

Sexual and Related Misconduct
Policy and Procedures for the
Fordham University Community

I. Policy Statement	6
II. Scope & Jurisdiction	6
III. Notice of Compliance with the University-Wide Nondiscrimination Policy & Description of the Duties of the Director of Gender Equity/Title IX Coordinator	9
IV. Conduct Prohibited by Title IX of the Education Amendments of 1972	10
A. Quid Pro Quo Harassment (Title IX)	10
B. Sex- or Gender-Based Harassment (Title IX)	11
C. Sexual Assault (Title IX)	11
D. Dating Violence (Title IX)	11
E. Domestic Violence (Title IX)	12
F. Stalking (Title IX)	12
G. Retaliation (Title IX)	13
V. Conduct Prohibited by University Policy and/or Laws Other Than Title IX of the Education Amendments of 1972	14
A. Dating Violence	14
B. Domestic Violence:	14
C. Intimidation and Retaliation for Reporting	15
D. Prohibited Consensual Relationships	15
E. Sex and Gender Discrimination	16
F. Sexual Assault	16
G. Sexual Exploitation and Other Sexual Misconduct	17
H. Sexual Harassment	18
I. Stalking	18
VI. Reporting	19
A. Submitting Reports	19
1. Reporting Any Time of the Day or Night	20
2. Reporting During Fordham Business Hours in the United States - Reports Involving Students	20
3. Reporting During Fordham Business Hours in the United States - Reports Involving Staff, Administrators, and Faculty	21
4. Reporting During Fordham Business Hours in the United States - Reports Involving Any Community Member	22
5. Reporting Conduct Occurring Abroad	23
B. Student Alcohol and Drug-Use Amnesty Policy When Reporting Sexual and Related Misconduct	23
C. Notification of Rights at the Time of First Disclosure	24
D. Speaking with Confidential Resources - Community Members Who do Not Have a Duty to Report	24
E. Mandatory Reporting: The University's Reporting Requirement for Faculty Members, Staff Members, and Administrators	25
F. Good Faith Reporting	26
G. False or Malicious Reporting	26
VII. Institutional Analysis of Reports	26

A. Assignment of an Administrative Support Person to Students	26
B. Conduct Governed by Title IX of the Education Amendments of 1972	27
C. Conduct Governed by University Policy and/or Laws Other than Title IX of the Education Amendments of 1972	29
D. Conduct Falling Outside the Scope of the Policy and Procedures	29
E. Emergency Removal	29
VIII. Procedural Options Available to the Parties if the Reported Conduct Falls Within the Scope of the Policy and Procedures	29
A. Supportive Measures	30
B. Informal Resolution Process	32
1. Allegations that Cannot be Addressed Through the Informal Resolution Process	32
2. Advisor of Choice	32
3. Initiating the Informal Resolution Process	32
4. Terminating the Informal Resolution Process	33
5. Reaching an Informal Resolution Agreement	33
C. Formal Resolution Process	34
1. Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972 - Formal Investigations in Which a Student is the Respondent	34
a. Advisor of Choice	34
b. Requesting the University Not Investigate	35
c. Sexual Assault Public Awareness Events	36
d. Formal Investigations	36
1. Notification of Proceedings and Meetings	36
2. Individuals Conducting the Investigation and Hearing Process	36
i. Use of a Designee as the Fact Finder and/or Adjudicator in a Student Conduct Proceeding	37
ii. Adjudication Process	37
3. Delay or Denial of Degree Award	37
4. Information and Evidence Used During the Student Conduct Process	38
i. Presumption of “Not Responsible” for Violating the Policy	38
ii. The “Preponderance of Evidence” Standard of Review:	38
iii. Opportunity to Review Evidence and Offer Information	38
iv. Past Findings	37
v. Prior Sexual History/Mental Health Diagnosis	38
vi. Impact Statement	38
5. Possible Sanctions	39
6. Remedies	39
7. Notification of Outcome	39
8. Time Frame for Investigation, Conduct Process, and Resolution	40
2. Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972 - Formal Investigations in Which a Student is the Complainant and an Employee is the Respondent	40
a. Advisor of Choice	40
b. Requesting the University Not Investigate	41
c. Sexual Assault Public Awareness Events	42

d. Formal Investigations	42
1. Notification of Proceedings and Meetings	42
2. Individuals Conducting the Investigation and Adjudication Process	43
3. Use of a Designee as the Fact Finder	43
4. Information and Evidence Used During the Formal Investigation Process	43
i. Presumption of “Not Responsible” for Violating the Policy	44
ii. The “Preponderance of Evidence” Standard of Review	44
iii. Opportunity to Review Evidence and Offer Information	44
iv. Past Findings	44
v. Prior Sexual History/Mental Health Diagnosis	44
5. Possible Sanctions	44
6. Remedies	44
7. Notification of Outcome	45
8. Time Frame for Investigation and Resolution	45
3. Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972 - Formal Investigations in Which Both Parties are Employees	45
4. Conduct that Falls Under Title IX of the Education Amendments of 1972 - All Members of the University Community	46
a. Advisor of Choice	46
b. Time Frame for the Title IX Grievance Process	46
c. Filing a Formal Complaint	46
d. Requesting the University Not Investigate	47
e. Notice of Allegations	47
f. Delays	47
g. Investigation	48
1. Multi-Party Matters	48
2. Inspection and Review of Investigative Record	48
3. Investigative Report	49
h. Hearings	49
1. Multiple Hearing Sessions	50
2. Participants in the Live Hearing	50
3. Hearing Procedures	51
4. Live Cross-Examination Procedure	52
5. Relevant Information and Questions	52
6. Review of Recording	52
i. Determination Regarding Responsibility	52
1. Standard of Proof	52
2. General Considerations for Evaluating Information	52
3. Outcome Letters - Determinations Regarding Responsibility	53
4. Timeline of Determination Regarding Responsibility	53
5. Finality	53
IX. Appeal of Dismissals or Determinations	53
A. Appeal when a Student is the Respondent - Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972	54
1. Appeal of the Dismissal of a Formal Complaint or Any Allegation	54

2. Appeal of a Determination Regarding Responsibility	54
3. SCRC Appeal Review Process	54
B. Appeal when a Student is the Respondent - Conduct that Falls Under Title IX of the Education Amendments of 1972	55
1. Appeal of the Dismissal of a Formal Complaint or Any Allegation	56
2. Appeal of a Determination Regarding Responsibility	56
3. SCRC Appeal Review Process	56
C. Appeal When an Employee is the Respondent	57
1. Appeal of the Dismissal of a Formal Complaint or Any Allegation	57
2. Appeal of a Determination Regarding Responsibility	57
3. Appeal Panel Procedures	58
4. Further Review	59
a. Faculty	59
b. Staff	59
X. Recordkeeping	59
XI. Non-University Resources	59
XII. A Plain Language Explanation of Distinctions Between the New York State Penal Law and the Fordham University Student Disciplinary Processes	62
XIII. Students' Bill of Rights	65
XIV. Glossary	65

I. Policy Statement

Fordham University is committed to maintaining a community in which its members live, work, and learn in a safe and respectful environment that is free from all forms of sex- and gender-based discrimination. In furtherance of this commitment, and in accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act (“VAWA”)/Campus Sexual Violence Act (“Campus SaVE Act”), and Article 129-A and Article 129-B of the New York State Education Law (“Enough is Enough”), the University prohibits the following forms of sexual or related misconduct: sex and gender discrimination, sexual assault, sexual harassment, stalking, dating violence, domestic violence, prohibited consensual relationships, sexual exploitation and other sexual misconduct, and intimidation and/or retaliation as described in Section IV, “*Conduct Prohibited by Title IX of the Education Amendments of 1972,*” and Section V, “*Conduct Prohibited by University Policy and/or Laws Other Than Title IX of the Education Amendments of 1972,*” below.

Sexual and related misconduct can occur between strangers, acquaintances, or people who know each other well, including people who are involved in an intimate or sexual relationship, and sexual and related misconduct can be committed by anyone regardless of sex, gender, gender identity, gender expression, or sexual orientation. Fordham will take prompt and effective steps to end the sexual and related misconduct, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

II. Scope & Jurisdiction

The Sexual and Related Misconduct Policy and Procedures for the Fordham University Community (“Policy and Procedures”) explains: (i) options for reporting sexual and related misconduct (on- and off-campus); (ii) the University’s process and procedures for responding to reports of prohibited conduct under this policy (including its fair and equitable process for conducting investigations and reaching resolutions); and (iii) the rights and options available to community members under the Policy and Procedures. For additional information on resources available to students, you may refer to the student brochure entitled Campus Assault and Relationship Education (CARE). For additional information on resources available to faculty, staff, and administrators, you may access the Employee Assistance Program (EAP) at: <https://www.liveandworkwell.com/content/en/public.html>.

Impact of the May 2020 Regulations Contained in Title IX of the Education Amendments of 1972. In recent years, colleges and universities have used the term “Title IX process” as an informal way to describe an institution’s response to all reports of sex- and gender-based discrimination. However, those “Title IX processes” represented the institution’s response to

reports as dictated by: (1) policies created by the institution; (2) New York State Education Law Articles 129-A and 129-B; (3) the Clery Act; (4) Title IX of the Education Amendments of 1972; (4) or other federal, state, or local laws. Under the U.S. Department of Education's May 2020 regulations, Title IX of the Education Amendments of 1972 is narrower in scope and reduces the types of prohibited conduct it covers. Nevertheless, the University will continue to address prohibited conduct that is no longer covered by that law. This position is consistent with the University's commitment to addressing all sex- and gender-based discrimination that has a continuing effect on campus.

Prohibited Conduct Under the Policy and Procedures That was Collectively Referred to as “Title IX Prohibited Conduct” Prior to August 14, 2020	
Prohibited Conduct Under Title IX of the Education Amendments of 1972 (beginning August 14, 2020)	Prohibited Conduct Under University Policy, New York State Education Law Articles 129-A and 129-B, the Clery Act, VAWA, and Other Federal, State, and Local Laws Prohibiting Sex- and Gender-Based Discrimination** (beginning August 14, 2020)
Quid Pro Quo Harassment (Title IX)	Sex and Gender Discrimination
Sex- or Gender-Based Harassment (Title IX)	Sexual Harassment
Sexual Assault (Title IX)	Sexual Assault
Dating Violence (Title IX)	Dating Violence
Domestic Violence (Title IX)	Domestic Violence
Stalking (Title IX)	Stalking
Retaliation (Title IX)	Intimidation and Retaliation for Reporting
	Prohibited Consensual Relationships
	Sexual Exploitation and Other Sexual Misconduct
	**Conduct falling outside the scope of Title IX of the Education Amendments of 1972 will be evaluated based on the terms listed in

	this column.
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Covered Conduct. The Policy and Procedures applies to conduct by all students, faculty, staff, and administrators taking place on campus or at Fordham University sponsored programs, activities, or events, including study abroad programs and academic, learning, and service programs located at off-campus sites. This policy also covers any conduct by students, faculty, staff, or administrators that has a continuing effect on campus or has a continuing effect on an off-campus education program, activity, or event sponsored by the University.

Applicable Policy for Parties Reporting Sexual and Related Misconduct						
		COMPLAINANT				
		<u>Student</u>	<u>Staff</u>	<u>Faculty</u>	<u>Administrator</u>	<u>Third Party**</u>
R E S P O N D E N T	<u>Student</u>	- Policy and Procedures	- Policy and Procedures	- Policy and Procedures	- Policy and Procedures	- Policy and Procedures (non-Title IX)
	<u>Staff</u>	- Policy and Procedures	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- S.H.E.P.P.*
	<u>Faculty</u>	- Policy and Procedures	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- S.H.E.P.P.*
	<u>Administrator</u>	- Policy and Procedures	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- Policy and Procedures (Title IX Provisions) - S.H.E.P.P.*	- S.H.E.P.P.*
	<u>Third Party**</u>	University Code of Conduct	University Code of Conduct	University Code of Conduct	University Code of Conduct	University Code of Conduct
<p>*S.H.E.P.P. = Sexual Harassment in Employment Prevention Policy **Third Parties include visitors, independent contractors, and vendors</p>						

The Policy and Procedures applies regardless of race, color, national origin, religion, creed, age, ability, sex, gender, gender identity, gender expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or any other protected class recognized under federal, state, or local law.

The portions of the Policy and Procedures pertaining to Title IX of the Education Amendments of 1972 only apply to conduct occurring on or after August 14, 2020. Conduct occurring prior to August 14, 2020, will be investigated and adjudicated using: (1) the definitions in effect at the time of the conduct; and (2) the procedures for conduct falling outside the scope of Title IX of the Education Amendments of 1972 that are in effect at the time the investigation and/or adjudication take place.

Enforcement of Provisions Pertaining to Title IX of the Education Amendments of 1972.

Should any portion of Title IX of the Education Amendments of 1972 be stayed, held invalid by a court of law, withdrawn, deemed unenforceable, or in any other way modified to not require the application of the Title IX grievance process or definitions, the relevant portion(s) of the Policy and Procedures, and the affected elements of it, will be deemed revoked as of the publication date of the opinion, order, decision, guidance, or other communication. To the extent permissible, if a matter is not complete as of the date of the opinion, order publication, or communication, the Title IX grievance process shall be investigated and adjudicated under the University's existing investigation and adjudication process for conduct that does not fall under Title IX of the Education Amendments of 1972.

