



Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024)

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NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024)

The New York Film Academy (NYFA) is committed to creating and maintaining a learning, living, and working environment free of harassment and violence where healthy, respectful, and consensual conduct represents the campus cultural norm.

Consistent with this commitment and complying with all applicable laws and governmental regulations, this Policy establishes a standard of zero tolerance for Sex Discrimination, as defined by the Final Rule under Title IX of the Educational Amendments of 1972, and all other forms of Sexual Misconduct. NYFA will promptly respond in a fair and impartial manner to all allegations of Sex Discrimination and Sexual Misconduct, provide assistance and support to those affected, and take appropriate disciplinary action upon finding a violation of this Policy.

Sex-Based Harassment is considered Discrimination on the basis of Sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

How does the Title IX Sex Discrimination and Sexual Misconduct Grievance Policy Impact Other Campus Disciplinary Policies?

NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy addresses all forms of sexual misconduct including sex discrimination and harassment as defined by the 2024 Title IX Regulations.

NYFA remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule addressed in this Policy. Specifically, **NYFA's Student Code of Conduct** and **NYFA's Employee Standards of Conduct** define certain behavior as a violation of campus policy.

The process and procedures established in NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy have no effect and are not applicable to any other NYFA policy for any violation of the Student Code of Conduct, employment policies, or any Civil Rights violation except as narrowly defined in this Policy. However, if the alleged conduct includes conduct that *would* constitute Sex Discrimination or Sexual Misconduct *and conduct that would not* constitute Sex Discrimination or Sexual Misconduct, the appropriate Policy will be applied to address the different types of allegations as appropriate and with NYFA's discretion.

I. Effective Date Changes to Procedure Based on Court Rulings and Legal Challenges or changes in Law or Regulation

Effective Date

NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024) will become effective on August 1, 2024, and will apply to alleged Sex Discrimination and Sexual Misconduct which occurs on or after August 1, 2024. Alleged Sex Discrimination and Sexual Misconduct that occurs on or before July 31, 2024 will be processed through **NYFA's Title IX Grievance Policy and Procedure (2020)** or **NYFA's Sexual Misconduct Policy (2020)**. This Title IX Sex Discrimination and Sexual Misconduct Grievance Policy will not be applied retroactively.

Should any portion of the 2024 Title IX Final Rule ([89 Fed. Reg. 33474](#) (Apr. 29, 2024)), be stayed or held invalid by a court of law which has jurisdiction over a New York Film Academy campus, or if the 2024 Title IX Final Rule is withdrawn or modified so as to be in conflict with NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024), then NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024) shall be deemed modified to be consistent with such ruling or order as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024) is revoked or modified in this manner, any conduct covered under NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024) shall be investigated and adjudicated under NYFA's previous Title IX Grievance Policy (2020) and/or Sexual Misconduct Policy (2020). NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024) will be updated as soon as practicable to reflect any court rulings or changes that invalidate parts of NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024), if applicable.

II. Scope and Jurisdiction of Procedure

Jurisdiction

NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy covers forms of Sexual Misconduct, including Sex Discrimination and Harassment as defined in the 2024 Title IX Regulations that would interfere with an individual's ability to equally access NYFA educational activities and programs, or for employees and staff, work activities. This Policy applies to NYFA students, student groups, faculty, staff, and third parties.

NYFA's Title IX Coordinator or designee will determine if this Policy applies to a Complaint. This Policy will apply when the following conditions are met:

1. The alleged conduct occurred on or after August 1, 2024;
2. The alleged conduct occurred in the United States. For incidents alleged of Sexual Assault, Domestic Violence, Dating Violence, and Stalking that occurred off-campus or during study abroad, the conduct alleged will be subject to the jurisdiction of this Policy;
3. The conduct alleged occurred in NYFA's Education Program or Activity; and;
4. The conduct alleged, if true, would constitute Sex Discrimination, Sex-Based Harassment, or Sexual Misconduct, as defined in this Policy.

NYFA has an obligation to address a Sex-Based Hostile Environment under its Education Program or Activity, even when some conduct alleged to be contributing to the Hostile Environment occurred outside of NYFA's Education Program or Activity, or outside of the United States. NYFA's Title IX Coordinator will work with all appropriate NYFA policies and procedures that may apply if this Policy does not.

Incidents of alleged Discrimination or Harassment that are based on Protected Statuses that are not pregnancy or related conditions, sex, sex stereotypes, sex characteristics, sexual orientation, or gender identity will be reviewed under NYFA's Discrimination, Harassment, and Retaliation Policy or other NYFA policies as appropriate and with NYFA's discretion.

NYFA will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Policy as outlined in the Appeals of Dismissals section below.

If all elements of jurisdiction are met, NYFA will investigate the allegations according to this Policy as appropriate, unless Informal Resolution is pursued or there are grounds for dismissal of the complaint.

Other Relevant NYFA Policies and Procedures

- Student Code of Conduct
- Discrimination, Harassment, and Retaliation Policy
- Bias-Related and Hate Crime Prevention Policy
- Student Grievance and Resolution Process
- Employee Prohibition Against Harassment, Discrimination & Retaliation
- Employee Standards of Conduct
- Employee Grievance Policy
- Title IX Grievance Policy and Procedure (2020)
- Sexual Misconduct Policy (2020)

III. Non-Discrimination in Application

The requirements and protections of NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy (2024) apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policies or processes may contact the Department of Education's Office for Civil Rights:

Students, faculty, and staff at the New York City campus may contact:
Office for Civil Rights U.S. Department of Education
32 Old Slip, 26th Floor, New York, NY 10005-2500
Telephone: 646-428-3900; Fax: 646-428-3843; TDD: 800-877-8339
Email: OCR.NewYork@ed.gov

Students, faculty, and staff at the Los Angeles campus may contact:
Office for Civil Rights U.S. Department of Education
50 United Nations Plaza, San Francisco, CA, 94102
Telephone: 415-486-5555; Fax: 415-486-5570; TDD: 800-877-8339
Email: OCR.SanFrancisco@ed.gov

Students, faculty, and staff at the Miami campus may contact:
Office for Civil Rights U.S. Department of Education
61 Forsyth St. S.W., Suite 19T10, Atlanta, GA, 30303-8927
Telephone: 404-974-9406; Fax: 404-974-9471; TDD: 800-877-8339
Email: OCR.Atlanta@ed.gov

IV. Definitions

Accused means a person accused of a violation who has not yet entered an institution's judicial or conduct process.

Admission means a selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by NYFA.

Bad Faith Complaint of Sex Discrimination or Sexual Misconduct means knowingly reporting a false allegation of Sex Discrimination or Sexual Misconduct, making a false

counter-complaint, or providing false information related to a complaint of Sex Discrimination or Sexual Misconduct.

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

Code of Conduct means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.

Consent means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.

1. 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.
2. Silence or lack of resistance, in and of itself, does not demonstrate consent.
3. The definition of consent does not vary based on a participant's sex, sexual orientation, gender identity, gender expression or relationship status.
4. 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.
5. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
6. Consent may be initially given but withdrawn at any time.
 - a. When consent is withdrawn or can no longer be given, sexual activity must stop.
7. 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.
 - a. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent.
 - b. 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.
 - c. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
8. Consent is active, not passive, and cannot be assumed. If there is confusion or ambiguity, individuals need to stop sexual activity and communicate about each person's willingness to continue.

Complainant means:

1. A student or employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination or Sexual Misconduct as defined in this Policy and who was participating or attempting to participate in NYFA's Education Program or Activity; or

2. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination or Sexual Misconduct under this Policy and who was participating or attempting to participate in NYFA's Education Program or Activity at the time of the alleged Sex Discrimination or Sexual Misconduct.

A Complainant may also be referred to as a Reporting Individual in this Policy, in alignment with New York State Education Law Article 129-B.

Complaint means an oral or written request to NYFA that objectively can be understood as a request for NYFA to investigate and make a determination about alleged Sex Discrimination or Sexual Misconduct at the institution.

Confidential Employee is an employee of NYFA whose communications are privileged or confidential under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

Disciplinary Sanctions means consequences imposed on a Respondent following a determination under this Policy that the Respondent violated NYFA's prohibition on Sex Discrimination and Sexual Misconduct.

Education Program or Activity means any academic extracurricular, research, occupational training or other Education Program or Activity operated by NYFA that receives Federal financial assistance.

Employee means any person hired by NYFA to perform a job function as faculty or staff.

Party means Complainant or Respondent.

Peer Retaliation means Retaliation by a Student against another Student.

Pregnancy or Related Conditions means

1. Pregnancy, childbirth, termination of pregnancy, or lactation;
2. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
3. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Relevant means related to the allegations of Sex Discrimination under investigation as a part of this Policy. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex Discrimination occurred, and evidence is Relevant when it may aid a Decision-Maker in determining whether the alleged Sex Discrimination occurred.

Remedies means measures provided, as appropriate, to a Complainant or any other person NYFA identifies as having had their equal access to NYFA's Education Program or Activity limited or denied by Sex Discrimination or Sexual Misconduct. These measures are provided to restore or preserve that person's access to NYFA's Education Program or Activity after NYFA determines that Sex Discrimination or Sexual Misconduct occurred.

Respondent means a person who is alleged to have violated NYFA's prohibition of Sex Discrimination or Sexual Misconduct.

Retaliation means intimidation, threats, coercion, or discrimination against any person by NYFA, a student, or an employee or other person authorized by NYFA to provide aid, benefit, or service under NYFA's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner of an investigation, proceeding, or hearing under this part, including in an informal resolution process.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. Retaliation is a violation of this Policy whether or not the underlying complaint is found to be a violation of Policy.

Student means a person who has gained Admission.

Student Group means any number of persons from the NYFA community who have created a group or organization which:

1. Has satisfied the administrative procedures for recognition, or
2. Is functioning within NYFA's community in the capacity of a student group.

Supportive Measures means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that Party's access to NYFA's Education Program or Activity, including measures that are designed to protect the safety of the Parties or NYFA's educational environment;
2. Provide support during NYFA's grievance procedures or during the informal resolution process for Sex Discrimination or Sexual Misconduct.

Third Party means an individual who is not a NYFA student, faculty, or staff member. Third parties may be visitors and guests who enter NYFA property or a NYFA-sponsored event.

Witness means a student, employee, or third party who was present and/or has information about alleged incident(s) of Sex Discrimination or Sexual Misconduct.

Working Days means Monday through Friday, excluding all official holidays or NYFA campus closures.

Definitions of Prohibited Conduct

1. **Sex Discrimination** is one or more acts of Discrimination on the basis of sex, including because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other related conditions.
 - A. **Sex-Based Harassment** is a form of Sex Discrimination that means sexual harassment (unwelcome conduct of a sexual nature) and other harassment on the basis of sex, including:
 - (1) **Quid Pro Quo Harassment** - an employee, agent, or other person authorized by NYFA to provide aid, benefit, or service under NYFA's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
 - (2) **Hostile Environment Harassment** is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from NYFA's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - a. The degree to which the conduct affected the Complainant's ability to access NYFA's education program or activity;
 - b. The type, frequency, and duration of the conduct;
 - c. The Parties' ages, roles within NYFA's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
 - d. The location of the conduct and the context in which the conduct occurred; and
 - e. Other sex-based harassment in NYFA's education program or activity; or
 - (3) **Sexual Assault** (as defined in the Clery Act) is any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving consent. This includes the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

(4) **Dating Violence** (as defined in the VAWA Amendments to the Clery Act) is any violence committed by a person

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim and;
- b. Where the existence of such a relationship shall be determined based on consideration of the following factors:
 1. The length of the relationship;
 2. The type of relationship; and
 3. The frequency of interaction between the persons involved in the relationship

(5) **Domestic Violence** (as defined in the VAWA amendments to the Clery Act) is one or more felony or misdemeanor crimes committed by a person who

- a. Is a current or former spouse or intimate partner of the victim;
- b. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- c. Shares a child in common with the victim; or
- d. Commits acts against a youth or adult victim who is protected from those acts under the family or that person's acts under the domestic or family violence laws of the state. For acts of domestic violence occurring at the New York campus, New York state law will apply; for the Los Angeles campus, California state law will apply; for the Miami campus, Florida state law will apply.

