

NON-TITLE IX STUDENT SEXUAL MISCONDUCT POLICY & PROCEDURES FOR STUDENTS

I. NOTICE OF NONDISCRIMINATION AND POLICY STATEMENT ON SEXUAL MISCONDUCT

New York School of Interior Design prepares its students to lead the interior design profession by providing a deep and broad education to aspiring designers and working professionals, drawing upon expert faculty, current tools in technology and close industry relationships. NYSID upholds values and standards that support that mission and holds high expectations regarding the conduct of its students, faculty, staff and administrators.

The health, safety, and well-being of all members of the NYSID community are the school's primary concerns. In furtherance of NYSID's mission and in accordance with Title IX of the Education Amendments of 1972 ("Title IX")¹, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"), as amended by the Violence Against Women Act/Campus Sexual Violence Act ("Campus SaVE Act"), and Article 129-B of the New York Education Law ("NY Law"), NYSID is committed to maintaining a community free from all forms of sex discrimination, including sexual misconduct.

Sexual misconduct is not tolerated in NYSID's education programs or activities. NYSID strictly prohibits sexual harassment and sexual violence, including the offenses of sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity.

NYSID adopts the standard of Affirmative Consent to sexual activity set forth in the NY Law.

Questions regarding Title IX, the Clery Act, the Campus SaVE Act and the NY Law may be referred to NYSID's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights.

¹ Incidents that fall within the definition of sexual harassment in the Final Rule issued by the U.S. Department of Education in May 2020 will be investigated and adjudicated pursuant to [NYSID's Title IX Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations August 2020](https://www.nysid.edu/campus-safety-security)
<https://www.nysid.edu/campus-safety-security>.

NYSID's designated Title IX Coordinator is: Karen Higginbotham, Dean of Students, 170 East 70th Street, New York, NY 10021, 212-472-1500 X202, khigginbotham@nysid.edu.

The Title IX Coordinator's responsibilities include, but are not limited to, overseeing NYSID's response to complaints of sexual misconduct, coordinating investigations into allegations of sexual misconduct, and identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation of a complaint of sexual misconduct. In the event that the Title IX Coordinator is unavailable, his/her designee will act to initiate and oversee the process on behalf of NYSID.

II. SCOPE OF POLICY

This policy governs sexual misconduct involving all NYSID students, and applies to such students regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction or other protected status. **This policy addresses conduct falling outside the jurisdiction and scope of NYSID's Title IX Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations.** Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed by NYSID's policy on discrimination and harassment located in the NYSID Student Handbook.

If the Respondent is a NYSID employee or other person doing business with NYSID, the investigation and disciplinary processes described in NYSID's Employee Sexual Harassment Policy will apply. That policy is located in NYSID's Staff and Faculty Handbooks. Please be aware that it is NYSID's policy to ensure that its work and learning environment is free from intimate, romantic, dating, or other similar relationships between supervisors and their subordinates, and between faculty members and their students.

This policy applies to any allegation of sexual misconduct that takes place on NYSID property, including the 1760 Third Avenue student residence, or any other property on which a NYSID program or activity takes place. This policy also covers conduct that takes place off of NYSID property, including study abroad programs, but which may have an impact on the NYSID community or in which both the Complainant and Respondent are members of the NYSID community.

This policy (i) sets forth the available resources and reporting options for victims of sexual misconduct; (ii) specifies and defines the prohibited conduct; (iii) describes NYSID's procedures for responding to complaints of sexual misconduct, including the investigation, hearing, and sanctioning processes; and (iv) describes programs

implemented by NYSID to educate and increase awareness among its community regarding sexual misconduct.

The following forms of sexual misconduct are prohibited:

- i. sexual harassment
- ii. sexual assault
- iii. sexual coercion
- iv. sexual exploitation
- v. dating violence
- vi. domestic violence
- vii. intimidation
- viii. stalking

III. DEFINITIONS

Accused shall mean an individual accused of a violation who has not yet entered NYSID's conduct process.