III. Notice of Compliance with the University-Wide Nondiscrimination Policy & Description of the Duties of the Director of Gender Equity/Title IX Coordinator

Fordham University is an Equal Opportunity Employer committed to the principle of equal opportunity in education and employment in compliance with Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, the Violence Against Women Act, and other federal, state, and local laws.

The Director of Gender Equity/Title IX Coordinator oversees the University's Title IX compliance efforts and is responsible for coordinating the University's response to all reports of sexual and related misconduct, including sex- or gender-based discrimination involving educational programs, gender equity in athletic programs, employment, and admission. The Director of Gender Equity/Title IX Coordinator also collects data from all University Gender Equity/Title IX reports to monitor the process, including outcomes, to identify and address any patterns or systemic issues that may arise.

Inquiries concerning the application of Title IX and its implementing regulation may be referred to the University's designated Title IX Coordinator listed below or to the Assistant Secretary of the Office for Civil Rights ("OCR"), U.S. Department of Education, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue SW, Washington, DC 20202-1100. You may call the OCR main numbers toll free at 800-421-3481 or 800-877-8339 (TDD). Or contact the OCR's New York office at <https://www.ed.gov/> or 646-428-3800.

You may contact the University's Director of Gender Equity/Title IX coordinator at:

Kareem Peat
Director of Gender Equity/Title IX Coordinator
Faculty Memorial Hall
Second Floor
Rose Hill Campus
(718) 817-0181
titleix@fordham.edu

IV. Conduct Prohibited by Title IX of the Education Amendments of 1972

The following conduct, when based on sex or gender, is prohibited under Title IX of the Education Amendments of 1972. The conduct under this section will be addressed using the Title IX grievance process. Please see Section V entitled "*Conduct Prohibited by University Policy and/or Laws Other Than Title IX of the Education Amendments of 1972*" for prohibited conduct that is not covered under this section.

- A. **Quid Pro Quo Harassment (Title IX):** Any instance in which a University employee conditions the provision of an aid, benefit, or service of the University on a person's (including a student's) participation in unwelcome sexual conduct.
- **Employees:** Please refer to the *Fordham University Sexual Harassment in Employment Prevention Policy* regarding rights and options granted under Title VII of the Civil Rights Act of 1964 and/or other employment laws or policies addressing sexual and related misconduct.

B. Sex- or Gender-Based Harassment (Title IX): Unwelcome conduct that a reasonable person would consider so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University education program or activity.

- Employees: Please refer to the *Fordham University Sexual Harassment in Employment Prevention Policy* regarding rights and options granted under Title VII of the Civil Rights Act of 1964 and/or other employment laws or policies addressing sexual and related misconduct.

C. Sexual Assault (Title IX): Any sexual act directed against another person without the consent of that person – including instances in which the person is incapable of giving consent – that satisfies one or more of the following:

1. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent;
2. Oral or anal sexual intercourse with another person: (i) forcibly and/or against that person's will; or (ii) not forcibly or against the person's will in instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
3. Use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person: (i) forcibly and/or against that person's will; or (ii) not forcibly or against the person's will in instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
4. The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification: (i) forcibly and/or against that person's will; or (ii) not forcibly or against the person's will in instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
5. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New York State law;
6. Non-forcible sexual intercourse with a person who is under the statutory age of consent (*i.e.*, 17 years of age).

D. Dating Violence (Title IX): Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic

violence.

- E. **Domestic Violence (Title IX):** A felony or misdemeanor crime of violence committed:
1. By a current or former spouse or intimate partner of the complainant;
 2. By a person with whom the complainant shares a child in common;
 3. By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
 4. By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state of New York;
 5. By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of New York State.

For the purposes of this definition:

- The relationship between the respondent and the complainant must be more than just two people living together as roommates.
- The people cohabitating must be current or former spouses or have an intimate relationship.

- F. **Stalking (Title IX):** A course of conduct directed at a specific person that would cause a reasonable person to:
1. Fear for their safety or the safety of others; or
 2. Suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

G. Retaliation (Title IX): Neither the University nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the U.S. Department of Education, or because the individual has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of “Sexual Harassment,” or a report or Formal Complaint of “Sexual Harassment” -- as the term is defined by the U.S. Department of Education -- for the purpose of interfering with any right or privilege secured by the U.S. Department of Education, constitutes retaliation.

The following concepts apply with respect to consent:

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

Six Guiding Principles Regarding Consensual Sexual Activity: The following principles, along with the above definition, will be used to evaluate whether sexual activity was consensual or violates the Sexual and Related Misconduct Policy and Procedures:

1. 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.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.
 - Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent.
 - Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
6. When consent is withdrawn or can no longer be given, sexual activity must stop.

Minors Lack Consent: A minor, defined as anyone less than 17 years of age, is

incapable of consenting to sexual activity with a person 18 years of age or older. The University adopts this prohibition of sexual activity with minors for conduct occurring on-campus or off-campus regardless of out-of-state laws.

V. Conduct Prohibited by University Policy and/or Laws Other Than Title IX of the Education Amendments of 1972

The following conduct, when based on sex or gender, is prohibited under University policy or federal, state, or local laws that are independent of Title IX of the Education Amendments of 1972. The conduct under this section will be addressed using the University's investigation and adjudication process. Please see Section IV entitled "*Conduct Prohibited by Title IX of the Education Amendments of 1972*" for prohibited conduct that is not covered under this section.

- A. **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual, physical, or psychological abuse, or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- B. **Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the complainant by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant under New York domestic or family violence laws, or by any other person against an adult or youth complainant who is protected from that person's acts under New York domestic or family violence laws.

For the purposes of this definition:

- The relationship between the respondent and the complainant must be more than just two people living together as roommates.
- The people cohabitating must be current or former spouses or have an intimate relationship.

- C. **Intimidation and Retaliation for Reporting:** Direct or indirect attempts to violate a University No-Contact Restriction or to intimidate, threaten, interfere with, restrain, coerce, discriminate against, or harass any person for attempting to report misconduct, reporting misconduct, pursuing a Formal Complaint, serving as a witness, or being a potential party or witness in a University investigation regarding possible violations of any of the University's policies regarding sexual and related misconduct is prohibited. Members of the University community who engage in this conduct will be subject to prompt and appropriate disciplinary action, including possible termination or expulsion from the University. Individuals engaging in this conduct who are not members of the University community will be subject to campus bans and other actions deemed appropriate by the Title IX Coordinator or their designee.
- D. **Prohibited Consensual Relationships:** When individuals are involved in a consensual romantic or sexual relationship and they are in positions of unequal authority or power, there is the potential for a conflict of interest, favoritism, or exploitation of power that impacts the integrity of the University's living, working, and learning environments. For this reason, this policy prohibits the following consensual romantic or sexual relationships between and among faculty, staff, administrators, and students:
1. Regardless of consent by all parties involved, anyone with supervisory, evaluative, or mentoring authority who controls or influences another person's employment, academic advancement, extracurricular or athletic team participation, scholarship or financial support, grades, recommendations, wage status, or promotion at the University is prohibited from having a romantic or sexual relationship with the person they control or influence.
 2. Regardless of consent by all parties involved, faculty members, staff members, and administrators are prohibited from having a romantic or sexual relationship with any undergraduate student, regardless of whether the faculty member, staff member, or administrator currently exercises, or expects to have, any pedagogical or supervisory responsibility over the undergraduate student.
 3. Regardless of consent by all parties involved, if a graduate student teaches courses to any undergraduate students for a semester, then starting the semester in which the graduate student begins teaching any undergraduate students, that graduate student is prohibited from having a romantic or sexual relationship with any undergraduate student. This prohibition applies to that graduate student for as long as the graduate student is enrolled at the University, even if that graduate student is no longer instructing undergraduates.
 4. Any individual who is promoted into a position or has a change of circumstances that results in a conflict with this section on prohibited consensual relationships must report this change in circumstances to their supervisor, their Vice President,

or to the Vice President of Human Resources, who will contact the Director of Gender Equity/Title IX Coordinator for assistance in resolving the conflict.

- E. **Sex and Gender Discrimination:** Any severe, pervasive, or persistent conduct that denies a person access to, the benefits of, or the ability to participate in any education program or activity on the basis of sex or gender.

For the description of Sex and Gender Discrimination applicable to employees, please see the *Fordham University Sexual Harassment in Employment Prevention Policy*.

- F. **Sexual Assault:** Engaging in the following sexual acts without affirmative consent:
1. Vaginal, anal, or oral sexual intercourse with another person;
 2. Inserting a foreign object, however slight, into any sexual or intimate parts of another person;
 3. Intentionally touching the sexual or intimate parts of another person, directly, through material, or through the use of an object, including making a person touch themselves or another person; or
 4. Intentionally touching another person's body for the purpose of sexual arousal, humiliation, degradation, or gratification.

**This definition includes attempts to engage in such conduct.

Affirmative Consent

Definition: 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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, gender, gender identity, gender expression, or sexual orientation.

Six Guiding Principles Regarding Consensual Sexual Activity: The following principles, along with the above definition, will be used to evaluate whether sexual activity was consensual or violates the Sexual and Related Misconduct Policy and Procedures:

1. 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.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.
 - Incapacitation may be caused by lack of consciousness or being asleep,

being involuntarily restrained, or if an individual otherwise cannot consent.

- Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 6. When consent is withdrawn or can no longer be given, sexual activity must stop.

Minors Lack Consent: A minor, defined as anyone less than 17 years of age, is incapable of consenting to sexual activity with a person 18 years of age or older. The University adopts this prohibition of sexual activity with minors for conduct occurring on-campus or off-campus regardless of out-of-state laws.

G. Sexual Exploitation and Other Sexual Misconduct: Taking advantage of another person, or attempting to take advantage of another person, without that person's consent. The following activity, or an attempt to engage in the following activity, is prohibited under this portion:

1. Voyeurism or Peeping: Intentionally watching, videotaping, or recording an individual who is undressing, completely or partially naked, or engaging in sexual activity. This includes allowing others to observe such conduct.
2. Sexual Exhibitionism: Engaging in sexually explicit activity in public spaces, including online.
3. Displaying or distributing nude or sexually explicit images of another person without that person's consent.
4. Writing or marking of graffiti on University property that is sexually graphic in nature.
5. Prostituting another person or soliciting a prostitute to campus, or a campus event, to engage in prostitution.
6. Knowingly exposing another person to a sexually transmitted infection or virus without that person's knowledge.
7. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
8. Stealthing: The act of removing a condom during sexual intercourse without affirmative consent of the sexual partner; or the act of intentionally misleading a sexual partner to believe a condom is being used during sexual intercourse.

H. Sexual Harassment: Unwelcome conduct of a sexual nature that is severe, pervasive, or persistent, including but not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, and:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's employment, academic standing, or status in a

- program, course, or activity; or
2. Submission to or rejection of such conduct by a person is used as the basis for employment or educational decisions affecting that person, or for academic evaluation, grades, or advancement; or
 3. Such conduct is sufficiently severe, pervasive, or persistent to have the purpose or reasonable effect of interfering with a person's work or educational performance, or creating an intimidating, hostile, or offensive work or educational environment.

The effect of the conduct will be evaluated based upon the perspective of a reasonable person in the position of the complainant.

Some examples of sexual harassment include, but are not limited to:

- Stating an intention or threat to expose another person's sexual orientation or sexual experiences with others;
- A direct or implied threat that submission to sexual advances is a condition to participate in a living, working, or learning group or activity; and
- Severe, pervasive, or persistent comments of a sexual nature, including jokes and remarks about sexual experiences.

*For the description of Sexual Harassment applicable to employees, please see the *Fordham University Sexual Harassment in Employment Prevention Policy*.

- I. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.

For purposes of this definition, "course of conduct" means two or more acts, including acts in which the respondent, directly, indirectly, or through third parties, by any method monitors, observes, follows, surveils, threatens, or communicates to or about a person or interferes with a person's property.

For purposes of this definition, "reasonable person" means a reasonable person under similar circumstances and with similar identities to the complainant. "Substantial emotional distress" means significant mental anguish or suffering that may, but does not necessarily, require professional treatment or counseling.

VI. Reporting

The University encourages all members of the community to report incidents of sexual and related misconduct. Consistent with Section VI(E) below, "*Mandatory Reporting: The University's Reporting Requirement for Faculty Members, Staff Members, and Administrators*," the University requires all faculty, staff, and administrators who learn of or reasonably suspect sexual and related misconduct within the University community to share that information as

outlined below. Reporting enables the University to provide a uniform approach to informing community members of: (i) their rights and options; and (ii) the resources available to them. Reporting improves the University's ability to take action that will stop the discrimination, prevent its recurrence, and remedy its effects. To submit a report that will be reviewed by the University at any time of day or night, please call the Department of Public Safety as described in Section VI(A)(1), "*Reporting Any Time of the Day or Night*," below.

A. Submitting Reports

If you wish to submit a detailed report of sexual or related misconduct, please contact the Gender Equity & Title IX Office, the Department of Public Safety, Human Resources, or the Assistant Head of the London Centre as outlined below. The individuals in these offices/departments are trained to receive detailed reports of sexual and related misconduct and respond to those reports.

In addition, reports of sexual and related misconduct involving students may be made to the Associate Vice President for Student Affairs, the Assistant Vice President and Dean of Students at Rose Hill, Dean of Students at Lincoln Center, or the Senior Associate Athletic Director / Senior Woman Administrator as outlined below. These reports will ultimately be shared with the Gender Equity & Title IX Office. Individuals who submit reports to the individuals listed in this paragraph will be directed to the Gender Equity & Title IX Office, the Department of Public Safety, Human Resources, or the Assistant Head of the London Centre if they wish to submit a detailed report of sexual and related misconduct.