(6) **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

2. **Sexual Misconduct** is any other unwelcome and/or unwanted behavior of a sexual nature not described above that is committed without Consent, creates a hostile environment, and/or has the purpose or effect of threatening, intimidating, or coercing a person. Sexual misconduct may vary in severity and may consist of a range of behaviors or attempted behaviors. It can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can occur between members of the same or different sex or gender.

A. **Interpersonal violence** are behaviors that are not physical in nature between individuals in dating or domestic relationships, as defined by the VAWA Amendments to the Clery Act, that cause one to fear for their safety and well-being. Examples of behaviors may include but are not limited to non-physical abuse (mental, emotional, financial), monitoring behaviors that

a reasonable person would consider to be inappropriate, coercion, or the controlling of monetary or tangible belongings.

- B. **Sexual Battery** is any intentional sexual contact, however slight, with any body part or object, without consent. Sexual contact includes contact above or beneath clothing with the breasts, buttocks, genitals, or areas directly adjacent to genitals (for instance, the inner thigh); touching another with any of these body parts; making another touch someone or themselves with or on any of these body parts; or any other bodily contact in a sexual manner.
- C. **Sexual Exploitation** is taking non-consensual or abusive sexual advantage of another person for the benefit or advantage of anyone, other than the exploited Party. Examples of sexual exploitation include, but are not limited to, the following:
 - (1) Causing or attempting to cause the incapacitation of another person to gain a sexual advantage
 - (2) Prostituting another person
 - (3) Non-consensual streaming, sharing, or recording of audio, video, or photography, or any type of distribution of such
 - (4) Engaging in sexual activity in the presence of a non-consenting third party
 - (5) Exposing genitals to a non-consenting third party or in a public area
 - (6) Watching others when they are naked or engaged in sexual activity without their consent
 - (7) Knowingly transmitting a sexually transmitted infection/disease to another individual without their consent
 - (8) Stealing of clothing

V. Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973 among others. The Parties and Witnesses may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX grievance procedure that do not fundamentally alter the procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties or Witnesses, even where the Parties or Witnesses may be receiving accommodations in other institutional programs and activities.

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with NYFA's Student Accessibility Services to provide support to students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of

any Supportive Measures, or any other reasonable accommodations requested during the grievance procedure.

VI. Parental, Family, Marital Status and Pregnancy or Related Conditions at NYFA

NYFA shall not adopt or implement any policy, practice, or procedure, concerning a student or employee's current, potential, or past parental family or marital status that treats students, employees, or employee applicants differently on the basis of sex.

NYFA shall not discriminate in its employment, education program or activity against any employee or student based on the employee or student's current, potential, or past pregnancy related conditions. NYFA does not engage in prohibited Discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity if NYFA ensures the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions. Requests for academic or employment accommodations due to pregnancy or related conditions are processed in compliance with Title IX regulations and ADA/Section 504, when applicable.

Reasonable Modifications

NYFA shall make reasonable modifications to prevent Sex Discrimination and ensure equal access to NYFA's education program or activity. Each reasonable modification is based on the student's individualized needs following a consultation with that student. A modification that NYFA can demonstrate fundamentally alters the nature of its education program or activity is not a reasonable modification.

Reasonable modifications may include, but are not limited to, breaks during class (students) or scheduled work hours (employees) to express breast milk, breastfeed, or attend health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student or employee to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

Students may take a voluntary leave of absence from NYFA's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a student qualifies for leave under NYFA's leave policy that allows a greater period of time than the medically necessary period, a student may opt to take leave under this policy instead. Upon the student's return to

NYFA's education program or activity, the student will be reinstated to academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

Lactation Spaces

NYFA has lactation spaces available for employee and student use on each campus. Lactation rooms are not a bathroom and are clean, shielded from view, free from intrusion from others, and may be used by a student or employee for expressing breast milk or breastfeeding as needed. For access to a lactation space, students and employees may contact NYFA's Title IX Coordinator to inquire. Employees are also encouraged to contact Human Resources.

Supporting Documentation

NYFA does not require supporting documentation for reasonable accommodations processes for pregnancy or related conditions for students unless the documentation is necessary and reasonable for NYFA to determine the reasonable modifications to make or whether to take additional specific actions. Examples of situations when supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided NYFA with sufficient supporting documentation; when the reasonable modification is allowing a student to carry or keep water nearby to drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when a student has lactation needs; or when the specific action is available to students for reasons other than pregnancy or related conditions without supporting documentation.

To the extent possible, NYFA treats pregnancy or related conditions in the same manner as other temporary medical conditions with respect to NYFA's student insurance plan with respect to admitted students.

NYFA does not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in NYFA's class, program, or extracurricular activity unless:

1. The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
2. NYFA requires certification of all students participating in the class, program, or extracurricular activity; and
3. The information obtained is not used as a basis for Discrimination prohibited.

VII. Education and Prevention

Education and Prevention Programs

In an effort to uphold the goals of this Policy, NYFA conducts prevention and awareness training for students, faculty, and staff. NYFA engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, stalking, and all other forms of sexual misconduct. Our prevention and awareness training programs:

1. Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome; and
2. Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

Primary and ongoing prevention and awareness programming for students, faculty, and staff provides information regarding:

1. NYFA's prohibition of crimes of dating violence, domestic violence, sexual assault, and stalking and the types of behaviors that constitute said crimes,
2. What affirmative consent is and what it is not,
3. Safe and positive options for bystander intervention,
4. Risk reduction, and
5. Options and resources for victims of covered sexual harassment as defined under this Policy.

Bystander Intervention

Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of sexual assault, dating violence, domestic violence, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

Bystanders play a critical role in the prevention of sexual and relationship violence. They are individuals who observe violence or witness the conditions that perpetuate violence. They are not directly involved but have the choice to intervene, speak up, and prevent and interrupt an incident. We want to promote a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm.

Darley and Latane, the forefathers of bystander intervention, identified five stages that people move through when taking action in a problematic situation, See, [Journal of Personality and Social Psychology](#). These stages may not be linear.

1. Notice potentially problematic situations
2. Identify when it's appropriate to intervene
3. Recognize personal responsibility for intervention
4. Know how to intervene
5. Take action to intervene

There are a range of actions NYFA community members can take to intervene and help de-escalate potential acts of violence. Once a potential problem has been identified, the following actions can be used to safely intervene:

1. Direct: Directly intervene and voice concern. For example, saying: "Are you okay?" "You look really upset." "How can I help?"
2. Distract: Do something to create a distraction that discontinues the harmful behavior. For example: Spill a drink, ask for directions, tell the abuser their car is being towed.
3. Delegate: Ask for help and delegate the intervention to someone else.

Being an active bystander does not mean that personal safety should be compromised. There are a range of actions that are appropriate, depending on the individual intervening and the situation at hand. If safety is ever a concern, leave the situation and seek outside help (delegate) - that's still bystander intervention!

Risk Reduction

To reduce the likelihood that an individual may become the victim of sexual violence, there are risk reduction actions one may consider. Risk reduction means options designated to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

With no intent to victim blame and recognizing that only abusers are responsible for their abuse, the following are some strategies to reduce one's risk of sexual assault or harassment (taken from Rape, Abuse, & Incest National Network, www.rainn.org):

1. Be aware of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
2. Try to avoid isolated areas. It is more difficult to get help if no one is around.
3. Walk with purpose. Even if you don't know where you are going, act like you do.
4. Trust your instincts. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
5. Try not to load yourself down with packages or bags as this can make you appear more vulnerable.

6. Make sure your cell phone is with you and charged and that you have money for a taxi or ride-share.
7. Don't allow yourself to be isolated with someone you don't trust or someone you don't know.
8. Avoid putting music headphones in both ears so that you can be more aware of your surroundings, especially if you are walking alone.
9. When you go to a social gathering, go with a group of friends. Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
10. If you feel unsafe in any situation, trust your instincts. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
11. Don't leave your drink unattended while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
12. Don't accept drinks from people you don't know or trust. If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from punch bowls or other large, common open containers.
13. Watch out for your friends, and vice versa. If a friend seems out of it, is too intoxicated, or is acting out of character, get your friend to a safe place immediately.
14. If you suspect you or a friend has been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.). Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
15. If you need to get out of an uncomfortable or scary situation here are some things that you can try:
 - a. Remember that being in this situation is not your fault. You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
 - b. Be true to yourself. Don't feel obligated to do anything you don't want to do. "I don't want to" is a good enough reason. Do what feels right to you and what you are comfortable with.
 - c. Have a code word with your friends or family so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
 - d. Lie. If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.

16. Try to think of an escape route. Consider answering these questions about your surroundings: How would you get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
17. If you and/or the other person have been drinking, you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

VIII. Reporting Sex Discrimination or Sexual Misconduct

Confidential Reporting

Student Complainants, Respondents, and Witnesses who want someone to talk to, but do not want to report the incident to NYFA, may have a conversation with the individuals on campus identified below who have a professional requirement to maintain confidentiality. The individuals on campus who are privileged and confidential resources when working in the following roles are listed below:

New York Campus - Counseling Services

17 Battery Place, 1st Floor

New York, NY 10004

CounselingNY@nyfa.edu

+1-212-674-4300

Los Angeles Campus - Counseling Services

3300 W. Riverside Drive, 4th Floor

Burbank, CA 91505

CounselingLA@nyfa.edu

+1-818-333-3558

Miami Campus - Counseling Services

420 Lincoln Road, 3rd Floor

Miami, FL 33139

CounselingSB@nyfa.edu

+1-305-318-7859

Faculty and staff Complainants, Respondents, and Witnesses may seek confidential consultation through NYFA's Employee Assistance Program. Faculty and staff can log into their online Paycom account for information on how to access this program and/or contact Human Resources for more information.

There are certain circumstances under state and federal law that require or allow mental health professionals to break confidentiality, without consent if necessary.

These include circumstances where there is serious danger to self or others, suspicion of child or elder abuse, or by court subpoena.

Privacy vs. Confidentiality

References made to “confidentiality” refer to the ability of identified confidential employees to not report crimes and violations to law enforcement or NYFA officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. For NYFA, the services and work product of NYFA’s licensed counselors in Counseling Services are confidential. NYFA notifies all students and employees about free confidential Counseling Service options and how to contact them.

References made to “privacy” mean NYFA offices and employees who cannot guarantee confidentiality will maintain 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, provide supportive measures, and/or seek a resolution.

NYFA’s confidential employees, Counseling Services, will inform any student that discusses they experienced conduct that could constitute Sex Discrimination or Sexual Misconduct about how to contact the Title IX Coordinator to file a complaint as well as an explanation of supportive measures and informal resolution and investigation processes the Title IX Coordinator can facilitate.

Community Resources and National Hotlines

Students, faculty, and staff may also access confidential resources located throughout the state and local communities. These organizations and national hotlines can provide a variety of resources including crisis intervention services, counseling, medical attention, and assistance dealing with the criminal justice system.

