



## **SEX-BASED MISCONDUCT POLICY**

**Effective March 1, 2021**

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## SEX-BASED MISCONDUCT POLICY

### I. STATEMENT OF POLICY AND GOALS

The New York Academy of Art (the “Academy”) is committed to providing a safe<sup>1</sup> environment for every member of its community and to ensuring that no student, faculty or staff member is excluded from participation in or denied the benefits of any Academy program or activity on the basis of sex. Accordingly, the Academy prohibits the following forms of Sex-Based Misconduct: sexual assault, sexual harassment, gender-based harassment, dating violence, domestic violence, sexual exploitation and stalking. This Policy also applies to dating violence, domestic violence and stalking that is not sex-based (definitions of these terms can be found below). All references in this Policy to “Sex-Based Misconduct” shall also be deemed to apply to non sex-based dating violence, domestic violence and stalking. Under certain circumstances an attempt to violate this Policy may itself be considered a violation. The use of alcohol or other drugs will not be accepted as a defense to a violation of this Policy.

The Academy prohibits retaliation against any individual for reporting an incident of Sex-Based Misconduct or for participating in any investigation or proceeding related to any such report.

Members of the Academy community who believe that they have been subjected to Sex-Based Misconduct are encouraged to report such incidents to the Academy and, where applicable, to local law enforcement. Pursuant to the procedures detailed below, upon receiving a report, the Academy will respond promptly and fairly. When appropriate, the Academy will take steps to prevent future incidents and to ameliorate the effects of past incidents.

This Policy applies regardless of the Complainant’s or the Respondent’s sexual orientation, sex, gender identity or expression, age, race, color, creed, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, national origin, religion, disability or other status protected by law.

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 Sex-Based Misconduct and other forms of discrimination and harassment do not extend to statements or written materials that are reasonably germane to the classroom subject matter.

The Academy will use Academy electronic mail (email) for purposes of communication and notification under this Policy.

This Policy does not constitute a contract and can be amended at any time in the Academy’s sole discretion.

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<sup>1</sup> If you are in in immediate danger, you should dial 911 and attempt to get to a safe place.

The Academy's Title IX Coordinator is Katie Hemmer. She can be reached at 111 Franklin Street or (212) 842-5961 or [khemmer@nyaa.edu](mailto:khemmer@nyaa.edu).

## II. POLICY AND PROCEDURE SUMMARY

This Policy prohibits all forms of sex and gender related misconduct, referred to here as "Sex-Based Misconduct". A person who has experienced Sex-Based misconduct has several options:

- **A report to a Confidential Resource.** A confidential resource provides emotional support and/or referral to medical services and maintains confidentiality. A report to a confidential resource does not result in an Academy investigation or any other Academy action to respond to the incident.
- **A report to a Responsible Employee.** Certain personnel at the Academy have the responsibility to receive reports of Sex-Based Misconduct and to take action based on those reports. A responsible employee will forward the information about the incident to the Title IX Coordinator. The Title IX Coordinator will discuss options with the reporting person. The assistance the Title IX Coordinator can facilitate includes the following:
  - **Supportive Measures.** Supportive measures are intended to support the individual who experienced Sex-Based Misconduct to continue in their involvement in the Academy's program and activities. Supportive measures include no contact orders; academic accommodations; or other academic or work accommodations.
  - **Informal Resolution.** An informal resolution is a resolution that the parties (i.e., the person making the allegations and the accused person) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
  - **Grievance Procedure.** The Academy's grievance procedure includes an investigation and adjudication process. The outcome of a grievance process is either that the person accused of Sex-Based Misconduct is found either responsible or not responsible for having committed a violation of this Policy. A violation results in appropriate sanctions and other remedies to address the violation.

Additionally, a complainant may make:

- **A report to Law Enforcement.** If an incident involves criminal conduct, the victim may make a complaint to law enforcement. 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.

The options for reporting above are not mutually exclusive, and an individual may pursue one option but not the other. An individual may obtain the services of a confidential resource and decide at that time or a later time to report to the Academy. An individual may report to the Academy and also make a report to law enforcement, or may make a report to only the Academy or only to law enforcement. A person seeking to understand their options pursuant to this Policy should reach out to the Title IX Coordinator, Katie Hemmer, 111 Franklin Street, (212) 842-5961 or [khemmer@nyaa.edu](mailto:khemmer@nyaa.edu).

### **III. PROHIBITED SEX-BASED MISCONDUCT DEFINED**

This Policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged violations. This Policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations) and also applies to a broader range of contexts and behaviors inconsistent with the Academy’s commitment to equal opportunity (i.e., “Academy Category” violations).

The designation of conduct or allegations as either “Title IX Category” or “Academy Category” is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the Academy’s broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

#### **A. Title IX Category Violations**

Title IX of the Education Amendments of 1972 provides: “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” “On the basis of sex” includes sex, gender, sexual orientation, gender identity and transgender status.

In accordance with Title IX as interpreted by the Department of Education, the Academy recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the complainant was in the United States at the time of the alleged conduct, that the complainant was participating in or seeking to participate in an Academy education program or activity at the time of the complaint, and that the conduct have occurred in the context of an Academy education program or activity:

- 1. Sexual harassment.** “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- An employee of the Academy conditioning the provision of an aid, benefit, or service of the Academy on an individual's participation in unwelcome sexual conduct (commonly referred to as a "quid pro quo"); or
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an Academy education program or activity (commonly referred to as a sexually or gender-based "hostile environment").
- 2. Sexual assault.** "Sexual assault" is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:
- Non-consensual sexual intercourse. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes conduct committed against both males and females.
  - Non-consensual sexual contact. The touching of the private body parts<sup>2</sup> of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
- 3. Dating violence.** "Dating violence" means violence committed on the basis of sex by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) 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.
- 4. Domestic violence.** "Domestic violence" means violence committed on the basis of sex 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 the domestic or family violence laws of New York, 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.

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<sup>2</sup> Private body parts include genital area, anus, groin, buttocks or breast, and the prohibited conduct includes contact over or under clothing.

**5. Stalking.** “Stalking” is engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

**B. Academy Category Violations**

The below conduct is prohibited even if it does not violate Title IX. The Academy may take action pursuant to this policy with respect to any behavior regardless of where and in what context it occurs if the conduct had an impact or effect on or poses a risk to the work or learning environment. Therefore, an Academy Category violation may occur even if the prohibited conduct occurs off-campus or during an employee’s or student’s or third party’s off duty time.