Individuals who possess a Fordham Access IT ID may use that ID to submit a **Public Safety Online Report**. These online reports will not receive an immediate response from the Department of Public Safety or emergency responders. To obtain an immediate response, please call (718) 817-2222 at any time of the day or night. The Public Safety Online Report is not a confidential report - the ID associated with the report will be kept on file by the University. However, the University will maintain the reporting individual's privacy to the greatest extent possible.

1. Reporting Any Time of the Day or Night

The Department of Public Safety can receive detailed reports of sexual and related misconduct at any time of the day or night. The Department of Public Safety is open 24 hours a day, 7 days a week, 365 days a year. The Department of Public Safety supervisors have extensive experience and training working with individuals who have experienced sexual and related misconduct.

The Department of Public Safety
Rose Hill and Calder Center: (718) 817-2222
Lincoln Center: (212) 636-6076
Westchester: (914) 367-3001

If necessary, calls made to the Department of Public Safety on any of the campuses will be routed to the appropriate campus.

Fordham Community Members: The phone number for the Department of Public Safety can be found on the back of the Fordham University identification card the University issued to you.

Public Safety Online Reporting

(Using Your Fordham Access IT ID)

http://my.fordham.edu/site/web/content/security/incident_report.jsp

Individuals who possess a Fordham Access IT ID may use that ID to submit a **Public Safety Online Report**. These reports will not receive an immediate response from the Department of Public Safety or emergency responders. The Public Safety Online Report is not a confidential report - the ID associated with the report will be kept on file by the University. However, the University will maintain the reporting individual's privacy to the greatest extent possible.

2. Reporting During Fordham Business Hours in the United States - Reports Involving Students

Fordham University students have the right to make a report to the Department of Public Safety, local law enforcement, and/or state police, or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University.

In addition to the reporting options listed in Section VI(A)(1), "*Reporting Any Time of the Day or Night*," and Section VI(A)(4), "*Reporting During Fordham Business Hours in the United States - Reports Involving Any Community Member*," reports involving students can be submitted to the Dean of Students for the campus at which the student is enrolled, the Associate Vice President for Student Affairs, and the Senior Associate Athletic Director / Senior Woman Administrator.

If you are a student enrolled at the Rose Hill Campus or the Calder Center, contact:
Assistant Vice President and Dean of Students at Rose Hill

Christopher Rodgers
McGinley Campus Center 242
(718) 817-4755
deanrogers@fordham.edu

If you are a student enrolled at the Lincoln Center or Westchester Campus, contact:
Dean of Students at Lincoln Center

Jenifer Campbell
140 W62 Building G33
(212) 636-6250
deanofsalc@fordham.edu

If you are a student enrolled at any campus, contact:
Associate Vice President for Student Affairs

Michele C. Burris
Keating Hall 100
(718) 817-4750
mburris@fordham.edu

If you are a student-athlete enrolled at any campus, contact:
Senior Associate Athletic Director / Senior Woman Administrator

Djenane Paul
Rose Hill Gymnasium, 2nd Floor
(718) 817 4304
dpaul2@fordham.edu

Students who submit reports to the administrators listed in this section will be directed to the Gender Equity & Title IX Office, the Department of Public Safety, Human Resources, or the Assistant Head of the London Centre if they wish to submit a detailed report of sexual and related misconduct.

Students may also refer to the CARE brochure [Campus Assault and Relationship Education](#) for detailed information on the steps to take to be aware of potential sex- and gender-based discrimination and how to address misconduct if it occurs.

**3. Reporting During Fordham Business Hours in the United States -
Reports Involving Staff, Administrators, and Faculty**

In addition to the reporting options listed in Section VI(A)(1), “*Reporting Any Time of the Day or Night,*” and Section VI(A)(4), “*Reporting During Fordham Business Hours in the United States - Reports Involving Any Community Member,*” reports involving staff, administrators, and faculty can be submitted to the following individuals during Fordham business hours in the United States.

If you are a staff member, administrator, or faculty member, contact:

Assistant Vice President of HR

Nancy Hark
Faculty Memorial Hall, Room 506
Rose Hill Campus
(718) 817-4090
nhark@fordham.edu

If you are a staff member, administrator, or faculty member, contact:

Senior Manager of Labor/Employee Relations

Gülay Siouzios
Faculty Memorial Hall, Room 506
Rose Hill Campus
(718) 817-3897

siouzios@fordham.edu

If you are a faculty member, contact:

Vice Provost / Associate Vice President and Associate Chief Academic Officer

Jonathan Crystal

Administration Building North, Room 226

(718) 817-0136

crystal@fordham.edu

Nancy Hark and Gülay Siouzios can receive detailed reports of sexual and related misconduct during business hours. These individuals possess extensive experience and training assisting individuals who have experienced sexual and related misconduct.

4. Reporting During Fordham Business Hours in the United States - Reports Involving Any Community Member

In addition to the reporting options listed in Section VI(A)(1), “*Reporting Any Time of the Day or Night*,” a report involving any community member can be submitted to the Gender Equity & Title IX Office during Fordham business hours in the United States.

Director of Gender Equity/Title IX Coordinator

Kareem Peat

Faculty Memorial Hall

Second Floor

Rose Hill Campus

(718) 817-3112

titleix@fordham.edu

The Gender Equity & Title IX Office can receive detailed reports of sexual and related misconduct during business hours. The individuals in the Gender Equity & Title IX Office possess extensive experience and training assisting individuals who have experienced sexual and related misconduct.

5. Reporting Conduct Occurring Abroad

In addition to the reporting options listed in Section VI(A)(1), “*Reporting Any Time of the Day or Night*,” and Section VI(A)(4), “*Reporting During Fordham Business Hours in the United States - Reports Involving Any Community Member*,” a reporting individual should contact the person leading the relevant program or activity if the program or activity occurs abroad. The person leading the Fordham program or activity is required to report this information to the Department of Public Safety.

If you are a student enrolled at London Centre, contact:

Assistant Head of the London Centre, Director of Student Affairs

Matthew Holland

mholland16@fordham.edu

All complaints are submitted centrally to the Department of Public Safety after submission to the Assistant Head of the London Centre. *All reports, regardless of location, may also be brought to the New York-based Department of Public Safety at +1-718-817-2222.*

Students may also refer to the CARE brochure [Campus Assault and Relationship Education](#) for detailed information on the steps to take to be aware of potential sex- and gender-based discrimination and how to address misconduct if it occurs.

B. Student Alcohol and Drug-Use Amnesty Policy When Reporting Sexual and Related Misconduct

A reporting individual acting in good faith or a bystander acting in good faith that discloses any incident of sexual or related misconduct to University officials or law enforcement will not be subject to adjudication under the University's Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the sexual or related misconduct.

The health and safety of every student at Fordham University is of utmost importance. The University recognizes that students who have been drinking and/or using recreational/illicit drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report sexual and related misconduct to institution officials.

All reported incidents are centrally tracked in order to be reviewed for patterns and to assist in stopping the recurrence of similar incidents.

C. Notification of Rights at the Time of First Disclosure

At the first instance of disclosure by a reporting individual to an institution representative, the following information shall be presented to student-complainants:

Fordham University students have the right to make a report to the Department of Public Safety, local law enforcement, and/or state police, or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University.

This information is also printed on the inside cover of the main University publication for students related to sexual and related misconduct, the Campus Assault and Relationship Education (CARE) brochure, which is available at www.fordham.edu/CARE.

D. Speaking with Confidential Resources - Community Members Who do Not Have a Duty to Report

Community members may want to talk about their experiences involving sexual and related misconduct in a supportive, confidential space that allows them to discuss and process their feelings. For this reason, *the University provides Confidential Resources, who are trained administrators and staff members available to those community members who do not wish to report their experience.* Except in limited circumstances, communications with the Confidential Resources listed below will not be shared with the Department of Public Safety, the Gender Equity & Title IX Office, the Deputy Title IX Coordinator, the Deans of Students, or any other member of the University community. Please note that Confidential Resources must report sexual and related misconduct when: (1) a community member is likely to engage in conduct that would result in serious harm to themselves or to others; or (2) there is reasonable cause to suspect that a minor has been sexually abused.

It is important to note that Confidential Resources may not be able to provide the full range of accommodations and supportive measures that Public Safety, the Deans of Students, the Deputy Title IX Coordinator, the Director of Gender Equity/Title IX Coordinator, or Human Resources can arrange (*e.g.*, changes to academic schedules, housing, and work schedules).

The following Confidential Resources are offered to the University Community:

Counseling and Psychological Services

Rose Hill Campus: (718) 817-3725

Lincoln Center Campus: (212) 636-6225

Westchester Campus: (914) 367-3733

Calder Center: Please use the Westchester Phone Number

University Health Services

Rose Hill Campus: (718) 817-4160

Lincoln Center Campus: (212) 636-7160

Westchester Campus: Please use the Rose Hill Phone Number

Calder Center: Please use the Rose Hill Phone Number

Office of Campus Ministry - Pastoral Counselors

Rose Hill Campus: (718) 817-4500

Lincoln Center Campus: (212) 636-6267

Westchester Campus: (914) 367-3420

Calder Center: Please use the Westchester Phone Number Above

Consistent with the mandatory reporting section below, all faculty, staff, and administrators have a duty to report all incidents of sexual and related misconduct they learn of or reasonably suspect if they are not designated as a Confidential Resource (*i.e.*, a trained administrator or staff

member working in Counseling and Psychological Services, working in University Health Services, or serving as a pastoral counselor in the Office of Campus Ministry who is available to those community members who do not wish to report their experience). All non-Confidential Resources will maintain community members' privacy to the greatest extent permitted under the Policy and Procedures.

E. Mandatory Reporting: The University's Reporting Requirement for Faculty Members, Staff Members, and Administrators

When any faculty member, staff member, or administrator observes, learns, or reasonably suspects a student or University employee has experienced sexual or related misconduct, that faculty member, staff member, or administrator must report all relevant details of the incident to the Director of Gender Equity/Title IX Coordinator, the Deans of Students for the campuses, the Associate Vice President for Student Affairs, the Department of Public Safety, or Human Resources. Reporting this information ensures that individuals who experience sexual or related misconduct are informed of their rights and options as well as the full range of resources available to them. Faculty members, staff members, and administrators are not required to report their own experience with sexual or related misconduct.

Faculty members, staff members, or administrators who do not know if they are obligated to report should contact the Director of Gender Equity/Title IX Coordinator, the Deans of Students for the campuses, the Associate Vice President for Student Affairs, the Department of Public Safety, or Human Resources to discuss the proper steps to take.

As stated in the preceding section, the only Fordham faculty members, staff members, or administrators who are exceptions to the mandatory reporting requirement are Confidential Resources. This group solely consists of the following offices:

1. Counseling and Psychological Services;
2. University Health Services; and
3. Office of Campus Ministry - Pastoral Counselors.
 - For more information about Confidential Resources, see Section VI(D) entitled, "Speaking with Confidential Resources - Community Members Who do Not Have a Duty to Report."

F. Good Faith Reporting

Even if a respondent is not ultimately found responsible, an individual who files a report or Formal Complaint in good faith will not be subject to discipline.

G. False or Malicious Reporting

Community members are prohibited from: (i) knowingly making false statements; (ii) knowingly submitting false information during the University investigation and adjudication process or the Title IX grievance process; (iii) knowingly bringing a false or malicious report or Formal Complaint against another community member; or (iv) knowingly using this policy for false or malicious purposes. Such conduct may be subject to disciplinary action under Section 6-03.01, “*Violations*,” of the University Code of Conduct, any document incorporating the University Code of Conduct, or this policy.

VII. Institutional Analysis of Reports

Upon receipt of a report of prohibited conduct, the University will perform an initial assessment of the report. As part of this assessment, the University will: (1) determine whether the reported conduct falls within the scope of Title IX of the Education Amendments of 1972, another relevant law, or University policy; and (2) assign an Administrative Support Person to a student-complainant as appropriate. The University will also conduct an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student or other community member. Upon completion of the initial assessment, the University will determine the next steps.

A. Assignment of an Administrative Support Person to Students

Administrative Support Persons (ASPs) are trained professionals assigned by the Division of Student Affairs to assist and support student-complainants when a report of sexual assault, stalking, dating violence, domestic violence, or sexual exploitation is received. At the discretion of the Associate Vice President for Student Affairs or the Deans of Students, an ASP may be assigned to student-complainants and student-respondents for reports of other types of sexual and related misconduct. An ASP will be assigned to a student-respondent once a Formal Complaint has been initiated or when supportive measures are being issued. An ASP will be available to a student-complainant even if the student-complainant decides not to proceed with an investigation and/or the Student Conduct Process.

ASPs are not a Confidential Resource, and information shared by a student with an ASP may be provided to University administrators involved in the investigative processes. Fordham administrators who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-Confidential Resource will be shared only as necessary for the University to investigate and/or seek a resolution.

The ASP will, using the information contained in the Campus Assault and Relationship Education (CARE) brochure, explain the various options and supportive measures available, including but not limited to:

- The right to have emergency access to a supervisor or investigator in the Department of Public Safety;
- Medical, counseling, and pastoral resources;
- The University’s prohibition against intimidation and retaliation;
- The standard of proof during the Student Conduct Process;
- How to report incidents to local law enforcement or a prosecutor, or to seek other types of relief through the legal system; and
- Supportive measures (*e.g.*, changing academic, living, transportation, and work commitments if such changes are warranted under the circumstances and reasonably available).