New York City

- Mount Sinai Beth Israel Victim Services Program:
<https://www.mountsinai.org/locations/beth-israel/support/social-work/victim-services>
- New York State Domestic Hotline and Office for the Prevention of Domestic Violence: <http://www.opdv.ny.gov/help/dvhotlines.html>
- Legal Momentum: <https://www.legalmomentum.org/>
- NYSCASA: <http://nyscasa.org/>
- NYSCADV: <http://www.nyscadv.org/>
- Anti-Violence Project: <http://www.avp.org>
- Safe Horizons: <http://www.safehorizon.org/>
- New York City Family Justice Centers:
<http://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>

Los Angeles / Burbank

- Peace Over Violence: <https://www.peaceoverviolence.org>
- Strength United: <https://www.csun.edu/eisner-education/strength-united/services>
- Rape Treatment Center, UCLA Medical Center: <https://www.uclahealth.org/locations/rape-treatment-center>
- YWCA Los Angeles: <https://www.ywcagla.org/sacs>
- YWCA Glendale, DV Project; <https://www.glendaleywca.org>
- Victim Assistance Program: <https://www.helpcrimevictims.org>
- Family Violence Program Burbank: <https://familyserviceagencyofburbank.org/>
- Rainbow Services: <http://rainbowservicesdv.org/>
- Jewish Family Services of Los Angeles: <https://www.jfsla.org>
- 1736 Family Crisis Center: <http://www.1736familycrisiscenter.org/>

South Beach / Miami

- Florida Council Against Sexual Violence: <https://www.fcasv.org>
- Domestic Violence Assistance Center: <https://www.myfloridalegal.com/victim-services-providers/coordinated-victim-assistance-center-cvac>
- Miami-Dade County Domestic Violence Assistance: https://www.miamidade.gov/global/service.page?Mduid_service=ser1502483183449106
- The Florida Bar : <https://www.floridabar.org>
- Roxy Bolton Rape Treatment Center: <https://jacksonhealth.org/locations/roxcy-bolton-rape-treatment-center/>
- Kristi House: <http://www.kristihouse.org/>
- Help Miami: <https://jcsfl.org/services/helpline/>

National Hotlines

- National Sexual Assault Hotline: 1-800-646-HOPE(4673)
- National Domestic Violence Hotline: 1-800-799-7233
- National Suicide Prevention Lifeline (call or text): 988
- Rape Abuse and Incest National Network (RAINN): 1-800-656-4673

Non-Confidential Reporting

Role of NYFA Title IX Coordinator

A NYFA Title IX Coordinator is responsible for carrying out the day-to-day responsibilities of enforcing this Title IX Sex Discrimination and Sexual Misconduct Grievance Policy for their assigned campus. Responsibilities include coordination of training, education, communications about, and administration of the Policies, and assisting the Complainant and Respondent (Parties) in applying the appropriate NYFA policy to the alleged conduct. The Title IX Coordinator collaborates with appropriate NYFA staff to implement supportive measures and help to effectively end sexual misconduct in a prompt and equitable

manner. A NYFA Title IX Coordinator may also designate other trained NYFA employees to carry out reasonable roles and responsibilities of this Policy.

Any person may report sexual misconduct (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual misconduct) in person, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for designated NYFA campus Title IX Coordinator

New York Campus and Online Programs

Susana Soto
Interim Title IX Coordinator
17 Battery Place
New York, NY 10004
NYtitle9@nyfa.edu
[NY Title IX Online Reporting Tool](#)
+1-212-674-4300

Los Angeles Campus

Susana Soto
Associate Dean of Students & Title IX Coordinator
3300 Riverside Drive, Room 114
Burbank, CA 91505
LAtitle9@nyfa.edu
[LA Title IX Online Reporting Tool](#)
+1-818-333-3577

Miami Campus

Susana Soto
Interim Title IX Coordinator
420 Lincoln Road
Miami, FL 33139
SBtitle9@nyfa.edu
[SB Title IX Online Reporting Tool](#)
+1-818-333-3577

Reports may be made at any time (including during non-business hours) by using the campus-specific Title IX Office email address, the campus-specific Title IX online reporting tool, or by telephone call to the associated campus-specific telephone number.

Employee Responsibility for Reporting and Training

Any employee who is not a confidential employee is required to inform the student about the Title IX Coordinator, the Title IX Coordinator's contact information, and the Title IX Coordinator's role to prevent Sex Discrimination as soon as a student discloses they are experiencing pregnancy or a related condition. A student may decide if they would like to contact the Title IX Coordinator to request reasonable modifications related to their pregnancy or related conditions.

Any employee who is not a confidential employee and who either has authority to institute corrective measures on behalf of NYFA or has responsibility for administrative leadership, teaching, or advising in NYFA's education program or activity must notify the Title IX Coordinator when they have information about conduct that may constitute Sex Discrimination or Sexual Misconduct and they may provide the Complainant with contact information of the Title IX Coordinator and information about how to make a complaint of Sex Discrimination or Sexual Misconduct. NYFA employees must disclose all information they have available when reporting forward, including the names of the Parties, even when the person has requested anonymity. NYFA encourages prompt reporting to allow for the collection and preservation of evidence that may be helpful during an investigation or criminal proceeding. A delay in filing a complaint may limit the Title IX Coordinator's ability to respond.

NYFA employees are not required to report alleged Sex Discrimination or Sexual Misconduct if the incident was brought forward and learned at a public awareness event hosted by NYFA to discourage incidents and culture of Sex Discrimination and Sexual Misconduct.

Note: Reporting requirements do not apply to any employee who has personally been subject to the alleged conduct that reasonably may constitute Sex Discrimination or Sexual Misconduct.

All NYFA employees are subject to annual Title IX training requirements, as required by federal regulations. Employees who participate in facilitating informal resolution processes and/or investigations will be subject to additional annual training requirements.

Considerations When Reporting

Non-Confidential Reports and Title IX Coordinators

NYFA encourages the campus community to report all incidents of Sex Discrimination and Sexual Misconduct to the appropriate Title IX Coordinator. The Title IX Coordinator is available to address any concerns, answer questions about this Policy, or receive

complaints about Sex Discrimination and Sexual Misconduct. Contact information for the Title IX Coordinators at each campus are located in the Title IX Coordinators section of this Policy (above).

Any person may report Sex Discrimination or Sexual Misconduct (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute Sex Discrimination or Sexual Misconduct), in person, by telephone, or by electronic mail (e-mail), using the contact information listed for the Title IX Coordinator, or by any other means that result in the Title IX Coordinator receiving the person's verbal or written report.

Timely Warnings

When a Sex Discrimination or Sexual Misconduct incident is reported to NYFA and involves an alleged crime that constitutes a serious or active threat to the campus community, NYFA will evaluate each incident on a case-by-case basis to determine if a timely warning notice will be distributed to the community to protect the health and safety of the community, in a manner consistent with the requirements of the Clery Act. In these instances, NYFA will not release personally identifying information about persons involved in an incident, unless identification of a Respondent is required by the timely warning for the safety of the campus community or is required by law. In addition, Counseling Services (confidential resources at NYFA) may submit anonymous statistical information for Clery Act purposes, unless they believe it would be harmful to their client, patient, or student.

NYFA may also share non-personally identifying information about reports received in aggregate form, including data about outcomes and sanctions. All NYFA proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act (as amended by VAWA), Title IX, state and local law, and NYFA policy.

Preserving Information

Physical information such as receipts, text messages, pictures, videos, emails, Facebook posts or messages, Snapchats, or other social media posts may be helpful during an investigation. Complainants, Respondents, and Witnesses are encouraged to gather said information because they will have the opportunity to present it during the investigation process. It is recommended that all emails, text messages, and social media posts related to the complaint be preserved in their entirety, even if the decision to submit a Complaint has yet to be made.

In incidents of Sex Discrimination or Sexual Misconduct, sexual assault, dating violence, domestic violence, or stalking, it is important to preserve evidence to aid in an institutional investigation, a legal process, and/or obtaining a protection order. Evidence

may be collected whether or not a Complainant chooses to make a report to law enforcement. Evidence of violence such as bruising or other visible injuries following an incident of dating or domestic violence should be documented and preserved with photographic evidence. Evidence of bullying, stalking and sex-based harassment, such as cyber communications, should also be preserved and not altered in any way.

Reporting to Hospitals and Medical Professionals

Seeking medical attention through emergency and follow-up services is recommended and can address physical well-being, health concerns, such as sexually transmitted diseases, and may provide a sexual assault forensic examination. While medical attention can be accessed at any medical facility, there are certain facilities that have specially-trained staff to conduct forensic exams. A forensic exam collects physical evidence, through vaginal and anal examinations, collections of fingernail scrapings and clippings, blood testing, etc., that may aid in an institutional investigation, a legal process, and/or the procurement of a protection order. A forensic exam may also test for and treat sexually transmitted diseases and pregnancy. The decision to obtain a forensic exam does not commit any individual to any course of action but does preserve the full range of options to seek resolution, if the individual chooses to in the future.

As time passes, evidence may dissipate or become unavailable, therefore it is recommended to obtain a sexual assault forensic exam as soon as possible following the alleged incident. Individuals are encouraged to not bathe, douche, smoke, use the toilet, or clean the location where the alleged incident occurred. Items that were worn or sheets and towels used during the alleged incident should be placed in a paper bag and brought to the forensic exam.

NYFA does not have health or medical centers on its campuses. If a student, faculty, or staff member is in need of medical assistance, NYFA will not provide transportation from campus but may assist in securing transportation and may accompany an individual, if requested. The hospitals and medical centers listed below have the ability to conduct a sexual assault forensic examination:

New York City

Mount Sinai Beth Israel Hospital, Manhattan
281 First Avenue
New York, NY 10003
+1-212-420-2000

Fort Greene Sexual Health Clinic, Brooklyn
295 Flatbush Avenue Extension
Brooklyn, New York 11201
+1-718-388-5889

Los Angeles / Burbank

Lakeside Community Healthcare Urgent Care
191 S Buena Vista St #150
Burbank, CA 91505
+1-818-295-5920

Cedars-Sinai Medical Center
8700 Beverly Blvd
Los Angeles, CA 90048
+1-310-423-3277

Santa Monica-UCLA Medical Center
Rape Treatment Center
1250 16th Street
Santa Monica, CA 90404
+1-424-259-7208

Keck Hospital - University of Southern California
1500 San Pablo Street
Los Angeles, CA 90033
+1-800-872-2273

South Beach / Miami

Jackson Memorial Hospital
Roxcy Bolton Rape Treatment Center
1611 NW 12th Avenue
Institute Annex, 1st Floor
Miami, FL 33136
+1-305-585-7273

Nancy J. Cotterman Center
Sexual Assault Treatment Center
400 NE 4th Street
Fort Lauderdale, FL 3301
+1-954-761-7273

Reporting to Law Enforcement

Complainants have the option to report to law enforcement in lieu of or in addition to reporting to the Title IX Coordinator. Reporting to law enforcement may start a criminal investigation and adjudication within the criminal justice system, which is a separate process from this Policy. NYFA supports any Complainant who chooses to make a police report and encourages Complainants to contact the law enforcement agency in the city where the incident occurred. The Title IX Coordinator can assist the Complainant in

locating the appropriate law enforcement agency. All Complainants will be informed of this reporting option and assured that the Title IX Coordinator will cooperate with any investigation to the extent possible under federal and local laws.

