></td>
</tr>
<tr>
<td>AND HARASSMENT AND AUTHORIZING AFFIRMATIVE ACTION</td>
<td></td>
</tr>
<tr>
<td>APPENDIX B: STATE HUMAN RIGHTS LAW (HRL)</td>
<td>54</td>
</tr>
</tbody>
</table>
TITLE IX POLICY ON EQUAL OPPORTUNITY, HARASSMENT AND NONDISCRIMINATION

STATEMENT OF EQUAL OPPORTUNITY

The Academy is committed to providing a working and learning environment free from unlawful discrimination and harassment and to fostering a nurturing and vibrant community founded upon the fundamental dignity and worth of all of its members. The Academy does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, national origin, military status, marital status, partnership status or any other legally protected characteristic in admissions, financial aid, or employment, or in the administration of any Academy program or activity.

Consistent with its commitment and with applicable laws, the Academy prohibits discrimination on the basis of membership in a protected class, discriminatory harassment, sexual harassment, sexual assault, sexual exploitation, domestic violence, dating violence and stalking and further prohibits knowingly assisting another in committing such an act. The Academy is committed to provide those who feel that they have been subjected to conduct in violation of this policy with mechanisms for seeking redress and resources for support. Accordingly, the Academy prohibits retaliation against any person for complaining of a violation of this Policy or for participating in any investigation or proceedings related to an alleged violation.

Community members are protected from sexual misconduct regardless of their sex, sexual orientation, immigration status, citizenship status or national origin, or any other protected characteristic.

APPLICABLE SCOPE

The core purpose of this policy is the prohibition of discrimination as defined in the law. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence.

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

The Title IX Team oversees the implementation of the Academy’s ADA/S04 compliance, Affirmative Action and Equal Opportunity plan, disability compliance and the Academy’s policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating Academy’s efforts related to the intake, investigation, resolution, and implementation of this policy.

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made to the Title IX Coordinator. Complaints or notice of alleged policy violations about employees may be made to the Director of Human Resources.

Katie Hemmer  
Title IX Coordinator  
Director of Admissions & Registrar  
111 Franklin Street, New York, NY 10013  
khemmer@nyaa.edu  
(212) 842-5961

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CFO & Director of Human Resources  
111 Franklin Street, New York, NY 10013  
skorsakov@nyaa.edu  
(212) 842-5978

INDEPENDENCE AND CONFLICT-OF-INTEREST

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest and oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Academy President David Kratz, dkratz@nyaa.edu, (212) 842-5959. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Academy President David Kratz, dkratz@nyaa.edu, (212) 842-5959. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.
Academy has also classified employees (administrators and faculty) as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

**STATE HUMAN RIGHTS LAW (HRL)**

See Appendix B

**ACADEMIC FREEDOM**

Nothing in this policy shall abridge academic freedom or the Academy’s educational mission or prohibit genuine contributions to the marketplace of ideas. Prohibitions against discrimination and harassment do not extend to statements or written materials that are germane to the classroom subject matter and circulated in the context of legitimate classroom discourse.

**POLICY ON ONLINE HARASSMENT AND MISCONDUCT**

The policies of Academy are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have a substantial effect on the Academy’s education program and activities or use Academy networks, technology or equipment. Members of the Academy community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Academy community. Certain speech is protected by the First Amendment and cannot legally be subjected to discipline.

**POLICY ON NONDISCRIMINATION**

In accordance with federal, state and local law, the Academy does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Age,
- Citizenship status,
- Color,
- Race
- Disability (physical or mental)
- Religion/Creed,
- Criminal conviction
- Domestic violence victim status,
- Gender,
- Gender identity,
- Sexual orientation
- Marital status,
● National origin,
● Political activities,
● Pre-disposing genetic characteristics,
● Pregnancy,
● Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
● or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers discrimination in both employment and access to educational opportunities.

When brought to the attention of the Title IX Coordinator or any official with authority to institute corrective measures on behalf of the Academy, any such discrimination will be promptly and fairly addressed and remedied by the Academy according to the grievance process described below.

POLICY ON DISABILITY DISCRIMINATION AND ACCOMMODATION

The Academy is committed to being in compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Director of Student Affairs has been designated as Academy’s ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability. Grievances related to disability status and/or accommodations will be addressed using the procedures below.

a. Students with Disabilities

Academy is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the Academy.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Student Affairs who coordinates services for students with disabilities. The Director of Student Affairs reviews documentation provided by the student and, in consultation with the student, determines which reasonable accommodations are appropriate for the student’s particular needs and academic program(s) in accordance with the Academy’s applicable policies.
b. Employees with Disabilities

Pursuant to ADA, the Academy will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the Academy.

An employee with a disability is responsible for submitting a request for an accommodation to the Director of Human Resources and providing necessary documentation. The Director of Human Resources will work with the employee’s supervisor to identify which essential functions of the position are affected by the employee’s disability and what reasonable accommodations could enable the employee to perform those duties in accordance with Academy’s applicable policies.