An ASP may only be provided to student-complainants and student-respondents. However, the Director of Gender Equity/Title IX Coordinator, or their designee, will assist employee-complainants and employee-respondents by explaining their rights and options and by providing supportive measures as appropriate.

B. Conduct Governed by Title IX of the Education Amendments of 1972

Reports submitted to the University will be looked into upon receipt. The Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee will determine if a report of sexual or related misconduct is within the scope of Title IX of the Education Amendments of 1972. If that law is deemed applicable, the Title IX grievance process will apply to the investigation and adjudication of a Formal Complaint.

If any element below is not met, the Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee must notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX grievance process:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred in the University’s education program or activity; or
3. The alleged conduct, if true, would constitute prohibited conduct as defined in Section IV, “*Conduct Prohibited by Title IX of the Education Amendments of 1972,*” above.

The parties may appeal this decision to dismiss a Formal Complaint. If the party challenging the mandatory dismissal is a student, the appeal of this dismissal must be submitted to the Senior Vice President for Student Affairs or their designee. If the party challenging the mandatory dismissal is an employee, the appeal of this dismissal must be submitted to the Vice President for Human Resources or their designee (see Section IX, “*Appeal of Dismissals or Determinations*”).

If any event below takes place, the Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee may notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX grievance process:

1. A complainant notifies the Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
2. The respondent is no longer enrolled at or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

The parties may appeal this decision to dismiss a Formal Complaint. If the party challenging the discretionary dismissal is a student, the appeal of this dismissal must be submitted to the Senior Vice President for Student Affairs or their designee. If the party challenging the discretionary dismissal is an employee, the appeal of this dismissal must be submitted to the Vice President for Human Resources or their designee.

Upon dismissal for the purposes of the Title IX grievance process, the University retains its discretion to apply any section of the Policy and Procedures that remains applicable.

If a report of sex- or gender-based discrimination includes both conduct that, if established, would constitute prohibited conduct under Title IX of the Education Amendments of 1972 and conduct that, if established, would constitute prohibited conduct under any other portion in the Policy and Procedures, only the allegations pertaining to Title IX of the Education Amendments of 1972 will be governed by the Title IX grievance process.

C. Conduct Governed by University Policy and/or Laws Other than Title IX of the Education Amendments of 1972

Reports submitted to the University will be looked into upon receipt. The Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee will determine if a report of sexual or related misconduct is within the scope of a University Policy and/or laws other than Title IX of the Education Amendments of 1972. If a University policy and/or other law applies to the report of sexual or related misconduct, the University's investigation and adjudication process will apply to the Formal Complaint.

D. Conduct Falling Outside the Scope of the Policy and Procedures

When appropriate, reported misconduct falling outside the scope of the Policy and Procedures will be referred to a University official or external authority.

E. Emergency Removal

If the University determines, following a safety and risk analysis of reported misconduct, that a respondent is an immediate threat to the physical health or safety of any student or other community member, the University will remove the respondent from the education program or activity on an emergency basis. The respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. Students who wish to appeal an emergency removal must submit same to the Senior Vice President for Student Affairs or their designee. For allegations under Title IX of the Education Amendments of 1972, employees who wish to appeal an emergency removal must submit same to the Vice President for Human Resources or their designee.

The University retains the authority to place an employee-respondent on administrative leave.

VIII. Procedural Options Available to the Parties if the Reported Conduct Falls Within the Scope of the Policy and Procedures

This section discusses the procedural options available to the parties if the reported conduct falls within the scope of the Policy and Procedures. Supportive measures, the Informal Resolution Process, and the Formal Resolution Process may all be pursued in the same matter.

A. Supportive Measures

The University will consider supportive measures that are appropriate to the nature and severity of the reported misconduct. Supportive measures may be imposed if requested or if the University deems them necessary to ensure safety, prevent retaliation, or avoid an ongoing hostile environment. Both parties may request and obtain reasonable and available supportive measures that effect a change in academic, extracurricular, housing, dining, employment, transportation, or other applicable arrangements. Supportive measures are non-disciplinary and non-punitive. A Formal Complaint does not have to be submitted for supportive measures to be provided.

Supportive measures include, but are not be limited to:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications to work or class schedules;
- Changes in work or housing locations;
- Campus transportation services;
- No-Contact Restrictions (see the “*No-Contact Restrictions*” paragraph below);

- Leaves of absence; and
- Increased security and monitoring of certain areas of the campus.

Both the complainant and respondent shall, upon request and consistent with the Policy and Procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and/or terms of any supportive measure directly affecting them, and shall be allowed to submit evidence in support of their request. The Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee will determine within a reasonable time frame whether there will be any modification.

The factors considered by the University when determining whether to issue supportive measures include:

1. The specific needs expressed by the party;
2. The age of the parties involved;
3. The severity or pervasiveness of the allegations;
4. Whether the complainant and respondent share the same residence hall, class, or job location; and
5. Whether other court ordered judicial measures have been taken to protect the complainant (see, e.g., the *“Orders of Protection Issued by Criminal Courts and Civil Courts (Including Family Court)”* paragraph below).

In the event the respondent is determined to present a continuing threat to the health and safety of the community, the respondent may be subject to emergency removal pending the outcome of the conduct process (see Section VII(E), *“Emergency Removal”*).

If the respondent is an employee, the University may place the respondent on administrative leave until the formal hearing has been completed and a final determination has been issued.

No-Contact Restrictions. A No-Contact Restriction is a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or third party. After a report of sexual or related misconduct is received by the Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, the Department of Public Safety, or Human Resources, a written or oral No-Contact Restriction may be put in place restricting the respondent from having contact with the complainant. The complainant may also be directed not to have contact with the respondent.

- An individual who wishes to report a violation of a No-Contact Restriction can contact the issuing office during business hours, the Department of Public Safety, or their Administrative Support Person if applicable. If the complainant and respondent observe each other in a public place, the parties are required to adhere to the provisions in the No-Contact Restriction. Individuals who violate a No-Contact Restriction are subject to a separate disciplinary charge of *“Intimidation and Retaliation for Reporting”* and may be subject to adjudication and discipline (see Section V(C), *“Intimidation and Retaliation*

for Reporting”).

- Both the complainant and respondent will, upon request and consistent with the Policy and Procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such supportive measure, including potential modification, and will be allowed to submit evidence in support of their request. The Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, Deans of Students, or their designee will determine within a reasonable time frame whether there will be any modification.

Orders of Protection Issued by Criminal Courts and Civil Courts (Including Family Court). In addition to University No-Contact Restrictions, which are exclusively issued to community members, victims of stalking, dating violence, domestic violence, or any other crime under federal, state, or local law can seek orders of protection against any individual through both the criminal and civil courts.

The Department of Public Safety or another designated University staff member is available to assist in obtaining a court-issued order of protection (or, if outside New York State, an equivalent protective force or restraining order) and explain the consequences of an individual violating such an order (*e.g.*, arrest, additional conduct charges, and emergency removal). The parties are entitled to receive a copy of the order of protection or its equivalent when one has been shared with the University. Respondents may speak with a Department of Public Safety representative, or other appropriate individual, who can explain the order and answer questions about it, including information regarding the accused’s responsibility to stay away from the protected person or persons. An individual may receive assistance from the Department of Public Safety in effecting an arrest when an individual violates such an order.

B. Informal Resolution Process

Parties who do not wish to proceed with an investigation and adjudication, and instead wish to seek the University’s assistance to resolve allegations of misconduct under the Policy and Procedures, may elect to enter the Informal Resolution Process. Generally speaking, this resolution option is less time intensive than an investigation and adjudication while still affording community members an opportunity to actively participate in a process led by the University for resolution of their complaints. The Informal Resolution Process may not begin until a Formal Complaint is filed. The option to pursue an Informal Resolution is available until a determination is reached. The Informal Resolution process will not involve any face-to-face meetings between the parties or otherwise involve direct communication between the parties. Statements or disclosures made by the parties in the course of the Informal Resolution Process will not be considered in the Formal Resolution Process.

1. Allegations that Cannot be Addressed Through the Informal Resolution Process

The Informal Resolution Process cannot be used to resolve allegations of “Quid Pro Quo Harassment (Title IX),” “Sex- or Gender-Based Harassment (Title IX),” “Sexual Assault (Title IX),” “Dating Violence (Title IX),” “Domestic Violence (“Title IX”),” “Stalking (Title IX),” or “Retaliation (Title IX)” as defined in the Policy and Procedures if the complainant is a student and the respondent is an employee.

2. Advisor of Choice

The complainant and the respondent may bring an Advisor of Choice to their respective Informal Resolution meetings. During the Informal Resolution Process, the Advisor of Choice is subject to the restrictions set forth in Section VIII(C)(1)(a), “*Advisor of Choice*.” A trained facilitator will preside over the Informal Resolution Process and may be assisted by a staff member, administrator, or outside expert.

3. Initiating the Informal Resolution Process

If a complainant wishes to proceed with Informal Resolution, the Director of Gender Equity/Title IX Coordinator, the Associate Vice President for Student Affairs, the Deans of Students, Human Resources, or their designee, will meet with the complainant to determine the name of the respondent and the date, time, location, and nature of the alleged misconduct, if known. During this meeting, the complainant and the University administrator, or their designee, will go over: (1) the allegations; (2) the requirements of the Informal Resolution Process, including that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution Process and resume the grievance process with respect to the Formal Complaint; and (3) any consequences resulting from participating in the Informal Resolution Process, including the records that will be maintained or shared.

In addition, the University administrator, or their designee, will schedule an individual intake meeting with the respondent to provide them a general understanding of the relevant portions of the Policy and Procedures. During this meeting, the respondent will be provided written notice disclosing: (1) the allegations; (2) the requirements of the Informal Resolution Process, including that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution Process and resume the grievance process with respect to the Formal Complaint; and (3) any consequences resulting from participating in the Informal Resolution Process, including the records that will be maintained or shared.

The parties must provide voluntary, written consent to engage in the Informal Resolution Process.

The parties will be provided 10 school days to reach an Informal Resolution agreement. An extension of the Informal Resolution Process may be granted for good cause as determined by the person facilitating the process.

4. Terminating the Informal Resolution Process

In the event either party wishes to end the Informal Resolution Process and proceed to the Formal Resolution Process, they must provide written notification to the person facilitating the Informal Resolution. At any time after the commencement of the Informal Resolution Process, the Director of Gender Equity/Title IX Coordinator or their designee may determine that the Informal Resolution Process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Formal Resolution Process. The Director of Gender Equity/Title IX Coordinator or their designee has sole discretion to reopen the Informal Resolution Process if an agreement was not reached during the previous attempt to pursue Informal Resolution.

5. Reaching an Informal Resolution Agreement

If, in the course of the Informal Resolution Process, the respondent agrees to acknowledge they engaged in prohibited conduct under the Policy and Procedures, that admission will serve as a finding of responsibility. The Director of Gender Equity/Title IX Coordinator, the Associate Vice President for Student Affairs, the Dean of Students, Human Resources, the appropriate Vice President, or their designee, will recommend one or more sanctions, which the respondent can accept or reject. The sanctions that may be imposed as a result of the Informal Resolution agreement are the same as those outlined in Section VIII(C)(1)(d)(5), “*Possible Sanctions*,” and Section VIII(C)(2)(d)(5), “*Possible Sanctions*,” below. The Director of Gender Equity/Title IX Coordinator will provide each party a copy of the proposed Informal Resolution agreement for them to review, sign, and return.

Any resolution reached through the Informal Resolution Process must be approved by the Director of Gender Equity/Title IX Coordinator, the Associate Vice President for Student Affairs, the Deans of Students, Human Resources, or their designee, and signed by them. If the Informal Resolution agreement is accepted by the parties and the University, the process is concluded. If the Informal Resolution agreement is rejected by either party or the University, the Formal Resolution process will resume, or end, based on the wishes of the parties.

The Informal Resolution agreement is not subject to appeal. Retaliation, violations of the terms of the resolution, or other prohibited conduct will be considered a new matter and will not reopen the original matter.

C. Formal Resolution Process

This portion of the Policy and Procedures addresses the Formal Resolution Process.

1. Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972 - Formal Investigations in Which a Student is the Respondent

The following is a description of the rights and options available in formal investigations in which the respondent is a student and the conduct does not fall under Title IX of the Education Amendments of 1972.

a. Advisor of Choice

In addition to the Administrative Support Person assigned to students when particular reports of sexual and related misconduct are received (See Section VII(A), “*Assignment of an Administrative Support Person to Students*”), the complainant and respondent may each be accompanied by an Advisor of Choice during any meeting under this policy. The Advisor of Choice may assist, advise, and support the party throughout the Student Conduct Process and be present for related meetings or proceedings. For conduct falling under this portion of the Policy and Procedures, VIII(C)(1)(a), Advisors of Choice are not permitted to communicate with University officials participating in the Student Conduct Process. The decision on whether to select an Advisor of Choice is solely that of the complainant or respondent. A person may not serve as an Advisor of Choice if they are involved in the underlying matter, including serving as a party or potential witness.

