



Albert Einstein College of Medicine

# **Title IX: Non-Discrimination and Anti-Harassment Policy and Complaint Procedures**

**(Including Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence & Dating Violence)**

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## **I. Executive Summary**

The following is a brief summary of the policy. Please read the full policy for more details, including definitions and examples of discrimination and harassment; complaint reporting procedures and guidelines; and the investigation and resolution processes.

- Albert Einstein College of Medicine (also referred to as “Einstein” or “College”) prohibits discriminatory practices, harassment and sexual misconduct of any kind and in any form.
- Complaints may be made to the College’s Title IX Coordinator, Vice President for Human Resources, Director of Security, Dean of Students, member of the Unlawful Harassment Panel, Senior Counsel or Confidential Compliance Hotline. Complaints also may be made to any other College personnel identified as “campus security authorities” including Office of Student Affairs and Housing Office.
- There is no time limit on when a complaint can be made.
- No College employee may discourage an individual from making a complaint.
- Any College employee with any knowledge of a violation of the policy must report the incident to the Title IX Coordinator, Vice President for Human Resources, Director of Security, Dean of Students, member of the Unlawful Harassment Panel or Senior Counsel, even if the actual victim of such discrimination, harassment or sexual misconduct is not interested in filing a formal complaint.
- All complaints must be reported to the Title IX Coordinator.
- The College will respond to all complaints promptly, thoroughly, fairly and impartially.
- The College may take reasonable and prudent interim measures to protect the parties involved and the College community.
- Complaints of discrimination or harassment, as well as sexual abuse/assault, stalking, domestic violence and dating violence, will be overseen by the Title IX Coordinator, and a fair and impartial investigation will be commenced upon receipt of a complaint or upon receiving information which the College determines on its own warrants further investigation.
- The College expects all members of the College community to cooperate with investigations.
- Retaliation is prohibited against anyone who filed and/or participated in the investigation of a complaint, even if the complaint is unsubstantiated. Those who knowingly make a false report will be subject to serious disciplinary action.

### **Title IX Coordinator**

Renee Coker, Senior Director, Talent Management & Title IX Officer  
Yeshiva University – Human Resources - Wilf Campus, BH 806  
2495 Amsterdam Avenue, New York, NY 10033  
(646) 592-4336 / renee.coker@yu.edu

*Students and employee-victims have the right (i) to make a report to the Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to the College; (iii) to be protected by the College from retaliation for reporting an incident; and (iv) to receive assistance and resources from the College.*

## **II. Scope**

### **To Whom Applicable**

This policy applies to all College faculty, administration (whether supervisors, administrators, and managers), and other staff, whether full-time or part-time (hereinafter collectively, “Einstein employees”), students, employees of contracted service providers, volunteers, and visitors, and covers their treatment of each other as well as others with whom they come into contact at the College and/or at College-sponsored and affiliated activities and events. The College’s disciplinary authority may not extend to third parties who are not students or employees of the College; however, a complaint that such a person engaged in a violation of this policy will be investigated in accordance with this policy as will a complaint made to the College by a third party if such complaint is connected to the College’s educational programs or activities.

With regard to discrimination, harassment, sexual abuse/assault, stalking, dating violence and domestic violence, as herein defined, this policy supersedes all other procedures and policies set forth in other College documents.

### **Where Applicable**

This policy is intended to protect all afore-mentioned individuals and applies to conduct that occurs on College premises and/or at College-sponsored and affiliated activities and events, whether on College premises or at other locations, including, but not limited to, overnight trips, service learning programs and internships, and to all forms/uses of technology by all individuals covered by this policy. The College may also address off-campus behavior that occurs other than at College-sponsored or affiliated events if it determines that the behavior, or the continued presence of the accused perpetrator, impairs, obstructs, substantially interferes with or adversely affects the mission, processes or functions of the College. Discrimination, harassment or sexual misconduct in any form (including sexual harassment, sexual abuse/assault, stalking, domestic violence and dating violence) is a violation of this policy and will be dealt with seriously, promptly and thoroughly. If any of the principles and procedures in this policy are inconsistent with those contained in another College policy, the principles and procedures in this policy will control.

## **III. Policy**

Einstein is committed to maintaining an academic, work and living environment in which all individuals are treated with respect and dignity. Each individual at the College has the right to work and learn in an environment that promotes equal opportunities for all. This policy prohibits discriminatory practices, harassment and sexual misconduct of any kind. Where discrimination, harassment or sexual misconduct has occurred, Einstein will act promptly to stop it, prevent its recurrence, and discipline and/or take other appropriate action against those responsible.

## A. Equal Employment Opportunity

Equal employment opportunity has and will continue to be a fundamental principle at Einstein. We do not discriminate on the basis of race, religion, color, creed, age, national origin or ancestry, sex, marital status, sexual orientation, gender identity and expression, physical or mental disability, veteran or disabled veteran status, genetic predisposition/carrier status, citizenship status, familial status or any other personal characteristic protected under applicable federal, state or local law.

## B. Bystander Intervention

The College expects all members of the College community to take reasonable and prudent actions to prevent or stop an act of discrimination, harassment, or sexual misconduct, and provide assistance if an act has occurred. Taking action or providing assistance may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

If someone suspects a friend, acquaintance, or stranger may be in a high-risk situation for becoming a victim, is being victimized, or has been victimized, it is important to decide as a bystander whether there is a safe and reasonable way to intervene effectively.

### 1) **Do's:**

- Remind friends that affirmative consent is required, and it is the difference between sex and sexual assault and that someone can be too intoxicated to consent.
- Take the initiative to help friends who aren't thinking clearly from becoming targets of violence (or) take steps to stop a friend who chooses to use violence.
- When possible, prevent an intoxicated friend/person from going to a private location with an acquaintance or friend.
- Contact the Security Department, the Title IX Coordinator or another person of authority who can assist.

### 2) **Don'ts:**

- Let friends engage in activities, such as excessive alcohol/drug consumption, that impedes judgment and that therefore could lead to actions, including sexual advances that are unwelcome and/or endanger the rights, safety, and well-being of others.
- Let friends walk/run alone in secluded areas or at night.
- Leave a friend or acquaintance alone at a party.
- Leave residence hall doors unlocked.
- Let friends drink to the point of impairment.
- Place yourself in a vulnerable situation where you are unable to voice consent.

### C. Free Speech and Academic Freedom

This policy is intended to protect covered persons from discrimination, harassment and sexual misconduct, not to regulate protected speech. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates this policy or otherwise violates federal, state or local anti-discrimination laws.

### D. Title IX Coordinator

Title IX prohibits discrimination on the basis of sex in education program and activities. Sexual harassment and sexual assault are forms of sex discrimination prohibited by Title IX. The College has designated an individual to coordinate its efforts to comply with and carry out its responsibilities under Title IX. This individual is called the Title IX Coordinator and is responsible for ensuring Title IX compliance at the College, as well as compliance with this policy. The Title IX Coordinator for the College is currently **Renee Coker**. The Title IX Coordinator is responsible for overseeing all Title IX complaints and other complaints under this policy, identifying and addressing any patterns of systemic problems that are found based on review of such complaints or otherwise, and providing education and training about this policy to the College community. Ms. Coker can be reached at (646) 592-4336 or [renee.coker@yu.edu](mailto:renee.coker@yu.edu). Her office is located on the Wilf Campus, Belfer Hall Room 806, 2495 Amsterdam Avenue, New York, New York 10033.

In the event of Ms. Coker's absence (or in the event of a conflict of interest), Yeshiva University's Chief Human Resources Officer, currently **Julie Auster**, will carry out her duties. Ms. Auster can be reached at (646) 592-4333 or [Julie.auster@yu.edu](mailto:Julie.auster@yu.edu). Her office is located on the Wilf Campus, Belfer Hall Room 216, 2495 Amsterdam Avenue, New York, NY 10033.

In addition to the Title IX Coordinator, inquiries regarding Title IX may be directed to the United States Department of Education's Office of Civil Rights ("OCR"). This agency may be contacted as follows:

#### **United States Department of Education, Office for Civil Rights**

Region 2 – New York

Jacob Javits Federal Building 26 Federal Plaza - Suite 3312 New York, NY 10278

Voice Phone: (800) 368-1019

Fax: (212) 264-3039

TDD: (800) 537-7697

#### **U. S. Equal Employment Opportunity Commission - New York District Office**

33 Whitehall Street, 5th Floor New York, NY 10004

(800) 669-4000

TTY: (800) 669-6820

Fax: (212) 336-3790

### E. Complaint Reporting Procedures and Guidelines

#### 1. Filing Complaints with College Officials

Complaints may be reported by the victim or by anyone else who has knowledge of a violation of this policy. Anyone who wishes to initiate a complaint regarding a violation of this policy may do so by

contacting any of the following. Employees may also report a complaint of sexual harassment in writing by submitting a [Sexual Harassment Reporting Complaint Form, HR-FRM-2018-016](#), to Yvonne Ramirez, Vice President for Human Resources and Diversity Officer.