POLICY ON ROMANTIC RELATIONSHIPS

While truly consensual romantic relationships are not sexual harassment, romantic relationships are susceptible to being determined after the fact to have been nonconsensual, and even coercive, whenever there is an inherent power differential between the parties. Therefore, any such relationship between a faculty or staff member and a student or between a supervisor and subordinate is prohibited.

POLICY ON DISCRIMINATORY HARASSMENT

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Academy’s harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Academy policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Academy policy, though supportive measures will be offered to those impacted. This policy applies to applicants as well as actual students and employees.

a. Discriminatory Harassment

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic or physical conduct that is severe or pervasive and objectively offensive.

The Academy reserves the right at its discretion to address offensive conduct and/or harassment that does not rise to the level of creating a hostile environment or that is of a generic nature and not based on a protected status through alternative resolution and other informal resolution mechanisms. For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Director of Student Affairs.
b. Sexual Harassment

For purposes of Title IX, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational or employment benefits on participation in unwelcome sexual conduct (i.e. quid pro quo);

2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity;

3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;

4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of New York State.

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

New York State Definition of Sexual Harassment

Additionally, see Appendix B for definitions of sexual harassment applied to employee misconduct under New York law when the definitions above (specific to Title IX) are not applicable, as determined by the Title IX Coordinator or Director of Human Resources.

c. Consent

For purposes of this policy, “consent” means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of
resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

d. Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which are covered by Title IX, the Academy additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to
any person within the Academy community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;

- Bullying, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Academy policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment benefits, or opportunities. Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

EDUCATION PROGRAM OR ACTIVITY

For purposes of this policy, the Academy’s “education program or activity” includes:

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

PROCEDURES

FILING A COMPLAINT OF DISCRIMINATION, HARASSMENT AND/OR RETALIATION

For purposes of this policy, “formal complaint” means a document – including an electronic submission – filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct with the Academy’s education program or activity and requesting initiation off the procedures consistent with the Title IX Grievance Policy to investigate the allegation of discrimination, harassment and/or retaliation. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the using the Grievance Form. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

For purposes of this policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered discrimination, sexual harassment and/or retaliation as defined in this policy.

TIME LIMITS ON REPORTING
There is no time limitation on providing complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the Academy’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible and is at the discretion of the Title IX Coordinator.

When notice/complaint is affected by significant time delay, the Academy will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

REPORTING TO LAW ENFORCEMENT

If you are in immediate danger, dial 911 and attempt to get to a safe place.

Acts of violence, including sexual assault, domestic violence, dating violence, and stalking, are against the law. If you are not in immediate danger and would like to report an incident to the police, you can do so by contacting:

NYPD 1st Precinct  
212-334-0611  
16 Ericsson Pl, New York, NY 10013  
Precinct: (212) 334-0611  
Community Affairs: (212) 334-0640  
Crime Prevention: (212) 334-0642  
Domestic Violence: (212) 334-2609  
Auxiliary Coordinator: (212) 334-0618  
Detective Squad: (212) 334-0635

If you would like someone to assist you in contacting the police or go with you to the police department, either the Title IX Coordinator or Director of Campus Security can assist you. The Academy will investigate a violation of this Policy regardless of whether a criminal investigation is being conducted. In the event a criminal investigation is conducted into events that are the subject of an investigation under this Policy, the Academy will not delay its investigation unless specifically requested by law enforcement. Even then, the investigation will not be delayed more than ten days, absent extraordinary circumstances.

Victims may report an incident to law enforcement regardless of whether they choose to report the incident to the Academy. Conversely, reporting an incident to the Academy does not require the reporting party to report the incident to law enforcement. The Academy reserves the right to report any crime to law enforcement, but, as a general rule, will not alert law enforcement to an incident of sexual misconduct without the reporting party’s permission, except where there is a serious and immediate threat to the campus community, when a minor is involved, or as otherwise required by law. In addition to the protective measures that the Academy may take, law enforcement may be able to provide additional protections, such as a restraining order. The Academy can assist students in contacting law enforcement and legal services organizations to learn about additional remedies that may be available.

SUPPORTIVE MEASURES
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.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a complaint or where no complaint has been filed to restore or preserve access to the Academy’s education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Academy’s educational environment, and/or deter harassment, discrimination, and/or retaliation. Supportive measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, increased security and monitoring of certain areas of campus, leaves of absence and other similar measures.

The Academy will maintain as confidential the supportive measures provided to the complainant and/or respondent, to the extent that maintaining such confidentiality would not impair the Academy’s ability to provide the supportive measures.

**EMERGENCY REMOVAL AND NO CONTACT ORDERS**

No contact orders limit continued intentional contact by the Respondent with the Complainant. If the Respondent and Complainant observe each other in a public place, it is the responsibility of the Respondent to leave the area immediately and without directly contacting the Complainant.

