

# Sexual Misconduct Policy

## 1. Introduction

The Mount Sinai Phillips School of Nursing is committed to providing an environment free from Sexual Misconduct. Sexual assault, sexual harassment, stalking, and other forms of Sexual Misconduct can be traumatizing and detrimental to a person's learning experience and overall health and have no place in our school community. Sexual Misconduct can be carried out by students, school employees, or third parties. The School will take any and all action needed to prevent, correct, and discipline behavior that violates this standard.

Students who believe that they have been subjected to Sexual Misconduct are encouraged to report these incidents. Upon receiving a report, the School will respond promptly, equitably and thoroughly. The School will make every effort to provide assistance and support to victims of Sexual Misconduct in a consistent, fair, and sensitive manner.

The School complies with Title IX of the Education Amendments Act of 1972, which prohibits discrimination on the basis of sex in education programs or activities. There are several laws that govern sex discrimination and sexual misconduct in the academic and employment context. This policy is intended to address conduct that is prohibited by Title IX, as defined by the United States Department of Education, and sexual misconduct as prohibited by New York Education Law § 129-b. This Policy and its appendix, which discuss rights and procedures under Title IX and under New York State Education Law § 129-b, are incorporated into the School's Code of Conduct. It is a violation of School policy (and potentially a violation of the law) to commit or attempt to commit Sexual Misconduct. Conduct that does not fall within the definitions of prohibited conduct as set forth in this policy may be a violation of other School policies that govern harassment and discrimination, including The Mount Sinai Health System Human Resources Policy 13.04 regarding Harassment and Sexual Harassment and Student and Faculty Conduct policies, Faculty Handbook, and House Staff Manuals.

The School prohibits all forms of discrimination on the basis of sex and gender in employment and in education programs and activities. All decisions regarding educational and employment opportunities must be made on the basis of merit and without discrimination because of sex, gender, gender identity or expression, pregnancy, parental status, marital status, sexual orientation, or any other characteristic protected by law.

## 2. Definitions

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

1. Consent to any sexual act or prior consensual sexual activity between or with any party

- does not necessarily constitute consent to any other sexual act.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs or alcohol.
  3. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, inebriation due to drugs or alcohol, an intellectual or other disability that prevents the person from having the capacity to give consent, involuntary restraint, or if an individual otherwise cannot consent.
  4. Consent to engage in activity with one person does not imply consent to engage in sexual activity with another; Consent may be initially given but can be withdrawn at any time;
  5. When consent is withdrawn or can no longer be given, sexual activity must stop.
  6. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

“Complainant” is the term used in the context of the School’s Sexual Misconduct investigation, adjudication, and appellate processes, to refer to an individual who has allegedly been the victim of Sexual Misconduct.

“Dating violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

“Domestic violence” is violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim, or by any other person against an adult or youth victim who is protected from that person’s acts under domestic or family violence laws.

“Designated Official” means School faculty and/or staff who are, pursuant to this Policy, required to forward reports of Sexual Misconduct to the School’s Title IX Coordinator (unless the report was received by the Designated Officials: (1) in their capacity as a treating physician; (2) in their capacity as a professional licensed counselor and/or pastoral counselor who provides mental-health counseling to members of the School Community; or (3) through a public awareness or advocacy event (such as candlelight vigils, protests, or other public events)), and includes officials with authority to institute corrective measures on behalf of the School, including the following School faculty and staff:

Dean of the Mount Sinai Phillips School of Nursing; Senior Associate Dean and Professor; Associate Deans; Program Directors.

“PSO School Community” or “School Community” means all School students, faculty, staff, and other School employees, officers, and directors. For purposes of this Policy and the accompanying procedures, individuals who are not employed by the School but are employed by hospitals or other components of the Mount Sinai Health System do not fall within the definition of “School Community” members. The “School” refers to Mount Sinai Phillips School of Nursing.

“Respondent” is the term used in the context of the School’s Sexual Misconduct investigation, adjudication, and appellate processes, to refer to an individual who has been accused of a

violation of this Policy.

“Retaliation” means any negative or adverse action taken against an individual for raising concerns, reporting, or filing complaints regarding Sexual Misconduct, or participating in the investigatory or adjudicatory process concerning a complaint of Sexual Misconduct. Retaliation can include, but is not limited to, hostility, intimidation, threats, and exclusion.

“Sexual Assault” means non-consensual sexual intercourse or non-consensual sexual contact as defined below:

Non-Consensual Sexual Intercourse is having or attempting to have sexual intercourse with another individual (i) by force, threat of force, or coercive conduct; (ii) without affirmative consent; or (iii) where that individual is incapacitated. Sexual intercourse includes anal, oral, or vaginal penetration, however slight, with a body part or an object.

Non-Consensual Sexual Contact is having or attempting to have sexual contact with another individual (i) by force, threat of force, or coercive conduct; (ii) without affirmative consent; or (iii) where that individual is incapacitated. Sexual contact includes touching, fondling or other intentional contact with the breasts, buttocks, groin, or genitals (over or under an individual’s clothing) for purposes of sexual gratification or when such private body parts are otherwise touched in a sexual manner.

“Sexual Harassment as defined under Title IX” includes (1) an employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual’s participation in unwelcome sexual conduct; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; and (3) sexual assault, domestic violence, dating violence and stalking. (Sexual harassment is defined more broadly under other laws and under other School policies, including the Mount Sinai Health System Human Resources Policy 13.04 regarding Harassment and Sexual Harassment, Student, Faculty and House Staff Handbooks).

“Sexual Misconduct” includes sexual assault, stalking, domestic violence, dating violence, and sexual harassment. For Sexual Misconduct to fall under Title IX, it must occur in the School’s education program or activity within the United States. Incidents of sexual assault, stalking, domestic violence and dating violence that occur off campus (including incidents that occur outside of the United States) in which a student is a Complainant or Respondent violate NYS law, will follow the procedures set forth below, except there is no hearing process for such claims – the investigator’s Report Of Investigation (“ROI”) will be reviewed by the Designated Arbiter, who will determine whether there has been a violation of the Sexual Misconduct Policy. [To the extent a court enjoins the 2020 Title IX regulations, or they are otherwise overturned, all Sexual Misconduct under this Policy will follow this modified process – the ROI will be reviewed by the Designated Arbiter for a determination, without the hearing process set out in this Policy.] Sexual harassment that occurs outside of the School’s education program or activities, or incidents that do not meet the definition of sexual harassment in this Policy, may fall under other School policies and will be addressed consistent with those policies.