**Title IX Coordinator**

Renee Coker  
(646) 592-4336  
[renee.coker@yu.edu](mailto:renee.coker@yu.edu)

**Security Department**

Neil Kaplan, Chief of Security  
(718) 430-2180  
[neil.kaplan@einstein.yu.edu](mailto:neil.kaplan@einstein.yu.edu)

**Human Resources**

Yvonne Ramirez, Vice President and Diversity Officer  
(718) 430-2551  
[yvonne.ramirez@einstein.yu.edu](mailto:yvonne.ramirez@einstein.yu.edu)

**Senior Counsel**

Dana Lee  
(718) 430-2546  
[dana.lee@einstein.yu.edu](mailto:dana.lee@einstein.yu.edu)

**Dean of Students**

Dr. Allison Ludwig – (718) 430-3060 – [allison.ludwig@einstein.yu.edu](mailto:allison.ludwig@einstein.yu.edu)  
Dr. Victoria Freedman – (718) 430-2872 - [victoria.freedman@einstein.yu.edu](mailto:victoria.freedman@einstein.yu.edu)

**Compliance Hotline**

1-800-662-8595

**[A member of the Unlawful Harassment Panel](#)**

In addition to those listed above, violations of this policy may be reported to other College personnel identified by the College as “campus security authorities” in the Annual Security Reports it publishes in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “*Clery Act*”), including:

**[Einstein Office of Student Affairs](#)**

(718) 430-3060

**[Einstein Housing Office](#)**

(718) 430-3552

**If any of these afore-mentioned people, other than the Title IX Coordinator, is first notified of a complaint, that person must promptly inform the Title IX Coordinator of the complaint.** If the complaint involves an allegation of sexual misconduct, the Title IX Coordinator will promptly inform Senior Counsel of such complaint. There is no time limit on when a complaint pursuant to this policy can be made to the College, however, the College’s ability to investigate and respond may be affected by any time delay in reporting. Therefore, the College strongly encourages victims to file complaints promptly.

Prompt reporting will serve to enhance the College's ability to investigate effectively and to preserve important evidence for future proceedings, including, for example, legal and disciplinary proceedings.

**Students and employee-victims have the right (i) to make a report to the Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to the College; (iii) to be protected by the College from retaliation for reporting an incident; and (iv) to receive assistance and resources from the College.**

In the case of an anonymous report, such complaint will be investigated to the extent possible, however, all anonymous reporters should be aware that reporting anonymously may affect the College's ability to investigate and respond effectively.

No College employee may discourage an individual from reporting misconduct covered by this policy. Any College employee with any knowledge, whether from firsthand observation, having been confided in or having heard about it in some other fashion, of a violation of this policy *must* report the incident to the Title IX Coordinator, Director of Security, Vice President for Human Resources or Senior Counsel, even if the actual victim of such discrimination or harassment is not interested in filing a formal complaint. Certain College employees who are serving in a privileged professional capacity as defined by applicable New York State Law (such as a professional mental-health counselor) are not so obligated to report. No College employee is authorized to investigate or resolve a suspected violation of this policy without the involvement of the Title IX Coordinator.

See **Section XXII** for information regarding confidential support services. See **Appendix D** for the Student Alcohol and Drug Use Amnesty Policy.

## 2. Filing Complaints with Law Enforcement and Government Agencies

Anyone who has been the victim of sexual violence, stalking, domestic violence, dating violence, or any other crime may (but is not required to) initiate a complaint with the local police department as well as with the College. Should an individual decide to file a complaint with the police, the College will support such individual in doing so. Regardless of whether such person wants to make a complaint to either the College or the local police, he/she should promptly seek medical attention both to address his/her own health and to preserve potential evidence should he/she later decide to file charges or obtain a protective order. The College can help guide a victim through the process of obtaining a judicial order of protection and/or College-issued "no contact" order.

The College system and police/legal system work independently from one another. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports are not solely determinative of whether or not misconduct under this policy has occurred. The College will cooperate with police investigations, but will not delay its investigation of a complaint in the absence of extenuating circumstances and will conduct its investigation simultaneously with any police/legal system investigation.

The College's first and foremost concern for anyone who has been the victim of an incident of sexual violence, stalking, domestic violence, dating violence, or any other crime is their physical safety. Thus, if anyone who has been a victim of such unlawful behavior is feeling physically unsafe, he/she should immediately call the Security Department, the local police precinct or 911 for assistance.



**Security Department**

(718) 430-2180

**New York City Police Department**

911 (Emergency)

**Local Police Precincts**

49th Precinct

2121 Eastchester Rd., Bronx, NY 10461

(718) 918-2000

In addition, if such person is in need of **immediate medical treatment**, he/she should go to the nearest hospital emergency room or call 911. The College is well aware of the emotional trauma often suffered by a victim of sexual violence, and therefore it has designated trained counselors in its Counseling Center to serve as sexual assault coordinators for the College. They can be reached by calling (929) 246-6791 or emailing [oasc@einstein.yu.edu](mailto:oasc@einstein.yu.edu) and asking for a sexual assault coordinator. Advice and support will be offered on a confidential basis as the victim begins to make choices regarding how to proceed post-assault. There are also many outside sources of support available to victims in these circumstances, including The NYC Alliance Against Sexual Assault (on-line at [www.svfreenyc.org](http://www.svfreenyc.org)), which has compiled numerous resources available to victims, and the SOVRI (Support for Orthodox Victims of Rape and Incest) Hotline at Beth Israel Medical Center, (888) 613-1613. The latter is confidential hotline (no caller-ID is used) that may be called anonymously for information and support.

Aside from the internal processes for reporting a complaint at the College, employees may also choose to pursue legal remedies and relief with the following governmental entities:

United States Equal Employment Opportunity Commission

1-800-669-4000

[www.eeoc.gov](http://www.eeoc.gov)

New York State Division of Human Rights

One Fordham Plaza, Fourth Floor

Bronx, NY 10458

(718) 741-8400

[www.dhr.ny.gov](http://www.dhr.ny.gov)

New York City Commission on Human Rights

40 Rector Street, 10th Floor

New York, NY 10006

(212) 306-7450

[www.nyc.gov/humanrights](http://www.nyc.gov/humanrights)

**F. Guiding Principles**

The College will address all complaints according to the following guiding principles, which are intended to protect the rights of all individuals:

- 1) Every effort will be made, consistent with the need to discharge the College's responsibilities and protect the safety of the College community, to respect the wishes of the alleged victim regarding further investigation. A complaint will not be pursued without the victim's consent, unless the College is obligated to do so or, in its judgment, the allegations are serious enough to warrant further action (see **Section X**).
- 2) Victims are strongly encouraged to file a complaint promptly after the alleged incident because as time goes by, an investigation becomes more difficult. Memories may become unreliable, and information and witnesses may become unavailable. Promptness in filing complaints is therefore strongly encouraged, as it may be essential for a thorough and fair resolution.
- 3) Any attempt to retaliate against or penalize a victim or any other person who reports or participates in the resolution of an incident is strictly prohibited, and any party found to have engaged in retaliation will be subjected to discipline (see **Section XVI**).

The College will respond to all reported complaints promptly, thoroughly, fairly and impartially. The alleged victim and the respondent will also be afforded the rights set forth in this policy.

Following a report of an incident to the Title IX Coordinator, the victim will be immediately advised of the College's policies and procedures, as described herein, and may choose to proceed informally (see **Section XII**) or to pursue a formal complaint (see **Section XIII**). However, complaints of sexual assault, stalking, domestic violence and dating violence may not be pursued through the informal process. See **Appendix B, Section I, Formal Resolution of Complaints Involving Students, or Appendix E, Formal Resolution of Complaints Involving Employees only**.

#### G. Interim Protective Measures and Accommodations

The College may take reasonable and prudent interim measures to protect the alleged victim, the reporter (if different than the alleged victim), the respondent (i.e., the person against whom a report has been filed), and all third-party witnesses pending resolution of the complaint. Interim measures may include restrictions on contact (College-issued "no contact" orders), bans from areas of campus, and changes to academic or living situations (including transferring to a different class, moving to a different room or residence hall, and changing work schedules). Intentional and/or continued violations of a College-issued "no contact" order is a violation of this policy and may result in additional misconduct charges and additional disciplinary sanctions including suspension and expulsion for students, or termination of employment for employees. The College also will consider the safety of the College community when making decisions regarding appropriate interim measures. All parties to a complaint will be informed of any interim measures taken by the College, but the College will otherwise endeavor to maintain as confidential such measures to the extent that maintaining them would not impair the ability of the College to provide such measures.