The Academy retains discretion to not respond to, investigate or adjudicate circumstances in which no Academy interest is implicated.

**1. Sexual harassment.** “Sexual harassment” means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. This definition prohibits conduct which is intentional and also conduct which, regardless of intent, has the effect or impact of creating an intimidating, hostile or offensive working or learning environment on the basis of sex. It makes no difference in determining whether conduct violates this Policy, that the person accused of violating the Policy was “just joking,” “teasing,” or being “playful” or had an evil motive. The fact that a person does not object to the alleged harassing conduct or does not request that the harassing conduct stop, does not necessarily mean that he/she welcomes the conduct. Unwelcome conduct of a sexual nature constitutes sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s education, campus life activities or employment (quid pro quo harassment);
- submission to, or rejection of such conduct by an individual is used as the basis for employment, academic or other student life decisions affecting such individual (quid pro quo harassment); or
- such conduct has the purpose or effect of interfering unreasonably with an individual’s academic performance or ability to participate in or benefit from the Academy’s programs or activities, or creating an intimidating, hostile or offensive academic or work environment that is, or would be, offensive to a person of reasonable sensitivity and sensibilities (hostile environment sexual harassment).



Examples<sup>3</sup> of behaviors that may constitute sexual harassment include, but are not limited to:

- subtle or persistent pressure for sexual activity;
- unwelcome touching of a sexual nature or impeding or blocking movements;
- requesting or demanding sexual favors concerning employment, academic activities or other activities;
- unwelcome communications (verbal, written, electronic, etc.) of a sexual nature;
- failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior;
- engaging in visual conduct such as leering or making sexual gestures;
- displaying sexually suggestive or degrading objects, pictures, cartoons, posters;
- distributing sexually suggestive, pornographic or obscene material;
- making derogatory comments on the basis of sex; sexual propositions; sexually explicit jokes or jokes concerning gender-specific traits or sexual preference;
- making sexually explicit comments about an individual's body or clothing; comments about an individual's sexual desirability; or using sexually degrading words to describe an individual; and
- engaging in verbal or written slurs, degrading or negative stereotyping.

To make a determination of whether sex-based harassment violates this Policy, the Academy will consider the severity, persistence or pervasiveness of the sex-based harassment. The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents. A single instance of sex-based harassment may be sufficient to constitute Academy Category sexual harassment. Likewise, a series of incidents may be sufficient even if each instance of the Sex-Based Misconduct is not particularly severe.

Sexual harassment is harassment "based on sex" which may consist of behavior that is not sexual in nature but that belittles or shows hostility or aversion toward an individual because of gender. Gender-based harassment includes verbal and/or physical aggression toward another based upon a perception that the other fails to conform to stereotypical notions of expected characteristics for males or females.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a "reasonable person" standard and takes into account the totality of the circumstances. The Academy considers the context of a communication or incident and the relationship of the individuals involved in the communication or incident.

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<sup>3</sup> The examples of conduct listed here also may apply to Title IX Category Sexual Harassment, depending on the circumstances, including whether the conduct occurred in the context of the Academy's educational program or activities.

**2. Sexual assault.** “Sexual assault” is a sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in an Academy education program or activity at the time of the complaint, or because the conduct did not occur in the context of an Academy education program or activity). Sexual assault consists of the following specific acts:

- Non-consensual sexual intercourse. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes conduct committed against both males and females.
- Non-consensual sexual contact. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. This also may include forcing or causing another to touch one’s own private body part(s) without consent.
- Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.

**3. Dating violence.** “Dating violence” means violence committed on the basis of sex by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) 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; and does not constitute dating violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example, because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in an Academy education program or activity at the time of the complaint, or because the conduct did not occur in the context of an Academy education program or activity).

**4. Domestic violence.**<sup>4</sup> “Domestic violence” means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim

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<sup>4</sup> Information about New York State Domestic Violence related laws is available online at <http://statelaws.findlaw.com/new-york-law/new-york-domestic-violence-laws.html>.

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 the domestic or family violence laws of New York, 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, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in an Academy education program or activity at the time of the complaint, or because the conduct did not occur in the context of an Academy education program or activity). This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

**5. Stalking.** "Stalking" is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation as defined above because of the basis on or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in an Academy education program or activity at the time of the complaint, or because the conduct did not occur in the context of an Academy education program or activity).

**6. Sexual Exploitation.** Sexual Exploitation occurs when, without Affirmative Consent, an individual takes sexual advantage of another. Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy and voyeurism (e.g., observing or recording others engaged in sexual activity, whether in-person or through audio or video recording or streaming, without the consent of all involved);
- taking intimate pictures of another, but then distributing the pictures to others without the photographed person's consent;
- engaging in sexual activity with another while knowingly infected with a sexually transmitted diseases without informing the other person of such infection;
- exposing of a person's genitals in non-consensual circumstances;
- prostituting or soliciting another community member; and
- incest.

**7. Retaliation.** Retaliation occurs when an adverse action is taken against an individual because the individual engaged in an activity protected by law or this Policy, including intimidating, threatening, coercing an individual who reported or complained of

Sex-Based Misconduct or participated in a school or government investigation or other proceedings related to allegations of Sex-Based Misconduct. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy. 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 does not constitute retaliation prohibited under this Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that a party made a materially false statement in bad faith.

#### **IV. GENERAL DEFINITIONS**

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

Each person involved in the sexual activity is responsible to ensure that they have the Affirmative Consent of the other or others to engage in the sexual activity. A person who has been drinking alcohol or using drugs is still responsible for ensuring that he/she has the other person's Affirmative Consent to engage in any sexual activity. Affirmative Consent must be ongoing throughout a sexual activity and can be withdrawn at any time, and, if it is, the sexual activity must stop. Consenting to a specific sexual activity does not constitute consent to any other sexual act. Consent is not assumed based on previous consensual encounters or implied by a relationship. Consent to a sexual encounter with one person does not constitute consent to such an encounter with another.

Consent does not exist when there is the presence of threat, coercion, force or intimidation. Lack of protest or resistance does not mean consent. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent.

All references to "consent" in this policy refer to "Affirmative Consent."