“Stalking” is an intentional course of repeated conduct or behavior over a period of time, directed at a specific person, which causes a person to feel alarm, annoyance, emotional distress, and/or fear.

### **3. Scope**

This Policy applies regardless of race, color, national origin, religion, creed, age, disability, sex/gender, sexual orientation, gender identity or expression, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal convictions or belonging to any other group protected by law.

This Policy applies to all prohibited Sexual Misconduct occurring on or after the effective date of this Policy. In the case of prohibited Sexual Misconduct occurring before the effective date of this Policy, the issue of whether there was a violation of School policy will be determined under the policies and procedures in effect at the time the complaint was made.

This Policy applies to all members of the School Community, and all appropriate third parties, including visitors and other licensees and invitees to the School, unless noted to the contrary in this Policy or its appendix.

The procedures set out in this Policy may not apply to reports of Sexual Misconduct against individuals who are not employed by the School but are employed by hospitals or other components of the Mount Sinai Health System (“MSHS”). Reports of Sexual Misconduct allegedly perpetrated by such individuals against School Community members will be addressed as described below.

### **4. Title IX Coordinator**

Reporting Sexual Misconduct can be difficult, and victims or witnesses to such behavior may have mixed feelings about whether or not to report it. The School encourages all members of the School Community who either: (1) believe that they have been the victim of Sexual Misconduct; or (2) become aware of incidents of Sexual Misconduct involving other members of the School Community, to report the conduct. Members of the School Community can report Sexual Misconduct to the Title IX Coordinator, or to numerous other individuals described below.

The School’s Title IX Coordinator is responsible for coordinating the School’s anti-Sexual Misconduct efforts, including training, education, and awareness initiatives and campaigns related to the prevention of Sexual Misconduct in the School Community. In addition, as described below, the Title IX Coordinator is responsible for assessing and investigating certain reports of Sexual Misconduct committed by members of the School Community, and for providing Complainants and/or victims with important information following disclosure of alleged incidents of Sexual Misconduct.

Questions and inquiries regarding Title IX, including reports of incidents or questions about Sexual Misconduct, may be referred to the Title IX Coordinator, whose contact information is as follows:

Bernice Pass-Stern  
Title IX Coordinator

148 E. 126th Street  
New York, NY 10035 Mobile phone: 347-931-2054  
Email: Bernice.pass-stern@mountsinai.org

## 5. Emergency Access to Title IX Coordinator or Other Appropriate Trained Official

Complainants have the right to emergency access to the Title IX Coordinator, or a designated substitute in her absence, or a representative from Mount Sinai Sexual Assault and Violence Intervention Program (“SAVI”), to:

- A. provide information regarding options to proceed;
- B. provide information on the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, in situations where there has been a sexual assault, and detailing that the criminal justice process uses different standards of proof and evidence, and that any questions about whether a specific incident violated the law should be addressed to law enforcement or to the district attorney; and
- C. explain whether he or she is authorized to offer the Complainant confidentiality or privacy, and inform the Complainant of other reporting options, including those described in this policy.

At the first instance of disclosure of a complaint/report of Sexual Misconduct by a Complainant to the Title IX Coordinator, or in her absence, another appropriate School representative, the Complainant must also be advised as follows:

“You have the right to make a report to campus security, local law enforcement, and/or state police or choose not to report; to report the incident to the School; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from the School.”

## 6. Options for Reporting Sexual Misconduct

There are a number of different options for formally reporting Sexual Misconduct, each of which provides varying degrees of confidentiality. Below are explanations of the various options for **officially** reporting allegations of Sexual Misconduct:

- **Reporting to Law Enforcement:** Members of the School Community have the option of reporting Sexual Misconduct to law enforcement. Formal complaints of Sexual Misconduct can be made to local law enforcement authorities by contacting the NYPD (by calling 911 or reporting the crime to a local police precinct), the District Attorney of New York Sex Crimes Unit at (212) 335-9373, or the New York State Police Sexual Assault Victims Unit.
- **Reporting to the Title IX Coordinator**
- **Reporting to the School Security Department:** All complaints and reports of Sexual Misconduct that are made to the School Security Department will be forwarded to the Title IX Coordinator. The School Security Department can be reached by dialing 646-396-4455.
- **Reporting to Designated Officials:** Reports of Sexual Misconduct can be made to any Designated Official. Designated Officials are required to forward all reports of Sexual Misconduct to the School’s Title IX Coordinator, and thus, cannot generally treat reports of Sexual Misconduct confidentially, unless the report was made to a

School Designated Official: (1) in his or her capacity as a treating physician; (2) in his or her capacity as a professional licensed counselor and/or pastoral counselor who provides mental-health counseling to members of the School Community; or (3) through a public awareness or advocacy event (such as candlelight vigils, protests, or other public events). In such cases, the School Designated Official to whom the report was made is not required to forward the report to the Title IX Coordinator absent express permission from the victim, and can otherwise treat the report as confidential, and the School is not obligated to begin an investigation.

Otherwise, however, a report of Sexual Misconduct that is made to any School Designated Official (whether directly by a victim, witness, bystander, or other Complainant or indirectly, through another faculty or staff member to whom a report has been made) is required to be forwarded to the Title IX Coordinator for assessment. For this reason, reports of Sexual Misconduct made to Designated Officials generally cannot be treated with complete confidentiality.

While School faculty and staff who are not Designated Officials have discretion as to whether or not to forward such reports to the Title IX Coordinator (and thus can keep such reports confidential), they are nonetheless encouraged to forward such reports to the Title IX Coordinator, especially when the Complainant agrees to such disclosure.