The Academy may establish an appropriate schedule for the Respondent to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Complainant, as long as any such restrictions are not unduly burdensome to the Respondent. Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

Both the Respondent and the Complainant may, upon request and consistent with the Academy’s policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence of his or her request.

The Academy can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies removal. This risk analysis is performed using standard objective violence risk assessment procedures.

If the Academy determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. The Academy will designate an individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.
Administrative Leave

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

PROMPTNESS

All allegations are acted upon promptly by Academy once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the Academy will avoid all undue delays within its control.

The Academy’s resolution process will run concurrently with any criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

PRIVACY

Even Academy offices and employees which cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information a Complainant provides to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution and to the notify the Title IX Coordinator or designee who is responsible for tracking patterns and spotting systemic issues. The Academy will limit disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Academy will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. The Academy reserves the right to determine which Academy officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

RETALIATION

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Academy will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.
Academy and any member of Academy’s community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**WHEN A COMPLAINANT DOES NOT WISH TO PROCEED**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus community and to comply with state or federal law. The Academy will assist with supportive measures and reasonable and available accommodations regardless of reporting choices.

The Title IX Coordinator has discretion over whether the Academy proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

This decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the Academy to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The Academy may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the Academy’s ability to pursue a Formal Grievance Process fairly and effectively.

When the Academy proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

The Academy’s ability to remedy and respond to notice may be limited if the Complainant does not want the Academy to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the choice to report, while balancing the Academy’s obligation to protect its community.
If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint with the Title IX Coordinator at a later date. Delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

**FEDERAL TIMELY WARNING OBLIGATIONS**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Academy must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Academy will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger. Any information about the resolution of a complaint will not be released by the Academy until the conclusion of the resolution process, and only as permitted by law.

**FALSE ALLEGATIONS AND EVIDENCE**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Academy policy.

**AMNESTY FOR COMPLAINANTS AND WITNESSES**

The Academy community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Academy officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of the Academy community that Complainants choose to report misconduct to Academy officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

The health and safety of every student at the Academy is of utmost importance. The Academy recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Academy strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Academy officials. A bystander acting in good faith or a Complainant acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Academy officials or law enforcement will not be subject to the institution’s code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.
Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves. The Academy maintains a policy of amnesty for students who offer help to others in need.

**FEDERAL STATISTICAL REPORTING OBLIGATIONS**

Reports of certain crimes occurring in specific geographic locations are included in the institution’s annual security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the Complainant. The institution is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. The Complainant will not be identified in a timely warning.

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;

c) VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and

d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with the Director of Campus Security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

**RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION**

**OVERVIEW**

The Academy will act on any formal complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination ("the Policy") that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.
The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable.

Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the Academy needs to take.

Initial Assessment

Following receipt of actual notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint and/or take other action because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, and/or a formal investigation and grievance process.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue, based on the nature of the complaint.

1 If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.
If the Title IX Coordinator determines that Title IX does not apply as a technical matter, the Title IX Coordinator will “dismiss” that aspect of the complaint and assesses which policies may apply. Please note that dismissing a complaint under Title IX is a procedural requirement under Title IX and does not limit any authority the Academy may have to address a complaint under another law or policy. If the formal grievance under Title IX continues, notice must include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The Academy must dismiss a formal complaint or any allegations therein under Title IX if, at any time during the investigation or hearing, it is determined that:

1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
2) The conduct did not occur in an educational program or activity controlled by the Academy; and/or
3) The conduct did not occur in the United States.

The Academy may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein or discontinue participation in the process.; and/or
2) The Respondent is no longer enrolled at or employed by the Academy; and/or
3) Specific circumstances prevent the Academy from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the Academy will promptly send written notice of the dismissal and the reason(s) for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below.

COUNTERCLAIMS

The Academy permits the filing of counterclaims. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

ADVISOR OF CHOICE AND PARTICIPATION OF ADVISOR

Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or eligible to attend.
The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Academy community. The Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses.

The Advisor of Choice is not an advocate and shall not participate directly in the process except to cross-examine witnesses during the live hearings.

The Academy will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The Academy’s obligations to investigate and adjudicate in a prompt timeframe under Title IX and other policies apply to matters governed under this Policy, and the Academy cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable will be made by the Title IX Coordinator or designee. The Academy will not be obligated to delay a meeting or hearing under this process more than five days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or use one provided by the Academy.

c. Advisors in Hearings/Academy-Appointed Advisor

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties’ Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the Academy will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct questioning, the Academy will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

f. Advisor Violations of New York Academy of Art Policy

All Advisors are subject to the same rules, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Academy officials in a meeting or interview unless invited to. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except to cross-examine witnesses during a hearing proceeding.
The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. The Investigator(s) or Decision-Maker(s) may refuse such request.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the Advisor will be required to leave, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role.