**Incapacitation** is a state where someone lacks the ability to knowingly choose to participate in sexual activity. A person may be incapacitated due to mental disability, sleep, unconsciousness, physical restraint or from the consumption (voluntary or otherwise) of drugs or alcohol. In New York a person under age 17 is also incapable of giving consent. Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, the odor of alcohol on a person's breath, inability to maintain balance, vomiting, unusual or irrational behavior and

unconsciousness. The presence of one or more of these cues does not necessarily indicate incapacity, nor does the absence of these cues necessarily indicate capacity.

**Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion to overcome resistance.

**Coercion** is unreasonable pressure. The use of emotional manipulation to persuade someone to do something they may not want to do, such as being sexual or performing certain sexual acts, constitutes coercion. Coercing someone into having sex or performing sexual acts does not constitute obtaining consent and is considered Sex-Based Misconduct.

**Intimidation** means to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**Advisor of Choice.** An advisor of choice is a person selected by the complainant or respondent to advise and accompany the complainant or respondent throughout the investigation and adjudication process. An advisor of choice may be any person, including an attorney. The institution does not appoint or pay for an advisor of choice. An advisor of choice's role is limited to the functions further described in this Policy.

**Institution Advisor.** A complainant or respondent who does not opt to be accompanied by an advisor of choice at a hearing is entitled to be appointed an advisor by the Academy at no charge to the party. This advisor is referred to an "institution advisor" who may be but need not be an attorney. An institution advisor's role is to ask cross-examination questions of the other party during a hearing. An institution advisor does not represent a party in any legal sense. At a hearing, an institution advisor is allowed the same right of participation as an advisor of choice. The party is responsible for formulating the cross-examination questions the institution advisor will pose during the hearing.

**Complainant.** The term complainant refers to the person who allegedly experienced the sexual misconduct in violation of the Policy whether or not a formal complaint is filed. In some cases, the Title IX Coordinator may file a formal complaint and thereby initiate an investigation and adjudication process pursuant to this Policy. In that instance, the Title IX Coordinator is not the "complainant."

**Respondent.** The term respondent refers to the person alleged to have committed a violation of this Policy.

**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; or
- 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.

**Relevant Evidence.** The term "relevant" refers to any evidence and questions that tend to make an allegation of sexual harassment more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the grievance process:

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

## **V. MEDICAL ATTENTION AND EVIDENCE PRESERVATION**

Victims of sexual assault or other acts of violence are encouraged to seek prompt medical attention. Medical attention is available at local hospital emergency rooms here. To gain assistance in getting to an emergency room, a victim can call 911 or notify Michael Smith, Director of Operations & Campus Security, 111 Franklin Street, (212) 842-5969.

Seeking medical attention will in no way obligate a victim to file a complaint or press criminal charges.

## **VI. CONFIDENTIAL RESOURCES**

The Academy encourages any person who has experienced sexual assault or other forms of Sex-Based Misconduct to talk to someone about what happened, so she or he can get the support needed.

### **What is the difference between a confidential and non-confidential resource?**

A confidential resource does not reveal the information shared with him/her without the disclosing person's consent. (There may be instances where a confidential resource must disclose

information in a criminal or civil court proceeding, but those are very limited circumstances. Similarly, reports of sexual abuse of a minor in the context of an Academy program, activity or facility will not be treated as confidential.) **The only Academy employee[s] who can offer confidentiality are [is] those listed as confidential resources below.**

A non-confidential resource is a person who must report information to others with a need to know. An Academy employee who is a non-confidential resource will disclose to as few individuals as possible, but a non-confidential resource does not have the ability to promise that he/she will not tell others within the Academy about the information that has been shared with him/her. At a minimum, a non-confidential resource will share all information with the Title IX Coordinator.

The only Confidential Resource available to members of the Academy Community is Amanda Jurist or any other person holding the position of Counselor for the Academy:

## **VII. REPORTING TO THE ACADEMY: REPORTING TO A “RESPONSIBLE EMPLOYEE”**

A Responsible Employee is an individual designated by the Academy to respond on the Academy’s behalf to allegations of violations of this Policy. A Responsible Employee is a Non-Confidential Resource. The Academy encourages reporting directly to either the Title IX Coordinator or to the Title IX Team, Board, President, Provost, CFO & Director of Human Resources, Vice President of Development, Faculty Chair(s), Full-time and Adjunct Faculty, and Staff each of whom is a Responsible Employee.

An individual who reports an incident to an Academy employee or office other than one of the Responsible Employees listed above risks that the information may not be acted upon by the Academy. Therefore, a person who wishes for the Academy to take action is strongly encouraged to report to one of the offices listed above.

### **A. Supportive Measures**

Once a report is made under this Policy, the Complainant will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. A report that triggers supportive measures need not be a formal complaint, and it may be made by a third-party (i.e., someone other than the complainant himself/herself). A Complainant may accept supportive measures and maintain his/her confidentiality. If the Respondent is informed of a report, or when the Respondent is informed of a formal complaint, the Respondent will be contacted by the Title IX Coordinator and offered individualized support as more fully described below.

Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the Academy’s educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties.

Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course-related adjustments or allowing a withdrawal from a course without penalty;
- Changes to transportation and campus working situations if those changes are requested by a party and reasonably available;
  - Mutual “No Contact” orders and, possibly, in rare cases, such as when legal restraining orders or orders of protection have been issued, one-way no contact orders. A no contact order, whether mutual or one-way, is non-disciplinary in nature, and the imposition of such an order is not and will not be viewed as an indication of the merits of the allegations;
- Access to campus escorts or other reasonable security or monitoring measures; and
- Counseling services.

Interim removal of a student from the Academy will only be done pursuant to the Emergency Removal protocol, discussed below.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various Academy departments and offices that may be involved. Supportive measures will be offered free of charge.

If a party’s request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. Information about how to request a review will be included in a written communication that will outline the supportive measures offered and any that were requested by the party but denied.

## **B. Emergency Removal**

In some cases, the Academy may undertake an emergency removal of a student Respondent in order to protect the safety of Academy community, which may include contacting local law enforcement to address imminent safety concerns.

Emergency removal is not a substitute for reaching a determination as to a Respondent’s responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person’s physical health or safety, which may arise out of the sexual harassment allegations.

Prior to removing a student Respondent through the emergency removal process, the Academy will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student, including the student Respondent, or other individual justifies removal, then a student



Respondent will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed.