Other than the options for officially reporting Sexual Misconduct discussed above, a member of the School Community who believes s/he is a victim of Sexual Misconduct can take any/all of the following steps:

- **Contact on or off-campus advocates and counselors.** Advocates and counselors can provide an immediate response in a crisis situation (e.g., help you obtain needed resources, explain reporting options, and help navigate the reporting process). There are many counseling, advocacy, and support organizations available to help victims of Sexual Misconduct, whether those victims choose to make an official report or participate in the institutional disciplinary or criminal processes. Contact information for on and off-campus counseling, advocacy, rape-crisis and sexual assault treatment programs, and support organizations is set forth at Appendix 1.
- **Get medical attention.** You can receive emergency medical care in the Emergency Departments of many of the hospitals referenced in Appendix 1. If you seek medical attention from The Mount Sinai Hospital Emergency Department, a DOH-certified Volunteer Advocate from the Mount Sinai Sexual Assault and Violence Intervention Program (“SAVI”) will be available to respond and to provide support, information and advocacy for you.
  - Evidence collection can be important in support of criminal charges, and accordingly, victims who may wish to pursue criminal action (or who wish to keep that option available) should be aware of the importance of immediately reporting the incident so that physical evidence can be preserved at the scene, as well as on the person assaulted. Although a delay in reporting could limit the amount of physical evidence available (which could impact a criminal investigation), victims can always report the incident, whether it be days, weeks, or months after the incident occurred. Additional information regarding sexual assault forensic examinations, as well as resources available through the New York State Office of Victim Services, can be found at <https://ovs.ny.gov/>.
  - Evidence collection is only one aspect of the sexual assault medical follow-up

care a survivor is entitled to receive if he or she decides to access services. A full physical examination, certain prophylactic antibiotics and anti-viral medications, pregnancy prevention medication (Plan B), and other procedures will also be offered during the victim's hospital visit.

## **7. Immediate and Supportive Measures**

The School shall ensure that individuals are provided appropriate supportive measures, which shall not be punitive or disciplinary against any party. Such supportive measures may include the following immediate and interim protections and accommodations, as appropriate:

- A. "No Contact Orders"
  - a. To have the School issue a "no contact order" consistent with School policies and procedures, where continued intentional contact between the Complainant and Respondent would be a violation of this Policy and/or the School Code of Conduct and would be subject to additional conduct charges.
  - b. The School may, if and when practicable, establish an appropriate schedule for the Complainant and Respondent to access applicable institution buildings and property.
  - c. The Title IX Coordinator shall, upon request, give both the Respondent and the Complainant a prompt and reasonable review of the need for and terms of a "no contact order," including potential modification. The Respondent and the Complainant shall be allowed to submit evidence in support of the request.
- B. Assistance from the Title IX Coordinator in finding and contacting appropriate services to assist in obtaining an order of protection or equivalent protective or restraining order.
- C. To receive a copy of the order of protection or equivalent when received by the School and to have the opportunity to meet or speak with an institutional representative or other appropriate individual who can explain the order and answer questions about it, including information from the order about the Respondent's responsibility to stay away from the protected person or persons.
- D. To have the consequences for violating orders of protection or equivalents (including but not limited to arrest, additional conduct charges, and interim suspension) explained.
- E. To receive assistance from the School's Security Department in calling on and assisting local law enforcement, when and if possible, in effecting an arrest when an individual violates an order of protection.
- F. When the Respondent is a student determined to present an immediate threat to a person's physical health or safety, to subject the Respondent to interim suspension. When the Respondent is an employee determined to present a continuing threat to the health or safety of the community, to place the employee on administrative leave. Both the Complainant and the Respondent shall, upon request, be afforded a prompt and reasonable review by the Title IX Coordinator of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of the request.
- G. Reasonable and available interim measures and accommodations that effect a change in academic class, and work schedules, housing arrangements,

employment, transportation, and other applicable arrangements in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Both the Respondent and the Complainant shall, upon request, be afforded a prompt and reasonable review, by the Title IX Coordinator of the need for and terms of any such interim measure that directly affects him or her and shall be allowed to submit evidence in support of the request.

- H. Other actions that the School/the Title IX Coordinator deem necessary and/or appropriate.

## **8. Sexual Misconduct Assessment and Investigation Processes**

### **A. Initial Assessment (Step 1)**

Following receipt of a report of Sexual Misconduct, the Title IX Coordinator will conduct an initial assessment. As part of the initial assessment, the Title IX Coordinator will take the following steps (to the extent that they have not already been taken by the Title IX Coordinator):

1. Assess the nature and circumstances of the complaint/report.
2. Address the immediate needs and concerns of the Complainant, including physical safety and emotional well-being needs.
3. Provide copies of or direct the Complainant to the School's Sexual Misconduct Policy and accompanying procedures and discuss the policy and procedures with the Complainant.
4. Provide the Complainant with information about resources, including information about intervention, mental health counseling, medical services, and sexually transmitted infections.
5. Provide the Complainant with information regarding sexual assault forensic examinations and direct the Reporting Individual to resources that are available through the New York State Office of Victim Services (<https://ovs.ny.gov/>).
6. Discuss the Complainant's preferences (if any) regarding the manner of resolution, requests (if any) for privacy and/or no further action (see Section B below entitled "Protocols for Requests for Confidentiality and/or No Further Action").
7. Assess for pattern evidence or other similar conduct by the Respondent.
8. Assess the complaint/report for any Clery Act and other reporting obligations, including entry in the crime log or issuance of a timely warning.
9. Direct the Complainant to information regarding on-campus and off-campus resources and the range of appropriate and available supportive and protective measures (see options for officially reporting allegations of Sexual Misconduct above and in Appendix 1).
10. Explain the School's policy prohibiting retaliation.

Upon completion of the Initial Assessment, the Title IX Coordinator will determine whether the circumstances warrant or require any of the following actions:

1. Proceeding to an investigation under the procedures set out in this Policy (see Sections (C) and (D)).
2. Referring/forwarding to a School Human Resources official or outside of the School for further action under other policies and procedures (see Section (C)); or



3. Considering the matter resolved (if, for example, the School honors a Complainant's request for confidentiality (see Section (B)) – in which case the matter will be closed with the School taking only such actions, as necessary, to protect, assist, and accommodate the Complainant.