**g. Sharing Information with the Advisor**

The Academy expects that the parties may wish to have the Academy share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor, though it is important to be mindful of the privacy of this process.

The Academy also provides a consent form that authorizes the Academy to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the Academy is able to share records with an Advisor.

**h. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Academy. The Academy may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the New York Academy of Art’s privacy expectations.

**i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.
RESOLUTION PROCESS

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Academy policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. The Academy encourages parties to discuss any sharing of information with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, etc., usually before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the Academy will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the Academy.

The Academy will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

b. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism, including mediation or restorative practices, etc.
by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

Even if both parties elect to pursue Alternate Resolution, the ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the Academy are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Academy policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

d. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the Academy. Negotiated Resolutions are not appealable.

GRIEVANCE PROCESS POOL

The Formal Grievance Process relies on a pool of administrators ("the Pool") to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found nyaa.edu/title-ix.

a. Pool Member Roles
Members of the Pool are trained annually, and serve in one of the following roles at the direction of the Title IX Coordinator:

- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

**b. Pool Member Appointment**

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. The Academy has designated permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary.

**c. Pool Member Training**

The Pool members receive annual training that includes, as applicable:

- The scope of the Academy’s Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the New York Academy of Art with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
• How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
• Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are Academy employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: nyaa.edu/title-ix.

Formal Grievance Process: Notice of Investigation and Allegations

The Academy will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:
• A meaningful summary of all of allegations,
• The identity of the involved parties (if known),
• The precise misconduct being alleged,
• The date and location of the alleged incident(s) (if known),
• The specific policies implicated,
• A description of the applicable procedures,
• A statement of the potential sanctions/responsive actions that could result,
• A statement that the Academy presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
• A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
• A statement about the Academy’s policy on retaliation,
• Information about the privacy of the process,
• Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
• A statement informing the parties that the Academy’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
• Detail on how the party may request disability accommodations during the interview process,
• The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
• An instruction to preserve any evidence that is directly related to the allegations.
Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and emailed to the parties’ Academy-issued email or designated accounts. Once emailed and/or received in-person, notice will be presumptively delivered.

**RESOLUTION TIMELINE**

The Academy will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

**APPOINTMENT OF INVESTIGATORS**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

**ENSURING IMPARTIALITY**

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual’s status or participation as a Complainant, Respondent, or witness.

The Academy operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.
INVESTIGATION TIMELINE

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The Academy will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

DELAYS IN THE INVESTIGATION PROCESS AND INTERACTIONS WITH LAW ENFORCEMENT

The Academy may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The Academy will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The Academy will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Academy will implement supportive measures as deemed appropriate.

The Academy action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

STEPS IN THE INVESTIGATION PROCESS

Investigations are impartial involve interviews with all relevant parties and witnesses and obtaining available, relevant evidence.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with the Title IX Coordinator initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
• Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
• Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
• Meet with the Complainant to finalize their interview/statement, if necessary
• Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  o Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
• Provide each interviewed party and witness an opportunity to review and verify the Investigator’s summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
• Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
• When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
• Interview all available, relevant witnesses and conduct follow-up interviews as necessary
• Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
• Complete the investigation promptly and without unreasonable deviation from the intended timeline
• Provide regular status updates to the parties throughout the investigation
• Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
• Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
• The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
• Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the New York Academy of Art does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be
role of the person receiving it (e.g., Complainant, Respondent, Complainant’s Advisor, Respondent’s Advisor).

- The Investigator(s) may elect to respond in writing in the investigation report to the parties’ submitted responses and/or to share the responses between the parties for additional responses.
- The Investigator(s) will incorporate relevant elements of the parties’ written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

ROLE AND PARTICIPATION OF WITNESSES IN THE INVESTIGATION

Witnesses (as distinguished from the parties) who are employees of the Academy are expected to cooperate with and participate in the Academy’s investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The New York Academy of Art will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

RECORDING OF INTERVIEWS

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

EVIDENTIARY CONSIDERATIONS IN THE INVESTIGATION

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the
Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent; 4) the parties’ mental health history or treatment.

**REFERRAL FOR HEARING**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline.

**HEARING DECISION-MAKER COMPOSITION**

The New York Academy of Art will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

**EVIDENTIARY CONSIDERATION IN THE HEARING**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to
the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the Academy uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

**NOTICE OF HEARING**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party’s or witness’s testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire.
to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the Academy will appoint one. Each party must have an Advisor present. There are no exceptions.

- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.²
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the Academy and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

**Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

**Pre-Hearing Preparation**

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

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² The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.
Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have submitted a written statement, unless all parties and the Chair assent to the witness’s participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they and/or their Advisors wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be
argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

HEARING PROCEDURES

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent)3, Advisors to the parties, any called witnesses and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

JOINT HEARINGS

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

ORDER OF THE HEARING – INTRODUCTIONS AND EXPLANATION OF PROCEDURES

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

3 Subject to the Academy’s Code of Organizational Conduct.
The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

**INVESTIGATOR PRESENTS THE FINAL INVESTIGATION REPORT**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**TESTIMONY AND QUESTIONING**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the
hearing, the Chair should not permit irrelevant questions that probe for bias.

**REFUSAL TO SUBMIT TO CROSS-EXAMINATION AND INFERENCES**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker(s) may not draw any inference *solely* from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party’s Advisor of choice refuses to comply with the New York Academy of Art’s established rules of decorum for the hearing, the New York Academy of Art may require the party to use a different Advisor. If a New York Academy of Art-provided Advisor refuses to comply with the rules of decorum, the New York Academy of Art may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

**RECORDING HEARINGS**

Hearings (but not deliberations) are recorded by the Academy for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the Academy will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

**DELIBERATION, DECISION-MAKING AND STANDARD OF PROOF**
The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments and any sanctions or recommendations.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

NOTICE OF OUTCOMES

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome will then be reviewed by legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 10 business days of receiving the Decision-maker(s)’ deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Academy records, or emailed to the parties’ Academy-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated,
including the relevant policy section, and will contain a description of the procedural steps taken by the Academy from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the New York Academy of Art is permitted to share such information under state or federal law; any sanctions issued which the Academy is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the Academy’s educational or employment program or activity, to the extent the Academy is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the Academy to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

SANCTIONS

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent’s disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions
The following are the usual sanctions\(^4\) that may be imposed upon students or organizations singly or in combination\(^5\):

- **Warning**: A formal statement that the conduct was unacceptable and a warning that further violation of any Academy policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Required Counseling**: A mandate to meet with and engage in either Academy-sponsored or external counseling to better comprehend the misconduct and its effects.
- **Probation**: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension**: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Academy. See information on transcript notation, below.
- **Expulsion**: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Academy-sponsored events. See information on transcript notation, below.
- **Withholding Diploma**: The Academy may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree**: The Academy reserves the right to revoke a degree previously awarded from the Academy for fraud, misrepresentation, and/or other violation of Academy policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions**: Deactivation, loss of recognition, loss of some or all privileges (including Academy registration) for a specified period of time.
- **Other Actions**: In addition to or in place of the above sanctions, the Academy may assign any other sanctions as deemed appropriate.

**TRANSCRIPT NOTATION**

For crimes of violence, including, but not limited to sexual violence, the Academy will make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For any Respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, the Academy will make a notation on the transcript that they "withdrew with conduct charges pending." The Academy

\(^4\) New York Academy of Art policies on transcript notation will apply to these proceedings.

\(^5\) Subject to New York Academy of Art’s Organizational Code of Conduct.
permits a student seeking removal of a transcript notation for a suspension to petition the Title IX Coordinator in writing for such removal, provided that such notation will not be removed prior to one year after conclusion of the suspension. Notations for expulsion will not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation will be removed.

b. Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Enhanced supervision, observation, or review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Delay of tenure track progress
- Assignment to new supervisor
- Restriction of stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the Academy may assign any other responsive actions as deemed appropriate.

WITHDRAWAL OR RESIGNATION WHILE CHARGES PENDING

a. Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, the Academy may place a hold on a student’s ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the Academy, the resolution process ends, as the Academy no longer has disciplinary jurisdiction over the withdrawn student.

However, the Academy will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged
harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the Academy. Such exclusion applies to all campuses of Academy. A hold will be placed on their ability to be readmitted. They may also be barred from Academy property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Academy unless and until all sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the Academy no longer has disciplinary jurisdiction over the resigned employee.

However, the Academy will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the Academy, and the records retained by the Title IX Coordinator will reflect that status.

All Academy responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

APPEALS

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 10 business days of the delivery of the Notice of Outcome. A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator. No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal panel will be designated. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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; and
(C) 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 specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 10 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 10 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Chair will render a decision in no more than 10 business days, barring exigent circumstances.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the Academy is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Academy is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties’ Academy-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.
b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. The Academy may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the Academy or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

LONG-TERM REMEDIES AND ACTIONS

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions...
with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the New York Academy of Art to the Respondent to ensure no effective denial of educational access.

The New York Academy of Art will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the New York Academy of Art’s ability to provide these services.

**FAILURE TO COMPLY WITH SANCTIONS AND/OR INTERIM AND LONG-TERM REMEDIES AND ACTIONS**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the Academy and may be noted on a student’s official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.
RECORDKEEPING

In implementing this policy, records of all allegations, investigations, resolutions and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Title IX Coordinator. The Academy will also maintain any and all records in accordance with state and federal laws.