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

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

Bystander means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of NYSID.

Bystander Intervention means safe and positive options for individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking.

Complainant means the individual making the allegation(s) of sexual misconduct.

Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the following factors: length of the relationship, the type of relationship, and 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.

Domestic Violence means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.

Intimidation means implied threats or acts that reasonably cause another to fear for his/her safety or well-being.

No-Contact Order means 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 by means of a third party.

Respondent means the individual accused of a violation who has entered NYSID's conduct process.

Retaliation means taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

Sexual Assault includes non-consensual sexual intercourse and non-consensual sexual contact. **Non-consensual sexual intercourse** means any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any object by an individual upon another individual without consent and/or by force. **Intercourse** means: vaginal or anal

penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact). **Non-consensual sexual contact** means any intentional sexual touching, however slight, with any body part or object by an individual upon another individual without consent. Intentional sexual contact includes contact with the breasts, buttocks, or groin, or touching another with any of these body parts; making another person touch any of these body parts; and any intentional bodily contact in a sexual manner.

Sexual Coercion is the application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

Sexual Exploitation means abuse or exploitation of another person's sexuality without consent, for the perpetrators own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

Sexual Harassment means unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic or physical conduct of a sexual nature, when: (1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education or campus life activities, or used as the basis of any academic, student life or employment decision (quid pro quo); or (2) such conduct is sufficiently severe, persistent or pervasive such that it limits an individual's ability to participate in, or benefit from, education or work programs or activities (hostile environment).

Sexual Misconduct means a range of unwelcome behavior of a sexual nature that is committed without consent or by intimidation, coercion, threat or force. Sexual Misconduct includes, but is not limited to, sexual harassment, sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

For purpose 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.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a person under similar circumstances and with similar identities to the victim.

Stalking can include: repeated or unwanted, intrusive and frightening communications by phone, mail and/or e-mail; repeatedly leaving or sending the victim unwanted items, presents or flowers; following or lying in wait for the victim at his/her home, school, work; etc.

Conduct that violates this policy may also violate New York State laws and subject the perpetrator to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State Penal Code.

IV. STUDENTS' BILL OF RIGHTS

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, and student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution
9. Access to at least one level of appeal of a determination
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution

V. RESOURCES AND REPORTING OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT

Immediate Medical Assistance and Counseling

NYSID strongly urges any student who has been the victim of any form of Sexual Misconduct to seek immediate assistance. Sexual assault forensic examinations (SAFE) are available at local hospitals noted below. Assistance is available 24 hours a day, 7 days a week, from:

- Local Police and Emergency Assistance – Call 911
- NYSID Campus Safety Office – (212) 472-1500, ext. 420
- New York-Presbyterian/Weill Cornell Medical Center
Victim Intervention Program
525 East 68th Street, New York, NY 10065
(212) 746-4458
- Safe Horizon Victims' Services and Advocacy
Rape Crisis/Sexual Abuse Hotline – (212) 277-3000 or (866) 698-HELP (4357)
Domestic Violence Hotline – (800) 621-HOPE (4673)

In instances involving physical injury or Sexual Assault, NYSID strongly encourages obtaining a medical examination to determine the extent of injuries. In addition, the hospital, with the victim's permission, will collect physical evidence in a sexual offense evidence collection kit. Consenting to the completion of a sexual offense evidence collection kit does not obligate pursuing criminal charges with the police; it is a way to preserve evidence should there be a choice to pursue criminal charges at a later time.

Hospitals are required by law to preserve such evidence for a minimum of 30 days. If choosing to seek medical assistance:

- It is important to not bathe, wash, shower, douche, brush teeth, comb hair, change clothes, or clean up so that no evidence of the attack is destroyed.
- A specially trained nurse or physician will conduct an interview about the circumstances of the assault.
- The examination will occur in a private examination room; no police personnel will be present during the examination.
- Medications to prevent pregnancy and sexually transmitted infections, including HIV, will be offered and, if any injuries will be treated.