If the Title IX Coordinator determines that the circumstances warrant proceeding to an investigation or require referral to officials in another MSHS component/unit for further action under other policies and procedures, the School will ask for consent from the Complainant, and the School will ask the Reporting Individual if s/he wants to file a formal complaint. A formal complaint is a document filed by the Complainant (in person, by mail, or by electronic mail) with the Title IX Coordinator alleging sexual misconduct against a Respondent. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the School. If a Complainant does not choose to file a formal complaint, such a request for "no further action" will be honored unless the School, through the Title IX Coordinator, determines in good faith that it is necessary to proceed in order to limit the risk of harm to the Complainant or other members of the School Community, in which case the Title IX Coordinator may sign the formal complaint. Factors used to determine whether to honor such a "no further action" request include but are not limited to:

- Whether the Respondent has a history of violent behavior or is a repeat offender.
- Whether the incident represents an escalation in unlawful conduct on behalf of the Respondent from previously noted behavior.
- The increased risk that the Respondent will commit additional acts of violence.
- Whether the Respondent used a weapon or force.
- Whether the Complainant is a minor.
- Whether the School has other means to obtain evidence, such as security footage, and whether available information reveals a pattern of misconduct at a given location or by a particular group.

**If the School honors Complainant's request for "no further action," the Complainant must understand that the School's ability to meaningfully respond to the report will necessarily be limited.** Accordingly, in such cases, the matter will be considered resolved, with the School taking only such actions as necessary to protect, assist, and accommodate the Complainant. Where a complaint was resolved because the School agreed to the Complainant's request to take "no further action," the matter may later be reopened at the discretion of the Title IX Coordinator if the Complainant later changes his or her mind and asks to have the matter investigated by the School or if additional evidence or allegations come to light.

There is no time limit for submitting a report of Sexual Misconduct, but at the time of filing a formal complaint, the Complainant must be participating in or attempting to participate in the School's education program or activity for the procedures set out in this Policy to apply. The ability to investigate and respond effectively to a complaint may be reduced with the passage of time. Therefore, any member of the School Community who believes that he or she has been a victim of Sexual Misconduct is encouraged to report such a complaint immediately in order to maximize the ability to obtain evidence and conduct a thorough, impartial and reliable investigation.

## **B. Protocols for Requests for Confidentiality / Anonymity**

Where a victim of Sexual Misconduct wishes to maintain confidentiality, the School must weigh the request(s) against its obligation to provide a safe, non-discriminatory environment for all members of the School Community, including the victim, and its legal obligations. The Title IX Coordinator will evaluate requests for confidentiality once the Title IX Coordinator is on notice of alleged Sexual Misconduct, using a range of factors, including but not limited to the following:

- The risk that the Respondent may commit additional acts of prohibited conduct or other violence;
- Whether the act of prohibited conduct was perpetrated with a weapon, was otherwise unusually violent, or whether other aggravating circumstances exist;
- Whether the complaint/report reveals or reflects a pattern of prohibited conduct;
- Whether the Complainant is or at the time was a minor; and
- Whether, as a practical matter, the School is able to pursue the investigation without the cooperation/participation of the Complainant.

If possible, based on the facts and circumstances, the School will take action consistent with the Complainant's request to maintain confidentiality. There may be times when the School is not able to honor a Complainant's confidentiality request. If the confidentiality request cannot be honored, the Complainant will be informed before the start of the investigation, and the School will still try to maintain his or her privacy to the greatest extent possible by only sharing, relaying, and/or disseminating information as necessary to conduct and complete the investigation and adjudication processes (including any applicable appeals therefrom) and/or as otherwise required by law.

If a Complainant chooses to make an anonymous report concerning Sexual Misconduct, the School will attempt to follow up on the report to the best of its ability. The School's ability to thoroughly investigate an allegation from an anonymous source may be limited based on the inability to speak with the Complainant.

**Confidentiality** versus Privacy: It is important to note that "confidentiality" is different than "privacy." Privacy, for purposes of this policy, means that information regarding reports of Sexual Misconduct will, to the greatest extent possible, not be disclosed, relayed, and/or disseminated to other individuals (including informing appropriate School officials and representatives) any more than is necessary to comply with the School's obligations under the law and School policies. Privacy may still be offered to a Complainant even when confidentiality cannot be offered, and School officials and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. This means that the information you provide to a non-confidential resource will be relayed and disseminated only as necessary for the Title IX Coordinator/investigator(s) to investigate and/or seek a resolution.

It should also be noted that faculty and/or staff (other than the Title IX Coordinator) should not share information provided by Complainants with law enforcement without the Complainant's consent or unless s/he has also reported the incident to law enforcement.

Because the standards for pursuing and completing criminal investigations are different from those used for the School's Sexual Misconduct investigations, the termination of a criminal investigation without an arrest or conviction does not affect the School's

obligations under Title IX, nor its obligations to investigate, adjudicate, and punish those who perpetrate Sexual Misconduct. In addition, Complainants have the right to file criminal complaints with local law enforcement authorities and Title IX Complaints with the School simultaneously.

Although Title IX does not require a school to report alleged incidents of Sexual Misconduct to law enforcement or other regulatory bodies, the School may have such reporting obligations under other laws, and as such, reserves the right to report any alleged crime to law enforcement or an appropriate regulatory body. In such cases, the Complainant will be informed before the report is forwarded to law enforcement authorities, and the School will, to the extent possible, only share information regarding the report with people who are involved in the law enforcement or regulatory investigation(s).

### **C. Protocols for Investigation of Sexual Misconduct Reports**

The Title IX Coordinator or her designee shall investigate cases where Respondent is a member of the School Community, and the alleged activity falls under the definition of Sexual Misconduct, using the procedures set forth in Section (D) below.

In the first instance, the Title IX Coordinator or her designee shall investigate whether the alleged conduct falls under the definition of Sexual Misconduct under Title IX – including the requirement that the conduct occur in the School’s educational program or activities and within the United States.

If the Title IX Coordinator determines that a complaint does not fall under the definition of Sexual Misconduct under Title IX – for example, if the alleged incident did not occur in the School’s education program or activity – the School will promptly send notice to both parties of dismissal of the action under Title IX. Dismissal at this stage may be reviewed on appeal.