DISABILITIES ACCOMMODATION IN THE RESOLUTION PROCESS

The Academy is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at Academy. Anyone needing such accommodations or support should contact the Director of Student Affairs or Director of Human Resources, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to New York Academy of Art officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by New York Academy of Art officials.
- The right to have New York Academy of Art policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right to receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court; and
- The right not to be discouraged by New York Academy of Art officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by New York Academy of Art officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by New York Academy of Art authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly by New York Academy of Art officials.
• The right to be informed of available interim actions and supportive measures after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available.
• The right to a New York Academy of Art-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
• The right to have reports of sexual harassment, domestic violence, dating violence, stalking, and sexual assault treated seriously.
• The right to make a decision about whether or not to disclose a crime or violation and participate in the resolution process and/or criminal justice process free from pressure by the institution.
• The right to participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
• The right to be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available.
• The right to be free from any suggestion that the Complainant is at fault when these crimes and violations are committed or should have acted in a different manner to avoid such crimes or violations.
• The right to describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident.
• The right to exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution;
• To be assisted by the institution's police or security forces, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order;
• To receive a copy of any order of protection or equivalent when received by an institution and have an opportunity to meet or speak with an institutional representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the Respondent’s responsibility to stay away from the protected person or persons and an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension;
• To receive assistance from university police or campus security in effecting an arrest when an individual violates an order of protection or, if university police or campus security does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such an order;
• When the Respondent is not a student but is a member of the institution’s community and presents a continuing threat to the health and safety of the community, to subject the Respondent to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and rules and policies of the institution;
• The right to have the New York Academy of Art maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the New York Academy of Art's ability to provide the supportive measures.
• The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
• The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
• The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
• The right to have inadmissible prior sexual history or irrelevant character evidence excluded by the decision-maker.
• The right to know the relevant and directly related evidence obtained and to respond to that evidence.
• The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
• The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
• The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
• The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
• The right to regular updates on the status of the investigation and/or resolution.
• The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
• The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
• The right to preservation of privacy, to the extent possible and permitted by law.
• The right to meetings, interviews, and/or hearings that are closed to the public.
• The right to petition that any New York Academy of Art representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
• The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
• The right to the use of the appropriate standard of evidence, preponderance of the evidence; to make a finding after an objective evaluation of all relevant evidence.
• The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
• The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
• The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
• The right to be informed in writing of when a decision by the New York Academy of Art is considered final and any changes to the sanction(s) that occur before the decision is finalized.
• The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the New York Academy of Art.
• The right to a fundamentally fair resolution as defined in these procedures.
VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of risk factors that escalate the potential for violence;
2. a determination of stabilizing influences that reduce the risk of violence;
3. a contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of intervention and management approaches to reduce the risk of violence.

To assess an individual’s level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process. A trained individual(s) will be assigned to perform the assessment, according to the specific nature of the Title IX case. The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.
RESOURCES AND SUPPORT

Referral services provided by the Academy are available to all students. External agencies generally provide free consultation and crisis services but may require use of insurance or payment of fees for other services. The Title IX Coordinator and/or Director of Student Affairs will work with any student to address financial issues or concerns and ensure that costs are not a barrier to support of treatment.

MEDICAL ATTENTION AND EVIDENCE PRESERVATION

If you are in immediate danger, dial 911 and attempt to get to a safe place.

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. Victims of sexual violence, including sexual assault, dating violence, domestic violence, and stalking, are encouraged to seek prompt medical attention and to report the incident to the police. To gain assistance in getting to an emergency room, a victim can call 911 or notify the Academy’s Director of Campus Security, security guards or a Title IX Team member.

Recommended Actions for Preserving Evidence

1. Seek forensic medical assistance at a hospital, ideally within 120 hours of the incident (sooner is better).
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

HOSPITALS

New York-Presbyterian/Lower Manhattan Hospital  
170 William St  
New York, NY 10038  
(212) 312-5000

Lenox Hill Hospital Greenwich Village  
30 7th Avenue  
New York, New York 10011  
(646) 665-6000
PRIVILEGED AND CONFIDENTIAL RESOURCES

Community members can seek assistance from an off-campus crisis center, which can provide confidentiality, sharing options and advice without any obligation to inform Academy staff members unless requested.