After determining a student Respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the Complainant and Respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

If a student Respondent disagrees with the decision to be removed from campus, the Respondent may appeal the decision. The Respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Provost within 10 calendar days of receiving the notice of removal. The decision concerning the appeal will be made by the Provost in consultation with the Title IX Coordinator. The burden of proof is on the student Respondent to show that the removal decision was incorrect.

This section applies only to student Respondents. Employee respondents are not subject to this section and may be placed on administrative leave pursuant to the Academy's policies during the pendency of a Title IX grievance process.

### **C. Grievance Procedure**

#### **1. Filing a Formal Complaint.**

A formal complaint is necessary to initiate the Academy's grievance process, meaning an investigation and adjudication process. A formal complaint must be in written form and must be signed by the complainant. A third-party or anyone other than the victim of the misconduct may not file a formal complaint. However, a formal complaint may be filed by a parent or guardian of a minor person.

A formal complaint is a document filed by a complainant or signed by the Academy's Title IX Coordinator alleging sexual harassment against a respondent and requesting that the Academy investigate the allegation. The Respondent may be either a student or an employee or a visitor, independent contractor, intern, volunteer of the Academy. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail to: **The Academy's Title IX Coordinator is Katie Hemmer. She can be reached at 111 Franklin Street or (212) 842-5961 or [khemmer@nyaa.edu](mailto:khemmer@nyaa.edu).**

In order to qualify as a formal complaint, the document must contain the Complainant's physical or electronic signature, or otherwise indicate that the Complainant is the person filing the formal complaint.

If a Complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, or the Complainant's identity is unknown, and the Title IX Coordinator determines there is sufficient cause to file a formal complaint, the Title IX

Coordinator may file a formal complaint. In such cases, the Title IX Coordinator is not considered to be a Complainant or other party under this Policy.

The Title IX Coordinator will consider the wishes of the Complainant not to proceed with the investigation and adjudication process. However, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that the allegations are such that it would be unreasonable not to proceed despite the wishes of the complainant.

In making this determination, the Title IX Coordinator will consider, among other factors, the risk that the alleged perpetrator will commit additional acts of Sex-Based Misconduct or other violence, which may be assessed by evaluating:

- whether there have been other complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators;
- whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the Academy possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

Additionally, where the respondent is not enrolled at the Academy and is not employed by the Academy, the Academy may decline to process the complaint through the Grievance Process. Instead, the Academy will take the steps it deems appropriate under the circumstances.

Parties may request reasonable accommodations in the complaint, investigation, hearing or any other phase of the process for disclosed disabilities to the Title IX Coordinator that do not fundamentally alter the process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even when the parties may be receiving accommodations in other institutional programs and activities.

**2. Early Dismissal.** The Title IX Coordinator will review a formal complaint filed by a Complainant. In order to comply with Title IX regulations, the Title IX Coordinator must "dismiss" the Title IX Category violation(s) if it is apparent that the allegations are not within the scope of Title IX, including that the conduct alleged:

- would not constitute a Title IX violation, even if proved,
- did not occur in the Academy's education program or activity, or
- did not occur against a person in the United States.

Even if a Title IX Category violation is subject to dismissal, the Academy may continue to process the allegations as Academy Category violations, assuming that the allegations, if true, would constitute Academy Category violations.

Additionally, the Title IX Coordinator may dismiss an Academy Category violation(s) if he/she determines that the conduct alleged would not constitute an Academy Category violation even if proved or that there is otherwise no merit to the allegation(s). Notice of dismissal will be in writing and issued to both the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the dismissal of a Title IX Category or Academy Category violation. A decision to dismiss a Title IX Category or Academy Category violation is immediately appealable by the Complainant by filing an appeal with the Title IX Coordinator, which will be decided by the Appeal Officer(s) as designate in the Appeal section of this Policy.

**3. Informal Resolution.** Informal Resolution may be offered to the parties after a formal complaint is filed by the Complainant. The Academy reserves the right not to offer Informal Resolution in cases where the Academy determines Informal Resolution to be inappropriate based on the allegations or other circumstances (including but not limited to a situation where an employee is alleged to have committed sexual misconduct against a student). Informal Resolution will be pursued only where both the Complainant and Respondent agree to use the process. Either party in an Informal Resolution process may terminate it at any time and, if that occurs, the complaint will proceed to formal investigation and adjudication process set forth below. Similarly, the Title IX Coordinator may decide to end an Informal Resolution process, including if new facts come to light rendering an Informal Resolution inappropriate.

If both parties consent to participate in the Informal Resolution process, the Academy will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will free from conflicts of interest and bias.

An Informal Resolution leads either to an agreement between the parties or no agreement, in which case the complaint returns to the formal investigation and adjudication process. The Academy reserves the right to disallow an Informal Resolution that the Academy finds unacceptable or inappropriate. An Informal Resolution may include disciplinary sanctions agreed to by the parties. An Informal Resolution will be agreed to by the parties in writing and is considered final.

**4. Consolidation of Formal Complaints.** The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single complainant against a respondent, or multiple complaints by a single complainant against multiple respondents.

**5. False Allegations and Evidence.** Knowingly false complaints can have serious effects on the person or persons accused. Accordingly, if, after investigating any complaint, the Academy determines that an individual has knowingly provided false information regarding the complaint, or knowingly has filed a false complaint, appropriate disciplinary action will be taken against the individual up to and including discharge for employees and expulsion for students.

**VIII. ASSIGNED HEARING OFFICER/DECISION MAKER AND APPEAL OFFICER[S]**

The following Complaint Procedure Diagram identifies the Hearing Officer/Decision Maker and Appeal Officer[s] who will be involved in deciding the complaint. The identity of the persons appointed to a particular case varies depending upon whether the Respondent is a student, faculty member, other employee or a third party. All Hearing Officers/Decision Makers and Appeal Officers shall receive annual training on the requirements of this Policy and on issues relating to Sex-Based Misconduct, including sexual harassment, sexual assault, dating violence, domestic violence, stalking and retaliation. A determination as to whether a violation of this Policy has been established is determined based on a preponderance of evidence standard. A preponderance of the evidence means to prove that something is more likely so than not so and does not require proof to an absolute certainty or beyond a reasonable doubt.