The complainant and respondent are encouraged to provide the contact information of the Hearing Officer (in student conduct proceedings) to their Advisor of Choice in advance of the meeting or proceeding. At least 48 hours before the scheduled meeting or proceeding, the parties are required to provide written notice that an Advisor of Choice will be present. This notification must include:

- Full name and title of the advisor of choice; and
- Contact information for the advisor of choice (phone, email, and address).

The availability of an Advisor of Choice to attend a meeting, interview, or hearing shall not unreasonably interfere with or delay the proceedings. If the Advisor of Choice’s conduct is not consistent with these guidelines, they may be excluded from the Student Conduct Process.

b. Requesting the University Not Investigate

If a person reports an incident of sexual or related misconduct to a non-Confidential Resource at the University but wishes not to participate as a party or witness, or does not want the University to proceed with a formal investigation, the University will attempt to honor that person’s wishes. Please note that:

- For instances in which an ASP is customarily assigned to a student, the University may assign an ASP to the complainant even if a formal investigation is not conducted;
- The University will take all reasonable steps to respond to the report consistent with the complainant’s request and will determine whether supportive measures are appropriate or necessary;
- The University will consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual and related misconduct

occurred, increased training, education, and prevention efforts, and conducting climate surveys; and

- By honoring the request, the University will not be able to meaningfully investigate and pursue misconduct or disciplinary proceedings to find anyone responsible for the violation.

In limited circumstances, the University may be unable to honor a request that it not investigate a report of sexual or related misconduct. The University may conduct its own investigation when it determines in good faith that it is in the best interest of the reporting party or University community to do so. In these instances, the University will serve as the complainant in the matter. The reporting party will, though, receive all notices issued under this Policy and Procedures.

When deciding whether the request can be honored, the University will weigh that request against its obligation to provide a safe, non-discriminatory environment for the University community.

The factors considered when determining whether the University has an overriding responsibility to proceed despite a reporting party's wishes include:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct by the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor;
- Whether the institution possesses other means to obtain evidence such as security footage; and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

If possible, the University will make attempts to inform the reporting party prior to proceeding with an investigation in which the University is the complainant. The University may proceed with an investigation and adjudication process in which a respondent could be found responsible for a policy violation even though a complainant does not participate in the process and does not want to proceed.

Under certain circumstances, the University may be required by law to report and/or file a complaint with external authorities. However, any complainant or witness can decide whether or not to cooperate with the external authority (*e.g.*, law enforcement).

c. Sexual Assault Public Awareness Events

The University is not obligated to begin an investigation based on information a person shares during public awareness events designed to be safe spaces for people to share their experiences.

These events could include candlelight vigils, “Take Back the Night” events, protests, or other public events. The University may decide to use the information learned to inform its efforts for additional education and prevention efforts.

d. Formal Investigations

The following portion of the Policy and Procedures describes the rights and options available to parties once the formal investigation begins.

1. Notification of Proceedings and Meetings

If a complainant selects the Formal Resolution Process, the complainant and respondent will be:

- Informed that there is a formal investigation into the conduct in question;
- Given notice describing the date, time, and location of the reported misconduct, if known, as well as relevant facts pertaining to the elements of the behavior that will be evaluated;
- Informed of the portions of the Policy and Procedures the behavior may violate;
- Informed of the possible sanctions; and
- Notified that they will be provided the time and location for all meetings in relation to the Student Conduct Process.

The University will ensure that complainants and respondents are afforded the right to a fair process during the formal investigation and throughout the Student Conduct Process.

2. Individuals Conducting the Investigation and Hearing Process

Trained, qualified investigators will serve as fact finders during the formal investigation phase. The results of the investigation will then be provided to the Associate Vice President for Student Affairs, the Dean of Students, or their designee for matters involving student-respondents.

The investigator will handle complaints impartially and objectively, perform fact finding, and follow all relevant procedures. The investigator evaluates information based upon the nature and context of the conduct after assessing the credibility of witnesses and weighing the relevant information obtained. If there is a significant conflict of interest in which the investigator cannot be impartial, another investigator will be assigned to the investigation.

Members of the Department of Public Safety are responsible for the formal investigation process in matters in which both parties are students and/or where a student is subject to possible student conduct sanctions under this Sexual and Related Misconduct Policy. The University may, at its discretion, designate another trained/experienced person to act as the investigator, finder of fact, and/or adjudicator in a conduct process.

In matters in which a student is the respondent, the Associate Vice President for Student Affairs, Dean of Students, or their designee serves as the Hearing Officer, completes the Student Conduct Process, and, if necessary, imposes appropriate student conduct sanctions.

i. Use of a Designee as the Fact Finder and/or Adjudicator in a Student Conduct Proceeding.

The University may, at its discretion, designate trained, experienced people to act as the fact finder and/or adjudicator in the Student Conduct Process.

Administrators involved in the investigation and conduct process receive training, at least annually, on issues regarding sexual and related misconduct, including sexual assault, sexual harassment, dating violence, domestic violence, and stalking. These administrators are also trained in conducting an investigation that protects the safety of the participants, ensures fairness, and promotes accountability.

ii. Adjudication Process

The Associate Vice President for Student Affairs, the Dean of Students for the campus where the respondent is enrolled, or their designee, conducts the Student Conduct Process in those matters in which a student is alleged to be in violation of the Policy and Procedures and, if necessary, imposes student conduct sanctions for students found in violation of the Policy and Procedures. The Associate Vice President for Student Affairs, the Deans of Students, or their designee is responsible for record keeping in these matters.

3. Delay or Denial of Degree Award

During the period disciplinary charges are pending against a student, the University may deny and/or delay issuance of a degree. Furthermore, the University may refuse to issue a degree to a student who is serving a suspension or has been permanently dismissed from the University.

4. Information and Evidence Used During the Student Conduct Process

The Student Conduct Process is designed to obtain information that will be used to determine: (1) the conduct that occurred; and (2) whether that conduct violates the terms of the Policy and Procedures.

- i. Presumption of “Not Responsible” for Violating the Policy:** The respondent is presumed not to have violated the Policy and Procedures until an outcome is issued. However, depending upon the circumstances of the initial allegation, the respondent can be suspended on an emergency basis pending the outcome of the conduct process. Depending upon the allegations and need for the University to keep the community and complainant safe, other supportive measures may be imposed upon the respondent pending the outcome of the conduct process (see Section VII(A) “Supportive Measures,” above).

- ii. **The “Preponderance of Evidence” Standard of Review:** The evidentiary standard in determining the facts will be based upon the preponderance of the evidence standard (*i.e.* that it is more likely than not that the alleged misconduct occurred).
- iii. **Opportunity to Review Evidence and Offer Information:** The parties are provided an opportunity to review and present relevant evidence and information that will be used during the conduct meetings and proceedings, consistent with the University’s policies and procedures. The opportunity to review evidence is also subject to federal, state, and local laws, including FERPA. Evidence must be relevant to the allegation, and the parties will be provided a meaningful opportunity to respond to the evidence, including providing reasonable opportunity to provide responsive evidence and information.
- iv. **Past Findings:** Past findings of misconduct may only be considered in the portion of the Student Conduct Process in which the sanction is determined.
- v. **Prior Sexual History/Mental Health Diagnosis:** Generally, a party or witness’ prior sexual history or mental health diagnosis and/or treatment may not be introduced during the investigation or adjudication phase. Determinations on exclusions and redactions of such information during the investigative phase are made by the investigator.
- vi. **Impact Statement:** Student-respondents and student-complainants are entitled to provide an impact statement if and when the Hearing Officer is deliberating on any appropriate sanctions and, in any case, at least 48 hours in advance of the scheduled meeting to provide notification to complainants and respondents as to the outcome of the conduct process.

5. Possible Sanctions

Students. Students who have been found to have violated the University’s Policy and Procedures may be subject to sanctions, which may include, but are not limited to: disciplinary reprimand, residence hall probation, student life probation, University disciplinary probation, suspension or expulsion from the University and/or suspension or expulsion from University housing. Additional sanctions include meeting with an administrator, parent notification, reflective or research paper, apology letter, No-Contact Restriction, special project or program with a Resident Assistant, mandatory study hall, suspension of privileges, and weekend suspension

from the residence halls.

*When a person maintains multiple roles (*i.e.*, student and employee), a determination of the person's status in a particular situation will be made in the context of the surrounding facts. Where an individual represents both roles in a matter, employee and student sanctions may be issued.

6. Remedies

In addition to possible disciplinary or conduct sanctions, the University may impose supplemental remedies in accordance with University statutes or other University policies.

7. Notification of Outcome

Both the complainant and the respondent will be simultaneously advised in writing of the outcome, including:

- Written notice of the findings of fact;
- Decision and any sanctions;
- Rationale for the decision and any sanctions; and
- Information on how to file an appeal.

Disclosure of Outcomes: The University considers Title IX matters to be sensitive and private. Unless required by law, the University does not publicly release underlying information regarding investigations. Disclosures of facts to witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. The University does not provide witnesses with the resolution of the proceeding. Participants in an investigation shall be advised that maintaining confidentiality is essential to protecting the integrity of the investigation and will be advised that it is usually best to refrain from discussing the matter during the pending investigation. After the parties are provided with the outcome, either party may choose to disclose or discuss the outcome of the Student Conduct Process.

8. Time Frame for Investigation, Conduct Process, and Resolution

While the time to resolve a reported incident will vary from matter to matter depending on the specific facts and circumstances, it is expected that in most instances Formal Complaints will be resolved within 90 school days of the day the complainant requests that the University's investigation and Student Conduct Processes commence. If these processes will take longer than 90 school days, both the complainant and the respondent will be notified in writing as to the delay and the reason for the delay. Delay can sometimes, but not always, be imposed by complexity of the Formal Complaint, holiday closures of the University, breaks in class schedule, midterm and final examinations, as well as the need to coordinate multiple parties for interview meetings and hearings.

2. Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972 - Formal Investigations in Which a Student is the Complainant and an Employee is the Respondent

The following is a description of the rights and options available in formal investigations in which the complainant is a student, the respondent is an employee, and the conduct does not fall under Title IX of the Education Amendments of 1972.

a. Advisor of Choice

In addition to the Administrative Support Person assigned to students when particular reports of sexual and related misconduct are received (see Section VII(A), “*Assignment of an Administrative Support Person to Students*”), the complainant and respondent may each be accompanied by an Advisor of Choice during any meeting under this policy. The Advisor of Choice may assist, advise, and support the party throughout this formal investigation process and be present for related meetings or proceedings. For conduct falling under this portion of the policy, VIII(C)(2)(a), Advisors of Choice are not permitted to communicate with University officials participating in this formal investigation process. The decision on whether to select an Advisor of Choice is solely that of the complainant or respondent. A person may not serve as an Advisor of Choice if they are involved in the underlying matter, including serving as a party or potential witness.

The availability of an Advisor of Choice to attend a meeting, interview, or hearing shall not unreasonably interfere with or delay the proceedings. If the Advisor of Choice’s conduct is not consistent with these guidelines, they may be excluded from the University’s investigation and adjudication process.

b. Requesting the University Not Investigate

If a person reports an incident of sexual or related misconduct to a non-Confidential Resource at the University but wishes not to participate as a party or witness, or does not want the University to proceed with a formal investigation, the University will attempt to honor that person’s wishes. Please note that:

- For instances in which an ASP is customarily assigned to a student, the University may assign an ASP to the complainant even if a formal investigation is not conducted;
- The University will take all reasonable steps to respond to the report consistent with the complainant’s request and will determine whether supportive measures are appropriate or necessary;
- The University will consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual and related misconduct

occurred, increased training, education, and prevention efforts, and conducting climate surveys; and

- By honoring the request, the University will not be able to meaningfully investigate and pursue misconduct or disciplinary proceedings to find anyone responsible for the violation.

In limited circumstances, the University may be unable to honor a request that it not investigate a report of sexual or related misconduct. The University may conduct its own investigation when it determines in good faith that it is in the best interest of the reporting party or University community to do so. In these instances, the University will serve as the complainant in the matter. The reporting party will, though, receive all notices issued under this Policy and Procedures.

When deciding whether the request can be honored, the University will weigh that request against its obligation to provide a safe, non-discriminatory environment for the University community.

The factors considered when determining whether the University has an overriding responsibility to proceed despite a reporting party's wishes include:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct by the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor;
- Whether the institution possesses other means to obtain evidence such as security footage; and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

If possible, the University will make attempts to inform the reporting party prior to proceeding with an investigation in which the University is the complainant. The University may proceed with an investigation and adjudication process in which a respondent could be found responsible for a policy violation even though a complainant does not participate in the process and does not want to proceed.

Under certain circumstances, the University may be required by law to report and/or file a complaint with external authorities. However, any complainant or witness can decide whether or not to cooperate with the external authority (*e.g.*, law enforcement).

c. Sexual Assault Public Awareness Events

The University is not obligated to begin an investigation based on information a person shares during public awareness events designed to be safe spaces for people to share their experiences. These events could include candlelight vigils, “Take Back the Night” events, protests, or other public events. The University may decide to use the information learned to inform its efforts for additional education and prevention efforts.

d. Formal Investigations

The following portion of the Policy and Procedures describes the rights and options available to parties once the formal investigation begins.

1. Notification of Proceedings and Meetings

If the complainant selects the Formal Resolution Process, the complainant and respondent will be:

- Informed that there is a formal investigation into the conduct in question;
- Given notice describing the date, time, and location of the reported misconduct, if known, as well as relevant facts pertaining to the elements of the behavior that will be evaluated;
- Informed of the portions of the Policy and Procedures the behavior may violate;
- Informed of the possible sanctions;
- Notified that they will be provided the time and place for all meetings in relation to the University’s investigation and adjudication process.