**Bellevue Hospital Center: Sexual Assault Response Team SAFE Center**
462 First Avenue
CD Building, Ground Floor #GA74
New York, NY 10016
Contact: Carla Brekke, Program Coordinator
Phone: (212) 562-3435/3755
Fax: (212) 562-6103
E-Mail: carla.brekke@bellevue.nychhc.org

**St. Luke’s-Roosevelt Hospital: Crime Victims Treatment Center - Roosevelt Office**
432 West 58th Street Suite 114
New York, NY 10019
Contact: Christine Fowley, LCSW
Phone: (212) 523-9058
E-Mail: ChFowley@chpnet.org

**Beth Israel Medical Center: Rape Crisis & Domestic Violence Intervention Program**
Dept. of Social Work
317 E 17th St.
New York, NY 10003
Contact: Carole Sher, Program Coordinator
Phone: (212) 420-4516
Fax: (212) 420-2036
E-Mail: csher@chpnet.org

**Safe Horizon Crisis Center**
2 Lafayette Street #3
New York, NY 10007
Phone: (212) 577-7700

**Safe Horizon Crisis Center**
2 Lafayette Street #3
New York, NY 10007
Phone: (212) 577-7700

**New York Presbyterian Hospital DOVE: Domestic and Other Violent Emergencies Program**
622 W 168th St., HP2
New York, NY 10032
Contact: Alma Withim, LCSW Program Coordinator
Phone: (212) 305-9060
Fax: (212) 305-6196
E-Mail: withima@nyp.org

**New York Asian Women’s Center**
39 Bowery St., PMB 375
New York, NY 10002
Contact: Julie Kim-Richards, Director of Client Services
Phone: (212) 732-0054 ext. 113
Fax: (212) 587-5731
E-Mail: info@nyawc.org
Hotline: (888) 888-7702 (24-hour Hotline)
These policies and procedures will be reviewed and updated annually. The Academy reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Academy may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Academy may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.
APPENDIX A: COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS
PROMOTING EQUAL OPPORTUNITY, PROHIBITING DISCRIMINATION AND
HARASSMENT AND AUTHORIZING AFFIRMATIVE ACTION

In accordance with all applicable laws and pursuant to its own policies and operating procedures, the Academy provides for equal opportunity, prohibits unlawful discrimination and harassment, and takes affirmative action. The applicable laws include:

- Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination against any person on the basis of race, color, or national origin in programs or activities receiving federal financial assistance.
- Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination against any person because of race, color, religion, sex, pregnancy, or national origin.
- Title IX of the Education Amendments of 1972, as amended, prohibits discrimination on the basis of sex in the conduct or operation of a school’s educational programs or activities, including employment in these programs and activities.
- The Equal Pay Act of 1963, prohibits discrimination on the basis of sex in rates of pay. The Lily Ledbetter Act of 2009 extends this protection. Executive Order 11246, as amended, prohibits discrimination in employment because of race, color, religion, sex, or national origin and requires affirmative action to ensure equality of opportunity in all aspects of employment.
- Sections 503 of the Rehabilitation Act of 1973, requires a federal contractor to take affirmative action to employ and advance in employment qualified workers with disabilities.
- Section 504 of the Rehabilitation Act of 1973, prohibits the exclusion of any person solely on the basis of a disability from participation in or access to benefits of any federally financed program or activity; it also prohibits discrimination against any person solely on the basis of disability in any federally financed program or activity.
- The Americans with Disabilities Act of 1990, as amended, prohibits discrimination in public accommodations and in employment against a qualified person with a disability and requires an employer to provide qualified applicants and employees with reasonable accommodations.
- The Violence Against Women Act (VAWA), as amended and reauthorized, prohibits domestic and sexual violence against any person.
- The Campus Sexual Violence Elimination Act (“Campus SaVE”), a provision of the Violence Against Women Reauthorization Act of 2013 that amended the Clery Act, requires that institutes of higher education provide data regarding incidents of sexual assault, domestic violence, dating violence, and stalking; and develop policies and procedures concerning the education, awareness, and prevention of sexual assault, domestic violence, dating violence, and stalking on campus.
- The Uniformed Services Employment and Reemployment Rights Act (USERRA), prohibits discrimination in employment based on past, current, or future military obligations.
- The Vietnam Era Veterans’ Readjustment Assistance Act of 1974 and the Veterans Employment Opportunities Act of 1998, as amended, prohibit job discrimination and require affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam Era, recently separated veterans, and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.
- The Immigration Reform and Control Act of 1986, prohibits employers from discriminating on the basis of citizenship status. The prohibition extends to employers who hire only U.S. citizens or U.S. citizens and green card holders, as well as to employers who prefer to employ unauthorized workers.
or temporary visa holders rather than U.S. citizens and other workers with employment authorization.

- The Small Business Act of 1958, as amended, Section 15(g)(1), requires federal contractors to afford maximum practicable business opportunities to Small Business Concerns, including businesses owned by disadvantaged individuals, disabled veterans, and women.

- The New York Executive Law, Article 15, Section 296(1), prohibits discrimination against any person in employment because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, marital status, or arrest record. Section 296(4) prohibits an educational institution from denying the use of its facilities to anyone otherwise qualified or permitting harassment of a student or applicant on the basis of color, race, religion, disability, national origin, sexual orientation, military status, sex, age, and marital status.

- The New York Labor Law, Section 194, prohibits discrimination on the basis of sex in rates of pay.