#### H. Investigation of Reported Incidents

Complaints of discrimination, harassment or sexual misconduct, including sexual violence complaints, will be overseen by the Title IX Coordinator.

Upon receipt of a complaint or upon receiving information which the College determines on its own warrants further investigation (even if no complaint is filed or even if a complaint is filed and later withdrawn), a fair and impartial investigation will commence in accordance with the procedures set forth in this policy. The College will inform the respondent in writing of the allegations made against him/her and will schedule a time for the respondent to meet with the investigator. This investigation may be conducted by the Title IX Coordinator, the Security Department or another appropriate entity as determined by the College (it being understood that the College reserves the right to use an outside individual or organization to conduct or assist with the investigation). Depending on the nature of the allegations, the investigation may include interviews with the complainant and respondent, interviews of witnesses, collection of documentation (including email and other communications relevant to the complaint), a review of documents or any other steps deemed important by the investigator in order to thoroughly and fairly conduct the investigation.

The alleged victim and respondent will be given an equal opportunity to present relevant witnesses and other evidence as part of the investigation. With respect to allegations regarding sexual assault, stalking, domestic violence or dating violence, the alleged victim and respondent may have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any College meeting/proceeding. The party shall promptly notify the Title IX Coordinator if he/she intends to use an advisor/support person, and identify such advisor/support person. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise actively participate in the meeting/proceeding. The advisor/support person may be asked to leave the meeting/proceeding if he/she deviates from his/her role. The advisor/support person will be subject to the same confidentiality expectations applicable to others in attendance at the meeting/proceeding.

In addition, both parties will be given periodic updates by the Title IX Coordinator. For a more detailed explanation of the investigative process, as well as the adjudication process, see **Appendix A**, Informal Resolution, and **Appendix B**, Formal Resolution of Complaints Involving Students and **Appendix E**, Formal Resolution of Complaints Involving Employees only.

The College expects all members of the College community to cooperate with investigations. However, in no event will an alleged victim or respondent be compelled to participate in the investigation.

#### **I. Request by Complainant Not to Pursue Investigation**

A complainant may decide after filing a complaint that he/she does not want to have the College pursue an investigation. Complainants and others should understand that compliance with such a request may limit the College's ability to take action in response to the complaint. In such a situation, the College will evaluate the request in the context of the College's responsibility to provide a safe, non-discriminatory, and harassment-free environment. In evaluating such a request, the College will consider several factors, including the seriousness of the alleged misconduct, the complainant's age, whether a weapon or force was involved, the parties involved, whether there have been other complaints of misconduct against the respondent, and the applicability of laws mandating an investigation or other action.

## J. Documentation of Investigations

The Title IX Coordinator will maintain records of all complaints (both formal and informal), investigations, findings (including the basis for those findings) and appeals. These records will be kept on file in accordance with the College's records and retention policy. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the final outcome of the investigation in writing (including referral to the hearing officer) and also will notify them of any sanctions to be imposed (including actions the College will take to eliminate the hostile environment and prevent recurrence) (see **Appendix B** and **Appendix E**). In addition, if someone other than the Title IX Coordinator engaged in the investigation, the Title IX Coordinator will be kept apprised of the progress of the investigation and the ultimate results, and the Title IX Coordinator will maintain records of the results. The Title IX Coordinator also will inform the applicable Registrar if any transcript notations are required (see **Appendix B, Section I**). In any situation in which the designated authority has a conflict of interest or is otherwise not available to act (e.g., there is a vacancy in the office), the Office of the Dean will be consulted for appropriate action.

## K. Informal Resolution and Unlawful Harassment Panel

The informal resolution approach is available to resolve incidents that may not be so serious that the College must intervene in a formal way and where the complainant (alleged victim or other person reporting the discrimination/harassment) does not wish to pursue a formal complaint but wants to end the discrimination/harassment. The manner in which an incident is handled will depend largely upon its severity or nature. Members of the College community may seek advice from the Title IX Coordinator or the Unlawful Harassment Panel on alternative methods of resolving disputes or perceived acts of discrimination/harassment. Both parties must agree to participate in order to commence the informal resolution process. Either party may instead choose to engage in Formal Resolution procedures.

[The Unlawful Harassment Panel](#) is charged with providing advice and access to resources about possible courses of action in respect of an allegation of discrimination or harassment (e.g., referral for any member of the College community who is concerned because of behavior that he/she perceives as discrimination or harassment). If a complainant wishes to pursue an informal resolution to a complaint, a Panel Member can provide a non-adversarial setting in which the problem can be addressed as appropriate, including confidential counseling. In the course of such action, the Panel Member may also assist by clarifying misunderstandings, and helping to assure that conflicts do not recur. Also, when appropriate and acceptable to both parties, certain complaints may be suitable for referral to mediation in order to explore the possibilities of a resolution.

The Panel consists of members of the College community, designated by the Dean from time to time. These appointments will be guided by considerations of continuity, experience and sensitivity to the concerns presented. A list of the present members can be found on the [Human Resources webpage](#).

**For more information about the Informal Resolution Process, please refer to Appendix A.**

**Informal Resolution is not an option in cases involving allegations of sexual assault, stalking, domestic violence or dating violence.**

#### L. Formal Resolution

Any individual who wishes to pursue the formal resolution process should file, in writing, a complaint with the Title IX Coordinator, stating the nature of the alleged misconduct, the individual(s) accused and the relief requested. If the individual making the complaint withdraws it, no further action will be taken unless the College determines it is obligated to do so or deems the allegations serious enough to warrant further action. The College, in its sole discretion, reserves the right to depart from the prescribed steps in order to effectively handle any and all complaints in accordance with applicable laws. For more information about the Formal Resolution Process, please refer to **Appendix B**. For more information about the formal resolution process for complaints involving employees only, please refer to **Appendix E**.

#### M. The Appeal Process

Both the complainant and respondent shall have the right to appeal the decision of the hearing officer as more fully described in **Appendix B** and **Appendix E**.

#### N. Confidentiality During an Investigation

Information gathered during the informal or formal investigation process will be handled by the College with due diligence and care. Discreet inquiry, corrective counseling, and trust will be stressed by the College in dealing with all complaints. Records and information concerning complaints will be kept confidential to the greatest extent possible, and the College will comply with all applicable laws in maintaining the confidentiality of the investigation. However, subject to applicable laws, the College cannot guarantee complete confidentiality where it would conflict with the College's obligations to ensure a safe, non-discriminatory and harassment-free environment. For example, under conditions of potential imminent harm to the community, the College may be required by federal law to inform the community of the occurrence of an incident of sexual violence (but would not identify the victim). In addition, consistent with law, information regarding violations of this policy may be shared among College personnel as appropriate and necessary.

#### **Complainant Request for Confidentiality**

The College will attempt to comply with all requests from a complainant that his/her name or identity not be revealed to the respondent and witnesses. However, the College is not able to guarantee confidentiality because doing so may limit the College's ability to investigate the allegations and to afford the respondent a fair opportunity to respond to the allegations. Requests for confidentiality should be made to the Title IX Coordinator, and he/she will evaluate any such requests in consultation with Senior Counsel. If possible, the Title IX Coordinator will make an effort to notify the complainant before disclosing the complainant's identity to the respondent. In all instances, the College will endeavor to maintain the complainant's and respondent's privacy and reveal the parties' identities only to those individuals who need to know it in order for an investigation to commence or continue (as applicable) and the matter to be adjudicated.

**Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource**

**will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.**

#### O. Retaliation

This policy prohibits retaliation against any individual who filed and/or participated in the investigation of a complaint, even if the complaint is unsubstantiated. Retaliation includes threats, intimidation, reprisals, harassment, and/or any other adverse action threatened (expressed or implied) or taken against anyone who reports a violation or suspected violation of this policy or who participates in an investigation of a complaint. Retaliation may take place in person, over the telephone or through electronic or social media means. Regardless of how it manifests itself, retaliation is prohibited. Anyone who either observes or becomes aware of such retaliatory behavior is strongly encouraged to report it to the Title IX Coordinator, and all College employees are under a business duty to do so. The Title IX Coordinator will review the facts and recommend the appropriate disciplinary action, up to and including suspension and expulsion for students and termination of employment for employees. Violations of this prohibition will be addressed through the procedures outlined in this policy and/or other College disciplinary procedures, as the College deems appropriate.