The University will ensure that complainants and respondents are afforded the right to a fair process during the formal investigation and throughout the Formal Resolution Process.

2. Individuals Conducting the Investigation and Adjudication Process

Trained, qualified investigators will serve as fact finders during the formal investigation phase. The Director of Gender Equity/Title IX Coordinator, or their designee, conducts investigations into reports in which a student is the complainant and a faculty member, staff member, or administrator is the respondent.

The investigator will handle complaints impartially and objectively, perform fact finding, and follow all relevant procedures. The investigator evaluates information based upon the nature and context of the conduct after assessing the credibility of witnesses and weighing the relevant information obtained. If there is a significant conflict of interest in which the investigator cannot be impartial, another investigator will be assigned to the investigation.

In matters involving faculty, staff, or administrators as respondents, the Director of Gender

Equity/Title IX Coordinator, or their designee, will make a finding of the facts and make a recommendation for resolution to either the area Vice President, or their designee, or the appropriate decision-maker as per the applicable collective bargaining agreement or University Statutes. The applicable decision-maker has the authority and responsibility to impose discipline or any other resolution they deem appropriate based upon the circumstances and severity of the findings of fact.

3. Use of a Designee as the Fact Finder

The University may, at its discretion, designate trained, experienced people to act as the fact finder. Administrators involved in the formal investigation process receive training, at least annually, on issues regarding sexual and related misconduct, including sexual assault, sexual harassment, dating violence, domestic violence, and stalking. These administrators are also trained in conducting an investigation that protects the safety of the participants, ensures fairness, and promotes accountability.

4. Information and Evidence Used During the Formal Investigation Process

The formal investigation process is designed to obtain information that will be used to determine: (1) the conduct that occurred; and (2) whether that conduct violates the terms of the Policy and Procedures.

- i. Presumption of “Not Responsible” for Violating the Policy:** The respondent is presumed not to have violated the Policy and Procedures until an outcome is issued.
- ii. The “Preponderance of Evidence” Standard of Review:** The evidentiary standard in determining the facts will be based upon the preponderance of the evidence standard (*i.e.* that it is more likely than not that the alleged misconduct occurred).
- iii. Opportunity to Review Evidence and Offer Information:** The parties are provided an opportunity to review and present relevant evidence. Evidence must be relevant to the allegation. A meaningful opportunity to respond to the evidence includes providing reasonable opportunity to provide responsive evidence and information. The opportunity to review evidence is subject to applicable federal, state, and local laws.

- iv. **Past Findings:** Past findings of misconduct may only be considered in the portion of the adjudication process in which the sanction is determined.
- v. **Prior Sexual History/Mental Health Diagnosis:** Generally, a party or witness' prior sexual history or mental health diagnosis and/or treatment may not be introduced during the investigation or adjudication phase. Determinations on exclusions and redactions of such information during the investigative phase are made by the investigator.

5. Possible Sanctions

Employees. Possible sanctions for employees include, but are not limited to, a letter of reprimand or warning letter, mandatory training, a reduction in pay, probation, suspension, termination of employment from the University, or other appropriate sanctions.

*When a person maintains multiple roles (*i.e.*, student and employee), a determination of the person's status in a particular situation will be made in the context of the surrounding facts. Where an individual represents both roles in a matter, employee and student sanctions may be issued.

6. Remedies

In addition to possible disciplinary or conduct sanctions, the University may impose supplemental remedies in accordance with applicable collective bargaining agreements, University statutes, or other University policies.

7. Notification of Outcome

Both the complainant and the respondent will be simultaneously advised in writing of the outcome, including:

- Written notice of the findings of fact;
- Decision and any sanctions;
- Rationale for the decision and any sanctions; and
- Information on how to file an appeal.

Disclosure of Outcomes: The University considers Title IX matters to be sensitive and private. Unless required by law, the University does not publicly release underlying information regarding investigations. Disclosures of facts to witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. The University does not provide witnesses with the resolution of the proceeding. Participants in an investigation shall be advised

that maintaining confidentiality is essential to protecting the integrity of the investigation and will be advised that it is usually best to refrain from discussing the matter during the pending investigation. After the parties are provided with the outcome, either party may choose to disclose or discuss the outcome of the Formal Resolution Process.

8. Time Frame for Investigation and Resolution

While the time to resolve a reported incident will vary from matter to matter depending on the specific facts and circumstances, it is expected that in most instances Formal Complaints will be resolved within 90 school days of the day the complainant requests that the University's investigation and adjudication processes commence. If these processes will take longer than 90 school days, both the complainant and the respondent will be notified in writing as to the delay and the reason for the delay. Delay can sometimes, but not always, be imposed by complexity of the Formal Complaint, holiday closures of the University, breaks in class schedule, midterm and final examinations, as well as the need to coordinate multiple parties for interview meetings and hearings.

3. Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972 - Formal Investigations in Which Both Parties are Employees

Matters that do not fall under Title IX of the Education Amendments of 1972 and involve an employee-complainant and employee-respondent are addressed in accordance with the *Fordham University Sexual Harassment in Employment Prevention Policy*.

4. Conduct that Falls Under Title IX of the Education Amendments of 1972 - All Members of the University Community

The following is a description of the rights and options available in all formal investigations falling under Title IX of the Education Amendments of 1972.

a. Advisor of Choice

In addition to the Administrative Support Person assigned to students when particular reports of sexual and related misconduct are received (see Section VII(A), "*Assignment of an Administrative Support Person to Students*"), the University will provide the parties equal access to advisors and support persons. Any restrictions on advisor participation will be applied equally.

The University has a long-standing practice of requiring students to participate in the process directly and not through an advocate or support person. Students participating as a complainant or respondent may be accompanied by an Advisor of Choice to any meeting or hearing to which

they are required or are eligible to attend. Except where explicitly stated in the Policy and Procedures, Advisors of Choice shall not participate directly in the process.

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

The University's obligations to investigate and adjudicate in a prompt time frame under Title IX and other University policies apply to matters governed under this Policy, and Fordham University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Director of Gender Equity/Title IX Coordinator or their designee. Fordham University will not be obligated to reschedule a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the University.

b. Time Frame for the Title IX Grievance Process

The time frame for the Title IX grievance process begins with the filing of a Formal Complaint. The Title IX grievance process will take no longer than 90 school days, but the time frame may be extended for good reason. Good reason includes, but is not limited to: the absence of a party, a party's advisor, or a witness; the complexity of the matter; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for requesting extensions is described below.

c. Filing a Formal Complaint

To file a Formal Complaint, a complainant must provide the Director of Gender Equity/Title IX Coordinator, the Department of Public Safety, or their designee a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under the Policy and Procedures if they are currently participating in, or are attempting to participate in, an education program or activity at the University. This includes being in the role of employee. For complainants who do not meet this criteria, the University will apply those portions of the Policy and Procedures that are applicable (see Section VII "*Institutional Analysis of Reports*").

d. Requesting the University Not Investigate

If a community member does not wish to file a Formal Complaint, the Director of Gender Equity/Title IX Coordinator, Associate Vice President for Student Affairs, or their designee may determine that a Formal Complaint is necessary. In these instances, the University will serve as the complainant in the matter. The University will inform the community member of this decision in writing, and that person need not participate in the process further. They will, however, receive all notices issued under this Policy and Procedures.

Community members have the right to make a report to the Department of Public Safety, local

law enforcement, and/or state police, or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University.

A complainant who files a Formal Complaint may elect, at any time, to address the matter through the University's Informal Resolution Process (see Section VIII(B), "*Informal Resolution Process*").

e. Notice of Allegations

The Director of Gender Equity/Title IX Coordinator, the Department of Public Safety, or their designee will draft and provide the Notice of Allegations to the parties. After the University receives the Formal Complaint, the Notice of Allegations will be provided to the respondent as soon as is practicable.

If in the course of an investigation the University decides to investigate additional allegations involving the respondent, the University will promptly notify the parties of the additional allegations. The parties will be provided sufficient time to review the additional allegations to prepare a response to those allegations.

The University will provide a party written notice of the date, time, location, participants, and purpose of any meeting, and will provide sufficient time for a party to prepare for their meeting.

f. Delays

Each party may request a delay in this Formal Resolution Process of up to five (5) calendar days for good cause. The requestor must provide reasonable notice and the delay must not overly inconvenience other parties. The request will be granted or denied in the sole judgment of the Director of Gender Equity/Title IX Coordinator, Public Safety, Dean of Students, Associate Vice President for Student Affairs, Human Resources, or their designee.

g. Investigation

After issuing the Formal Complaint and Notice of Allegations, the Department of Public Safety, the Director of Gender Equity/Title IX Coordinator, or their designee will conduct a formal investigation into the reported conduct.

The University, and not the parties, is responsible for gathering information (*i.e.*, the University has the responsibility to show a violation of the Policy and Procedures has occurred). Either party may decide not to share their experience and may decide not to participate in an investigation or hearing.

The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The University will provide an equal opportunity for the parties to present witnesses

and other information.

1. Multi-Party Matters

The University may consolidate Formal Complaints alleging prohibited conduct under Title IX of the Education Amendments of 1972 when those Formal Complaints arise out of the same facts or circumstances.

2. Inspection and Review of Investigative Record

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the information obtained during the investigation. The purpose of this inspection and review process is to give each party an equal opportunity to meaningfully respond to the information gathered prior to the conclusion of the investigation.

Any information that is directly related to the allegations raised in the Formal Complaint and Notice of Allegations will be available for inspection and review by the parties. The University will send this information to each party and each party's Advisor of Choice, if any, through an electronic format.

The parties will have ten (10) calendar days to inspect and review the Investigative Record and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension if needed. If the parties wish to address whether information in the record is directly related to the allegations raised, that response should be submitted in a separate document.

The University will provide copies of the other party's written response addressing whether information in the Investigative Record is directly related to the allegations raised in the Formal Complaint. The University will also provide copies of the other party's written response addressing additional information directly related to the allegations in the Formal Complaint. Each party will have the option to submit a 250 word response to any written response submitted by the other party as a part of a review of the Investigative Record.

Information obtained during the course of the investigation that is determined, in the reasoned judgment of the investigator, not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information. Any information obtained in the investigation that is kept from disclosure or appropriately redacted will be retained in the file. Any information deemed properly subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the information subject to inspection and review or use such information for any purpose unrelated to the Title IX grievance process. Once signed, this Agreement may not be withdrawn.

3. Investigative Report

The investigator will create an Investigative Report fairly summarizing relevant information. The Investigative Report is not intended to catalog all information obtained by the investigator, but only to provide a fair summary of the information directly related to the allegations.

The investigator may redact irrelevant information from the Investigative Record when that information is contained in materials that are otherwise relevant.

h. Hearings

The University will not issue a disciplinary sanction arising from an allegation of prohibited sexual and related misconduct under this section without holding a live hearing unless the matter is otherwise resolved through the Informal Resolution Process.

The live hearing may be conducted with all parties physically present in the same geographic location. At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the other party or the witness answering questions. In addition, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through an appropriate video conferencing platform. This technology will enable participants to see and hear each other simultaneously. At its discretion, the University may reschedule a hearing based on technological issues.

All proceedings will be recorded by transcript or through an audio or audiovisual recording. That transcript or recording will be made available to the parties for inspection and review.

Prior to obtaining access to any information, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or information obtained in the hearing or use such testimony or information for any purpose unrelated to the Title IX grievance process without prior, written approval from the University. Once signed, this Agreement may not be withdrawn.

1. Multiple Hearing Sessions

The University may determine that multiple sessions are needed to complete a hearing. If so, the University will notify all participants and endeavor to reasonably accommodate all participants' schedules and complete the hearing as promptly as practicable.

2. Participants in the Live Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are the following:

Complainants and Respondents (the Parties)

- The parties cannot waive the right to a live hearing.
- The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence.
- The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- Unless prohibited by applicable law, the decision-maker can rely on prior statements made by a party when reaching a determination regarding responsibility even if a party does not submit to cross-examination.
- The decision-maker cannot draw an inference about responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions.
- The parties shall be subject to the University's Rules of Decorum.

Advisors of Choice

- The parties have the right to select an advisor of their choice.
- The Advisor of Choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party or otherwise communicate on behalf of the party except for the purpose of cross-examination.
- In addition to selecting an Advisor of Choice to conduct cross-examination, the parties may assign an advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party. This may include an Administrative Support Person (see Section VII(A), "*Assignment of an Administrative Support Person to Students*").
- The parties are not permitted to conduct cross-examination; it must be conducted by their Advisor of Choice. For this reason, if a party does not select an Advisor of Choice, the University will select an Advisor of Choice to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- If a party does not attend the live hearing, the party's Advisor of Choice may appear and conduct cross-examination on their behalf.
- If neither a party nor their Advisor of Choice appears at the hearing, the University will provide an Advisor of Choice to appear on behalf of the non-appearing party.
- Advisors of Choice are subject to the University's Rules of Decorum, and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and they have the right not to be subjected to retaliation for non-participation.
- Unless prohibited by applicable law, if a witness does not submit to cross-examination, the decision-maker can rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a party or witness who testifies at the live hearing.
- Witnesses shall be subject to the University's Rules of Decorum.