Law Enforcement Notification

Under the NY Law, victims of Sexual Misconduct have the right to notify or decline to notify law enforcement. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred, or may be helpful in obtaining a protection or restraining order from the police. Campus Security and other NYSID representatives are available to assist in notifying law enforcement of an incident of Sexual Misconduct and in contacting law enforcement or legal service organizations to learn about remedies. Except in instances where the victim is a minor, NYSID will respect a victim's decision regarding whether or not to report an incident to local law enforcement.

Resources and Reporting

NYSID is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of Sexual Misconduct. The reporting of Sexual Misconduct to NYSID's Title IX Coordinator should occur in a timely manner. Any incident of Sexual Misconduct reported to another NYSID employee, with the exception of those employees designated as confidential, as set forth below, will be reported by the employee to the Title IX Coordinator.

At the time of first disclosure, reporting individuals will be informed of their rights as follows: "You have the right to make a report to NYSID Campus Security, local law enforcement, and/or state police or choose not to report; to report the incident to NYSID's Title IX Coordinator; to be protected by NYSID from retaliation for reporting an incident; and to receive assistance and resources from NYSID." In addition, reporting individuals will be advised of their right to have emergency access to the Title IX Coordinator or other NYSID designee trained in interviewing victims of sexual assault who will advise on the importance of preserving evidence and obtaining a SAFE as soon as possible, and

detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the NY Penal Law should be addressed to law enforcement or the District Attorney.

Confidentiality and Privacy

NYSID understands that, for many victims of Sexual Misconduct, confidentiality is a primary concern. However, it is important to note that certain NYSID employees are required by state and federal laws to share information from a report of Sexual Misconduct with NYSID or government authorities. The ability of NYSID employees to maintain confidentiality is as follows:

Professional Counselors

Professional, licensed mental health counselors are not required to report any information about an incident of Sexual Misconduct to the Title IX Coordinator without a victim's permission. State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or to others; or (ii) if there is reasonable cause to suspect that a minor has been sexually abused. The following is a list of NYSID's professional counselors:

- Penni Morganstein, Psychologist
(212) 452-4180, ext. 320
pmorganstein@nysid.edu

Even NYSID employees who cannot guarantee confidentiality will maintain individuals' privacy to the greatest extent possible. Information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Responsible Employees

A Responsible Employee is a NYSID employee who has the authority to redress Sexual Misconduct, who has a duty to report incidents of Sexual Misconduct, or who a student could reasonably believe has this authority or duty. A report of Sexual Misconduct to a Responsible Employee will immediately trigger NYSID's investigation into the alleged Sexual Misconduct in accordance with the procedure described in this policy. A Responsible Employee must report all relevant details about the alleged Sexual Misconduct shared by the victim to the Title IX Coordinator. To the extent possible, information reported to the Responsible Employee will be shared only with those having a need to know such information in order to respond in accordance with NYSID policy.

NYSID may be obligated by law to investigate all allegations of Sexual Misconduct regardless of whether the victim wishes to file a complaint. Therefore, if a victim reports an incident of Sexual Misconduct to a Responsible Employee, but wishes to remain confidential or requests that no investigation into the incident be conducted, NYSID will weigh that request against NYSID's obligation to provide a safe, nondiscriminatory environment for all members of its community, including the victim. If NYSID honors the request for confidentiality, the victim must understand that NYSID's ability to effectively investigate the incident and pursue disciplinary action against the Accused may be limited. In rare circumstances, NYSID may not be able to honor a victim's request for confidentiality when doing so would jeopardize its responsibility to provide a safe, non-discriminatory environment. NYSID has designated the Title IX Coordinator to evaluate requests for confidentiality once a Responsible Employee is notified of alleged Sexual Misconduct.