#### P. Knowing False Claims or Information

The College considers any allegation of discrimination, harassment or sexual misconduct a serious matter and encourages individuals to report all incidents to the College. All good faith reports will be treated seriously. Any individual who *knowingly* files a false claim, or who *knowingly* provides false information during an investigation or proceeding may be subject to appropriate disciplinary action, up to and including suspension and expulsion for students and termination of employment for employees.

#### Q. Time Limits

The College will exercise due diligence in complying with the stated time limits set forth in this policy. However, stated time limits may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance. Any party may request an extension of any deadline by submitting a written request to the Title IX Coordinator detailing the reason for such request and the amount of additional time requested. The Title IX Coordinator has the discretion to grant or deny any such request.

#### R. Remedies and Sanctions

If the College determines that an individual engaged in an act of sexual assault, stalking, domestic violence or dating violence, sanctions which may be imposed by the College include suspension or expulsion for students, and termination of employment for employees.

In addition to any disciplinary action, the College may take action to eliminate a hostile environment created by discrimination, harassment or sexual misconduct, to prevent the recurrence of the discrimination, harassment or sexual misconduct, and to address the effects of the discrimination, harassment or sexual misconduct on the parties involved, the witnesses and the College community, as

appropriate. Such efforts may include additional training and awareness programs for the College community.

More information about possible sanctions can be found in **Appendix B** and **Appendix E**.

### S. Education/Training

As part of the College's commitment to providing a safe, non-discriminatory and harassment-free environment, this policy shall be disseminated widely to the College community through publications, websites, student orientations, new employee orientations, current employee training and other appropriate channels of communication. The College also provides training programs for College employees and students to promote awareness and a safe and respectful College environment.

### T. Re-Evaluation

The College reserves the right to modify and/or amend any or all of the terms and/or procedures outlined herein at any time, in its sole discretion. In the event the College determines that circumstances warrant modification or amendment of this policy, timely notice of the same will be communicated to all affected parties. This policy is made available to the entire faculty, staff, and student body of Einstein, as well as all interested others, and can be accessed via the [Human Resources webpage](#) or can be obtained from the Title IX Coordinator, the Office of Human Resources, Senior Counsel, or the Einstein Office of Student Affairs.

### U. Support Resources

#### **Confidential College Resources**

A report made to the following College resources will not trigger an investigation by the College:

**[Office of Academic Support and Counseling](#)**

718-430-3154

[oasc@einstein.yu.edu](mailto:oasc@einstein.yu.edu)

#### **Non-Confidential College Resources**

A report also may be made to the College's Title IX Coordinator, Security Department, Dean of Students, or other "campus security authorities" (See **Section V**), however it will trigger an investigation by the College.

#### **Other Resources not affiliated with the College**

- **The NYC Alliance Against Sexual Assault** on-line at [www.svfreenyc.org](http://www.svfreenyc.org) or (212) 229-0345 has compiled numerous resources available to victims
- **Manhattan Family Justice Center can provide a wide range of services and support. The Manhattan location is at 80 Centre Street, New York, NY, 10013; Phone: (212) 602-2800; <http://www.nyc.gov/html/ocdv/html/help/fjc.shtml>**

- **Family Court Volunteer Lawyer Program** (part of the New York State Access to Justice Program)  
900 Sheridan Avenue  
Bronx, NY 10451  
Phone: (718) 618-2150  
Hotline: (718) 618-2150
- **Safe Horizon (NYC)**  
2 Lafayette Street, 3rd Floor  
New York, NY 10007  
Phone: (212) 227-3000  
<http://www.safehorizon.org/help@safehorizon.org>  
Hotline: (866) 689-4357

### **Immigration & Visa Assistance Services for Victims of Sexual & Interpersonal Violence**

U.S. Citizenship and Immigration Services (USCIS)

<http://www.uscis.gov/citizenship/learners/find-help-your-community>

USCIS Find Legal Services Webpage

<http://www.uscis.gov/avoid-scams/find-legal-services>

Board of Immigration Appeals (BIA) (Listing of attorneys by state who provide immigration services either for free or for little cost)

<http://www.justice.gov/eoir/probono/states.htm>

American Immigration Lawyers Association (AILA) Immigration Lawyer Referral Service

<http://www.ailalawyer.org/>

American Bar Association (ABA) (Information on finding legal services by state)

<http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>

### **Sexual Assault Forensic Examinations (SAFE)**

**Mount Sinai Beth Israel - Petrie Division** (Manhattan) located at First Avenue at 16th Street, New York, NY 10003 (main phone: (212) 420-2000) regarding services to sexual assault victims. The Petrie Division has a Sexual Assault Forensic Examiner Program, and is a designated SAFE Center of Excellence. Emergency care and support is available 24 hours/7 days a week, and a Victim Service Program social worker or volunteer advocate is on call at all times.

### **Emergency Resources**

- **New York City Police Department:** 911
- **Lifenet Helpline:** 1-800-543-3638



## IV. Definitions

### Unlawful Discrimination or Harassment

Unlawful discrimination or harassment includes discrimination or harassment based on race, religion, color, creed, age, national origin or ancestry, sex, marital status, physical or mental disability, veteran or disabled veteran status, genetic predisposition/carrier status, sexual orientation, gender identity or expression, citizenship status or any other characteristic protected by any applicable law, ordinance, or regulation. Applicable laws that prohibit such discrimination and harassment include, but are not limited to, the following: Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin; Title IX of the Higher Education Act of 1972 (“Title IX”), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability; N.Y. Executive Law, art. 15, §290 et seq. (Human Rights Law); and Title 8 of the Administrative Code of the City of New York (Human Rights Law).

This policy prohibits discrimination against or harassment of any individual based on that individual’s membership in a protected class, whether or not it rises to the level of unlawful discrimination or harassment. In addition, this policy protects all others listed above, even if they are not members of a protected class, for example, if someone is discriminated against or harassed based on an inaccurate assumption that the person is a member of a protected class.

Examples of conduct that may violate this policy include the use of epithets, slurs, jokes, stereotyping, or intimidating or hostile acts directed at any individual because of his/her protected class status, as well as the failure to provide equal consideration, acknowledgment or access to educational opportunities to equally qualified individuals. Harassment does not have to include intent to harm or be directed at a specific target. Prohibited harassment may involve a single episode or ongoing behavior depending on the severity of the issue. In addition, this policy forbids not only verbal and physical harassment but also harassment in any medium, including email and electronic social media.

Discrimination and harassment can take many forms. Prohibited conduct includes, but is not be limited to, behaviors commonly recognized as sexual harassment, sexual abuse/assault, other physical violence, threatening behavior and stalking. Sexual harassment, including sexual abuse/assault (“sexual violence”), is a form of sex discrimination prohibited by Title IX and other laws. All of these behaviors are prohibited regardless of the relationship or gender of the parties involved, and thus any such harassment that occurs in a dating or domestic relationship is specifically prohibited by this policy.

Sexual abuse/assault, stalking, domestic violence and dating violence are prohibited by this policy as well as federal and state laws. Anyone found responsible by Einstein for such conduct will face serious disciplinary sanctions, including suspension or expulsion from Einstein for students, and termination of employment for employees.

#### Definition of Unlawful Sexual Harassment

Sexual harassment refers to any *unwelcome* or *unwanted* sexual advances, requests for sexual favors, or other verbal, physical, demonstrative, or electronic conduct or communication of a sexual nature when:

- *Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational experience; or*
- *Submission or rejection of such conduct is used as the basis for a decision regarding an employment, academic, or other College-related activity affecting such individual; or*
- *Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or participation in a College program, department or extra-curricular activity; or*
- *Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working, learning, studying, or school environment.*

Sexual harassment may occur in a single incident or consist of a series of incidents. It can occur between any two people covered by this Policy, including, but not limited to, two faculty or staff members, a faculty or staff member and a student, two students, a group and an individual, people of the same or different gender, or people of the same or unequal status or power. Sexual harassment is considered a form of misconduct and disciplinary action will be taken against individuals engaging in sexual harassment and individuals, including supervisors, who knowingly allow such behavior to continue.

Examples of conduct which may constitute sexual harassment include, but are not limited to: verbal comments of an overtly sexual nature, whether in the form of jokes, innuendoes, slurs, or other statements; the use of sexual teaching materials or comments of a sexual nature not relevant to the material being taught or any other academic purpose; remarks of a sexual nature about an individual's clothing or body; remarks speculating about an individual's sexual orientation, activity or previous sexual experiences; verbal harassment or abuse of a sexual nature; making offensive gender-based remarks; the display or transmission of sexually offensive objects, photographs, drawings, graffiti, email, electronic social media communications, computer graphics or programs when sexual content is not relevant to any academic purpose; non-verbal behaviors of a sexually degrading or offensive nature, such as gesturing, or leering; unwanted touching, hugging, or brushing against an individual's body; requests, demands or persistent pressure for sexual favors, particularly when accompanied by an offer of rewards or threats of retaliation concerning work, grades, promotions, tenure or any other academic or College-related decision; and sexual abuse/assault ("*sexual violence*").