**Complaint Procedure Diagram<sup>5</sup>**

<b>Respondent</b>	<b>Investigator</b>	<b>Decision Maker/ Hearing Officer</b>	<b>Appeal Officer(s)</b>
Faculty Member	Title IX Coordinator or Deputy Title IX Investigator(s)	Provost	President
Student	Title IX Coordinator or Deputy Title IX Investigator(s)	Provost	Director of Human Resources
Staff	Title IX Coordinator or Deputy Title IX Investigator(s)	Director of Human Resources	Provost

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<sup>5</sup> In any given case, the Academy reserves the right to appoint an external party to serve as the investigator, Decision Maker or Hearing Officer.

Third Party	Title IX Coordinator or Deputy Title IX Investigator(s)	Director of Human Resources	Provost
President or Senior Executives who Report to him/her/they	Title IX Coordinator or Deputy Title IX Investigator(s)	Executive Committee of Board of Trustees (with recusal of President and Chair of Board of Trustees)	Chair of the Board of Trustees

**IX. OBJECTIONS TO THE INVESTIGATOR, DECISION MAKER/HEARING OFFICER OR APPEAL OFFICER(S)**

The Complainant or Respondent may object to the participation of the particular Investigator, the Decision Maker or Appeal Officer based on a conflict of interest or other facts suggesting that that the Investigator, Decision Maker, or Appeal Officer is unable to fulfill his or her responsibilities in an impartial manner. Such objection must be made in writing to the Title IX Coordinator prior to any recommendation or decision being issued by the person and in no event, later than two calendar days after the Respondent or Complainant, if any, learn the identity of the person or persons who will be serving in these roles. Concerns of bias or a potential conflict of interest by the Title IX Coordinator should be made to Academy President, David Kratz, [dkratz@nyaa.edu](mailto:dkratz@nyaa.edu) , (212) 842-5959.

**X. INVESTIGATION PROCEDURE**

In the absence of an Informal Resolution, a Formal Complaint will result in an investigation.

**A. Notice of Investigation**

The Complainant and Respondent shall receive a notice of investigation referencing the violation(s) of this policy alleged to have been committed and the range of possible disciplinary sanctions and remedies following any determination of responsibility. The notice of investigation will include, to the extent known:

- the identities of the involved parties;
- the date, time, location and factual allegations concerning the alleged violation;
- the policy provisions allegedly violated;
- a description of the investigation and adjudication process;
- potential sanctions;

- the right to an advisor of their choice, who may be, but is not required to be, an attorney;
- their right to inspect and review evidence in accordance with this Policy;
- notice that knowingly making false statements or knowingly submitting false information is prohibited under the Academy's Student Code of Conduct; and
- that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process will be provided with a copy of this Policy and will be given an opportunity to meet with the Title IX Coordinator to ask any questions they may have about the Policy before the investigation begins.

If, in the course of the investigation, the Academy decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator will provide notice of the additional allegations to the parties.

#### **B. Selection of Investigator**

The Investigator will be the Title IX Coordinator or another individual or individuals selected from a pool of individuals from the Academy who have been trained in the requirements of this Policy, on issues relating to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation that protects the safety of victims and promotes accountability. Similarly trained individuals from outside the Academy, who may be attorneys, may also be selected to be the Investigator. The Title IX Coordinator will select the Investigator.<sup>6</sup>

#### **C. Investigation Procedure**

The Investigator will conduct a prompt and thorough investigation. During the investigation, the appointed Investigator will:

- give the Respondent proper notice of the complaint and investigation and provide him or her an opportunity to provide information;
- interview the Complainant, the Respondent and any material witnesses;
- gather all relevant documentary and/or physical evidence;
- complete the investigation in a timely manner;
- maintain communication with the Complainant and the Respondent on the status of the investigation and overall process.

During the course of the investigation, the Complainant and the Respondent shall each be afforded an opportunity to present his/her version of the event(s) to the Investigator(s) as well as the names of witnesses and any other evidence. However, at all times, the burden of gathering evidence remains with the Academy. The Investigator will have sole discretion to determine

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<sup>6</sup> In the event that the Title IX Coordinator has a conflict of interest, another appropriate Academy administrator will select the Investigator.

which witnesses to interview. Neither the Complainant nor the Respondent will have the right to question any witnesses or to be present during such questioning during the investigation stage. The Investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the Complainant with a person other than the Respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The Investigator will determine the order and method of investigation. If either party offers information relating to the parties' sexual history with one another, the other will have the right to respond.

Efforts will be made to maintain privacy; only people who have a need to know about the incident will be informed, and information will be shared only as necessary with Investigators, the Complainant, witnesses and the Respondent.

All members of the Academy community are encouraged to participate in the investigation process. However, Complainants and Respondents may elect not to participate in the investigation process at all or may choose not to be interviewed and only to identify other witnesses and relevant documents. The Academy will not draw an adverse inference against either party for failing to participate in the investigation process, but the Investigator and Hearing Officer can only draw conclusions from the information available. So, the failure of one party to present his or her version of events will likely have a substantial impact on the outcome of the investigation.

The time needed to complete an investigation will vary based upon several factors, including the complexity, severity and extent of the allegations. It is expected most investigations will be completed within thirty calendar days and only rarely will the investigation exceed forty-five calendar days.<sup>7</sup>

At the conclusion of the investigation, the Investigator will prepare a written investigation report.

#### **D. Investigator's Report**

Following the completion of the investigation, the Investigator shall prepare a written report of the investigation ("Investigation Report") that contains the following, except as prohibited by law:

- a copy of the written complaint;
- copies of any documents relevant to the investigation;
- to the extent known by the Investigator, the name(s) of the Complainant and Respondent and the names of every person interviewed by the Investigator in connection with the investigation, the name of any persons presented by the parties as witnesses and a summary of any evidence provided;

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<sup>7</sup> Circumstances may arise that require time periods to be extended for good cause. When such circumstances arise, the Complainant and Respondent will be informed.

- the name of each individual the Investigator attempted to interview but did not interview in connection with the investigation, the attempts that the Investigator made to interview such individual(s) and the reason(s) why such individual(s) was not interviewed; and
- a summary of each interview conducted by the Investigator in connection with the investigation.