When weighing a Complainant's request for confidentiality, the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- Whether there have been other Sexual Misconduct complaints about the same Respondent;
- Whether the Respondent has a history of arrests or records from a prior school indicating a history of violence;
- Whether the Respondent threatened further Sexual Misconduct or other violence against the Complainant or others;
- Whether the Sexual Misconduct was committed by multiple perpetrators;
- Whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- Whether the alleged Sexual Misconduct was perpetrated with a weapon;
- The age of the Complainant;
- Whether NYSID has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence).

After considering these factors, NYSID may be compelled to investigate the alleged Sexual Misconduct and, if appropriate, pursue disciplinary action in a manner that may require NYSID to disclose the complainant's identity to the respondent. If NYSID determines that it must disclose the Complainant's identity to the Respondent, the Complainant will be promptly informed.

If, after considering these factors, NYSID determines that it is able to respect the Complainant's request for confidentiality, it will nevertheless take all reasonable steps to

respond to the complaint consistent with the Complainant's confidentiality request, and will determine whether interim measures are appropriate or necessary. NYSID will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported Sexual Misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys.

Accommodations

Any individual who has been the victim of Sexual Misconduct may request assistance in changing academic, living, transportation, and working situations. NYSID will grant such accommodations, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement. Such accommodations may include moving a student's residence, adjusting a student's academic or work schedule, and issuing a No Contact Order. Under such orders, a Respondent's intentional contact with the victim will be deemed a violation of this policy subject to additional conduct charges. NYSID will provide assistance to any victim seeking an order of protection order through local law enforcement or the equivalent if outside New York.

Requests for accommodations in connection with incidents of Sexual Misconduct should be made to the Title IX Coordinator. NYSID will provide information about the student's request for accommodations only to those having a need to know such information in order to implement the accommodations.

Reports of Sexual Misconduct from Others or Anonymous Sources

If NYSID receives a report of alleged Sexual Misconduct by someone other than the alleged victim (e.g., by a friend or roommate) or from an anonymous source, the Title IX Coordinator will promptly notify the alleged victim of the report, and inform the alleged victim of the available resources and assistance. NYSID will respond to the report of Sexual Misconduct as if the victim had made the initial report.

Alcohol and Drug-Use Amnesty

The health and safety of every student at NYSID is of utmost importance. NYSID recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to Domestic Violence, Dating Violence, Stalking, or Sexual Assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. NYSID strongly encourages students to report Domestic Violence, Dating Violence, Stalking, or Sexual Assault to school officials. A Bystander acting in good faith or a reporting

individual acting in good faith that discloses any incident of Domestic Violence, Dating Violence, Stalking, or Sexual Assault to NYSID or law enforcement will not be subject to NYSID's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the Domestic Violence, Dating Violence, Stalking, or Sexual Assault. NYSID also reserves the right to provide amnesty to code of conduct violations in additional circumstances.

Time for Reporting

There is no time limit for reporting Sexual Misconduct. Nevertheless, any member of the NYSID community who believes that he or she has been a victim of Sexual Misconduct is encouraged to report the alleged Sexual Misconduct immediately in order to maximize the ability to obtain evidence and conduct a thorough, impartial, and reliable investigation.

Under no circumstances will NYSID allow an impending graduation to compromise its resolution of a Sexual Misconduct complaint. The conferral of a degree may, therefore, be held, if necessary, until proper resolution of any Sexual Misconduct charges, provided that a hearing opportunity will be scheduled for the earliest possible date that can accommodate the parties and their witnesses.

Anti-Retaliation Policy

NYSID prohibits Retaliation against any person who reports Sexual Misconduct or participates in the investigation of any allegation of Sexual Misconduct, including testifying as a witness. Retaliation should be reported promptly to the Title IX Coordinator. Reports of Retaliation will be investigated in accordance with the appropriate NYSID policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of Sexual Misconduct.

VI. PROCEDURES FOR RESPONDING TO A COMPLAINT OF SEXUAL MISCONDUCT

NYSID is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of Sexual Misconduct. Incidents of sexual misconduct should be reported to the Title IX Coordinator. If an incident of Sexual Misconduct is reported to another NYSID employee, with the exception of those employees designated above as confidential, such employee will report the incident to the Title IX Coordinator.