**Regarding the appropriateness of romantic or sexual relationships between College employees and students, see Einstein's [Workplace Romance & Fraternization Policy](#).**

### **Sexual Assault**

Sexual Assault is any nonconsensual sexual act prohibited by law, including when the victim lacks capacity to consent. Sexual assault includes:

- *Non-Consensual Sexual Contact:* Any intentional sexual touching, however slight and with any object or body part, that is without affirmative consent (as defined below) and/or by threat, intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. This includes intentional contact with breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner.

- *Rape*: 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, forcibly or without affirmative consent or where the victim is incapable of affirmative consent due to mental or physical incapacity. *Statutory rape* is non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

**Affirmative Consent (“Consent”)**

Affirmative Consent is defined as 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. This definition does not vary based upon a participant’s sex, sexual orientation, gender identity or expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act;
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol;
- Consent may be initially given but withdrawn at any time;
- Consent cannot be given when a person is incapacitated (as hereafter described);
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm; and
- When consent is withdrawn or can no longer be given, sexual activity must stop.

- Children under 17 years of age cannot legally consent under New York State Law to having sex or sexual contact with an adult (i.e., someone who is 17 years of age or older). **Any sexual contact in New York between a child under 17 and an adult is a crime, and any such illegal behavior between a College student under 17 and a College employee or employee of a contracted service provider to the College will be reported to an appropriate law enforcement agency. Other jurisdictions may have different standards, and any illegal behavior in such jurisdiction also will be reported to the appropriate law enforcement agency.**

### **Incapacitation**

Occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. 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.

Evaluating incapacitation requires an assessment of an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and
- Level of consciousness.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a knowing, reasonable decision about whether to engage in sexual activity is in violation of this policy.

**Alcohol and Other Drugs:** In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's ability to provide affirmative consent, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

*Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one's responsibility to obtain affirmative consent.*

**See Appendix D for the Student Alcohol and Drug Use Amnesty Policy.**

### **Stalking**

Stalking refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety or the safety of others, or to suffer substantial emotional distress (i.e., significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling). Such a course of conduct means two or more acts, including, but not limited to, any actions directed at another person, whether done directly, indirectly or through

others, via the telephone, electronic devices or any other means of communication, to follow, monitor, observe, surveil, threaten, or communicate to or about a person or interfere with the person's property. Stalking may include contact through a third party.

Examples of conduct that may constitute prohibited stalking include, but are not limited to: unwelcome/unwanted communications of any type, including face-to-face, telephone calls, voice messages, e-mail, text messages, postings, written letters or notes and unwanted gifts; use of threatening words or conduct; pursuing or following; observing and/or surveillance; trespassing or vandalism; entering or remaining on or near a person's property, residence, classroom, place of employment or any other location where the person is present; interfering with or damaging a person's property, including pets; and engaging in other unwelcome contact.

**Dating Violence**

Dating violence is violence committed by a person who is or has been in a romantic or intimate relationship with the victim. Identification of a dating partner, and the existence of a social relationship of a romantic or intimate nature constituting a dating relationship, shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Domestic Violence**

Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim, or by any other person against an adult or youth victim who is protected from that person's acts.

Examples of conduct that may constitute, whether alone or in combination, domestic violence include, but are not limited to: a pattern of name-calling, insults, put-downs; keeping or limiting a person from contacting family or friends; withholding money, food or other necessities; stopping a person from getting or keeping a job, getting to class, or staying in school; actual or threatened physical harm; sexual abuse/assault ("*sexual violence*"); stalking; possessiveness or extreme jealousy; intimidation; physical assault or threats thereof; and emotional isolation/manipulation.

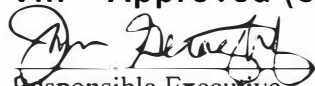
**V. Effective Date**

Effective as of: April 1, 2018.

**VI. Policy Management and Responsibilities**

The Associate Dean for Finance and Administration is the Responsible Executive for this policy. The Vice President of Human Resources and Diversity is the Responsible Officer, and the Human Resource department is responsible for administering, implementing and enforcing this policy.

**VII. Approved (or Revised)**

  
Responsible Executive

5/17/18  
Date

## Appendix A: Informal Resolution

The Title IX Coordinator or Unlawful Harassment Panel Member(s) may recommend or, with the continued mutual consent of all parties, facilitate an informal means of addressing the issues raised in a complaint made pursuant to this policy, including but not limited to:

1. An informal direct discussion between the complainant and the respondent in the presence of the Title IX Coordinator or a Panel Member(s);
2. Requesting additional education for the area or department where the complaint originated; or
3. Commencing mediation of the complaint. The complainant and the respondent must agree to mediation if mediation is to go forward. **Mediation is optional.** The mediator will be designated by the Title IX Coordinator within 10 days after the parties' agreement to participate in mediation. The mediator will contact the parties to set the date, time, and location of the mediation session(s). Only the mediator and the parties will be participants in the mediation session(s), except as provided below. During the mediation process, the mediator normally will: (i) ask the parties to give their versions of the incident, including both factual information and their feelings; (ii) identify key issues; (iii) seek the agreement of both parties on the issues; (iv) facilitate discussion; and (v) work with both parties to develop a written document that will include a statement of agreement. If either party is dissatisfied with the mediation process at any time prior to the signing of a mediation agreement, that party may request that the mediation process cease.

The complainant may at any time replace his/her informal complaint with a formal complaint and thereby proceed with the formal resolution process (see **Appendix B**, Formal Resolution of Complaints Involving Students or **Appendix E**, Formal Resolution of Complaints Involving Employees Only). Formal complaints must be made to the Title IX Coordinator (see **Appendix B**, Formal Resolution of Complaints Involving Students and **Appendix E**, Formal Resolution of Complaints Involving Employees Only). Furthermore, the College reserves the right to conduct its own formal investigation into any complaint, whether formal or informal, where it determines the facts call for such an investigation.

The respondent may decline to participate in the informal process and may request that a formal complaint be filed. No negative inference may be drawn from such a request.

If applicable, where a Panel Member is unable or unwilling to undertake the review of a complaint, for example because of a conflict of interest, the Title IX Coordinator will select another Panel Member.

In addition, at the reasonable request of a party to the complaint (for example, because of a conflict of interest), the Title IX Coordinator will select another Panel Member or mediator (as applicable). Where acceptable to both parties, the Panel Member(s) involved may request that an additional Panel Member(s) and/or the Title IX Coordinator be present for the discussions.

**Informal Resolution is not available in cases of alleged sexual assault, stalking, domestic violence, or dating violence.**

## **Appendix B: Formal Resolution of Complaints Involving Students**

### **I. For Complaints Involving Sex/Sex-Based Discrimination, Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence and Dating Violence**

Following a determination to pursue a formal resolution of a complaint involving students received by the Title IX Coordinator involving sex/sex-based discrimination, sexual harassment, sexual abuse/assault, stalking, domestic violence and dating violence:

- 1) The Title IX Coordinator (or his/her designee) will provide all parties involved with a copy of these procedures.
- 2) The Title IX Coordinator (or his/her designee) will request the complainant to provide to the Title IX Coordinator, within 5 days after the Title IX Coordinator's request and preferably in writing, a description of all facts that bear on the allegations; specifically, the details surrounding the accusation, names of possible witnesses, and the nature and description of possible evidence. The complainant is expected to share with the Title IX Coordinator, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available.
- 3) The Title IX Coordinator (or his/her designee) will promptly inform the respondent in writing (and send a copy to the complainant) of the allegations (including the date, time, location, nature of the alleged misconduct, factual allegations and reference to specific code violations and sanctions that may be imposed) and ask the respondent to respond to them within 5 days after such notice. Such response should include all facts that bear on the allegations, including the names of possible witnesses and the nature and description of possible evidence. The respondent is expected to share with the Title IX Coordinator, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available. The Title IX Coordinator will inform the complainant of any defenses that the respondent may provide. The Title IX Coordinator (or his/her designee) may ask to meet with the parties separately to discuss the allegations.
- 4) Where appropriate, in the judgment of the Title IX Coordinator, both the complainant and the respondent may be invited to engage in mediation or conciliation; however mediation will not be used to resolve a complaint of sexual assault, stalking, domestic violence or dating violence.
- 5) The Title IX Coordinator may also work with Senior Counsel, as appropriate, in responding to the receipt of a complaint, and when the complaint involves an allegation of sexual violence, stalking, domestic violence, dating violence or other sexual misconduct, the Title IX Coordinator will promptly notify Senior Counsel of the existence of such complaint.
- 6) The Title IX Coordinator (or other designated investigator) will fully, fairly and impartially investigate the complaint, and each party equally will have the opportunity to present witnesses and other evidence to the investigator. Each party will also be afforded similar and timely access to information that may be provided by the College to the other party and that will be used to adjudicate the complaint.