Where the Complainant or Respondent is a student, the Title IX Coordinator or her designee will then assess whether the complaint alleges sexual assault, stalking, domestic violence and/or dating violence that occurred off campus. Conduct in this category will be investigated and assessed pursuant to the procedures set forth below for Title IX matters, except that there will not be hearings in such matters – rather, the ROI will be reviewed by the Designated Arbiter, and the Designated Arbiter will make a determination based on the ROI.

If the conduct alleged does not constitute Sexual Misconduct as defined by this policy, it may still violate other School policies, and it may be investigated consistent with applicable School policies and procedures. If the actions alleged in a complaint do not fall under the School’s Sexual Misconduct Policy, but they may fall under another policy, the Title IX Coordinator will inform the appropriate individual(s) of the matter for further investigation and consideration.

If actions alleged in a complaint fall under the School’s Sexual Misconduct Policy, and other aspects of the complaint fall under another School policy, the Title IX Coordinator will inform the appropriate individual(s) of the matter and the School, at its discretion, may: (i) run parallel investigations of the Sexual Misconduct allegations (through the processes set out in this Policy) and allegations that fall under other policies (through the processes set out in those other policies or otherwise established by the School); (ii) the School may perform a single investigation of all claims; (iii) or the School may perform one investigation followed by

another investigation. The School will make this determination based on the specifics of the allegations.

To the extent an individual's employment is terminated or an individual is dismissed from the School based on actions that do not fall within the purview of Title IX, the individual is entitled to whatever right to appeal s/he would otherwise have under School policy – in such cases, the School need not engage in the Title IX investigative/hearing/appeal process set forth in this Policy. For example, if a Complainant alleges both race-based harassment and sexual harassment, the School may choose to investigate the race-based harassment first. If the School terminates the Respondent's employment because of the race-based harassment, it need not engage in the process set out in this Policy to investigate the sexual harassment claim.

In cases where the Respondent is not a member of the "School Community" but is employed, affiliated, and/or associated with other entities/components of the MSHS (such as, for example, MSHS hospital employees), the Title IX Coordinator will, upon completion of the Initial Assessment, forward the report of Sexual Misconduct to a Human Resources official in the appropriate MSHS component/unit with whom the Respondent is employed, associated, and/or affiliated, for further action under the governing policies and procedures that apply under the circumstances (unless the School has agreed to honor the Complainant's request for confidentiality or that "no further action" be taken).

In cases where the Respondent is not a member of the School Community and is not employed, affiliated, or associated with entities/components in the MSHS, the Title IX Coordinator can, upon completion of the Initial Assessment, forward the report to officials of the entity/organization (if any) with whom the Respondent is employed or associated/affiliated, for investigation/further action (unless the School has agreed to honor the Complainant's request for confidentiality or that "no further action" be taken).

## **D. Investigation Procedures (Step 2)**

### **i. Notification of Investigation Initiation**

Unless otherwise indicated in this Policy (such as, for example, where a request for confidentiality or that "no further action" be taken is honored by the School or when a report of Sexual Misconduct needs to be referred to another component/unit in the MSHS for further action), the School will investigate complaints/reports of Sexual Misconduct allegedly perpetrated by members of the School Community that are made to either: (1) School faculty or staff who notify the Title IX Coordinator; (2) the Title IX Coordinator, or (3) of which the School has otherwise received notice (from sources such as members of the local community, social networking sites, or the media).

Before initiating an investigation of Sexual Misconduct, the Complainant will be notified in writing that the investigation will be beginning and of the specific rules and/or code of conduct/School Sexual Misconduct Policy provisions alleged to have been violated, and possible sanctions. The Respondent will also be provided with written notice that will include:

- A description of the date, time, location and factual allegations concerning the violation, including who was involved;
- A statement that the Respondent is presumed not to be responsible at the outset of the

process, and can only be found responsible after the School follows the process set out in this Policy;

- A reference to the specific rules and/or code of conduct/School Sexual Misconduct Policy provisions alleged to have been violated, and;
- A statement concerning possible sanctions.

The parties will be notified that information protected by legal privilege – e.g., attorney-client privilege or doctor patient privilege – cannot be used during the investigation unless the person holding that privilege waives it.

To the extent the School determines it is a viable option in a specific case, the parties will be notified of the option of participating in an informal resolution, if both parties agree to this alternative. To the extent either party wants to exit the informal resolution process and engage in the resolution process described below, the parties will be informed of their right to do so. In the event the parties exit the informal resolution process, the information elicited in the informal resolution process will not be used in the formal resolution process. Informal resolution will not be available in cases where an employee is accused of sexually harassing a student, as sexual harassment is defined under this Policy.

- The parties will be notified that they are entitled to an advisor of their choice, who may be an attorney.
- The parties will be informed that they can request to inspect and review evidence, and the parties will be provided with an opportunity to do so.
- The parties will also be notified that the School prohibits knowingly submitting false statements or false information during an investigation/hearing process.
- Notice will go out to the parties promptly after the Complainant files a formal complaint or the School decides to proceed with a formal complaint.

## **ii. Investigation Mechanisms, Protocols, and Safeguards**

The Title IX Coordinator may conduct an investigation, or she may designate an appropriate investigator(s) to conduct an investigation.

The Sexual Misconduct investigation may involve, but is not limited to:

- Conducting interviews of the Complainant, the Respondent, and any witnesses or other third parties who may have information or evidence regarding the allegations;
- Reviewing documents and records, including law enforcement investigation documents, student and personnel files, and written statements regarding the allegations;
- Gathering and examining other relevant documents and evidence, including video, audio, photographs, e-mails, text-messages, or social media posts that may be relevant to the allegations.

The investigator(s) will follow these principles in all investigations of alleged Sexual Misconduct:

- A. All investigations of alleged Sexual Misconduct will be undertaken in a reliable and impartial manner. All Complainants/Respondents will be notified of the time frame within which the investigation of the report(s) is expected to be completed. The School

will strive to complete investigations of reports of Sexual Misconduct in as timely a manner as possible.