Additionally, in cases involving only Academy Category violations, the Investigation Report additionally will contain the following:

- a list of the relevant facts that the Investigator found during the investigation;
- a recommendation based on the evidence obtained by and available to the Investigator as to whether or not the complaint alleging a violation of the Policy is substantiated or unsubstantiated using a preponderance of the evidence standard;
- a description of any prior substantiated complaints made against the Respondent, the resolution of any prior complaints, whether any information from the previous complaints was relied upon by the Investigator in making any findings of fact or recommendations in the report;
- a recommendation as to what, if any, remedial measure(s) (e.g., harassment training, etc.) should be taken in light of the complaint and/or factual determination; and
- a recommendation as to what, if any, sanction(s), including suspension, expulsion or termination, should be taken against the Respondent.

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to completion of the Investigation Report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Respondent will be provided with at least ten (10) calendar days to submit a written response, which the Investigator will consider prior to completion of the Investigation Report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps. At the conclusion of the investigation, the Investigator will complete a written Investigation Report that fairly summarizes the relevant evidence. The Investigator need not include information in the Investigation Report that the investigator determines not relevant or otherwise excludable.



In most cases, the Investigator will finalize the Investigation Report and provide it to the Decision Maker within seven (7) calendar days, but this time may be extended, if necessary due to the content of the parties' submissions following their review of the draft Investigation Report.

## **XI. ADJUDICATION PROCESSES**

In situations where a case includes a Title IX Category violation, a hearing will be held pursuant to the Hearing Procedures below.

In cases involving only Academy Category violation(s), no hearing is held and, instead, the Decision Maker will make a decision as to whether the Respondent is responsible for the violation and, if responsible, sanctions(s) based on the Decision Maker's review and consideration of the Investigation Report, together with the parties' responses to the Investigation Report submitted to the Investigator as described in Section IX (Investigation Procedure) above. The Decision Maker will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "Preponderance of the evidence" means that the Decision Maker must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

## **XII. HEARING PROCEDURES**

These hearing procedures apply to the adjudication of any case involving a Title IX Category violation.

### **A. General**

At least ten (10) calendar days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the Investigation Report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

A hearing before a Hearing Officer will be held not less than ten (10) calendar days after the parties have been provided access to the final Investigation Report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s). The Hearing Officer may be a member of the campus community or may be external to the Academy, as determined by the Title IX Coordinator.

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the name of the Hearing Officer.

Participants in the hearing will include the Hearing Officer, the Complainant and the Respondent, their respective advisors, the Investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title

IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

The hearing may be conducted with all parties physically present in the same location or, at the Hearing Officer's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Hearing Officer and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

#### **B. Procedural Matters**

The Hearing Officer is in charge of organizing the presentation of information to be considered at the hearing. Generally, the hearing will proceed in the following order:

1. Opening Statement by the Complainant
2. Opening Statement by the Respondent
3. Questions for the Investigator(s) by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
4. Questions for the Complainant by the Hearing Officer and, if desired, on behalf of the Respondent (as described below)
5. Questions for the Respondent by the Hearing Officer and, if desired, on behalf of the Complainant (as described below)
6. Questions for each witness by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
7. Closing Statement by the Respondent
8. Closing Statement by the Complainant

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the Investigation Report as described in Section X (Investigation Procedures) will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. A party may not request to introduce at the

hearing any evidence not previously offered or introduced in the investigation pursuant to Section X (Investigation Procedure) unless the evidence was unavailable to the party seeking to introduce it and the party could not have discovered or obtained the evidence during the investigation process (including at time of the party's response to the Investigation Report) with reasonable diligence.

The Hearing Officer will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this Policy, the Hearing Officer will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, to alter the order of the proceedings from that described above, and/or to recall parties or witnesses for additional questions as the Hearing Officer deems necessary or appropriate. The Hearing Officer may impose additional ground rules as the Hearing Officer may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

In order to streamline the hearing process, the Hearing Officer may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference. The submission of questions pre-hearing does not preclude the advisor from asking additional questions live during the hearing. The Hearing Officer may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs. At the pre-hearing conference, the Hearing Officer may ask to hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or directly related to the allegations.

### **C. Advisors**

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). Additionally, if the party is not accompanied by an advisor at the hearing, the Academy will appoint an institution advisor.

Except with respect to questioning as described below, an advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Hearing Officer during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating and non-abusive manner. If the Hearing Officer determines that an advisor of choice is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the Academy will assign an advisor of the

Academy's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation.

The Hearing Officer may be advised by and/or consult with the Academy's legal counsel as the Hearing Officer deems necessary or appropriate. The Hearing Officer may be accompanied by an assistant who will not participate in the hearing or decision in any way but may provide administrative or clerical assistance to the Hearing Officer (i.e., making copies, contacting the next witness, etc.) during the hearing.

#### **D. Questioning Procedures**

The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questioning must be conducted by the party's advisor in a respectful, nonintimidating and non-abusive manner, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the Academy to provide without fee or charge to that party, an advisor of the Academy's choice (referred to as an Institution Advisor) to conduct cross-examination on behalf of that party. An Institution Advisor does not represent a party in any legal sense, and the party is responsible for formulating the cross-examination questions that the Institution Advisor will pose during the hearing.

Only relevant questions may be asked by a party's advisor to a party or witness. Before the party or witness answers a question posed by an advisor, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The advisor posing the question may request that the Hearing Officer reconsider any decision to exclude a question and the Hearing Officer, after soliciting the other party's advisor's opinion, will render a final determination. Such decisions by the Hearing Officer are final and not subject to further objection or reconsideration during the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the hearing, the Hearing Officer may not rely on any statement of that party or witness, during the hearing or otherwise, in reaching a determination regarding responsibility. The Hearing Officer will not draw an inference

as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination questions.