- 7) Both parties will be advised by the Title IX Coordinator (or his/her designee) that reasonable efforts will be made by the College to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see **Section XV**).
- 8) The Title IX Coordinator will explore possible interim protective measures and accommodations with both parties.
- 9) The Title IX Coordinator (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.
- 10) The Title IX Coordinator (or his/her designee) will provide the complainant and the respondent with periodic status updates.
- 11) The Title IX Coordinator (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 days after receipt of the respondent's statement regarding the allegations, and generally within 40 days after receipt of the formal complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline (see **Section XVIII**).
- 12) The Title IX Coordinator (or other designated investigator) will compile a neutral investigation report, and will simultaneously inform the parties of the conclusion of the investigation. Both parties will have an opportunity to review the investigation report in person, in the presence of a College official at a location selected by the College. The complainant and respondent may respond to the report, either verbally or in writing.
- 13) The Title IX Coordinator will then decide (in his/her discretion as he/she feels appropriate, and in consultation with Senior Counsel) if (i) the individual who handled the investigation and compiled the report (which may be the Title IX Coordinator or other designated investigator) should make the finding as to whether this policy has been violated and determine appropriate sanctions, or (ii) a hearing officer should convene a hearing and make the finding as to whether this policy has been violated and determine appropriate sanctions. (It is expected that the hearing process referred to in option (ii) will only be used in very limited circumstances as the Title IX Coordinator, in consultation with Senior Counsel, will determine as appropriate in his/her discretion.) In all cases, a finding of a violation of this policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the discrimination or harassment occurred).
- 14) If the Title IX Coordinator (or other designated investigator) is selected to make the finding and determine sanctions as provided above, then he/she should do so promptly (and generally within 5 days) after the conclusion of the investigation. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the finding. At this point, the parties may submit an impact statement for the Title IX Coordinator's (or other designated investigator's) consideration during the sanction stage. Impact statements should be submitted within 3 days of notice of the finding. In deciding an appropriate disciplinary action, the Title IX Coordinator (or other designated investigator) may consider the respondent's past violations of College policy, as well



as the nature and severity of the violation(s), the impact statements of the parties, and any mitigating circumstances. The Title IX Coordinator (or other designated investigator) will decide the appropriate disciplinary actions generally within 10 days of the finding. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, and the right to appeal (as provided below).

- 15) If a hearing officer is selected to make the finding and determine sanctions as provided above, then a hearing officer will be selected by the Title IX Coordinator (in consultation with the Senior Counsel) depending on the nature of the case and the parties involved. The hearing officer may be the Title IX Coordinator, another College employee, or an outside individual, but may not be the person who handled the investigation. The process will then be as follows:
- i. The hearing officer will schedule a hearing as soon as possible after the conclusion of the investigation (and generally within 5 days), and the Title IX Coordinator will simultaneously notify the parties as soon as practicable of the date, time and place of the hearing.
  - ii. Prior to the hearing, the hearing officer will review the investigation report, as well as any responses to the investigation report submitted by the complainant or respondent.
  - iii. At the hearing, the hearing officer may question the parties in order to assist him/her in deciding whether or not the charges are supported by a preponderance of the evidence. The hearing officer may ask that witnesses attend the hearing, so that he/she may ask witnesses questions in person. The parties are encouraged to attend the hearing, so that they are given a full opportunity to explain their positions. If a party is uncomfortable appearing in the same location with the other party, arrangements can be made so that one or both parties may participate in the hearing live by conference call or video conference.
  - iv. With respect to allegations regarding sexual assault, stalking, domestic violence or dating violence, the parties may have a personal advisor/support person present during the hearing (see **Section IX**).
  - v. Generally within 5 days of the hearing, the hearing officer will issue a written decision on whether a violation has occurred. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the decision. At this point, the parties may submit an impact statement for the hearing officer's consideration during the sanction stage. Impact statements should be submitted within 3 days of notice of the decision. In deciding an appropriate disciplinary action, the hearing officer may consider the respondent's past violations of College policy, as well as the nature and severity of the violation(s), the impact statements of the parties, and any mitigating circumstances. The hearing officer will decide the appropriate disciplinary actions generally within 10 days of the hearing.
  - vi. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, and the right to appeal (as provided below).

16) The College expects all cases involving a finding of sexual violence, stalking, domestic violence and dating violence to involve consideration of suspension or expulsion for students, and termination of employment for employees. Other sanctions that may be imposed include a warning, disciplinary probation, restriction from employment by the College, removal from College housing, removal from courses or activities, loss of privileges, no contact, exclusion from areas of the campus and facilities, removal or non-renewal of scholarships, a notation on the respondent's official College transcript, community service, restitution, and a fine. In addition, the respondent may also be required to undergo an assessment and treatment by a therapist or counselor, attend an intervention treatment program and/or issue a letter of apology.

17) Appeal Process.

- i. In all cases, there are three possible grounds for appeal:
  - An alleged material violation of the established procedures in this policy;
  - Evidence is now available that could not have been obtained at the time of the determination/initial hearing; or
  - The sanction is excessive, inconsistent or insufficient with the nature of the offense.
- ii. Either party may appeal the decision of the Title IX Coordinator (or other designated investigator) or hearing officer, as applicable, (based on the grounds described above) to an **Appeal Panel** (of two or more persons, or as otherwise may be required by applicable law, rule or regulation) selected by the Title IX Coordinator (in consultation with Senior Counsel) depending on the nature of the case and the parties involved. The Title IX Coordinator (or other designated investigator) or hearing officer, as applicable, may not serve on the Appeal Panel. A request for an appeal must consist of a plain, concise, and complete written statement outlining the grounds for the appeal. The appeal request must be submitted to the Title IX Coordinator within 5 days of the date of the final determination letter.
- iii. Upon receipt of the appeal, the Title IX Coordinator will provide the other party with notice of the appeal and the opportunity to respond in writing. The other party's response to the appeal must be submitted within 5 days from receipt of notice of the appeal. In the event that both parties initially appeal the decision, each party will be provided notice and a copy of the other party's appeal.
- iv. The appeal will be conducted in a fair and impartial manner. The appeal is not a re-hearing of the underlying matter. The Appeal Panel will review the written investigation report, decisions and all supporting documents, and also may consult with both parties.
- v. The Appeal Panel (by majority vote of panelists, or by unanimous decision if less than 3 panelists) can affirm the original determination of responsibility, alter the determination of responsibility either in whole or in part, and/or alter the sanctions, depending on the

circumstances. The matter can also be referred back for further investigation or consideration if appropriate.

- vi. The Appeal Panel will issue its determination generally within 5 days from the date of the submission of all appeal documents by both parties. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the decision.
  - vii. Appeal decisions are final.
  - viii. If there is no appeal, the Title IX Coordinator also will simultaneously notify the parties that the initial decision is final because the time for an appeal has expired.
- 18) Notwithstanding the foregoing, to the extent permitted by law, (i) findings and recommendations concerning represented employees will be subject to the provisions of the appropriate collective bargaining agreement, and (ii) findings and recommendations that involve suspension or termination of faculty members will be subject to the provisions of the appropriate faculty handbook/policy.
- 19) The College will endeavor to fully resolve all formal complaints generally within 60 days (or, in the case of a faculty complaint, such other time period as may otherwise be required by the applicable faculty handbook/policy) after receipt of the formal complaint. The 60 day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.
- 20) Transcript Notations. Students suspended or expelled for committing an act of sexual assault, stalking, domestic violence, dating violence, or a “violent crime,” as defined by the Clery Act,<sup>1</sup> will have a notation placed on their transcript as follows: “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.” The College will consider requests to remove transcript notations. Requests for removal of a transcript notation should be sent to the Title IX Coordinator. A transcript notation will not be removed prior to one year after conclusion of the suspension. If a finding of responsibility is vacated for any reason, a corresponding transcript notation will be removed. Expulsion notations will not be removed in any case. If an accused student withdraws from the College while charges are pending and declines to complete the disciplinary process the following notation will be placed on his/her transcript: “withdrew with conduct charges pending.”

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<sup>1</sup> “Violent crimes” defined by the Clery Act are murder, sexual offenses (forcible and non-forcible), robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.