The Decision-Maker

- The outcome of the hearing will be decided by a single decision-maker.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.
- The decision-maker is permitted to have hearing facilitators present. Hearing facilitators may be University employees who are present during the hearing to assist with the orderly management of the hearing process.

3. Hearing Procedures

For all live hearings conducted under this section, the procedure will be as follows:

- The decision-maker, or designee, will open and establish rules and expectations for the hearing;
- The parties will each be given the opportunity to provide opening statements read or submitted by the party themselves;
- The decision-maker will be given the opportunity to ask initial questions of the parties and witnesses;
- The Complainant's Advisor of Choice will be given an opportunity to ask questions of the Complainant after the decision-maker has conducted their initial questioning of the Complainant;
- The Respondent's Advisor of Choice will be given an opportunity to conduct live cross-examination of the Complainant after the Complainant has had an opportunity to be questioned by their own Advisor of Choice;
- The Respondent's Advisor of Choice will be given an opportunity to ask questions of the Respondent after the decision-maker has conducted their initial questioning of the Respondent;
- The Complainant's Advisor of Choice will be given an opportunity to conduct live cross-examination of the Respondent after the Respondent has had an opportunity to be questioned by their own Advisor of Choice;
- The parties will be given the opportunity for live cross-examination of a witness after the decision-maker conducts its initial questioning of the witness;
- During any cross-examination, the decision-maker will have the authority to pause the cross-examination at any time for the purposes of asking the decision-maker's own follow-up questions or taking any time necessary in order to enforce the established Rules of Decorum;

- Should a party or their Advisor of Choice choose not to cross-examine a party or witness, the party will affirmatively waive cross-examination through a written or oral statement to the decision-maker. A party's waiver of cross-examination does not eliminate the ability of the decision-maker to use statements made by the party;
- At the conclusion of cross-examination, the decision-maker will have an opportunity to ask additional questions of that party or witness;
- The decision-maker reserves the right to prohibit further questioning of a party or witness after the parties have been given an opportunity to cross-examine that party or witness, or after the decision-maker has asked their additional questions following the conclusion of cross-examination.

4. Live Cross-Examination Procedure

Consistent with the Rules of Decorum, each party's Advisor of Choice will conduct live cross-examination of the other party, or parties, and any witnesses. During this live cross-examination, the Advisor of Choice will ask the other party, or parties, and any witnesses relevant questions and follow-up questions directly, orally, and in real time, including those challenging credibility.

5. Relevant Information and Questions

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. Relevant information and questions refer to any questions and information that tend to make an allegation more or less likely to be true.

Relevant information and questions do not include the following types of information and questions, which are deemed "irrelevant" at all stages of the process outlined in this portion of the Policy and Procedures:

- Information and questions about the complainant's sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Information and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.
- Cross-examination questions that are duplicative of questions already asked may be deemed irrelevant.

6. Review of Recording

The recording of the hearing will be available for review by the parties within 10 calendar days, unless there are any extenuating circumstances. The audio or visual recording of the hearing will

not be distributed to parties or their Advisor of Choice.

i. Determination Regarding Responsibility

1. Standard of Proof

The University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy and Procedures occurred.

2. General Considerations for Evaluating Information

The University allows parties to call relevant “expert witnesses” for direct and cross-examination.

When appropriate, the University will allow parties to call relevant character witnesses to testify.

The University will admit and allow testimony regarding relevant polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes.

3. Outcome Letters - Determinations Regarding Responsibility

The outcome letter will be issued simultaneously to all parties through their University email account or through other reasonable means. The Determination will include:

1. Identification of the allegations potentially constituting prohibited conduct under Title IX of the Education Amendments of 1972;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other information, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Policy and Procedures, if any, the respondent has or has not violated;
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and
6. The recipient’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in Section IX, “*Appeal of Dismissals or Determinations*”).

4. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University in a reasonably prompt time frame after the completion of the hearing.

5. Finality

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in Section IX, “*Appeal of Dismissals or Determinations*,” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

IX. Appeal of Dismissals or Determinations

This section addresses the appeal process for: (1) the dismissal of a Formal Complaint; (2) the dismissal of any allegations in a Formal Complaint or Notice of Allegations; and (3) determinations regarding responsibility.

A. Appeal when a Student is the Respondent - Conduct that Does Not Fall Under Title IX of the Education Amendments of 1972

Notice of intent to appeal must be submitted to the Senior Vice President for Student Affairs within two (2) school days of: (1) the dismissal of a Formal Complaint or any allegations; or (2) a determination regarding responsibility. All appeals will be conducted in a fair, impartial, and equitable manner by decision-makers who are free of any conflict of interest.

A complainant or respondent may file a written appeal of a matter eligible for formal investigation based upon: (1) a material procedural error that could significantly impact the outcome of a case; (2) a claim that the sanction is substantially disproportionate to the finding(s); or (3) discovery of material, relevant evidence that was previously unavailable and could significantly impact the outcome of a case.

1. Appeal of the Dismissal of a Formal Complaint or Any Allegation

The appeal of the dismissal of a Formal Complaint or any allegations is heard by the Senior Vice President for Student Affairs or their designee. Within 20 school days of receipt of the notice of intent to appeal, the Senior Vice President for Student Affairs or their designee will inform all parties in writing of the final outcome of the appeal. An extension of the time frame to issue the final decision may be granted for good cause as determined by the Senior Vice President for Student Affairs or their designee. The complainant and respondent will be notified in writing of both the appeal and the final outcome of the appeal.

2. Appeal of a Determination Regarding Responsibility

The appeal of a determination regarding responsibility is heard by the Student Conduct Review Council (SCRC), which is comprised of five members: two faculty members appointed by the President of the Faculty Senate, one of whom is appointed as chairperson; one administrator appointed by the Senior Vice President for Student Affairs; and two students appointed by the President of the United Student Government. In the event the complainant or respondent is a graduate student, the students on the SCRC will be appointed by the Dean of the particular graduate school. If the Chair of the SCRC determines that there is a conflict of interest with any panel member, that panel member will be excused and replaced by another panel member to ensure a fair and impartial proceeding.

The SCRC shall have the power to: (1) uphold the decision of the Hearing Officer; (2) uphold the decision but change the sanction; or (3) remand the matter back to the Hearing Officer for further hearing. The decisions and sanctions of the SCRC are determined by majority vote, and are final and not appealable.

3. SCRC Appeal Review Process

- a. The Hearing Officer and the person filing the appeal will present their respective versions of the matter to the SCRC. In addition to the Administrative Support Person assigned to students, the appealing student -- who represents themselves in the hearing -- can have one (1) Advisor of Choice present. The Advisor of Choice may not actively participate during the hearing and must adhere to all rules set forth for Advisors of Choice in the Policy and Procedures.
- b. The SCRC may pose questions to the Hearing Officer and to the appealing student. Both the complainant and respondent will be given an opportunity to be heard, if they so choose.
- c. The SCRC may choose to ask the Hearing Officer to return to the meeting to answer specific questions about the matter or ask the Senior Vice President for Student Affairs or the Associate Vice President for Student Affairs at any time to answer questions on the process of the Council.
- d. The SCRC hearing is conducted in closed session.
- e. If the SCRC decides by majority vote that it needs more information in order to reach its decision, it may call relevant witnesses or request information to the extent required.
- f. Within 15 school days of the conclusion of the SCRC hearing, the Chairperson of the SCRC will inform all parties, including the Senior Vice President for Student Affairs, of the final decision.
- g. A timely final outcome letter will be simultaneously provided to both the complainant and respondent.

B. Appeal when a Student is the Respondent - Conduct that Falls Under Title IX of the Education Amendments of 1972

Notice of intent to appeal must be submitted to the Senior Vice President for Student Affairs within five (5) school days of: (1) the dismissal of a Formal Complaint or any allegations; or (2) a determination regarding responsibility. All appeals will be conducted in a fair, impartial, and equitable manner by decision-makers who are free of any conflict of interest.

A complainant or respondent may file a written appeal of a matter eligible for formal investigation based upon: (1) a procedural irregularity that affected the outcome of the matter; (2) a claim that the sanction is substantially disproportionate to the finding(s); (3) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or (4) the Director of Gender Equity/Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

1. Appeal of the Dismissal of a Formal Complaint or Any Allegation

The appeal of the dismissal of a Formal Complaint or any allegations is heard by the Senior Vice President for Student Affairs or their designee. Within 20 school days of receipt of the notice of intent to appeal, the Senior Vice President for Student Affairs or their designee will inform all parties in writing of the final outcome of the appeal. An extension of the time frame to issue the final decision may be granted for good cause as determined by the Senior Vice President for Student Affairs or their designee. The complainant and respondent will be notified in writing of both the appeal and the final outcome of the appeal.

2. Appeal of a Determination Regarding Responsibility

The appeal of a determination regarding responsibility is heard by the Student Conduct Review Council (SCRC), which is comprised of five members: two faculty members appointed by the President of the Faculty Senate, one of whom is appointed as chairperson; one administrator appointed by the Senior Vice President for Student Affairs; and two students appointed by the President of the United Student Government. In the event the complainant or respondent is a graduate student, the students on the SCRC will be appointed by the Dean of the particular graduate school. If the Chair of the SCRC determines that there is a conflict of interest with any panel member, that panel member will be excused and replaced by another panel member to ensure a fair and impartial proceeding.

The SCRC shall have the power to: (1) uphold the decision of the Hearing Officer; (2) uphold the decision but change the sanction; or (3) remand the matter back to the Hearing Officer for further hearing. The decisions and sanctions of the SCRC are determined by majority vote, and are final and not appealable.

3. SCRC Appeal Review Process

- a. The Hearing Officer and the person filing the appeal will present their respective versions of the matter to the SCRC. In addition to the Administrative Support Person assigned to students, the appealing student -- who represents themselves in the hearing -- can have one (1) Advisor of Choice present. The Advisor of Choice may not actively participate during the hearing and must adhere to all rules set forth for Advisors of Choice in the Policy and Procedures.
- b. The SCRC may pose questions to the Hearing Officer and to the appealing student. Both the complainant and respondent will be given an opportunity to be heard, if they so choose.
- c. The SCRC may choose to ask the Hearing Officer to return to the meeting to answer specific questions about the matter or ask the Senior Vice President for Student Affairs or the Associate Vice President for Student Affairs at any time to answer questions on the process of the Council.
- d. The SCRC hearing is conducted in closed session.
- e. If the SCRC decides by majority vote that it needs more information in order to reach its decision, it may call relevant witnesses or request information to the extent required.
- f. Within 15 school days of the conclusion of the SCRC hearing, the Chairperson of the SCRC will inform all parties, including the Senior Vice President for Student Affairs, of the final decision.
- g. A timely final outcome letter will be simultaneously provided to both the complainant and respondent.

C. Appeal When an Employee is the Respondent

Notice of intent to appeal must be submitted to the Vice President for Human Resources within five (5) school days of: (1) the dismissal of any allegation(s); or (2) a determination regarding responsibility. All appeals will be conducted in a fair, impartial, and equitable manner by decision-makers who are free of any conflict of interest.

A complainant or respondent may file a written appeal of a matter eligible for formal investigation based upon: (1) a procedural irregularity that affected the outcome of the matter; (2) a claim that the sanction is substantially disproportionate to the finding(s); (3) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or (4) the Director of Gender Equity/Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or

bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

1. Appeal of the Dismissal of a Formal Complaint or Any Allegation

The appeal of the dismissal of a Formal Complaint or any allegations is heard by the Vice President for Human Resources or their designee. Within 20 school days of receipt of the notice of intent to appeal, the Vice President for Human Resources or their designee will inform all parties in writing of the final outcome of the appeal. An extension of the time frame to issue the final decision may be granted for good cause as determined by the Vice President for Human Resources or their designee. The complainant and respondent will be notified in writing of both the appeal and the final outcome of the appeal.

2. Appeal of a Determination Regarding Responsibility

The appeal of a determination regarding responsibility is heard by the Appeal Panel. The Appeal Panel's makeup will differ based on the constituency of the respondent. If the respondent is an adjunct or full-time non-tenured track faculty member who is also a member of a collective bargaining unit, the Appeal Panel will consist of an administrator selected by the Senior Vice President for Student Affairs, a full-time tenured or tenure-track faculty member selected by the Faculty Senate, and a bargaining unit member of the respondent's collective bargaining unit selected by the Vice President for Human Resources. The full-time tenured or tenure-track faculty member will serve as Chair of the Appeal Panel.

For all respondents other than those described above, the Appeal Panel will consist of a representative selected by the Senior Vice President for Student Affairs, a representative selected by the Vice President for Human Resources, and a representative of the respondent's constituency. If the respondent is a faculty member who is not a member of a union, the constituency representative will be selected by the Faculty Senate or their designee. If the respondent is an administrator, the constituency representative will be selected by the Vice President for Administration or their designee. If the respondent is a member of Local 810 or Local 153, the constituency representative will be selected by the respective unions or their designee. The representative selected by the Vice President for Human Resources will serve as Chair.

If the Chair of the Appeal Panel determines there is a conflict of interest with any panel member, that panel member will be excused and replaced by another panel member to ensure a fair and impartial proceeding.

3. Appeal Panel Procedures

- a. The hearing is conducted in a closed session.
- b. The Appeal Panel will review the full case record, including the Director of Gender Equity/Title IX Coordinator's Investigative Report, the sanctions, or lack thereof,

imposed by the issuing Vice President, or designee, the related rationale, and any and all evidence in the case file.