- B. All investigations of alleged Sexual Misconduct will be conducted in a manner that takes into consideration the serious and sensitive nature of such allegations, and which limits, to the extent possible, the number of individuals who are contacted, interviewed, or otherwise made aware of the investigation. To this end, the Title IX Coordinator and any designated investigator(s) will, to the extent possible, share information with the least number of people necessary to effectuate the School's response, investigation, and adjudication.
- C. The School will conduct its own investigation (and adjudication) of Sexual Misconduct allegations, regardless of whether the alleged Sexual Misconduct is also being pursued through the criminal justice system. The School will comply with law enforcement requests for cooperation, which at times may require that the School temporarily delay its investigation while law enforcement organization(s) gather evidence. Temporary delays should not last more than ten days, except when law enforcement specifically requests and justifies a longer delay.
- D. The investigation will be conducted independently and without regard to/without being precluded by any determinations that may have been made by other entities, including law enforcement authorities (such as the NYPD or the District Attorney of New York), the grand jury, or in connection with criminal proceedings.
- E. Complainants and Respondents will be given reasonable advance written notice of any meetings that they are required to or eligible to attend in connection with the investigation, including the date, time, location, participants and purpose of the meeting.
- F. Where the Respondent or the Complainant and the Respondent are students and/or postdoctoral fellows/students at the School, all of the additional principles and safeguards set forth in Appendix 2 apply.

An attorney with the Mount Sinai Health System Office of General Counsel can serve as legal counsel to the Title IX Coordinator and/or the designated investigator(s) in connection with investigations of Sexual Misconduct.

### **iii. Report of Investigation and Hearing Before Designated Arbiter**

Upon completion of the investigation, the investigator(s) shall prepare a Report of Investigation ("ROI"), which shall include a description of the evidence discovered during the course of the investigation, and the investigator's findings. The ROI will make a finding of fact as to whether it is more likely than not that prohibited conduct occurred and a recommendation as to whether the conduct violates institutional policy and set forth the evidentiary basis for the conclusion.

Respondent and Complainant will receive a draft of the full ROI and any evidence directly related to the complaint. The parties will have 10 calendar days to respond to the ROI and the evidence in writing to the Title IX Coordinator. Witnesses will also be given a copy of a summary of their witness interview in the draft ROI and be given 10 calendar days to confirm its accuracy or make any necessary corrections. The investigator(s) will consider any written response to the ROI by the parties before finalizing the ROI. The Respondent and Complainant will receive a final copy of the ROI at least 10 days before the Hearing before a Designated Arbiter. The final ROI shall thereafter be submitted to the appropriate Designated Arbiter. The appropriate Designated Arbiter will be determined on a case-by-case basis,

based on the status of the Respondent, and will be appointed by the Dean of the Medical School or his designee.

Upon receipt and consideration of the ROI, the Designated Arbiter will hold a hearing and weigh the evidence using a “preponderance of the evidence” standard, asking whether it is more likely than not that the Respondent violated the Policy. The Respondent is assumed not to have violated the Sexual Misconduct Policy at the outset of the hearing.

At the hearing:

- Complainant and Respondent will both have an advisor present. If a Complainant or Respondent does not have an advisor, the School will appoint an advisor.
- The Designated Arbiter will determine the order of witnesses and has the discretion to ask the witness questions or give the witness an opportunity to make a statement.
- The Complainant’s and Respondent’s advisors may ask questions of all witnesses at the hearing, including questions that challenge the witness’s credibility. Under no circumstances will the parties be permitted to question witnesses directly. Questions must be asked in a neutral tone. Advisors will not be permitted to be disruptive or harassing during their questioning. Questions must be relevant and must not pertain to Complainant’s past sexual behavior or sexual predisposition – with two exceptions – where evidence of prior sexual behavior is offered to prove someone other than the Respondent committed the alleged offense, or where prior sexual behavior evidence is specifically about the Complainant and the Respondent and is offered to prove consent. The Designated Arbiter will determine whether or not each question is relevant before the party or witness has to answer the question. A lawyer from the School’s Office of General Counsel will serve as counsel to the Designated Arbiter and may consult with the Designated Arbiter concerning such determinations.
- If an individual does not appear at the hearing or is not subject to questioning/cross-examination, the Designated Arbiter will exclude and not rely on that individual’s statements in making a decision.
- All reasonable measures will be taken to ensure that proceedings are conducted in a manner that does not inflict additional trauma on the Complainant. When requested, arrangements will be made so that the Complainant and the Respondent do not have to be present in the same room at the same time. This can be affected through the use of closed-circuit televisions or other means where a Complainant has requested sequestration. No Sexual Misconduct adjudication hearings will require a Complainant to be present at the hearing as a requirement to hold the hearing.

A recording or transcript will be made of the hearing and will be made available for the Complainant and Respondent to review.

The Complainant and Respondent may submit impact statements, describing the impact of the case on them and/or requested sanctions, to the Designated Arbiter before the Designated Arbiter decides on what sanctions, if any, are appropriate.

If, after holding a hearing and assessing the evidence, the Designated Arbiter determines that it is more likely than not that the Policy was violated, the Designated Arbiter is empowered to impose what he or she believes to be the appropriate sanctions/remedial actions to be taken. A list of sanctions/remedies that can be imposed for violations of the Policy are set forth in Appendix 3.

If the Designated Arbiter determines that it is more likely than not that the Policy was not violated, the Designated Arbiter will dismiss the report. Thereafter, the matter will be referred back to the Title IX Coordinator, who will either: (1) close the matter; or (2) refer the matter to other appropriate designated School officials for further action as appropriate, to the extent the allegations may implicate other School policies and procedures.

The Complainant and Respondent will thereafter be notified simultaneously via email of the outcome of the process, including: (1) all procedural steps in the process (including notices provided, evidence gathered); (2) the Designated Arbiter's findings of fact; (3) the Designated Arbiter's decision as to whether a violation of the Policy did or did not take place (and the rationale for his or her decision); (4) the Designated Arbiter's decision regarding sanctions (and the rationale for his or her decision regarding sanctions, if any), including how the sanction will restore or preserve equal access to the School's education program or activity) and (5) whether remedies were offered to the Complainant. The School will also disclose other steps that the School has or will take to prevent recurrence.