### **Formal Resolution of Complaints Involving Students**

#### **II. For Complaints Not Involving Sex/Sex-Based Discrimination, Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence and Dating Violence**

Following a determination to pursue a formal resolution of a complaint involving students received by the Title IX Coordinator involving discrimination or harassment not covered by Section I above:

- 1) The Title IX Coordinator (or his/her designee) will provide all parties involved with a copy of these procedures.
- 2) The Title IX Coordinator (or his/her designee) will request the complainant to provide to the Title IX Coordinator, within 5 days after the Title IX Coordinator's request and preferably in writing, a description of all facts that bear on the allegations; specifically, the details surrounding the accusation, names of possible witnesses, and the nature and description of possible evidence. The complainant is expected to share with the Title IX Coordinator, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available.
- 3) The Title IX Coordinator (or his/her designee) will promptly inform the respondent in writing (and send a copy to the complainant) of the allegations (including the date, time, location, nature of the alleged misconduct, and factual allegations) and ask the respondent to respond to them within 5 days after such notice. Such response should include all facts that bear on the allegations, including the names of possible witnesses and the nature and description of possible evidence. The respondent is expected to share with the Title IX Coordinator, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available. The Title IX Coordinator will inform the complainant of any defenses that the respondent may provide. The Title IX Coordinator (or his/her designee) may ask to meet with the parties separately to discuss the allegations.
- 4) Where appropriate, in the judgment of the Title IX Coordinator, both the complainant and the respondent may be invited to engage in mediation or conciliation.
- 5) The Title IX Coordinator may also work with Senior Counsel, as appropriate, in responding to the receipt of a complaint.
- 6) The Title IX Coordinator (or other designated investigator) will fully, fairly and impartially investigate the complaint, and each party equally will have the opportunity to present witnesses and other evidence to the investigator. Each party will also be afforded similar and timely access to information that may be provided by the College to the other party and that will be used to adjudicate the complaint.
- 7) Both parties will be advised by the Title IX Coordinator (or his/her designee) that reasonable efforts will be made by the College to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see **Section XV**).

- 8) The Title IX Coordinator will explore possible interim protective measures and accommodations with both parties.
- 9) The Title IX Coordinator (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.
- 10) The Title IX Coordinator (or his/her designee) will provide the complainant and the respondent with periodic status updates.
- 11) The Title IX Coordinator (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 days after receipt of the respondent's statement regarding the allegations, and generally within 40 days after receipt of the formal complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline (see **Section XVIII**).
- 12) The Title IX Coordinator (or other designated investigator) will compile a neutral investigation report and will then determine the credible evidence and make a finding as to whether this policy has been violated. A finding of a violation of this policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the discrimination or harassment occurred).
- 13) The Title IX Coordinator will simultaneously inform the parties of the conclusion of the investigation and the finding. The complainant and respondent may respond to such findings, either verbally or in writing, and such response will be furnished to the appropriate disciplinary authority along with the investigation's findings. Neither the complainant nor the respondent is entitled to receive a copy of the internal investigative report or any other related documents, except, in the case of any faculty complaint, as may otherwise be expressly required by any applicable faculty handbook/policy. If the College determines to furnish a document to one party, it will also simultaneously furnish a copy to the other party.
- 14) Findings and recommendations concerning an employee-respondent will be promptly referred to the Vice President for Human Resources for consideration of appropriate disciplinary action. The Vice President for Human Resources will consult with the Title IX Coordinator and the designated investigator (as applicable) to review the findings and recommendations, as well as any responses to such findings received from the complainant or respondent. With respect to faculty, the Vice President for Human Resources also will consult with the Dean.
- 15) Findings and recommendations concerning a student-respondent will be promptly referred to the applicable Dean of Students or his/her counterpart at the student-respondent's school for consideration of appropriate disciplinary action. The Dean of Students or his/her counterpart will consult with the Title IX Coordinator and the designated investigator (as applicable) to review the findings and recommendations, as well as any responses to such findings received from the complainant or respondent.
- 16) The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the sanctions to be imposed. A student-respondent may appeal the sanctions to be imposed on him/her, but no other party has a right of appeal. Within 5 days of notice of the sanctions to be

imposed on the student-respondent, the student-respondent may appeal the sanctions by submitting a written request to the Title IX Coordinator. The only grounds for an appeal are that the sanctions are excessive or inconsistent with the nature of the offense. The appeal is not a re-hearing of the underlying matter. Upon receipt of the appeal, the Title IX Coordinator will provide the other party with notice of the appeal and the opportunity to respond in writing. The other party's response to the appeal must be submitted within 5 days from receipt of notice of the appeal. The appeal will be reviewed by the Dean (or his/her designee), and he/she will issue a determination generally within 5 days from the date of the submission of all appeal documents by both parties. The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the decision. Appeal decisions are final. If there is no appeal, the Title IX Coordinator also will simultaneously notify the parties that the initial decision is final because the time for an appeal has expired.

- 17) Notwithstanding the foregoing, (i) findings and recommendations concerning represented employees will be subject to the provisions of the appropriate collective bargaining agreement, and (ii) findings and recommendations that involve suspension or termination of faculty members will be subject to the provisions of the appropriate faculty handbook/policy.
- 18) The College will endeavor to fully resolve all formal complaints generally within 60 days (or, in the case of a faculty complaint, such other time period as may otherwise be required by the applicable faculty handbook/policy) after receipt of the formal complaint. The 60 day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.

### Appendix C: Student Bill of Rights

Einstein is committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. 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 institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion 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;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. 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
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

See **Section VI** for information about filing a report, and **Section XXII** for confidential reporting options.

## **Appendix D: Student Alcohol and Drug Use Amnesty Policy**

The health and safety of every student at Einstein is of utmost importance. Einstein 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. Einstein strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Einstein officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to a Einstein official or law enforcement will not be subject to a 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.

Einstein will provide students with the assistance needed to respond to high risk drinking and/or other drug abuse. In a crisis, students are encouraged to seek such assistance by contacting the Security Department or 911.

### **[Security Department](#)**

Forchheimer Building, Room G9  
1300 Morris Park Avenue  
(718) 430-2180  
[security@Einstein.yu.edu](mailto:security@Einstein.yu.edu)

Additional resources and information can be found in Einstein's [Drug and Alcohol Policy](#).



### Appendix E: Formal Resolution of Complaints Involving Employees Only

Following a determination to pursue a formal resolution of a complaint involving only employees received by the Title IX Coordinator:

- 1) The Title IX Coordinator (or his/her designee) will provide all parties involved with a copy of these procedures.
- 2) The Title IX Coordinator (or his/her designee) will request the complainant to provide to the Title IX Coordinator, within 5 days after the Title IX Coordinator's request and preferably in writing, a description of all facts that bear on the allegations; specifically, the details surrounding the accusation, names of possible witnesses, and the nature and description of possible evidence. The complainant is expected to share with the Title IX Coordinator, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available.
- 3) The Title IX Coordinator (or his/her designee) will promptly inform the respondent in writing (and send a copy to the complainant) of the allegations (including the date, time, location, nature of the alleged misconduct, and factual allegations) and ask the respondent to respond to them within 5 days after such notice. Such response should include all facts that bear on the allegations, including the names of possible witnesses and the nature and description of possible evidence. The respondent is expected to share with the Title IX Coordinator, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available. The Title IX Coordinator will inform the complainant of any defenses that the respondent may provide. The Title IX Coordinator (or his/her designee) may ask to meet with the parties separately to discuss the allegations.
- 4) Where appropriate, in the judgment of the Title IX Coordinator, both the complainant and the respondent may be invited to engage in mediation or conciliation; however mediation will not be used to resolve a complaint of sexual assault, stalking, domestic violence or dating violence.
- 5) The Title IX Coordinator may also work with Senior Counsel, as appropriate, in responding to the receipt of a complaint, and when the complaint involves an allegation of sexual violence, stalking, domestic violence, dating violence or other sexual misconduct, the Title IX Coordinator will promptly notify Senior Counsel of the existence of such complaint.
- 6) The Title IX Coordinator (or other designated investigator) will fully, fairly and impartially investigate the complaint, and each party equally will have the opportunity to present witnesses and other evidence to the investigator. Each party will also be afforded similar and timely access to information that may be provided by the College to the other party and that will be used to adjudicate the complaint.
- 7) Both parties will be advised by the Title IX Coordinator (or his/her designee) that reasonable efforts will be made by the College to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see **Section XV**).