- c. The issuing Vice President, or designee, will serve as a party during the hearing. If the complainant and/or respondent submits a notice of intent to appeal, they will also serve as a party during the appeal (“appealing party”). A non-appealing complainant or respondent will be considered a witness for the purposes of the appeal.
- d. The Vice President, or designee, issuing the findings and the appealing party will present their respective versions of the matter to the Appeal Panel. The Appeal Panel may ask questions to the parties or relevant witnesses. The complainant and respondent will be given an opportunity to be heard even if they have not submitted a notice of intent to appeal.
- e. Each party may be given an opportunity to submit questions to the other party and to relevant witnesses. To do so, the party must submit questions to the Appeal Panel Chair, who may then ask the questions.
- f. In addition to the Administrative Support Person assigned to students, the parties may have one (1) Advisor of Choice present. However, the Advisor of Choice may not actively participate during the hearing and must adhere to all rules set forth in the Policy and Procedures.
- g. The Appeal Panel may affirm the decision of the decision-maker or sustain any of the specified grounds for appeal, in which case the Appeal Panel may:
 - reverse a finding;
 - change a sanction or remedy;
 - remand a case to the original decision-maker for clarification or reconsideration consistent with the Appeal Panel’s decision;
 - remand a case to the Director of Gender Equity/Title IX Coordinator to identify a new decision-maker due to a conflict of interest substantiated by the appeal process; or
 - remand a case for a new or additional investigation, to be followed by a finding by a decision-maker.
- h. Within 90 calendar days of receipt of the notice of intent to appeal, the Vice President for Human Resources or their designee will inform all parties in writing of the final outcome of the appeal. The final outcome will be determined by majority decision.
- i. An extension of the timeframe for the Appeal Panel to issue the final decision may be granted for good cause as determined by the Vice President for Human Resources or their designee.

- j. The Vice President for Human Resources will simultaneously provide the complainant, the respondent, and the Vice President issuing the sanctions, if applicable, with a copy of the Appeal Panel's findings.
- k. A record of the Hearing will be preserved for the case file by the Gender Equity & Title IX Office.

4. Further Review

Employees may have the right to a limited review of the final decision per the process above.

a. Faculty

- Bargaining Unit Faculty Members: Bargaining unit faculty members should follow the grievance and arbitration procedures in the applicable collective bargaining agreements as limited for Title IX purposes.
- Non-Bargaining Unit Faculty Members: Faculty not a member of a bargaining unit should follow the procedures as limited for Title IX purposes as outlined in Article IV of the University Statutes.

b. Staff

- Clerical/Maintenance Union Members: Those employees who are members of either the Clerical or the Maintenance Union should follow the grievance procedures in their respective Collective Bargaining Agreements.

X. Recordkeeping

The University will maintain the following materials for a period of seven years:

- Records of any actions, including any supportive measures, taken in response to a report or Formal Complaint under Title IX of the Education Amendments of 1972.
- Investigative Records under Title IX of the Education Amendments of 1972, including any determination regarding responsibility;
- Any audio or audiovisual recording or transcript of any hearing;
- Any appeal and the outcome of the appeal;
- Any information regarding the Informal Resolution Process, including the outcome; and
- All materials used to train any Title IX Coordinators, investigators, decision-makers, or Informal Resolution facilitators.

XI. Non-University Resources

The following are selected non-university resources that may be of assistance to members of the University community.

24/7 Confidential Hotlines:

- RAPE Crisis Hotline: 914-345-9111
- Safe Horizon's Rape/Sexual Assault and Incest Hotline: 212-227-3000
- NYC Domestic Violence Hotline: 800-621-HOPE (4673)
- Gay and Lesbian Anti-Violence Project: 212-714-1141
- Crime Victims Hotline: 212-577-7777
- New York State Domestic Violence Hotline: (800) 942-6906
- New York State Office of Victim Services: (800) 247-8035 or www.ovs.ny.gov

International Resources:

- Rape Crisis National Helpline—London: 0808 802 9999
- International Directory of Domestic Violence Agencies:
<http://www.hotpeachpages.net/a/countries.html>
- Sexual Assault Support and Help for Americans Abroad (SASHAA): <https://sashaa.org/>

Medical Treatment: Anyone who is sexually assaulted or physically injured is encouraged to seek a medical examination to determine the extent of injuries. It is also important to understand that physical evidence is collected during a sexual assault examination as a way to preserve evidence should the victim want to pursue criminal charges with the police or a local prosecutor at a later time.

Hospitals: *The hospitals listed below conduct sexual assault examinations***Rose Hill Campus:**

- Jacobi Medical Center—Pelham Parkway South, Bronx, NY, 718-918-5000
- North Central Bronx Hospital—3424 Kossuth Ave., Bronx, NY, 718-519-5000

Lincoln Center Campus:

- Mt. Sinai Roosevelt Emerg. Rm—59th St. on 9th and 10th Aves., NY, NY 212-523-6800
- Mt. Sinai/St. Luke's, Emergency Room—1111 Amsterdam Ave., NY, NY 212-523-3335

Westchester Campus:

- Westchester County Medical Center—100 Woods Rd., Valhalla, NY, 914-493-7000

Calder Center:

- Westchester County Medical Center—100 Woods Rd., Valhalla, NY, 914-493-7000

London Centre:

- The Haven—Whitechapel, Royal London Hospital, Whitechapel, London, E1 5DG, 020 7247 4787
- The Haven—Paddington, Imperial College Healthcare NHS Trust, Praed Street, London, W2 1NY, 020 3312 6666
- The Haven—Camberwell, King's College Hospital, Denmark Hill, London, SE5 9RS 020 3299 9000

Law Enforcement / Local Prosecutor: A victim/survivor of any criminal sexual offense has legal recourse outside the University and can commence civil or criminal proceedings against the offending person. Many of the prohibited behaviors of the University's policies are also violations of New York State criminal laws where a person can be charged criminally with rape, sex abuse, stalking, and other charges. If convicted of such crimes, a person can be subject to severe penalties, including imprisonment for up to 25 years. If the action takes place outside New York State, a person is subject to the criminal laws of the applicable jurisdiction.

Family and Civil Court: Additionally, Family Court is a civil court option where a person can seek a civil court order of protection in many circumstances. University administrators and/or the Department of Public Safety can assist any victim in the finding of resources, accompanying a person to court, and in initiating a legal proceeding in family court or civil court.

- The Bronx County Family Court is located at 900 Sheridan Ave, Bronx NY 10451 (corner of 161 Street).
- The Westchester Family Court is located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601.
- The Manhattan Family Court is located at 60 Lafayette St., New York, NY 10013.
- The Bronx Civil Court is located at 851 Grand Concourse, Bronx, NY 10451.
- The Manhattan Civil Court is located at 111 Centre Street, New York, NY 10013.

Law Enforcement:

- **Rose Hill Campus:** 48th Precinct—450 Cross Bronx Expressway, Bronx, NY 718-299-3900
- **Lincoln Center Campus:** 20th Precinct—120 West 82nd St., New York, NY 212-580-6411
- **Westchester Campus:** Harrison P.D.—650 North Street, Harrison, NY 914-967-5110
- **Calder Center:** North Castle Police Department —15 Bedford Road, Armonk, NY 914-273-9500
- **NY State Police:** 24-hour hotline for reporting sexual assault on NY college campuses 844-845-7269
- **NYPD Special Victims Division:** 646-610-7272
- **London Centre:** Dial 112 or 999 for assistance.

A person may report an incident to either the police or the University, or to both simultaneously. A complainant has the right to have the institution’s process run concurrently with a criminal justice investigation. The filing of a complaint of sexual and related misconduct under this Policy and Procedures is independent of any criminal investigation or proceeding. The University will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary supportive measures to protect the complainant and the University community.

However, the University may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

There may be times when the Department of Public Safety or another administrator may contact the police regarding the nature of an alleged incident. However, it is always the complainant’s decision as to whether or not to cooperate with any police or University investigation. The Department of Public Safety and other administrators stand ready to assist in reporting incidents to the police or local prosecutors. Department of Public Safety supervisors are former ranking members of law enforcement who have prior experience and training working with victims of all crimes.

XII. A Plain Language Explanation of Distinctions Between the New York State Penal Law and the Fordham University Student Disciplinary Processes

	<u>Criminal Justice System</u>	<u>Fordham University Disciplinary System</u>
<u>Goals</u>	Safety, deterrence, and punishment.	Education, safety, and creating a safe and supportive campus.
<u>Governing Law</u>	NYS Penal Law, NYS Rules of Criminal Procedure, Federal Criminal Law, Federal Rules of Evidence.	Title IX, the Clery Act, VAWA NYS Education Law Articles 129-A & 129-B.
<u>How to Report</u>	Crimes involving sexual violence may be reported to: Fordham University Public Safety, New York City Police Department, local police, New York State Police, or Federal Law Enforcement Agents.	Victims may disclose sexual violence to: Department of Public Safety (non- confidential), Dean of Students (non-confidential), Director of Gender Equity/Title IX Coordinator (non-confidential), Human Resources (non-confidential) Counseling and Psychological Services (Confidential), Pastoral counselor in Campus Ministry (Confidential), University Health Services (Confidential), and Other Community Members Listed in Section VI of the policy.

Will there be an Investigation?

Determination is made by the law enforcement agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision whether to have a criminal prosecution is made by a prosecutor.

In most instances, an investigation will not take place if the complainant does not want an investigation to occur. The University may conduct its own investigation when it determines, in good faith, that it is in the best interest of the complainant or University community to do so.

Who Investigates?

Police or law enforcement officials.

Trained, qualified investigators employed or retained by the University.

Procedures

Federal, state, or local law.

University policies, statutes, or bylaws, which incorporate the requirements of governing law.

Standard of Evidence

Crimes must be proven “Beyond a Reasonable Doubt.”

A violation of disciplinary rules must be determined by a “Preponderance of Evidence.”

Confidentiality/ Privacy

A criminal charge and trial must be public.

Fordham offers Confidential Resources. Non-Confidential Resources maintain privacy to the greatest extent possible.

Who are the Parties?

The prosecution and defendant. The victim is not a party.

The reporting individual (also referred to as the complainant) and the accused (also referred to as the respondent). The University acts as the finder of fact.

**Participation
in the
Process**

A criminal prosecution can proceed without the participation or cooperation of the reporter but the burden of proof is harder to achieve.

Parties cannot be required to participate in the University process. The University will be limited in its ability to respond if the reporting individual does not participate.

All non-party students, faculty, staff, and administrators are required to participate in all investigations under the Policy and Procedures.

**Who Initiates
Proceedings?**

A prosecutor.

The complainant or the University in the role of the complainant.

Testimony

Generally public. Witnesses/reporters can be cross examined.

A reporter's testimony is private. Cross-examination is only permitted in hearings under Title IX of the Education Amendments of 1972.

**Role of
Attorneys**

Both the state and defendants are represented by counsel.

Attorneys may serve as Advisors of Choice under the Policy and Procedures.

**Mental
Health/
Sexual
History**

Generally, but not always, a reporter's prior sexual and mental health history is inadmissible in a criminal matter.

Generally not admissible but subject to very limited exceptions.

**Possible
Outcomes**

Defendant may:
*plead guilty
*have matter dismissed
*be charged guilty or
not guilty by a judge or
jury.

The respondent may be found
“responsible” or “not responsible” for
violations of University policy, agree
to an Informal Resolution, or the
matter may be dismissed.

**Possible
Sanctions**

Fined, imprisoned, or both.

Sanctions range from a warning
to suspension or expulsion from
the University.

XIII. Students’ Bill of Rights

In accordance with New York State law, 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 hearing related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution.

XIV. Glossary

The following definitions apply to the terms used in the Sexual and Related Misconduct Policy and Procedures for the Fordham University Community.

Bystander: A person who observes misconduct, or impending misconduct, conflict, potential violence, or conduct that is in violation of rules or policies of an institution.

Clery Reporting: The data collected by the Department of Public Safety on violent crimes (including sexual assault, dating violence, domestic violence, and stalking) occurring on or near University property and is compiled in the University's Annual Security Report. Only aggregate data is reported and no personally identifiable information is collected. For more information on Clery Reporting, please review the Annual Security and Fire Safety Report or contact the Department of Public Safety.

Complainant: The person initiating the complaint or the person who is reported to have experienced sexual or related misconduct. When the University initiates a Formal Complaint, the University is deemed the complainant and the person who is reported to have experienced sexual or related misconduct is deemed a witness.

Confidentiality: References to confidentiality refer to the ability of designated Confidential Resources to refrain from sharing reports of prohibited conduct under the Policy and Procedures without permission, except for extreme circumstances such as a health and/or safety emergency or child abuse.

Formal Complaint: For the purposes of this Title IX Grievance Policy, "Formal Complaint" means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the Formal Complaint, or signed by the Director of Gender Equity/Title IX Coordinator, alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting

initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Minor: Anyone less than 17 years of age.

Privacy: Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this Policy and Procedures, including informing appropriate institution officials. All designated as Campus Security Authorities must report information and should so inform the individual reporting.

Reasonable Person: A reasonable person under similar circumstances and with similar identities to the relevant Fordham community member.

Respondent: The person whose conduct is being reviewed to determine whether there was a violation of the Sexual and Related Misconduct Policy and Procedures for the Fordham University Community.

Third Party: A person who is on campus or participating in a Fordham sponsored program, activity, or event. The term also includes visitors, independent contractors, and vendors.