#### **E. Hearing Determinations**

Following conclusion of the hearing, the Hearing Officer will render as to whether the Respondent is responsible or not responsible for the alleged violation(s). The Hearing Officer will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "Preponderance of the evidence" means that the Hearing Officer must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

### **XIII. NOTIFICATION OF DECISION**

The Hearing Officer or Decision Maker shall issue written notification to the Complainant and Respondent of the determination as to whether the Respondent violated this policy. If the case involves a Title IX Category violation, the Hearing Officer will issue this written determination within seven (7) calendar days of the conclusion of the hearing. If the case involves only Academy Category violations, the Decision Maker will issue this written determination within seven (7) calendar days of receipt of the Investigation Report. This time may be extended, based on the complexity of the situation under consideration. If the Hearing Officer or Decision Maker concludes that the Respondent is responsible for violation of this Policy, then both the Complainant and Respondent will be permitted to submit a written impact statement to the Hearing Officer or Decision Maker for purposes of the determination of appropriate sanctions. The parties will have two (2) calendar days to submit their impact statement to the Hearing Officer or Decision Maker. The Hearing Officer or Decision Maker may consult with other Academy officials in determining any appropriate sanctions. The Hearing Officer or Decision Maker shall issue a written decision outlining the relevant factual findings supporting the determination, the decision and the appropriate sanctions, if any, as well as the rationale for the decision and sanctions. In most cases, the written decision will be issued within three (3) calendar days after the expiration of the time for the parties to submit impact statements, but this time may be extended if necessary. The persons to whom the written decision shall be issued are the Investigator, the Respondent, and the Complainant, if any. The Hearing Officer or Decision Maker shall also forward copies of the parties' written impact statements, if any, to the Investigator. In addition, the Hearing Officer or Decision Maker shall forward the decision to any Academy officials the Hearing Officer or Decision Maker believes should be made aware of the decision.

#### **A. Sanctions for Violating this Policy**

Those found to have violated this Policy will be subject to disciplinary action. The Academy may impose any of the following sanctions:

- Warning

- Probation
- Restriction(s) to address impact of incident (i.e., to avoid contact with individual or to avoid certain location(s), to provide that other party may have priority in selecting courses etc.)
- Community service
- Restriction of access to Academy facilities
- Loss of privileges and access to Academy activities (including participation in student organizations)
- Suspension from school (for one or more semesters)
- Expulsion
- Revocation of honors or awards
- Revocation of degree
- Suspension from Academy employment
- Termination of Academy employment

In determining the appropriate sanction, the Decision Maker will consider a variety of factors including: the specific misconduct at issue, the circumstances surrounding the lack of consent (e.g. whether force, threat, coercion or intentional incapacitation were involved), the Respondent's state of mind (e.g. knowing, reckless, intentional, etc.), the impact of the misconduct on the Complainant, the Respondent's prior disciplinary history, the risk that the Respondent will engage in Sex-Based Misconduct again and the Respondent's conduct during the pendency of the investigation, and any information provided in the parties' impact statements.

For those crimes of violence that the Academy is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation:

- Suspended after a finding of responsibility for a code of conduct violation;
- Expelled after a finding of responsibility for a code of conduct violation; or
- Withdrew with conduct charges pending.

within which to provide their comments/recommendations with respect to such revised Investigation Report and forward it to the Hearing Officer or Decision Maker.

Transcript notations for suspensions may be removed at the discretion of the Academy, but no earlier than one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

#### **XIV. APPEALS**

Within five (5) calendar days of the date of receipt of the Decision, the Complainant or the Respondent may file a written appeal to the Title IX Coordinator, which appeal will be decided by the appropriate Appeal Officer(s) listed in the Complaint Procedure Diagram. The appeal must

include a detailed statement setting forth the ground(s) upon which the appeal is based. The sole grounds upon which a party may base an appeal are as follows:

- Procedural irregularity that affected the determination regarding responsibility or dismissal of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the determination regarding responsibility or dismissal of the matter;
- The Investigator, Hearing Officer/Decision Maker was biased or had a conflict of interest that may have affected the investigation or decision;
- The finding of responsibility or no responsibility was not consistent with the preponderance of the evidence standard; and/or
- The sanction is disproportionate to the violation.

Within five (5) calendar days of receiving the timely appeal, the appropriate Appeal Officer(s) shall request that the Title IX Coordinator forward to the Appeal Officer(s): (i) the Investigation Report, (ii) copies of the parties' written impact statements, if any, (iii) the decision made by the Hearing Officer/Decision Maker; and (iv) the Hearing Officer's/Decision Maker's written communications to the Complainant and Respondent informing each of the outcome of the investigation. After receiving such a request, the Title IX Coordinator shall forward these documents to the Appeal Officer(s) within three (3) calendar days. Within three (3) calendar days of receiving a timely appeal, the Appeal Officer(s) shall forward the appealing party's submission to the other party who shall have five (5) calendar days to submit a written response. In most cases, within seven (7) calendar days of receiving the other party's response to the appeal submissions, the Appeal Officer(s) shall decide the appeal and issue a written appeal decision, with the burden on the appealing party to prove one or more of the limited grounds for appeal by a preponderance of the evidence. The Appeal Officer(s) shall issue the written appeal decision to the Investigator, the Hearing Officer/Decision Maker, the Complainant and the Respondent. The time in which the Appeal Officer(s) will issue this written appeal decision may be extended, based on the complexity of the situation under review. The Appeal Officer(s) may affirm the decision in whole or in part, modify the decision, reverse the decision or send it back to the Investigator or Hearing Officer/Decision Maker for further investigation and/or consideration. In addition, the Appeal Officer(s) shall forward the appeal decision to any Academy officials the Appeal Officer(s) believes should be made aware of the appeal decision. Unless the Appeal Officer(s) sends the decision back for further investigation, the appeal decision is final. When a decision is sent back to the Investigator for further investigation, the Investigator shall issue a revised Investigation Report, which the Complainant and Respondent shall have an opportunity to review, and the Hearing Officer/Decision Maker will consider the new information and render a new decision. The parties will then have an opportunity to appeal that decision in accordance with the procedure set forth above.

## **XV. APPLICATION TO FACULTY AND STAFF**

One or more of the Academy's personnel policies or faculty and staff handbook policies may overlap with this Policy in a particular situation. This Policy applies to any situation where a student is the Complainant or Respondent. In all other situations (i.e., where a student is not a party), the Academy reserves the right to apply this Policy or another applicable Academy policy or process. The Academy will apply this Policy to any situation where the Academy determines that Title IX requires the application of this Policy.

## **XVI. MISCELLANEOUS PROVISIONS**

- All time periods may be extended by the Academy for good cause shown.
- In the event the allegations of discrimination, harassment or retaliation are involved with other violations of Academy policies, the Academy reserves the right to select the process or processes to be used to determine all charges that arise out of the same incidents and/or allegations and whether any overlapping procedures are to be utilized sequentially, simultaneously or not at all.
- The Title IX Coordinator will serve as the centralized record keeper of records concerning complaints and investigations. Additional records concerning complaints and investigations may also be maintained by the Director of Human Resources.
- Any suspension or termination of full-time faculty member prior to expiration of a contract of appointment will be subject to the Academy's Dismissal Policy.