- 8) The Title IX Coordinator will explore possible interim protective measures and accommodations with both parties.
- 9) The Title IX Coordinator (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.
- 10) The Title IX Coordinator (or his/her designee) will provide the complainant and the respondent with periodic status updates.
- 11) The Title IX Coordinator (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 days after receipt of the respondent's statement regarding the allegations, and generally within 40 days after receipt of the formal complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline (see **Section XVIII**).
- 12) The Title IX Coordinator (or other designated investigator) will compile a neutral investigation report and will then determine the credible evidence and make a finding as to whether this policy has been violated. A finding of a violation of this policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the discrimination or harassment occurred).
- 13) The Title IX Coordinator will simultaneously inform the parties of the conclusion of the investigation and the finding. Neither the complainant nor the respondent is entitled to receive a copy of the internal investigative report or any other related documents, except, in the case of any faculty complaint, as may otherwise be expressly required by any applicable faculty handbook/policy. If the College determines to furnish a document to one party, it will also simultaneously furnish a copy to the other party.
- 14) Findings and recommendations will be promptly referred to the Vice President for Human Resources for consideration of appropriate disciplinary action. The Vice President for Human Resources will consult with the Title IX Coordinator and the designated investigator (as applicable) to review the findings and recommendations, as well as any responses to such findings received from the complainant or respondent. With respect to faculty, the Vice President for Human Resources also will consult with the Dean.
- 15) The College expects all cases involving a finding of sexual violence, stalking, domestic violence and dating violence to involve consideration of termination of employment. Other sanctions that may be imposed include a warning, disciplinary probation, restriction from employment by the College, removal from College housing, removal from courses or activities, loss of privileges, no contact, exclusion from areas of the campus and facilities, community service, restitution, and a fine. In addition, the respondent may also be required to undergo an assessment and treatment by a therapist or counselor, attend an intervention treatment program and/or issue a letter of apology.
- 16) The Title IX Coordinator will simultaneously notify the parties as soon as practicable of the sanctions to be imposed. Neither party may appeal the decision.

- 17) Notwithstanding the foregoing, (i) findings and recommendations concerning represented employees will be subject to the provisions of the appropriate collective bargaining agreement, and (ii) findings and recommendations that involve suspension or termination of faculty members will be subject to the provisions of the appropriate faculty handbook/policy.
  
- 18) The College will endeavor to fully resolve all formal complaints generally within 60 days (or, in the case of a faculty complaint, such other time period as may otherwise be required by the applicable faculty handbook/policy) after receipt of the formal complaint. The 60 day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.

## Appendix F: New York Crime Definitions

The Violence Against Women Act (VAWA) and its regulations require the College to include certain New York State definitions in its Annual Security Report and also require that these definitions be provided in other materials disseminated by the College. Relevant New York definitions are set forth below.

CONSENT:<sup>2</sup> Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or 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. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, 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. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

CONSENT, ABBREVIATED: Clear, unambiguous, and voluntary agreement between the participating to engage in specific sexual activity.

DATING VIOLENCE: New York State does not specifically define "dating violence." However, under New York Law, intimate relationships are covered by the definition of domestic violence when the crime is committed by a person in an "intimate relationship" with the victim. See "Family or Household Member" for definition of "intimate relationship."

DOMESTIC VIOLENCE: An act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

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<sup>2</sup> For the purposes of this policy, the College defines consent as *affirmative consent* as defined in the body of this policy, which is consistent with N.Y. Educ. Law § 6441.

**FAMILY OR HOUSEHOLD MEMBER:** Person's related by consanguinity or affinity; persons legally married to one another; person formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether such persons are married or have lived together at any time; unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

**PARENT:** means natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

**SEXUAL ASSAULT:** New York State does not specifically define sexual assault. However, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape.

**SEX OFFENSES; LACK OF CONSENT:** Whether or not specifically stated, it is an element of every sexual act committed without consent of the victim.

**SEXUAL MISCONDUCT:** When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

**RAPE IN THE THIRD DEGREE:** When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) 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 SECOND DEGREE:** When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree the defendant was less than four years older than the victim at the time of the act.

**RAPE IN THE FIRST DEGREE:** When a person 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 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**CRIMINAL SEXUAL ACT IN THE THIRD DEGREE:** When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without such persons consent where such lack of consent is by reason of some factor other than incapacity to consent.

**CRIMINAL SEXUAL ACT IN THE SECOND DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.

**CRIMINAL SEXUAL ACT IN THE FIRST DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**FORCIBLE TOUCHING:** When a 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. It includes squeezing, grabbing, or pinching.

**PERSISTENT SEXUAL ABUSE:** When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

**SEXUAL ABUSE IN THE THIRD DEGREE:** When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.

**SEXUAL ABUSE IN THE SECOND DEGREE:** When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old.

**SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

**AGGRAVATED SEXUAL ABUSE:** For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.

**AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE:** When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina,

urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.

**AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE:** When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1)(a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

**AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE:** When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

**AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

**STALKING IN THE FOURTH DEGREE:** When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) 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 (2) 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 (3) 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 THIRD DEGREE:** When a person (1) Commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an 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 (4) commits the crime or stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

**STALKING IN THE SECOND DEGREE:** When a person: (1) Commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic

knuckles, metal knuckles, chuka stick, sand bag, sandclub, sligshot, slungshot, shirken, “Kung Fu Star,” dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or (2) commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 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; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

**STALKING IN THE FIRST DEGREE:** When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.



**Appendix G: A Plain Language Explanation of Distinctions between the New York State Penal Law and the College Disciplinary Processes**

New York State Education Law Article 129-B requires that College officials explain differences between College processes and the criminal justice process in addressing sexual and interpersonal violence.

There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. The College disciplinary process seeks to determine whether an individual has violated College policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated College policy may be suspended, expelled or otherwise restricted from full participation in the College community. This document is intended to help explain the differences between the criminal justice system and College disciplinary processes.

	<b>Criminal Justice System</b>	<b>College Disciplinary System</b>
<b>Goals.</b>	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
<b>Governing Law.</b>	NYS Penal Code; NYS Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act, as amended by the Violence Against Women Act; NYS Education Law Articles 129-A and 129-B. College’s Title IX: Non-Discrimination and Anti-Harassment Policy; Student Bill of Rights Employee/Faculty Handbooks; Code of Conduct.
<b>How to report and whether there must be action once a report is made.</b>	Crimes involving sexual violence may be reported to the local police agency or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted	Victims may disclose sexual violence to various College employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the College’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will

	without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
<b>Who investigates?</b>	Police or other law enforcement officials.	Investigators employed or retained by the College; these individuals may work for different departments within the College, including, but not limited to, the Security Department, Student Affairs and Academic Affairs.
<b>Procedures.</b>	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	College policies, which generally incorporate requirements of Governing Law. Collective bargaining agreements and the faculty handbook may impact some procedures.
<b>Standard of Evidence.</b>	Crimes must be proven "Beyond a Reasonable Doubt."	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not).
<b>Confidentiality.</b>	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	The College offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
<b>Privacy.</b>	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the College, the parties to the proceedings, and pursuant to law.

<p><b>Who are the parties?</b></p>	<p>The prosecution/State and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.</p>	<p>Reporting individual and accused/respondent.</p>
<p><b>Participation in the process.</b></p>	<p>In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.</p>	<p>Reporting students cannot be required to participate in the College process. However, the College will be limited in its ability to respond if a reporting individual does not participate.</p>
<p><b>Who initiates the proceedings?</b></p>	<p>A prosecutor, acting on behalf of the State (or the United States in federal cases).</p>	<p>The College initiates proceedings, with the reporting individual generally having an active role.</p>
<p><b>Testimony.</b></p>	<p>In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.</p>	<p>Upon conclusion of a formal investigation, a hearing may be scheduled where the hearing officer may question the parties and witnesses. The parties may not cross-examine the witnesses. The College permits a party to participate in the hearing live by conference call or video conference.</p>
<p><b>Role of attorneys.</b></p>	<p>Both the State and the defendant are represented by counsel; counsel may question witnesses.</p>	<p>The parties may have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any College meeting/proceeding. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise</p>

		actively participate in the meeting/proceeding.
<b>Mental Health and Sexual History.</b>	In New York, a reporting individual’s prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. NYS Education Law Article 129-B permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact-finding phase of the disciplinary process.
<b>Possible Results.</b>	<p>If a prosecution takes place, the defendant may</p> <ul style="list-style-type: none"> <li>• plead guilty or “no contest”</li> <li>• have the case dismissed by the judge (on legal grounds)</li> <li>• be found “guilty” or “not guilty” by a judge or jury</li> </ul>	<p>In cases that do not involve sexual assault, the College has mediation or similar procedures if the parties agree.</p> <p>If there is a formal proceeding, the respondent may be found “responsible” or “not responsible” for violations of the College’s rules. Respondents may also accept responsibility before a finding by an adjudicator.</p>
<b>Sanctions.</b>	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating College policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the College.

\* From <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>