Students, faculty, and staff who want to make a police report in addition to, or in lieu of, reporting to NYFA may contact law enforcement directly by calling 911 for emergencies or:

- New York City Campus: New York Police Department, 1st Precinct, 212-741-4811
- Los Angeles Campus: Burbank Police Department, 818-238-3000
 - NYFA Security (LA), 818-415-3837
- Miami / South Beach Campus: Miami Beach Police Department, 305-673-7900

If a Complainant obtains a restraining order or protection order against another individual, the Complainant should notify the appropriate NYFA office for reasonable accommodations. A student Complainant is encouraged to disclose that information to the Title IX Coordinator, Dean of Students, or Campus Dean so NYFA can assist in making reasonable accommodations. A faculty or staff Complainant is encouraged to share information of a restraining order or protection order with Human Resources, in addition to the Title IX Coordinator.

The Title IX Coordinator or NYFA Security (LA) is available to assist individuals with obtaining a restraining order or protection order and assist law enforcement in effecting an arrest when an individual violates a restraining order or protection order. The Title IX Coordinator or NYFA Security (LA) is also available to help obtain more information about restraining orders or protection orders, specifically:

1. Answer questions about it, including information from the order about the Respondent's obligation to stay away from the person(s) seeking protection.
2. Explain the consequences for violating a restraining order or protection order, including but not limited to arrest, Student Conduct violations, Procedural Hold, or Administrative Leave.

VIX. NYFA Response to Reports of Sex Discrimination or Sexual Misconduct:

Any NYFA community member who reports incidents of Sex Discrimination or Sexual Misconduct to the Title IX office will be advised of their right to the following: Students, faculty, and staff who report to NYFA will be advised of their right to:

1. Notify and/or privately disclose the incident to NYFA Security (LA), local law enforcement, state police, and/or the state or local government;
2. Privately disclose the incident to NYFA Counseling Services, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals;

3. Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure;
 - a. The Title IX Coordinator or appropriate official will advise about the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
 - b. Provide guidance that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
 - c. Explain their abilities or limitations regarding confidentiality or privacy and inform the reporting individual of other reporting options;
4. File a report of Sex Discrimination and/or Sexual Misconduct, and the right to consult with the Title IX Coordinator and other appropriate NYFA staff for information and assistance. Reports shall be investigated in accordance with this Policy and a reporting individual's identity shall remain private upon request;
5. Privately disclose or report the incident to Human Resources or the right to request that a confidential or private employee assist in reporting if the Accused is a NYFA employee;
6. Receive assistance from the Title IX Coordinator or NYFA Security (LA) in initiating legal proceedings in family court or civil court; and
7. Withdraw a complaint or involvement at any time.

If the decision is made to report to the Title IX Coordinator or Human Resources, reporting individuals have the right to be protected from retaliation for reporting an incident and to receive assistance and resources from NYFA. Reporting individuals may choose to request supportive measures, including mental health support, to safely maintain access to NYFA (refer to the Supportive Measures section of this Policy for additional details).

Additionally, per NY Education Law Article 129B, reporting individuals in New York state will receive information on sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York State Office of Victim Services.

Request for Anonymity or Not to Proceed

A Complainant may request anonymity or ask that the Title IX Coordinator not pursue an investigation or take any other action. Such requests will be evaluated by the Title IX Coordinator. The Title IX Coordinator will determine whether the request can be honored and will determine the appropriate manner of resolution that is consistent with the Complainant's request to the degree possible. However, NYFA may need to take action to protect the health and safety of the Complainant and the campus community.

Requests for anonymity will be taken seriously, but cannot be guaranteed, as such requests may limit the Title IX Coordinator's ability to investigate and take reasonable action in response to a complaint. NYFA is committed to making reasonable efforts to protect the privacy of all individuals involved in the process and respect requests of Complainants. If the Title IX Coordinator determines that NYFA must proceed with an investigation despite the request of the Complainant, the Title IX Coordinator will notify the Complainant. The Complainant is not required to participate in the investigation, nor any subsequent actions taken by the institution.

Anonymity and non-investigation requests will be weighed against various factors, including but not limited to the following:

1. Whether the Accused has a history of violent behavior, is a repeat offender, or if NYFA has information suggesting a pattern, ongoing Sex Discrimination or Sexual Misconduct, or if multiple individuals have been impacted;
2. Whether the incident represents escalation in unlawful conduct on behalf of the Accused from previously noted behavior;
3. The increased risk that additional acts of Sex Discrimination or Sexual Misconduct would occur without the initiation of a complaint;
4. The severity of the alleged incident, including whether the Accused used a weapon or force and/or if established, the incident would require the removal of the Accused from campus or the imposition of another disciplinary sanction to end the harassment or discrimination;
5. The age and relationship of the Parties, including whether the Accused is a NYFA employee or whether the Reporting Individual is a minor;
6. The availability of evidence and whether NYFA possesses other means to obtain evidence such as security footage;
7. Whether NYFA can end the Sex Discrimination or Sexual Misconduct and prevent its recurrence without initiating grievance procedures.

In all cases, the final decision as to whether, how, and to what extent NYFA will conduct an investigation and whether other measures will be taken, is at the sole discretion of the Title IX Coordinator.

Timeframe for Reporting

A complaint under this Policy may be filed at any time, regardless of the length of time between the alleged incident and the decision to come forward. NYFA understands the sensitive nature of these incidents and acknowledges that many reports of Sex Discrimination or Sexual Misconduct may be delayed.

NYFA encourages prompt reporting of allegations to allow for the collection and preservation of evidence that may be helpful during an investigation or criminal proceeding. Delay in filing a complaint may limit the Title IX Coordinator's ability to

respond. If the complaint is delayed to the point where one of the Parties has graduated or is no longer employed, NYFA will still seek to meet its obligation under this Policy by taking reasonable action to end the Sex Discrimination or Sexual Misconduct, prevent its recurrence, and remedy its effects.

Documentation and Records Retention

NYFA will create and maintain the following records for a period of seven (7) years: records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of Sex Discrimination or Sexual Misconduct; records of investigations, including any determination regarding responsibility and any audio or audiovisual recording(s) or transcript(s) created, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant, Respondent, or Witnesses; any appeal and the result of that appeal; and any informal resolution, and the result of such resolution processes. Records may be kept longer than seven (7) years in cases with outcomes that include suspension, expulsion, or termination, in accordance with NYFA records policies. Records will be maintained in accordance with the privacy protections set forth in Title IX, Title VII, the Clery Act, FERPA, and applicable state law regarding the privacy of personnel records.

Amnesty for Alcohol and/or Drug Use for Students Who Report or Participate as Witnesses

The health and safety of every student at NYFA is of utmost importance. NYFA recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that a form of Sex Discrimination or Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. NYFA strongly encourages students to report Sex Discrimination or Sexual Misconduct, including domestic violence, dating violence, stalking, or sexual assault to the Title IX Coordinator. 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 NYFA or law enforcement will not be subject to NYFA's Student Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the Sex Discrimination or Sexual Misconduct.

Supportive and Protective Measures

Complainants who report allegations of Sex Discrimination or Sexual Misconduct have the right to receive supportive measures from NYFA, regardless of whether they file a complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures are individualized measures offered as appropriate, and may vary depending upon what is reasonably available at NYFA. Supportive measures are meant to:

1. Restore or preserve that Party's access to NYFA's education program or activity, including measures that are designed to protect the safety of the Parties or NYFA's educational environment; or
2. Provide support during NYFA's grievance procedures, and if applicable, or during the informal resolution process.

Supportive measures are intended to restore or preserve access to NYFA's educational programming and activities, without disrupting the other individuals (Complainant, Respondent, or Witness); protect the safety of all individuals and the educational environment; and deter Sex Discrimination and Sexual Misconduct. Supportive measures must not unreasonably burden either Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to NYFA's education program or activity.

NYFA may modify or terminate supportive measures at the conclusion of the grievance procedures or informal resolution process, or may continue them beyond that point within NYFA's discretion.

NYFA will maintain the confidentiality of supportive measures provided to Parties and Witnesses to the extent that maintaining such confidentiality will not impede the provisions of the supportive measures, as permitted by law. NYFA will not disclose information about any supportive measures to persons other than the person whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to NYFA's education program or activity, or there is an exception that applies, such as:

1. NYFA has obtained prior written consent from a person with the legal right to consent to the disclosure;
2. When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
3. To carry out the purpose of the Policy when it is necessary to address conduct that reasonably may constitute Sex Discrimination or Sexual Misconduct in NYFA's education program or activity;
4. As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
5. To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under FERPA.

When a student, faculty, or staff member reports to the Title IX Coordinator that they have experienced Sex Discrimination or Sexual Misconduct, whether the incident(s) occurred on or off campus, the Title IX Coordinator will provide written information that identifies existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available on campus and within the community. The written notification will also describe options for available assistance in -

and how to request changes to - academic, living, transportation, and working situations. Students, faculty, and staff may also contact the Title IX Coordinator to request information about the available options.

Students, faculty, and staff who are Complainants, Respondents, or Witnesses can make requests to the Title IX Coordinator, who will help identify available options, determine the best course of action, and coordinate effective implementation of supportive measures.

NYFA may provide the following options, temporarily or ongoing, if requested to the Title IX Coordinator and reasonably available:

Supportive measures for students, as appropriate, may include but are not limited to:

1. Mental health services such as counseling services
2. Academic assistance: transferring to another section or class time slot, rescheduling an assignment or test, extensions of deadlines or other course-related adjustments, accessing academic support such as tutoring, arranging for incompletes, a leave of absence or withdrawal from course(s), preserving eligibility for financial aid, needs-based or talent-based discounts, or international student visas
3. Modifications to work schedules
4. Campus escort services for a student to move safely between NYFA classes and programs
5. No Contact Order (NCO) - restrictions on contact applied to one or more Parties
6. Change in housing: switching residence hall rooms or assistance in finding alternative third- party housing
7. Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
8. Leaves of absence
9. Providing resources available for medical assessment, treatment, and crisis response
10. Increased security and monitoring of certain areas of the campus
11. Providing resources and options available for contacting law enforcement
12. Transportation and parking assistance
13. Training and education programs related to Sex Discrimination and Sexual Misconduct
14. Assistance in identifying additional resources off campus
15. Assistance by NYFA's security forces, if applicable, or other school officials in obtaining an order of protection, or if outside of New York state, an equivalent protective or restraining order

Supportive measures for faculty and staff members, as appropriate, may include but are not limited to:

1. Change in the nature or terms of employment, such as adjustments to working schedule, change in supervisor, or taking a leave of absence
2. Mental health services through NYFA's Employee Assistance Program or through employee health insurance
3. Providing an escort for the employee to move safely between NYFA classes and programs
4. Providing increased security and monitoring of certain areas of the campus
5. Transportation and parking assistance
6. Assistance in identifying additional support resources
7. No Contact Order (NCO) - restrictions on contact applied to one or more Parties

Note on No Contact Orders: NYFA administration may implement a No Contact Order for Parties to ensure the safety of Parties before, during, and after Title IX grievance procedure processes. If a Party would like to request modifications to an implemented No Contact Order, they must submit their request, in writing, to the Title IX Coordinator with justification and evidence supporting their modification request.

Note on Orders of Protection and their equivalent: If a student or an employee obtains a restraining order of protection against another individual, the student or employee is encouraged to disclose that information to the Title IX Coordinator, Dean of Students, or Campus Dean so NYFA can assist in making reasonable accommodations. Faculty and staff are encouraged to share information on a restraining order or protection with Human Resources, in addition to the Title IX Coordinator. NYFA cannot issue an order of protection but will provide information on other available options, such as a no contact order.