Initial Steps

Intake Meeting with Complainant

Upon notice of any allegation of Sexual Misconduct, the Title IX Coordinator will schedule an individual intake meeting with the Complainant within 1 business day of receiving notice. At the intake meeting, the Title IX Coordinator will provide the Complainant with a general understanding of this policy, and identify forms of support or immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers). The Title IX Coordinator will also provide the Complainant with a written explanation of his or her rights and options with respect to his or her report of Sexual Misconduct. The intake meeting may also involve a discussion of any accommodations that may be appropriate concerning the Complainant's academic schedule, housing, and/or employment arrangements. Additional information regarding interim accommodations is set forth in the Interim Measures section below.

At the initial intake meeting, the Title IX Coordinator will seek to determine how the Complainant wishes to proceed, i.e., whether the Complainant wishes to pursue Formal Resolution, Informal Resolution (not available for complaints of sexual violence), or does not wish to pursue resolution of any kind. Regardless of how the Complainant chooses to proceed, NYSID seeks to resolve every report of Sexual Misconduct within 60 calendar days of the initial report, excluding any appeal. The time frames included in this policy may vary depending on the details of the complaint and, in some cases, the time of the academic year (e.g., during school breaks or final exams). NYSID may extend any time frame for good cause, provided the Complainant and Respondent are given a written explanation as to the reason for such extension.

If the Complainant wishes to proceed with either Formal Resolution or Informal Resolution, the Title IX Coordinator will ascertain the name of the Respondent, and the date, location, and nature of the alleged Sexual Misconduct. The Title IX Coordinator will ask the Complainant to submit a written statement to the appointed Investigator of her/his narrative of the incident within 1 business day.

If the Complainant does not wish to pursue Formal Resolution or Informal Resolution, and either requests that his or her complaint remain confidential, or refuses to participate in the initial intake meeting with the Title IX Coordinator, the Title IX Coordinator will inform the Complainant that NYSID's ability to respond may be limited. In such scenarios, Title IX nevertheless requires NYSID to evaluate the Complainant's request(s) for no action in the context of NYSID's commitment to provide a reasonably safe and non-discriminatory environment for its entire community. NYSID will make every effort to honor a Complainant's request for anonymity, and the Title IX Coordinator will explain the

potential for conclusions to be drawn about the Complainant's identity should a Formal Resolution process be determined to be necessary to protect the NYSID community.

Interim Measures

In all complaints of alleged Sexual Misconduct, the Title IX Coordinator will initiate an appropriate inquiry and take immediate protective measures to support and protect the Complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, after the intake meeting, the Title IX Coordinator may impose a No Contact Order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the fact-finding and, if applicable, the adjudication.

Any student who has been the victim of Sexual Misconduct may request assistance in changing academic, living, transportation, and working situations after a report of Sexual Misconduct. The Title IX Coordinator will evaluate and ensure such accommodations are made, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement. When taking such steps to separate the Complainant and the Respondent, NYSID will, to the extent practical, minimize the burden on the Complainant.

The Complainant and Respondent can seek review of the need for and terms of any No Contact Order, interim measures, and other accommodations granted.

To ensure the safety and well-being of the Complainant, the Title IX Coordinator may also take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, which may include directing appropriate officials to alter the students' academic, transportation, housing, and/or employment arrangements, or other appropriate protections. In addition, if the Respondent is a student determined to pose a continuing threat to the health and safety of the NYSID community, the Respondent may be subject to an interim suspension from NYSID.

Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

Effect of Criminal Proceedings

Sexual Misconduct may constitute a violation of both law and NYSID policy. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic

evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Therefore, criminal investigations or reports are not determinative of whether Sexual Misconduct, for purposes of the policy, has occurred. In other words, conduct may constitute Sexual Misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

The filing of a complaint of Sexual Misconduct under this policy is independent of any criminal investigation or proceeding. NYSID will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or take any necessary interim measures to protect the Complainant and the NYSID community. However, NYSID 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. Such delay should not last longer than 10 days except when law enforcement requests and justifies a longer delay.