### **E. Appeals**

All parties will have the same rights to present their cases on appeal. An individual can appeal based on the following grounds:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence discovered that was not reasonably available at the time the Designated Arbiter made the determination.
3. Conflict of interest on the part of the Title IX Coordinator, investigator(s) or Designated Arbiter(s) that affected the outcome of the matter.

To the extent other grounds for appeal are available in School policies for House Staff Officers or faculty, such individuals can appeal based on those grounds as well.

If a Complainant or Respondent wishes to appeal from a Designated Arbiter's decision as to whether or not a violation of the School Sexual Misconduct Policy occurred, he or she must file written notice of appeal with the Title IX Coordinator within ten (10) calendar days of e-mailing of notice of the Designated Arbiter's decision.

Thereafter, the Dean of the Nursing School will convene a panel ("Panel") to consider the appeal. The Panel will consist of three (3) School faculty and/or staff members who have been trained in the adjudication of Sexual Misconduct claims. No students are permitted to serve on any Sexual Misconduct adjudication panels. An attorney with the Mount Sinai Health System Office of General Counsel will serve as legal counsel to all Panels convened pursuant to these procedures.

The following procedures will be followed with respect to the appeal:

1. Following selection of the Panel and the appointment of a panel Chair, the Complainant and Respondent will be notified of the names of the members of the Panel and will have 48 hours from receipt of such notification to challenge, in writing, any member of the Panel for cause.
2. In the event of a challenge, the Panel Chair (or if the Chair is challenged, the Dean of the Nursing School or his designee) will decide on the merits and replace Panel



members if necessary.

3. Both the Complainant and the Respondent will be permitted to provide written submissions to the Panel regarding the matter and the allegations, which will be no longer than twelve pages.
4. The Panel will also have access to the ROI and the recording/transcript of any Hearing before the Designated Arbiter.
5. Certain rights will be afforded, and certain principles will be implemented/measures will be taken in connection with all appellate proceedings regarding reports of Sexual Misconduct allegedly perpetrated by students at the School against other School students (*i.e.*, "Student on Student" Sexual Misconduct). Those safeguards and measures are set forth in Appendix 2.
6. The Panel will deliberate on the findings without the presence of either the Complainant or the Respondent. Upon concluding its deliberations, the Panel will vote and make its determination as to whether the grounds for appeal have been met and any necessary remedial action that may result based on a majority vote.
7. The Panel will provide the parties with a written decision on the appeal, including the rationale for the decision and any further steps or remedial actions deemed necessary (the "Panel Report").
8. The Panel will strive to complete the Panel Report in as timely a manner as possible.
9. The Panel Report will be forwarded to the Dean of the Nursing School (or his/her designee). The Panel's findings and determination regarding liability (whether or not the School's policy was violated) must be accepted by/cannot be rejected by the Dean (or his/her designee). However, the Dean (or his/her designee) may accept or reject the Panel's recommendations regarding sanctions/remedial action to be imposed in making his or her determination as to what sanctions/remedial action will be imposed for the violation (a non-exhaustive list of the sanctions/remedies that can be imposed following determinations that this Sexual Misconduct Policy has been violated are set forth in Appendix 3).
10. Copies of written statements from the Panel and/or the Dean of the Nursing School (or his/her designee) detailing the factual findings supporting any determinations of violations of the Policy and the rationale for any sanctions imposed will be provided to both the Complainant(s) and the Respondent(s) upon conclusion of the appellate processes.

If the investigation and grievance/complaint adjudication process reflects that Sexual Misconduct created a hostile environment, the Dean of the Nursing School and the Title IX Coordinator will work to ensure that prompt and effective steps are taken that are reasonably calculated to end the conduct, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

#### **F. Time Frames**

To the extent possible and consistent with a full and fair process, the School will seek to resolve complaints within approximately 100 calendar days of an initial report, not including the time for any appeal. The School will seek to resolve appeals within 50 calendar days. The School will seek to resolve an informal resolution process within 50 calendar days. Time frames will vary depending on the complexity of the investigation and the severity and extent of the alleged misconduct. The School will give the parties periodic status updates.

#### **9. Rights of Complainants**

All Complainants have the right to:

- A. Notify School security, local law enforcement, and/or state police;
- B. Have emergency access to the Title IX Coordinator, or in his or her absence, other appropriate officials trained in interviewing victims of Sexual Misconduct, who shall be available upon the first instance of disclosure by a Complainant to provide certain information regarding options for proceeding that are set out above.
- C. Confidentially disclose the incident to individuals and organizations that are associated or affiliated with the School, including SAVI, Professional and Pastoral Counselors, Non-Professional Counselors and Advocates, and others (a more complete list of on and off campus advocates and counseling options, some of which offer confidentiality is available in Appendix 1), who can assist in obtaining services for Complainants.
- D. Confidentially disclose the incident and obtain services from the state or local government.
- E. Disclose the incident to institution representatives such as the Title IX Coordinator, who can offer privacy and may be able to offer confidentiality, if appropriate, and can assist in obtaining resources for Complainants.
- F. File a report of Sexual Misconduct and consult with the Title IX Coordinator and other appropriate institution representatives for information and assistance. As set forth above, reports shall be dealt with in accordance with institutional policy and will be treated with privacy to the extent possible.
- G. Disclose, if the Respondent is an employee of another entity in the MSHS, the incident to the appropriate human resources or other authorities at the Respondent's entity of employment, or request that a confidential or private employee assist in reporting to the appropriate authorities.
- H. Receive assistance from the Title IX Coordinator in initiating legal proceedings in family court or civil court.
- I. Withdraw a complaint or withdraw involvement from the School Sexual Misconduct investigation and/or adjudication process at any time. It must be noted here that in certain circumstances, the School may have no choice but to continue with the investigation and/or adjudication processes even if a Complainant has withdrawn his or her complaint or has requested that "no further action" be taken. The criteria on which the School will base its decision regarding whether to proceed with the institutional process despite the Complainant's withdrawal from the process are set forth above.