## **XVII. AMNESTY FOR INDIVIDUALS WHO REPORT SEX-BASED MISCONDUCT**

The health and safety of every student at the Academy is of utmost importance. The Academy realizes 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 student bystander or student incident participant acting in good faith, who reports or discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Academy officials or law enforcement will not be subject to the Academy'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.

The Amnesty protocol applies to straightforward cases of alcohol or other drug-related emergencies. The Amnesty protocol does not excuse co-occurring discriminatory, harassing or other infractions that are related or unrelated to the medical emergency.



## **XVIII. UNIVERSITY DUTY TO REPORT CRIME STATISTICS**

The Academy has a duty to report data about various forms of Sex-Based Misconduct in accordance with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Act (Clery Act). No personally identifiable information is disclosed, but statistical information is disclosed as part of the Academy's Annual Security Report. The information to be shared includes the date, location type (residence hall, public property, off-campus, etc.) and specific crime category.

The Academy may also be required to issue a timely warning to the Academy community when it receives a report of certain crimes that pose a serious or continuing threat. Such warning will not include any personally identifying information about the victim.

Because the Academy is under a continuing obligation to address the issue of Sex-Based Misconduct campus-wide, reports of Sex-Based Misconduct (including non-identifying reports) will also prompt the Academy to consider broader remedial action—such as increased monitoring, supervision or security at locations where the reported Sex-Based Misconduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

## **XIX. RECORDS DISCLOSURE**

Disciplinary proceedings conducted by the Academy are subject to the Family Educational Rights and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits disclosure of student information outside the Academy without the student's consent, but it does provide for release of student disciplinary information without a student's consent in certain circumstances.

Students should be aware, however, that information collected during the investigation process may be subpoenaed in civil or criminal proceedings. Additional information about the Academy's FERPA policies can be found at: <http://www.pace.edu/osa/student-records/paceuniversity-ferpa-policy>

## **XX. POLICY ADMINISTRATION**

The Title IX Coordinator is responsible for ensuring the Academy's compliance with Title IX of the Education Amendments of 1972 and for administering this Policy and Procedure. The Title IX Coordinator is Katie Hemmer, 111 Franklin Street, (212) 842-5961 or [khemmer@nyaa.edu](mailto:khemmer@nyaa.edu)

The Title IX Coordinator is available to answer any questions that members of the Academy community may have about this Policy and Procedure and to assist them in gaining access to available resources.

Any student with a complaint that the Academy failed to comply with Title IX may make a complaint to:

US Department of Education, Office for Civil Rights <http://www.ed.gov/ocr>

US Department of Education  
Office for Civil Rights  
New York Office  
32 Old Slip, 26th Floor  
New York, NY 10005  
(646) 428-3800  
[OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

## **XXI. DELEGATION OF AUTHORITY**

Any Academy administrator or official empowered by this Policy, may delegate their authority to any other appropriate Academy official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent an Academy official named in this Policy from fulfilling their designated role.

**STUDENTS' BILL OF RIGHTS  
IN CASES INVOLVING SEXUAL ASSAULT,  
DOMESTIC/DATING VIOLENCE AND STALKING**

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the New York Academy of Art (the "Academy");
- Participate in a process that is fair, impartial and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the Academy courteous, fair and respectful health care and counseling services, where available;
- Be free from any suggestion by an Academy official that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the Academy, any student, the accused and/or the Respondent and/or their friends, family and acquaintances within the jurisdiction of the Academy;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the Academy.

**STATEMENT OF RIGHTS IN CASES INVOLVING  
SEXUAL ASSAULT, DOMESTIC/DATING VIOLENCE AND STALKING**

Anyone reporting an incident of sexual assault, domestic or dating violence or stalking has the right to:

- Notify Campus Security, Local Law Enforcement or the New York State Police.
- Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
  - options to proceed, including the right to make a report to Campus Security (reports to Campus Security are reported to the Title IX Coordinator), Local Law Enforcement and/or the New York State Police or choose not to report; to report the incident to the Academy; to be protected by the Academy from retaliation for reporting an incident; and to receive assistance and resources from the Academy, as set out in the New York Academy of Art Sex-Based Misconduct Policy and Procedure;
  - where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
  - that the criminal justice process utilizes different standards of proof and evidence than the Academy's misconduct procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the District Attorney;
  - whether the person they are reporting to is authorized to offer the confidentiality or privacy; and
  - any other reporting options.
- If they are a student, to contact Amanda Jurist; or to contact non-Academy confidential resources, including the New York State Office of Victim Services at 1(800) 247-8035 or <https://ovs.ny.gov>
- Disclose confidentially the incident and obtain services from the state or local government;

- Disclose the incident to the Academy's Responsible Employees who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, subject to the Academy's Sex-Based Misconduct Policy and Procedure, and can assist in obtaining resources for reporting individuals;
- File a report of sexual assault, domestic violence, dating violence and/or stalking and consult the Title IX Coordinator and other appropriate Academy personnel for information and assistance. Reports shall be investigated in accordance with Academy policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is not the same as confidentiality and private information can be shared as necessary to implement and fulfill the Academy's obligations under the law and its policies and procedures;
- Disclose, if the accused is an Academy employee of the institution, the incident to Human Resources or to request that a confidential or private employee assist in reporting to Human Resources;
- Receive assistance from appropriate Academy representatives if interested in initiating legal proceedings in family court or civil court, such assistance to consist of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings; and
- Withdraw a complaint or involvement from the Academy processes at any time, with the understanding that in appropriate cases, the Academy may nonetheless be required to proceed even if the reporting individual does not wish to do so.

**COMPLAINT FORM**

Date(s) of Incident(s): \_\_\_\_\_

Complainant: \_\_\_\_\_

Person(s) About Whom Complaint Is Made: \_\_\_\_\_

\_\_\_\_\_  
Description of Incident(s) (attach additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name(s) of Witnesses(es), if any: \_\_\_\_\_

\_\_\_\_\_  
Has the incident(s) been reported before? †Yes †No. If yes, when, to whom, and what was the resolution? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Complainant Signature

\_\_\_\_\_  
Date

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Complaint Received By:

_____	_____
Print Name	Title
_____	
Date Received	