An order of protection is requested from and issued by a criminal or civil/family court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including but not limited to situations involving domestic violence. NYFA cannot apply for a legal order of protection or restraining order for a victim from the applicable jurisdiction(s). Students, faculty, and staff are required to apply directly for these services.

Whether or not a Complainant is granted an order of protection, they may meet with the Title IX Coordinator to develop a Safety Action Plan, which is a plan for NYFA and the victim to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to: escorts, special parking arrangements, changing classroom or work location, or allowing a student to complete assignments from home. NYFA cannot apply for an order of protection or prevent an order from the applicable jurisdiction(s). The victim is required to apply directly for these services as described above.

Process for Review of Supportive Measures

NYFA provides for a Complainant or Respondent to seek modification or reversal of NYFA's decision to provide, deny, modify, or terminate a supportive measure. Grounds for challenge of supportive measures include, but are not limited to:

1. Whether a supportive measure is reasonably burdensome;
2. Whether a supportive measure is reasonably available;
3. Whether a supportive measure is being imposed for punitive or disciplinary reasons;
4. Whether the supportive measure is being imposed without fee or charge; and
5. Whether the supportive measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the education program or activity, provide safety, or provide support during the grievance procedure.

Requests for a modification or reversal of a supportive measure must be timely, and should be submitted within five (5) working days of its implementation. NYFA will conduct a fact-specific inquiry into timelines.

The review will be conducted by an impartial employee of NYFA, who did not make the challenged decision on the original supportive measure request. The impartial employee of NYFA who makes this determination will have authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedures as outlined above for providing supportive measures in accordance with Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e. two-way no contact orders).

Emergency Protective Measures

When NYFA determines a need to enact Emergency Protective Measures for the safety of the institution and the members of the NYFA community, NYFA may enact a Procedural Hold for Emergency Removal for student Respondents or an Administrative Leave for employee Respondents.

Procedural Hold for Emergency Removal for Student Respondents

NYFA retains the authority to remove a student Respondent from all or part of NYFA's educational program or activity on an emergency basis, where NYFA (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex Discrimination or Sexual Misconduct justifies

removal. A Procedural Hold for Emergency Removal may include exclusion from classes, or from specified NYFA activities, or from NYFA property. NYFA will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

If the Title IX Coordinator or designee determines a Procedural Hold for Emergency Removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the implementation of the Procedural Hold. If a Respondent challenges a Procedural Hold for Emergency Removal, the following procedure will follow:

1. Within twenty-four (24) hours after the imposition of the Procedural Hold, the Campus Dean or designee will review the information upon which the Procedural Hold was based. The Procedural Hold will stand unless the Campus Dean rescinds the Procedural Hold within twenty-four (24) hours of its imposition. If the Campus Dean rescinds the Procedural Hold, the action will be deemed vacated and every reasonable effort will be made to inform the Complainant and Respondent that the Procedural Hold is vacated.
 - a. Should the Procedural Hold be vacated, that will have no bearing on the Title IX Grievance proceedings arising from the conduct which prompted the Procedural Hold.
2. Upon imposition of the Procedural Hold, the Title IX Coordinator or designee will notify the Respondent of the allegations, the length and conditions of the Procedural Hold, and the opportunity for a review with the Campus Dean or designee to challenge the Procedural Hold.
3. Review of the Procedural Hold will have scheduling priority. The Respondent may be accompanied by an Advisor. The Respondent may present information to contest the Procedural Hold, or to demonstrate that the Procedural Hold is unnecessary or that the conditions of the Procedural Hold should be modified. The Campus Dean is authorized to investigate the facts which prompted the Procedural Hold and may lift the Procedural Hold or modify its conditions. Within three (3) working days of the conclusion of the Procedural Hold review, the Campus Dean will determine:
 - a. If the Procedural Hold is necessary
 - b. If the conditions of the Procedural Hold should be modified

The result of the Procedural Hold review will have no bearing on this Policy proceedings arising from the conduct which prompted the Procedural Hold.

Administrative Leave for Employee Respondents

NYFA retains the authority to place a non-student employee Respondent on administrative leave during the grievance procedure. Employee Respondents may be removed from NYFA's educational program or activity on an emergency basis, where NYFA (1)(a) undertakes an individualized safety and risk analysis, and (b) determines that an

immediate threat to the health or safety of any student or other individual arising from the allegations of covered Sex Discrimination or Sexual Misconduct justifies a removal, or (2) a student's access to NYFA's educational program or activity is significantly impacted. For NYFA, this process is referred to as Administrative Leave.

If the Title IX Coordinator or designee determines an Administrative Leave is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the implementation of the Administrative Leave. An Administrative Leave may include exclusion from employee responsibilities, or from specified NYFA activities, or from NYFA property.

1. Within twenty-four (24) hours after the imposition of the Administrative Leave, the Campus Dean or designee will review the information upon which the Administrative Leave was based. The Administrative Leave will stand unless the Campus Dean rescinds the Administrative Leave within twenty-four (24) hours of its imposition. If the Campus Dean rescinds the Administrative Leave, the action will be deemed vacated and every reasonable effort will be made to inform the Complainant and Respondent that the Administrative Leave is vacated.
 - a. Should the Administrative Leave be vacated, that will have no bearing on the Title IX Grievance proceedings arising from the conduct which prompted the Administrative Leave.
2. Upon imposition of the Administrative Leave, the Title IX Coordinator or designee will notify the Respondent of the allegations, the length and conditions of the Administrative Leave, and the opportunity for a review with the Campus Dean or designee to challenge the Administrative Leave.
3. Review of the Administrative Leave will have scheduling priority. The Respondent may be accompanied by an Advisor. The Respondent may present information to contest the Administrative Leave, or to demonstrate that the Administrative Leave is unnecessary or that the conditions of the Administrative Leave should be modified. The Campus Dean is authorized to investigate the facts which prompted the Administrative Leave and may lift the Administrative Leave or modify its conditions. Within three (3) working days of the conclusion of the Administrative Leave review, the Campus Dean will determine:
 - a. If the Administrative Leave is necessary
 - b. If the conditions of the Administrative Leave should be modified

The result of the Administrative Leave review will have no bearing on this Policy proceedings arising from the conduct which prompted the Administrative Leave.

Note on Student Employees: When a Complainant or Respondent is both a student and an employee of NYFA, NYFA must make a fact-specific inquiry to determine whether this procedure applies to that student employee. NYFA will consider if the Complainant or Respondent's primary relationship with NYFA is to receive an education and whether the

alleged Sex Discrimination or Sexual Misconduct occurred while the Party was performing employment-related work.

X. Introduction to Title IX Grievance Procedures

Basic Requirements of the Grievance Procedure

All Title IX grievance procedures are carried out by institutional officials who are trained on how to conduct procedures and investigations in a manner that protects the safety of victims and promotes accountability.

NYFA shall:

1. Treat Complainants and Respondents equitably;
2. Ensure that any person designated by NYFA as a Title IX Coordinator, Investigator, or Decision-Maker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
3. Establish reasonably prompt timeframes for the major stages of this grievance procedure, including a process that allows for the reasonable extension of time frames on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
4. Ensure that reasonable steps to protect the privacy of the Parties and Witnesses during the pendency of the grievance procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to Witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this grievance procedure;
5. Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
6. Exclude impermissible evidence from consideration as defined in the grievance procedure; and
7. Clearly articulate principles for how NYFA will determine which policies and procedures apply if not all such complaints are handled under this institutional grievance procedure.

NYFA will additionally ensure that Complainants are advised of their right to:

1. Notify NYFA Campus Security, local law enforcement, and/or state police;
2. Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence

and obtaining a sexual assault forensic examination 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 state law should be addressed to law enforcement or to the district attorney, who shall also explain whether they are authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;

3. Disclose the incident confidentially to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
4. Disclose the incident confidentially and obtain services from the state or local government;
5. Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;
6. File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this grievance procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;
7. Disclose, if the Respondent is an employee of NYFA the incident to NYFA's Human Resources Department or the right to request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at which point, such referral shall be handled according to the appropriate policies and procedures related to employee complaints;
8. Receive assistance from appropriate NYFA representatives in initiating legal proceedings in family court or civil court; and
9. Withdraw a complaint of involvement from NYFA's Title IX grievance procedure at any time.

Filing a Complaint and Timeframe

The timeframe for this Title IX Sex Discrimination and Sexual Misconduct Grievance Policy begins with the filing of a Complaint. The Policy procedures will be concluded within a reasonably prompt manner, which may generally be within ninety (90) working days, after the filing of the Complaint, provided that the proceedings may be extended for reasons including but not limited to, the absence of a Party, a Party's Advisor, or Witnesses; concurrent law enforcement activity; or the need for language assistance or for an accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Complaint, a Complainant must provide the Title IX Coordinator with a written or verbal account describing, in as much detail as possible, the facts of any incident(s) which give rise to the filing of the Complaint.

Nothing in this Policy prevents a Complainant from seeking the assistance of state or local law enforcement along with the appropriate on-campus process.

Who can file a Complaint?

1. A Complainant (as defined in Section IV of this Policy); or
2. The Title IX Coordinator

Note on Title IX Coordinator initiated Complaints: In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence of termination of an Informal Resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex Discrimination or Sexual Misconduct. This determination is fact-specific, and the Title IX Coordinator must consider:

1. The Complainant's request not to proceed with the initiation of a Complaint;
2. The Complainant's reasonable safety concerns regarding initiation of a Complaint;
3. The risk that additional acts of Sex Discrimination or Sexual Misconduct would occur if a Complaint is not initiated;
4. The severity of the alleged Sex Discrimination or Sexual Misconduct; including whether Sex Discrimination or Sexual Misconduct, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the Sex Discrimination or Sexual Misconduct and prevent its recurrence;
5. The age and relationship of the Parties, including whether the Respondent is an employee of NYFA.
6. The scope of the alleged Sex Discrimination or Sexual Misconduct, including information suggesting a pattern, ongoing Sex Discrimination or Sexual Misconduct, or Sex Discrimination or Sexual Misconduct alleged to have impacted multiple individuals;
7. The availability of evidence to assist a Decision-Maker in determining whether Sex Discrimination or Sexual Misconduct occurred; and
8. Whether NYFA could end the alleged Sex Discrimination or Sexual Misconduct and prevent its recurrence without initiating this grievance procedure.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents NYFA

from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in this grievance procedure.

What is the timeframe for NYFA to evaluate if the Title IX Coordinator is initiating an investigation under this Policy?

The Title IX Coordinator must evaluate whether the Complaint falls under this grievance procedure five (5) working days after the Complaint is made, and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and rationale for the extension or delay.

Can I make a Complaint and request initiation of the grievance procedure even if I have made a Complaint to law enforcement?

Yes. NYFA has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint with law enforcement. This procedure is an administrative process that is different from the criminal justice process. Per New York state law, it is required that NYFA's process run concurrently with a criminal justice investigation and proceeding, however, temporary delays are allowed as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

Receipt and Outreach

Once an allegation has been reported or a Complaint has been made, the Title IX Coordinator will contact the Complainant via NYFA email or other reasonable means to extend an offer to meet in-person. The offer to meet will include reporting options, the Student Bill of Rights (if the Complainant is a student), resources on and off campus, and supportive measures. It is the responsibility of Parties to maintain and regularly check their NYFA email accounts.

In addition, upon receipt of a report, NYFA may issue a timely warning to the campus community under the terms defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or (Clery Act).

The Title IX Coordinator may also refer the report to the Dean of Students, Campus Dean, Director of Human Resources, or an appropriate NYFA Administrator if it is determined that the behavior does not fall under this Policy.