Formal Resolution

The Formal Resolution process includes three phases: 1) fact-finding, 2) adjudication, and 3) determination. In most cases, all three phases will occur. However, in cases in which no Respondent is identified or where a victim wishes to remain confidential or does not wish to pursue corrective action, and the Title IX Coordinator has determined, after reviewing the incident and/or Complainant's request against the factors listed in the Confidentiality section above, that the Respondent does not pose a risk to the community, only the fact finding phase may occur.

Fact Finding

If the Complainant wishes to proceed with Formal Resolution, the Title IX Coordinator will promptly initiate an official investigation and will immediately appoint an Investigator to conduct the fact finding for the complaint and provide the Investigator with the names of the Complainant and Respondent and the date, location, and nature of the alleged Sexual Misconduct.

Fact finding will commence within 1 business day of the Title IX Coordinator's appointment of the Investigator. In most cases, the investigation will be conducted by a trained Investigator appointed by the Title IX Coordinator. In some cases, the Title IX Coordinator may conduct the fact finding phase.

Fact finding is separate and distinct from the adjudication phase. During the fact finding phase, the Investigator will meet individually with parties involved, and may interview witnesses and collect and review such evidence as the Investigator deems necessary or helpful to the investigation into the alleged Sexual Misconduct, including written statements from the parties involved. The purpose of fact finding is to gather any and all information related to a report of Sexual Misconduct.

The Title IX Coordinator, will send the Complainant and Respondent an official letter that outlines the allegations of the complaint, which will include the date, time, location, and factual allegations about the violation, sections of the code of conduct violated, and possible sanctions. The letter will also identify the Investigator and direct the Respondent and Complainant to schedule meetings with the Investigator.

At least 3 business days prior to their meeting with the Investigator, the Respondent and Complainant will each provide the Investigator with a list of witnesses they wish to be called, copies of documents, and a description of any other information they propose to provide as evidence. The Investigator will provide each party with a copy of the list of witnesses and identification or copies of documents or other information submitted by each party

NYSID may arrange for the interviews with the Investigator to be recorded, and may arrange for the preparation of any transcript of the recording that NYSID deems appropriate. The interviews will be conducted by the Investigator as follows:

- As a non-adversarial process, interviews will not follow a courtroom model, and formal rules of evidence will not be observed.
- A record of the interviews will be kept by transcripts, recording, or other appropriate record. Such record shall be preserved and maintained for at least 5 years from the date of the interview.
- If either party fails to attend the interview, the Investigator may proceed and determine the complaint on the basis of the evidence available.
- Both the Complainant and the Respondent may have an advisor of their own choosing, present to support and assist them during the interview, and appeal stages of the Formal Resolution process. An advisor may not direct questions to the Investigator, but may consult with the party that he or she is assisting. The Investigator will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the interviews.

- After reviewing all documents pertaining to the case, as necessary, the Investigator may recall parties or witnesses for additional questioning.
- At no time will the Complainant and Respondent be questioned at the same time or be permitted to question each other.
- At any time during the fact finding phase, the Investigator may interview witnesses and collect and review such evidence as the Investigator deems necessary or helpful to his or her investigation into the alleged Sexual Misconduct.

If the Investigator determines that unresolved issues exist that would be clarified by the presentation of additional information, the Investigator may delay the process in a timely manner to receive such information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other information that should have been presented by the Complainant or Respondent at least 3 business days in advance of their interviews with the Investigator.

Once the investigation is complete, the Investigator will provide a written report of the findings of the investigation to the Title IX Coordinator, including a determination as to whether the evidence presented supports the charge against the Respondent. The Title IX Coordinator will contact the Complainant with the final charges and confirm a desire to move forward before proceeding to adjudication as permissible within the constraints of ensuring campus safety.