- The New York City Human Rights Law, Chapter 1, Section 8-107, makes it an unlawful discriminatory practice for an employer to discriminate against any person because of his or her actual or perceived age, race, creed, color, national origin, gender (including gender identity and expression), disability, marital status, sexual orientation, alienage or citizenship status, partnership status, unemployment status or status as a perceived or actual victim of domestic violence.

**RELEVANT NEW YORK STATE STATUTES**

**§130.20 Sexual misconduct.**
A person is guilty of sexual misconduct when:
1. He or she engages in sexual intercourse with another person without such person’s consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person’s consent; or (Eff.11/1/03, Ch.264, L.2003)
3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

**§130.25 Rape in the third degree.**
A person is guilty of rape in the third degree when:
1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person’s consent where such lack of consent is by reason of some factor other than incapacity to consent. Rape in the third degree is a class E felony.

**§130.30 Rape in the second degree.**
A person is guilty of rape in the second degree when:
1. Being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. He or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It will be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act. Rape in the second degree is a class D felony.

**§130.35 Rape in the first degree.**
A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:
1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.
Rape in the first degree is a class B felony.

§130.40 Criminal sexual act in the third degree.
A person is guilty of criminal sexual act in the third degree when:
1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old.
2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person’s consent where such lack of consent is by reason of some factor other than incapacity to consent.
(Eff.11/1/03,Ch.264,L.2003)
Criminal sexual act in the third degree is a class E felony.

§130.45 Criminal sexual act in the second degree.
A person is guilty of criminal sexual act in the second degree when:
1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.
It will be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.
(Eff.11/1/03,Ch.264,L.2003) Criminal sexual act in the second degree is a class D felony.

§130.50 Criminal sexual act in the first degree.
A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person: (Eff.11/1/03,Ch.264,L.2003)
1. By forcible compulsion; or
2. Who is incapable of consent by means of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.
Criminal sexual act in the first degree is a class B felony.(Eff.11/1/03,Ch.264,L.2003)

§130.52 Forcible touching.
A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor’s sexual desire. For the purposes of this section, forcible touching includes squeezing, grabbing or pinching. Forcible touching is a class A misdemeanor.(Eff.11/1/03,Ch.264,L.2003)

§130.05 Sex offenses; lack of consent.
Lack of consent results from: (a) Forcible compulsion; or (b) Incapacity to consent; or (c) Where the offense charged is sexual abuse of forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor’s conduct; or (Eff.11/1/03,Ch.264,L.2003) (d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse or deviate sexual intercourse, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor’s situation would have understood such person’s words and acts as an expression of lack of consent to such act under all the circumstances. (Eff.11/1/03,Ch.264,L.2003)
Penal Code § 120.45. Stalking in the fourth degree. 1999. A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

4. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or

5. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or

6. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor.

Penal Code § 120.50. Stalking in the third degree. 1999. A person is guilty of stalking in the third degree when he or she:

4. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or

5. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or

6. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or

7. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

NY CLS Penal § 120.55. Stalking in the second degree. 1999. Amended 2003. A person is guilty of stalking in the second degree when he or she:

3. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, slingshot, [fig 1] slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

4. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or

5. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or

6. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical
injury or death [fig 1]; or
7. (Added, L 2003) Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

Penal Code § 120.60. Stalking in the first degree. 1999. Amended 2000. A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:
5. intentionally or recklessly causes physical injury to the victim of such crime; or
6. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.
APPENDIX B: STATE HUMAN RIGHTS LAW (HRL)

EQUAL OPPORTUNITY EMPLOYMENT

It is the Academy’s policy to provide equal employment opportunity to all employees and applicants for employment. No individual will be discriminated against on the basis of age, race, color, national origin, gender, sexual orientation, creed or religion, disability, military status, marital status, domestic violence status or any other status protected by applicable law. This policy applies to all terms, conditions and privileges of employment, including recruitment, hiring, placement, compensation, promotion, discipline and termination.

SEXUAL HARASSMENT PREVENTION POLICY

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment, and the New York Academy of Art (Academy) is committed to maintaining a workplace free from sexual harassment. Per New York State Law, the New York Academy of Art has a sexual harassment policy in place that protects you. This policy applies to all employees, paid or unpaid interns and non-employees in our workplace, regardless of immigration status.

- Click here to download our complete policy.
- Click here to download our complaint form.

If you believe you have been subjected to or witnessed sexual harassment, you are encouraged to report the harassment to a supervisor, manager, the Title IX team member, or, if faculty, the Provost, so we can take action.

Stephan Korsakov  
CFO & Director of Human Resources  
New York Academy of Art  
212.842.5978  
skorsakov@nyaa.edu

Peter Drake  
Provost  
New York Academy of Art  
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pdrake@nyaa.edu

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Title IX Investigator  
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New York Academy of Art  
212.842.5963  
ntimmons@nyaa.edu

For more information and additional resources, please visit: www.ny.gov/programs/combating-sexual-harassment-workplace