Student Bill of Rights

During the process outlined within this Policy, student Complainants and student Respondents are afforded specific procedures that provide them the right(s) 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 NYFA's Title IX Sex Discrimination and Sexual Misconduct grievance proceedings 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 NYFA 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 NYFA representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by NYFA, any student, the Respondent, and/or their friends, family and acquaintances within the jurisdiction of NYFA;
9. Have access to at least one level of appeal of a determination;
10. Be accompanied by an Advisor of their choice who may assist and advise a Complainant or Respondent throughout NYFA's Title IX Sex Discrimination and Sexual Misconduct grievance proceedings including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or NYFA's Title IX Sex Discrimination and Sexual Misconduct grievance proceedings.

Intake

Any individual who reports an allegation by a NYFA community member may make an appointment with the Title IX Coordinator by phone, email, or in person. This first meeting is called an Intake and serves to provide an opportunity for the Title IX Coordinator or designee to gather more information about the incident and assess the need for supportive measures. Supportive measures may be taken prior to an investigation or in the absence of an investigation. The Complainant may ask questions about this Policy and investigative process during the Intake. The Complainant may also bring an Advisor to the Intake. Translation services are offered, if requested and reasonably available.

Initial Assessment

The Title IX Coordinator will determine if this Policy should apply to a Complaint. The Title IX Coordinator will assess if the allegation, even if substantiated, does or does not rise to

the level of a policy violation, or may determine there is or is not sufficient information to investigate the matter. If the allegation does not rise to a policy violation, or if there is not sufficient information to investigate the matter, the Title IX Coordinator may dismiss the report and seek an alternative informal resolution. The Title IX Coordinator will inform the Complainant and provide rationale for the determination within ten (10) working days of the Title IX Coordinator becoming notified of the Complaint.

Dismissal of a Formal Complaint

The Title IX Coordinator or designee may dismiss a Complaint of Sex Discrimination or Sexual Misconduct for any of the following reasons at any time during the investigation:

1. The Title IX Coordinator or designee is unable to identify the Respondent, after taking reasonable steps to do so;
2. The Respondent is not participating in NYFA's education program or activity and is not employed by NYFA;
3. The Complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator or designee declines to initiate a Complaint of these procedures, and The Title IX Coordinator or designee determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex Discrimination or Sexual Misconduct, even if proven; or
4. The Title IX Coordinator or designee determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex Discrimination or Sexual Misconduct.

The Title IX Coordinator or designee must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis. Upon reaching a decision that the Complaint will be dismissed, The Title IX Coordinator or designee will promptly send written notice of the dismissal of the Complaint or any specific allegation within the Complaint, and the reason for the dismissal, simultaneously to the Parties through their NYFA email accounts, or other reasonable means.

Notice of Dismissal

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator or designee does not need to Notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then NYFA must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as included below under Appeal of Dismissals.

Appeal of Dismissal

NYFA must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity to appeal the dismissal of a Complaint on the following grounds:

1. Procedural irregularity: procedural irregularity that affected the outcome of the matter (i.e. failure of NYFA to follow own policy to a degree that had material effect on the outcome of the matter);
2. New evidence: new evidence that would change the outcome and that was not reasonably available when the determination whether Sex Discrimination or Sexual Misconduct occurred when dismissal of the Complaint was made; and
3. The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then NYFA must also notify the Respondent that the dismissal may be appealed on the grounds outlined above.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities (if possible) remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals will be decided by the Appeals Decision-Panel, who will be free of conflict of interest and bias, and will not serve as an Investigator, Title IX Coordinator, or Decision-Maker in the same matter. The Appeals Decision-Panel may be made up of one or more trained individuals. Outcome of an appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

Multi-Party Complaints

NYFA may consolidate Complaints alleging Sex Discrimination or Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex Discrimination or Sexual Misconduct arise out of the same facts or circumstances.

NYFA can consider factors when making this fact-specific determination, which include, but are not limited to:

1. The facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
2. Any risks to the fairness of the investigation or outcome.

Allegations Potentially Falling Under Two Policies

If the alleged conduct includes conduct that would constitute Sex Discrimination or Sexual Misconduct and conduct that would not constitute Sex Discrimination or Sexual Misconduct, the appropriate Policy and procedure will be applied to address the different types of allegations as appropriate and with NYFA's discretion.

Pending Criminal Investigation and/or Proceeding

NYFA is obligated to investigate any allegation of Sex Discrimination or Sexual Misconduct in a timely, equitable manner, even if a criminal complaint has been filed with law enforcement. The fact-finding portion of NYFA's investigation may be temporarily delayed for up to ten (10) days, at the request of a law enforcement agency.

Notice of Allegations

Upon initiating NYFA's Title IX grievance procedures, the Title IX Coordinator or designee shall provide a notice of allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after NYFA receives a complaint, if there are no extenuating circumstances.

The Parties will be notified by their NYFA email accounts if they are a student or employee, and by other reasonable means if they are neither.

Contents of Notice

The Notice of Allegations must include:

1. NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Policy and NYFA's Informal Resolution process;
2. The Student Bill of Rights;
3. Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex Discrimination or Sexual Misconduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to NYFA;
4. A statement that the Parties are entitled to an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;

5. A statement that the Respondent is presumed not responsible for the alleged Sex Discrimination or Sexual Misconduct until a determination is made at the conclusion of the proceedings and that prior to the determination;
6. Prior to the determination of responsibility, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decision-Maker;
7. A statement that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
8. Notice of the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the proceedings.
9. A statement that knowingly making false statements or submitting false information during the Sexual Misconduct Policy proceedings is a violation of this Policy;
10. If, in the course of an investigation, NYFA decides to investigate additional allegations of Sex Discrimination or Sexual Misconduct by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, NYFA is required to provide written notice of any additional allegations to the Parties whose identities are known.

Additional Note: To the extent that NYFA has reasonable concerns for the safety of any person as a result of providing written Notice of Allegations, the Title IX Coordinator or designee may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on specific and articulable facts which shall include a safety and risk analysis of the situation and not on mere speculation or stereotypes.

Notice of Meetings and Interviews

NYFA will provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with a Party, with sufficient time for the Party to prepare to participate. Parties will be notified about, and provided sufficient time to review, any additional allegations that arise during the investigation.

Role of an Advisor

NYFA will provide the Parties equal access to Advisors and support persons; any restrictions on Advisor participation will be applied equally.

An Advisor is an individual who may accompany a Party to any meeting or proceeding, including interviews and meetings related to the appeals process. There may only be one Advisor in a meeting or other proceeding for each Party; however, that person does not need to be the same individual throughout the entire process. The Complainant and

Respondent may have any individual of their choosing serve as their Advisor. NYFA cannot limit the choice of who that Advisor may be, excluding Witnesses of the alleged incident(s) in question.

An Advisor is prohibited from participating directly in any meeting or other proceeding, including contacting the Title IX Coordinator or designee and speaking on behalf of the individual they are supporting. The Title IX Coordinator or designee has the authority to determine what constitutes appropriate behavior of an Advisor and may take reasonable steps to ensure compliance of this Policy. If it has been determined that the Advisor's participation is interfering with the investigation or other proceeding, the Advisor may be removed.

NYFA is not mandated to communicate with Advisors and will only communicate directly with the Complainant and Respondent. The investigation or other proceeding will not be unreasonably delayed to accommodate the schedule of an Advisor.

Delay and Postponement

Each Party may request a one-time delay of up to five (5) working days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not unreasonably inconvenience other Parties.

For example, except under extraordinary circumstances, a request to take a five-day delay made an hour before a meeting for which multiple Parties have traveled to and prepared for shall generally not be granted, while a request for a five-day pause in the middle of investigation interviews to allow a Party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further extensions in the procedure.

Conflicts of Interest

NYFA is committed to fairly and impartially implementing this Policy. The Title IX Coordinator, Investigator, Facilitator, and/or Decision-Maker(s) shall disclose to the Parties any facts which may constitute a conflict of interest.

A Complainant or Respondent must identify in writing, to the Campus Dean, any real or perceived conflict of interest with the Title IX Coordinator within three (3) working days of receiving a Notice of Allegations. The Campus Dean may recuse the Title IX Coordinator and appoint a different trained individual to serve in the capacity of the Title IX Coordinator, or the Campus Dean may not recuse the Title IX Coordinator. If the Title IX

Coordinator is not recused from their role, the Campus Dean will notify the Party who expressed concern, in writing, of the reasoning for not recusing the Title IX Coordinator.

A Complainant or Respondent must identify in writing, to the Title IX Coordinator, any real or perceived conflict of interest with the designated Investigator, Facilitator, and/or Decision-Maker(s) within three (3) working days of receiving notification of those designated individuals. The Title IX Coordinator may recuse the Investigator, Facilitator, and/or Decision-Maker(s) and appoint a different trained individual to serve in the role, or the Title IX Coordinator may not recuse the Investigator, Facilitator, and/or Decision-Maker(s). If the Investigator, Facilitator, and/or Decision-Maker(s) is/are not recused from their role, the Title IX Coordinator will notify the Party who expressed concern, in writing, of the reasoning for not recusing the Investigator, Facilitator, and/or Decision-Maker(s).

XI. Title IX Grievance Procedure - Informal Resolution

At any time prior to determining whether Sex Discrimination or Sexual Misconduct occurred under this grievance procedure, including prior to making a Complaint or during an investigation, Parties may instead seek NYFA's assistance to resolve allegations of Sex Discrimination or Sexual Misconduct, and may elect to enter the informal resolution process. Informal resolution is designed to address the reported behavior, prevent reoccurrence, and remedy the effects without completing a formal investigation.

The Parties may voluntarily elect to enter the informal resolution process at any time after the filing of a Complaint through informed written consent. This informed written consent will include all terms of the elected informal resolution, including a statement that any agreement reached through informal resolution is binding on the Parties.

No Party may be required to participate in informal resolution, and NYFA may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex Discrimination and Sexual Misconduct does not continue or recur within NYFA's Education Program or Activity.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process may resume. The Parties reserve the right to request an investigation at any time until the informal resolution has concluded. In participating in the informal resolution process, the Parties understand that the

timeframes governing the investigation temporarily cease and only recommence upon reentry into the formal process.

Notice Prior to Entry Into Informal Resolution Process

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

1. The allegations;
2. The requirements of the informal resolution process;
3. That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume NYFA's grievance procedures;
4. That the Parties' agreements to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming NYFA's grievance procedures arising from the same allegations;
5. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
6. What information NYFA will maintain and whether and how NYFA could disclose such information for use in its Grievance Procedures if they are initiated or resumed.

Determination to Approve Entry into Informal Resolution

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official may approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or other designated official may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm to or the safety of students, faculty and staff, whether the Respondent is a repeat offender and whether the Parties are participating in good faith. This determination is not subject to appeal. Informal resolution processes may never be applied where the allegations include sexual assault.

At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated officials 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 process. This determination is not subject to appeal.

If an informal resolution process is approved or denied, NYFA will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

Role of the Facilitator

Informal resolution processes are managed by trained Facilitators. All Facilitators must not be the same person as the Investigator or the Decision-Maker(s) in NYFA's grievance procedures. Any person designated to facilitate informal resolutions must not have a conflict of interest or bias in favor of or against any Complainants or Respondents generally or an individual Complainant or Respondent. The Facilitator may recuse themselves or be replaced if there is a conflict. The Title IX Coordinator may serve as the Facilitator, subject to these restrictions.