In order to comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), documents prepared in anticipation of fact finding, or other information introduced in the fact finding phase and any transcript of the interviews may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or NYSID policy.

Adjudication and Determination

In all investigations into alleged Sexual Misconduct, NYSID will evaluate evidence under a preponderance of the evidence standard. A preponderance of the evidence means that information shows it is more likely than not that the Respondent violated this policy and that sexual conduct occurred without Affirmative Consent.

The Respondent will be found to be responsible for the alleged Sexual Misconduct if the Investigator concludes, based upon careful review of all information presented, that it is more likely than not that such Sexual Misconduct occurred. The Investigator shall determine whether the Respondent is responsible for Sexual Misconduct, and will recommend the corrective measures and/or sanctions necessary for ensuring the

protection of the Complainant and the community to the Dean of Students. The Investigator will provide a written statement of these determinations, which will include factual findings that support the determination and rationale for the decision and sanctioning recommendation, to the Title IX Coordinator. After reviewing the Investigator's written statement, the Dean of Students will determine the sanction.

Sanction

The Dean of Students may consider suspension or expulsion for any student found responsible for Sexual Misconduct; however, he or she may impose any of the following sanction(s) that are determined to be fair and proportionate to the violation:

- Reprimand or warning
- Changing the Respondent's academic schedule
- Disciplinary probation
- Revocation of honors or awards
- Restricting the Respondent's access to NYSID facilities or activities
- Community service
- Issuing a No Contact Order to the Respondent or requiring that such an order remain in place
- Changing the Respondent's housing assignment
- Dismissal from or restricting or reassignment of employment
- Removing the Respondent from student housing
- Suspension (limited time or indefinite)
- Expulsion
- Revocation of degree

In determining an appropriate sanction(s), the Dean of Students will consider any existing record of past violations of NYSID policies, as well as the nature and severity of such past violation(s). The Dean of Students will consider as part of the deliberations whether the Respondent poses a continuing risk to the Complainant and/or the NYSID community. Either party may make or submit an impact statement to the Dean of Students during the sanctioning phase. The rationale for any sanction imposed will be explained and supported in the written decision of the Dean of Students.

Within 5 business days from the conclusion of the adjudication the Dean of Students will issue a determination letter to the Respondent and the Complainant. Both parties, concurrently, will receive a copy of this determination letter.

The determination letter will contain only the following information: (i) the name of the Respondent; (ii) whether the Respondent has been found responsible or not responsible for specific violation(s) of the Sexual Misconduct policy; (iii) the sanction imposed, if any; (iv) NYSID's appeal process; (v) any change to the results that occurs prior to the time that the results become final; and (vi) when the results become final. Both the Respondent and the Complainant have a right to this information. The determination letter may not be disclosed except where disclosure is authorized or required by law.

Transcript Notations

For crimes of violence, including sexual violence, NYSID will make a notation on the transcript of a student found responsible through the hearing process in cases where the sanction includes suspension or expulsion that the student was "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the Respondent who withdraws from NYSID while such conduct charges are pending, and declines to complete the disciplinary process, NYSID will make a notation on the transcript that the student "withdrew with conduct charges pending." Respondents may seek removal of a transcript notation for a suspension, but the notation shall not be removed until 1 year after the conclusion of the suspension. Exclusion notations shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation will be removed.

Appeal

Either party may appeal the determination of the Investigator and/or the disciplinary decision of the Dean of Students. A party has three grounds under which to appeal the determination: (i) the Investigator committed procedural errors that had an impact on the decision, (ii) there is new evidence that was not reasonably available at the time of the fact finding process, or (iii) the sanctions are not consistent with past practices or the severity of the alleged Sexual Misconduct.

Final sanctions are in effect until any timely appeal of the decision is resolved. The Dean of Students may suspend the determination pending exhaustion of appeal, allow the student to attend classes or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable. Interim measures will remain in effect until the appeal is resolved.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the determination of responsibility and/or the sanction must file a **notice of intent to appeal** within 5 business days of the date the party

is notified of the Investigator's findings and the sanctions of the Dean of Students. The intention to file an appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. This notice of intent to appeal must contain the party's grounds for the appeal.

2. Within 2 weeks of filing a notice of intent to appeal, the party's formal appeal must be filed with the Title IX Coordinator. The party should submit copies of any and all material the party wishes to provide as evidence for his/her appeal.
3. An appeal panel of 2 trained members will be appointed by the Title IX Coordinator to review the appeal. All members of the appeal panel will be free of conflicts of interest in the case. Except for appeals brought under (ii) above, the appeal panel's entire review process will be based on the party's appeal and the Investigator's record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.
4. The appeal panel will make a final determination on the appeal. The appeal panel shall render its decision regarding the appeal within 20 calendar days, and will provide written notice of such determination to the Dean of Students, and issue a final determination letter to the Respondent and the Complainant. Both parties, concurrently, will receive a copy of this final determination letter.

Informal Resolution

A Complainant who wishes to file a formal complaint but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as Informal Resolution. The Informal Resolution procedure is not available for complaints of Sexual Assault.

If the Complainant wishes to proceed with Informal Resolution, the Title IX Coordinator will ascertain the name of the Respondent, and the date, location, and nature of the alleged Sexual Misconduct, and, within 2 business days, will schedule an individual intake meeting with the Respondent in order to provide to him or her with a general understanding of the policy.

Informal Resolution provides an opportunity for the Complainant to confront the Respondent in the presence of, and facilitated by the Dean of Students, and to communicate his or her feelings and perceptions regarding the incident, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The Respondent will have an opportunity to respond. The Respondent is expected to attend this meeting and participate in any investigation.

The Complainant and the Respondent each may bring an advisor to the Informal Resolution. Advisors are subject to the same restrictions set forth for advisors in Formal Resolution, outlined above. The Dean of Students will preside over the Informal Resolution and may elect to be assisted by another NYSID staff member.

If, in the course of the Informal Resolution, the Respondent admits to violating the NYSID Student Sexual Misconduct Policy, that admission will serve as a finding of responsibility that is final and cannot be appealed. The Dean of Students will recommend a sanction, which the Respondent can accept or reject. The sanctions that may be imposed as the result of the Informal Resolution process are the same as those outlined in the Formal Resolution process above. If the recommended sanction of the Dean of Students is accepted, the process is concluded. If the recommended sanction is rejected, the complaint will proceed to the Formal Resolution sanctioning process. In such case, all information gathered during the Informal Resolution process will be made available to the Adjudicator in the Formal Resolution sanctioning process.

Informal Resolution may result in the imposition of protective actions agreed upon by the parties, or (with or without such agreement) based on information derived from the Informal Resolution taken together with any other relevant information known to NYSID at the time of the Informal Resolution.

NYSID may, at any time, elect to end such proceedings and initiate Formal Resolution instead. Statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the Formal Resolution.

In order to promote honest, direct communication, information disclosed during Informal Resolution must remain private, except where disclosure may be required by law or authorized in connection with duties on behalf of NYSID.

VII. PREVENTION AND AWARENESS EDUCATION PROGRAMS

Creating a safe and respectful environment is the responsibility of all members of the NYSID community. To promote and maintain this environment, NYSID engages in comprehensive educational programming to prevent Sexual Misconduct, including Sexual Harassment, Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Retaliation. NYSID provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees.

NYSID educates the student community about Sexual Misconduct through the following programs:

New Student Orientation Workshops and Informational Sessions

Sexual Misconduct Information Sessions and Workshops hosted by New York Presbyterian/Weill Cornell Medical Center Victim Intervention Program

Smart Phone Apps with ongoing educational programming and information

Student Leadership Training

Quarterly dissemination of publications and information pertaining to Sexual Misconduct