All Facilitators must have specialized training required by law and regulation. Such training includes:

1. NYFA's obligation to address Sex Discrimination and Sexual Misconduct in its education program or activity;
2. The scope of conduct that constitutes Sex Discrimination and Sexual Misconduct, under this Policy;
3. All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and NYFA's response to Sex Discrimination and Sexual Misconduct;
4. The rules and practices associated with NYFA's information resolution process; and
5. How to serve impartially, including by avoiding conflicts of interest and bias.

Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

1. Restrictions on contact; and
2. Restrictions on the Respondent's participation in one or more of NYFA's education program or activities or attendance at specific events, including restrictions NYFA could have imposed as Remedies or Disciplinary Sanctions had NYFA determined at the conclusion of the grievance procedures that Sex Discrimination or Sexual Misconduct occurred.

Breach of Informal Resolution Agreements

If a Party breaches the resolution or if NYFA has other compelling reasons, such as if it learns of any fraud by a Party entering into the agreement, NYFA may void the agreement and initiate or resume the grievance procedures.

Confidentiality

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the grievance procedures, provided that this information is disclosed and reviewed by the Parties under this Policy.

Informal Resolution Options

NYFA offers the following informal resolution procedures for addressing Complaints of Sex Discrimination and Sexual Misconduct under this Policy.

Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for some or all of the allegations of the Formal Complaint at any point during the informal resolution process, NYFA may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the Title IX Coordinator or other designated Decision-Maker will convene to determine the Respondent's sanction and other remedies, as appropriate and consistent with institutional policies. The Parties will be given an opportunity to be heard at the sanctions hearing, including but not limited to the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or Witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process described in the Appeals portion of this Policy.

Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained Facilitator, identify points of agreement and appropriate remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the consent of both Parties, who will be instructed not to contact one another during the process. The Title IX Coordinator or

designee will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within ten (10) working days after the Facilitator receives consent to mediate from both Parties, and will continue until concluded or terminated by either Party or the Facilitator. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Campus Dean to re-evaluate other options for resolution, including investigation and proceeding forward with grievance procedures.

During mediation, the Facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the Facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an Advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the Facilitator will memorialize the agreement that was reached between the Parties. The Title IX Coordinator or designee will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

Restorative Justice

A restorative justice ("RJ") Conference is a dialogue, facilitated by a trained NYFA employee intended to restore relationships and repair harm after a conflict has occurred. Both the responsible Party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed Party must also be willing to accept an apology offered by the Respondent. Additionally, all involved Parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Facilitator will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all Parties agree to participate willingly. Upon doing so, the RJ process typically commences within ten (10) working days after the Facilitator receives written agreements from all involved Parties. The RJ Conference will continue until

the Conference is successfully concluded or until the Facilitator determines that the Conference will not be successful. If successful, an agreeable resolution is reached by all involved Parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Campus Dean to re-evaluate other options for resolution.

The Title IX Coordinator or designee will monitor the Parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

XII. Title IX Grievance Procedure - Investigation

General Rules of Investigation

After issuing the Notice of Allegations, an Investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Sex Discrimination or Sexual Misconduct. The Title IX Coordinator may serve as the Investigator, however the individual serving as the Investigator may not be the same individual who serves as a Decision-Maker.

NYFA, and not the Parties, has the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex Discrimination or Sexual Misconduct occurred under this grievance procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred, or may decide not to participate in the investigation. This does not shift the burden of proof away from NYFA, and does not indicate responsibility.

The Investigator will conduct live-questioning of Parties and Witnesses to adequately assess a Party's or Witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of Sex Discrimination or Sexual Misconduct. This will occur during individual meetings with a Party or Witness.

Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or Witness and have those questions asked by the Investigator during one or more individual meetings, including follow-up meetings, with a Party or Witness, subject to the appropriate procedures outlined below. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

NYFA 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. NYFA will provide an equal opportunity for the Parties to present Witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove or disprove the allegations) as described below.

NYFA will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

Fact-Finding

Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory (tending to prove and disprove the allegations) relevant evidence that are Relevant and not otherwise impermissible to the Investigator.

The Investigator will meet separately with the Complainant, Respondent and identified Witnesses. To the extent possible, the Investigator will interview the Complainant, Respondent, or Witnesses either in-person, or through a method like Zoom, to observe the demeanor and to assist in the determination of the credibility of all involved Parties, including Witnesses.

The Investigator will ask the Parties for all information related to the allegations, including names of Witnesses and documentation related to the incident, which may include documented communications between the Parties, receipts, photos, video, or other information relevant to the allegations.

If a Complainant or Respondent is uncooperative and chooses not to participate in the fact-finding stage of the investigation, the Investigator will continue with the grievance procedure proceedings in their absence. Uncooperative Respondents are still subject to provisions under this grievance procedure.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible, regardless of relevance, consistent with this grievance procedure.

Information Review

At the conclusion of fact-finding, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the information review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

During the Information Review, the Complainant and Respondent each meet separately with the Investigator. An Advisor may accompany the Complainant and Respondent to their respective meetings. The Complainant and Respondent can each bring a written statement to the Information Review, can share their responses to the information being

reviewed, and will be given a reasonable deadline by which to request that the Investigator gather additional relevant information, if applicable in the form of:

1. Requests for additional documentation from Witnesses
2. New Witnesses
3. Additional documentation under the control of NYFA

Requests to gather additional information may be denied, if deemed irrelevant by the Investigator. The Investigator may ask questions during the Information Review, including questions submitted by the other Party. The Investigator may modify or exclude questions that they find to be unfairly prejudicial, confusing, argumentative, misleading, unnecessarily repetitive, not probative, or speak only to a Party's character or non-relevant prior sexual behavior.

Each Party may submit new relevant or substantive information and/or materials up to one (1) time following the conclusion of the fact-finding process and preceding the issuance of the Investigative Report to the Parties. The Investigator shall share any new submitted information and/or materials with the other Party. The Investigator will schedule an additional Information Review meeting to allow each Party to respond to the new information.

Additional information, such as new Witnesses or materials, will not be considered unless it is shown by the providing Party that the Witnesses or materials were unknown or unavailable to the Party prior to the initial Information Review.

The Investigator may record Information Reviews through audio, audio-visual, or written notes. Any recordings will be the property of NYFA. Complainants, Respondents, or Advisors may take their own written notes; however, they may not record, share, or stream any photography, video, or audio of the Information Review. Additionally, Respondents and Complainants may request to review the official recordings of their or the other Party's Information Review under the supervision of the Title IX Coordinator or designee.

The Parties and their Advisors shall sign an agreement to respect the privacy of the Parties, the confidentiality of the proceedings, and not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to this grievance procedure proceedings.

Evidence Considerations

Evidence that will be available for the information review process will be any evidence that is directly related to the allegations raised in the Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the Decision-Maker in making a determination regarding responsibility;

2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a Party or other source.

Relevant Evidence

Evidence is Relevant when it is related to the allegations of the Complaint and which tends to prove or disprove any disputed fact or event under investigation as part of this grievance procedure.

Questions are Relevant when they seek evidence that may aid in showing whether the conduct alleged in the Complaint and prohibited by this Policy occurred, and evidence is Relevant when it may aid a Decision-Maker in determining whether the alleged conduct, which would constitute a violation of this Policy, occurred.

Impermissible Evidence

The following types of evidence are exceptions to the above rule. Any questions seeking such evidence is considered impermissible and must not be accessed or considered or used except by NYFA: Exceptions to the above include the following:

1. Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. Any item protected by Family Educational Rights and Privacy Act Regulations (FERPA)
3. A Party or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connect with the provision of treatment to the Party or Witness, unless the recipient obtains that Party's or Witness's voluntary, written consent for use in NYFA's grievance procedures; and
4. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged Sex Discrimination or Sexual Misconduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged Sex Discrimination or Sexual Misconduct or preclude determination that Sex Discrimination or Sexual Misconduct occurred.

Information, evidence, and material obtained in the investigation that is determined in the reasoned judgment of the Title IX Coordinator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigation Report.

Investigation Report

After Information Reviews have concluded, the Investigator will prepare an Investigation Report that fairly summarizes relevant evidence. Investigator will provide each Party and their Advisors with an equal opportunity to access and review an accurate description of the Relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an Investigative Report. The Investigation Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence. Only Relevant Evidence (including both inculpatory and exculpatory evidence) will be referenced in the Investigation Report.

The Investigation Report will include an analysis of all disputed information identified throughout the process, an analysis of policy, and conclusion of whether or not there is a preponderance of evidence that the Respondent violated NYFA policy. The Investigator may redact irrelevant information from the Investigation Report when that information is contained in documents or evidence that is/are otherwise relevant.

The Parties and their Advisors will also have an equal opportunity to access and review the underlying Relevant and not otherwise impermissible evidence summarized in the Investigative Report upon the request of any Party. The Title IX Coordinator or Investigator will provide each Party and their Advisors with a reasonable opportunity to respond to the Investigative Report.

Determination Regarding Responsibility

Decision-Making

The Title IX Coordinator or Investigator will send the Investigation Report to a trained Decision-Maker for review of the gathered evidence and potentially sanctioning if a Respondent is found responsible for the alleged conduct in question. For NYFA, this may be a Title IX Coordinator at one of NYFA's other campuses. For example, if an Investigation Report is prepared by NYFA LA, the NYFA LA Title IX Coordinator may send the Investigation Report to the Title IX Coordinator at NYFA NY for review.

The Decision-Maker is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the Decision-Maker is not persuaded under the applicable standard by the evidence that Sex Discrimination or Sexual Misconduct occurred, whatever the quantity of the evidence is, the Decision-Maker must not determine that Sex Discrimination or Sexual Misconduct occurred.

Where a Respondent faces a potentially severe sanction (such as a lengthy suspension or expulsion for a student, or termination for an employee) and if the determination depends

on the credibility of involved Parties or Witnesses, then the Decision-Maker shall have the ability to observe live, either in-person or by other means, such as through a method like Zoom, the demeanor of those Parties and/or Witnesses in deciding which Parties and/or Witnesses are more credible.

The possible outcomes for an alleged violation are:

1. Responsible
2. Not responsible
3. Inconclusive

Presumption of Innocence

NYFA applies the presumption of innocence principle to all Respondents involved in a Title IX investigation under this Policy. Meaning, a Respondent is considered not responsible until determined responsible through a Title IX investigation grievance procedure.

Standard of Proof

NYFA uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Complaints covered under this Policy. Preponderance of evidence means that a decision of responsibility for a policy violation will be made if it is more likely than not that a violation occurred. The totality of the information gathered during the investigation will be used to determine the preponderance of evidence.

General Considerations for Evaluating Evidence

While the opportunity for information review is required in these grievance proceedings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Title IX Coordinator or Investigator. Formal rules of evidence, such as those applied in criminal or civil court, may be used as guidelines by the Decision-Maker but are not controlling for this Policy.

1. Credibility

The Decision-Maker shall not draw inferences regarding a Party or Witness' credibility based on the Party or Witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or Witness, the plausibility of their statements, the consistency of their statements, and their reliability in light of corroborating or conflicting testimony or evidence.

Credibility judgments should not rest on whether a Party's or Witness's statements are non-linear or incomplete, or if the Party or Witness is displaying stress or anxiety.

Where a Party's or Witness's conduct or statements demonstrate that the Party or Witness is engaging in retaliatory conduct, including but not limited to Witness tampering and intimidation, the Decision-Maker may draw an adverse inference as to that Party's or Witness's credibility.

2. Weight of Statements

The Decision-Maker will afford the highest weight relative to other information to first-hand accounts by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove or disprove the allegations) evidence will be weighed in equal fashion.

A Witness's testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than accounts regarding direct knowledge of specific facts that occurred.

3. Expert Witnesses

Parties may present "expert witnesses" as part of an investigation. While the expert witness will be allowed to submit information and will be subject to questioning, the Decision-Maker will afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether all Parties present experts as witnesses.

Determination Regarding Sanctioning

Mitigating and Aggravating Factors

When making a determination about sanctioning, the Decision-Maker may assess mitigating and aggravating factors including but not limited to:

1. Sanctions previously imposed by NYFA for the same or similar violation.
2. Severity of the offense, and the harm, or potential harm to the NYFA community or member of the campus community.
3. The actual or potential consequences of the behavior in question.
4. The Respondent's status as an employee or student of NYFA.
5. The Respondent's past disciplinary record.
6. The Respondent's age or grade level, as the expectation of awareness of the inappropriateness and consequences of the Respondent's behavior may be impacted by the Respondent's maturity or experience in the NYFA community.
7. Use of force, weapons, foreign objects, coercion, intimidation, threats, humiliation.

8. Serious physical injury and/or intent to cause physical injury.
9. Premeditated behavior, planning, and/or predatory behavior.
10. Violation of disciplinary sanctions, including disciplinary probation, suspension, no contact directives, and/or interference with emergency protective measures.

Past findings of Domestic Violence, Dating Violence, Stalking, or Sexual Assault may be admissible in the disciplinary state that determines sanction. However, it is not admissible prior to determination of responsibility.

Sanctioning for Students

One or more of the following sanctions or additional actions may be imposed on students found responsible for Policy violations:

1. Disciplinary Sanctions

a. Warning

- i. Notice to the student that a violation of NYFA policies or regulations has occurred and that continued or repeated violations of NYFA policies or regulations may be cause for further disciplinary action.
- ii. A warning carries no transcript notation.

b. Disciplinary Probation

- i. A status imposed for a specific period of time in which a student must demonstrate conduct that abides by NYFA's policies and expectations. Conditions restricting the student's privileges or eligibility for NYFA activities may be imposed. A temporary transcript notation may accompany the probationary period. Further misconduct during the probationary period or violation of any conditions of the probation may result in additional disciplinary action, including but not limited to, suspension or expulsion.
- ii. Disciplinary probation carries a temporary transcript notation that is only noted on the student's transcript during the duration of the disciplinary probation. When the disciplinary probation period concludes, the transcript notation is removed.

c. Deferred Suspension

- i. A status imposed for a specific period of time in which the student must successfully complete conditions outlined by the Title IX Coordinator and/or may be a period in which suspension from NYFA is deferred or delayed until a later date. Further violations of NYFA's policies, or failure to complete any assigned conditions may result in additional disciplinary action including, but not limited to, suspension or expulsion.
- ii. Deferred suspension carries a temporary transcript notation that is only noted on the student's transcript during the duration of the

deferred suspension. When the deferred suspension period concludes, the transcript notation is removed.

d. Suspension

- i. Suspension is the termination of a student's status for a specified period of time, including the remainder of an academic term or for several academic terms. Suspension may take effect at such time as the Title IX Coordinator determines.
- ii. A suspended student will be ineligible to enroll in any NYFA courses at any NYFA campuses during the period of suspension. A suspended student may be prohibited from entering specified areas, or all areas, of NYFA property.
- iii. During the period of suspension, the Title IX Coordinator may place a hold on the student's NYFA records which may prevent the student from registering, obtaining transcripts, verifications, or receiving a degree from NYFA.
- iv. Further violations of NYFA's policies or expectations, or failure to complete any assigned conditions may result in additional disciplinary action including but not limited to further suspension or expulsion.
- v. After the period of Suspension, the student will be reinstated if:
 1. The student has complied with all conditions imposed as part of the suspension.
 2. The student is academically eligible.
 3. The student meets all requirements for reinstatement including, but not limited to, removal of Holds on records, and payment of restitution where payment is a requirement of reinstatement.
 4. The student meets the deadlines for filing all necessary applications, including those for readmission, registration, and enrollment.
 5. Students are required to apply for readmission following a suspension of more than one academic term and must meet all requirements for readmission.
- vi. Notations for Suspension may be permanent. A transcript notation for Suspension may be removed one year following the date Suspension has concluded. A notation may only be removed if a request is made, in writing, to the Title IX Coordinator, one year after the terms of Suspension have been met.

e. Deferred Expulsion

- i. A status imposed for a specific period of time in which the student must successfully complete conditions outlined by the Title IX Coordinator and/or may be a period in which expulsion from NYFA is deferred or delayed until a later date. Further violations of NYFA's

policies, or failure to complete any assigned conditions will result in additional disciplinary action including, but not limited to, immediate expulsion.

- ii. Deferred expulsion carries a permanent transcript notation that indicates the duration of the deferred expulsion.

f. Expulsion

- i. Expulsion is the permanent termination of a student's status. An expelled student will be ineligible to enroll in any NYFA courses at any NYFA campuses indefinitely. Expelled students may be prohibited from entering specified areas, or all areas of NYFA property, and/or may be excluded from NYFA activities.
- ii. The student record of an expelled student may include a Hold on the student's NYFA records, which may prevent the student from registering, obtaining transcripts, verifications, or receiving a degree from NYFA.
- iii. Expulsion carries a permanent transcript notation.

g. Revocation of Awarding Degree or Certificate

- i. If, after a degree or certificate has been awarded, a degree or certificate recipient is found responsible for a policy violation while the student was an enrolled student, the Title IX Coordinator may impose, as a sanction, a revocation of the degree or certificate, subject to the following procedures:
 - 1. The Title IX Coordinator will submit a recommendation of revocation of the degree or certificate to the Campus Dean.
 - 2. A Notice of Intent to Revoke Degree or Certificate shall be sent to the student. This notice shall include the details of the violation and the basis for the revocation.
 - 3. The student may submit a written appeal of the revocation to the Campus Dean within ten (10) working days from the date of the Notice of Intent to Revoke Degree or Certificate. The imposition of the revocation of degree or certificate will be deferred until the conclusion of the appeal. The decision of the Campus Dean is final.

2. Educational Sanctions

- a. Educational sanctions are intended to help students learn from their decisions and reflect on what they want to get out of their educational experience. Educational sanctions may include, but are not limited to:
 - i. Reflective or research papers, presentations, or assignments
 - ii. Community Service
 - iii. Restitution
 - iv. Participation in designated educational programs, services, or activities
 - v. Letter of apology

3. Additional Actions

- a. Additional actions are intended to help repair any harm that resulted from a violation or protect the safety of the NYFA campus community. Additional actions may include, but are not limited to:
 - i. Exclusion from entering specified areas, or all areas, of NYFA property
 - ii. Loss of privileges and/or exclusion from NYFA activities

4. Limits on Sanctions

- a. The loss of NYFA employment or removal from paid student positions will not be a form of sanction. However, when maintaining student status or good disciplinary standing is a condition of employment or the paid position, the loss of student status or good disciplinary standing will result in termination of the student's employment or removal from the paid student position.

Transcript Notations

For students found responsible for a conduct violation, a temporary transcript notation will appear for students on Disciplinary Probation, Deferred Suspension, or Suspension (for one academic term or less). For students found responsible for a conduct violation, a permanent transcript notation will appear for students on Suspension (for more than one academic term), Deferred Expulsion, or Expulsion.

Additionally, for crimes of violence, including, without limitation, sexual violence, defined as crimes that meet the reporting requirements pursuant to the Clery Act (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)) and NY Education Law Article 129B, NYFA is required to make a transcript notation for a student found responsible for Suspension or Expulsion.

For respondents that withdraw with conduct charges pending and decline to complete the disciplinary process, a transcript notation indicating "withdrew with conduct charges pending" may appear.

Sanctioning for Employees

One or more of the following sanctions or additional actions may be imposed on employees for Policy violations:

1. Subbing or rescheduling an instructor from their class assignment(s)
2. Replacing an instructor from their class assignment(s)
3. Counseling session regarding Policy expectations
4. Verbal Warning
5. Written Warning
6. Final Written Warning
7. Suspension of employment status
8. Termination of employment status

Final Outcome

Written Determination

All determinations on whether Sex Discrimination or Sexual Misconduct occurred will be communicated to the Parties in writing, simultaneously. The written determination will include: any imposed sanctions, and the rationale for the decision(s) via a Final Outcome Letter. This information is communicated through each Party's NYFA email account, or other reasonable means as necessary, and will include:

1. A description of the alleged Sex Discrimination or Sexual Misconduct;
2. Information about the policies and procedures that NYFA used to evaluate the allegations;
3. The Decision-Maker's evaluation of the relevant evidence and determination whether Sex Discrimination or Sexual Misconduct occurred;
4. Conclusions regarding which section of this Policy, if any, the Respondent has or has not violated;
5. Any Disciplinary Sanctions NYFA will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by NYFA to the Complainant, and to the extent appropriate, other students identified by NYFA to be experiencing the effects of the Sex Discrimination or Sexual Misconduct; and
6. NYFA's procedures for the Complainant and Respondent to appeal.
7. 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

Upon receiving the Final Outcome Letter, the Complainant and Respondent may request, in writing, a redacted copy of the Investigation Report.

Disclosures of Outcome by the Parties

The Complainant and Respondent have the right to choose whether to disclose or discuss the outcome of the grievance procedure related to Sex Discrimination or Sexual Misconduct.

The Complainant and the Respondent have the right to have all information obtained during the course of the grievance proceedings be protected from public release until the Appeals Decision-Panel makes a final determination unless otherwise required by law.

Finality of Determination

The determination regarding responsibility becomes final either on the date that NYFA provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

Appeals

Each Party may appeal:

1. The dismissal of a Complaint or any included allegations, and/or;
2. A determination regarding whether Sex Discrimination or Sexual Misconduct occurred and/or sanctions.

To appeal, a Party must submit their written appeal within five (5) working days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

1. Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow NYFA's own procedures).
2. New evidence that would change the outcome that was not reasonably available when the determination whether Sex Discrimination or Sexual Misconduct occurred or dismissal was made; and
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against an individual Party, or for or against Complainants or Respondents generally, that would change the outcome.
4. The severity of the sanctions is unfair compared to the severity of the conduct for which the Respondent was found responsible.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, NYFA will notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to both Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals should be submitted electronically to the Title IX Coordinator, who will forward to the Appeals Decision-Panel. Appeals will be decided by an Appeals Decision-Panel, who will be free of conflict of interest and bias, and did not serve as Investigator, Title IX Coordinator, or Decision-Maker for the same matter. The Appeals Decision-Panel may be made up of one or more trained individuals.

The outcome of the appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

XIII. Retaliation

When NYFA has information about conduct that reasonably may constitute Retaliation under Title IX or its grievance procedures, NYFA is obligated to initiate its grievance procedures or, as appropriate, NYFA's informal resolution process.

NYFA will keep the identity of any individual who has made a report or Complaint of Sex Discrimination or Sexual Misconduct confidential, including the identity of any individual who has made a report or filed a complaint of Sex Discrimination or Sexual Misconduct under this Policy, any Complainant, any individual who has been reported to be the perpetrator of Sex Discrimination or Sexual Misconduct, any Respondent, and any Witness, except as permitted by FERPA, or as required by law, or to carry out the purposes of this Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under these grievance proceedings.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve Sex Discrimination or Sexual Misconduct, but that arise from the same facts or circumstances as a report or Complaint of Sex Discrimination or a report or Complaint of Sexual Misconduct.

Complaints alleging Retaliation may be filed according to this Policy.

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