## **10. Additional Rights in "Student on Student" Sexual Misconduct Proceedings**

The School is cognizant of the serious and sensitive nature of Sexual Misconduct claims. Accordingly, as set forth more fully in N.Y. Educ. Law § 6444(5) and to the extent feasible and lawful, the School will ensure that certain rights are afforded and that certain safeguards are taken in connection with all Sexual Misconduct investigations, adjudications, and reviews (including appellate reviews) involving reports of Sexual Misconduct allegedly perpetrated by students at the School against other students at the School. These rights and safeguards are set forth fully in Appendix 2.

## **11. Policy for Alcohol and/or Drug Use Amnesty**

The health and safety of every student at the School is of utmost importance. The School recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that Sexual Misconduct occurs may be hesitant to report

such incidents because of fear of potential consequences for their own conduct. The School strongly encourages students to report Sexual Misconduct, including domestic violence, dating violence, stalking, or sexual assault, to School officials, including but not limited to the Title IX Coordinator. A bystander acting in good faith or a Complainant acting in good faith who discloses any incident of Sexual Misconduct, including domestic violence, dating violence, stalking, or sexual assault, to School officials or law enforcement will not be subject to action for violations of the School's drug or alcohol use policies occurring at or near the time of the commission of the subject Sexual Misconduct.

Nothing in this Policy or otherwise shall be construed to limit an institution's ability to provide amnesty to students in additional circumstances not expressly set forth herein.

While this Policy provides students with amnesty for violations of the School's drug and alcohol use policies under the circumstances set forth above, it does not absolve the School of its obligations, in legally mandated or otherwise appropriate circumstances, to take whatever steps are necessary to ensure the safety of the School Community, patients, and the public, and to truthfully and accurately report to any governmental, administrative, regulatory, professional, or licensing authorities, boards, or bodies, and the School expressly reserves its rights to do so.

## **12. Prohibition Against Retaliation**

It is a violation of School policy to retaliate against an individual for: (1) raising concerns, reporting, or filing complaints or reports (whether first or third party) regarding Sexual Misconduct; (2) involvement in registering complaints or reports of Sexual Misconduct; (3) serving as representatives for Complainants or Respondents; or (4) participating in the investigative or adjudicative processes in connection with allegations of Sexual Misconduct.

## **13. False Reports**

Submitting a false report or providing false or misleading information in bad faith or with a view to personal gain in connection with an alleged incident of Sexual Misconduct is prohibited and is subject to disciplinary action. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are ultimately not substantiated.

## **14. Education, Training, and Prevention**

The School has adopted a comprehensive student onboarding and ongoing education campaign to educate members of the School Community about Sexual Misconduct (including domestic violence, dating violence, stalking, and sexual assault). In connection with this campaign:

1. All new incoming and transfer students shall, during the course of their orientation, receive training on certain enumerated topics that are set forth in Appendix 4.
2. The School will use multiple methods, including written handouts as well as programs that may include on-line courses, lectures, seminars, workshops, and discussion groups, to educate students about Sexual Misconduct and violence prevention, and to promote discussion, encourage reporting, and facilitate prevention of Sexual Misconduct.
3. The School will, to the extent feasible, share information on Sexual Misconduct with

parents of enrolling students.

4. Training under the School's campaign shall, as appropriate, include groups such as international students, students who are also employees, leaders, and officers of registered or recognized student organizations, and online and distance education students. The School will also provide specific training to members of groups that the School, through the Title IX Coordinator, identifies as "high-risk populations."
5. All student leaders and officers of student organizations recognized or registered with the School, as well as those seeking recognition by the School, shall complete training on Sexual Misconduct prior to receiving recognition or registration.
6. The Title IX Coordinator will regularly assess the School's anti-Sexual Misconduct programs and policies to determine effectiveness and relevance for students.

The School trains its Designated Officials to report to the Title IX Coordinator any incidents of Sexual Misconduct that may violate the School's Code of Conduct. Designated Officials are trained to understand that they do not need to determine whether the alleged Sexual Misconduct occurred before reporting an alleged incident to the Title IX Coordinator. The School's Title IX Coordinator and Human Resources officials who investigate claims of Sexual Misconduct are trained to have in-depth knowledge of Sexual Misconduct investigations and this policy.

The School also ensures that a pool of faculty and staff are trained in the adjudication of Sexual Misconduct claims so that they can investigate claims and hear claims of Sexual Misconduct as a Designated Arbiter or on a panel assessing an appeal. Training will include the definition of sexual harassment, how to conduct an investigation and the hearing process for such claims, how to serve impartially, avoiding prejudgment, conflict of interest, and bias, evidence at a hearing / relevance / questioning, and technology used at a live hearing. Training material for adjudicators and investigators will be made available on the School's website.

### **15. Bi-Annual "Campus Climate Assessments"**

The School will conduct bi-annual "campus climate assessments" to ascertain general awareness and knowledge of the provisions of N.Y. Education Law Article 129-b, including student experience with and knowledge of reporting and adjudication processes, which shall be developed using standard and commonly recognized research methods. Principles and procedures for development, implementation, and administration of the "campus climate survey" are set forth in Appendix 5.

The School shall take steps to ensure that answers to "campus climate assessments" remain anonymous and that no individual is identified. The School shall publish the results of "campus climate surveys" online, provided that no personally identifiable information or information that can reasonably lead a reader to identify an individual shall be shared.

### **16. Dissemination of Policies and Procedures and "Student Bill of Rights"**

Upon adoption, copies of and/or links to this Policy shall be disseminated to all students electronically as a part of the Student Catalog. Thereafter, copies of and/or links to this Policy shall be disseminated electronically to all new and incoming students during orientation. In addition, this Policy will also be permanently available on the School learning management system- Moodle under Student Resources.

The School has adopted a “Student Bill of Rights” as part of its Code of Conduct. Copies of the “Student Bill of Rights” will be posted on the School learning management system Moodle under Student Resources as a part of the Catalog)

## **17. Statement on Compliance**

This Policy is designed to comply with applicable legal requirements, including but not limited to Title IX of the Education Amendments of 1972, relevant provisions of the Violence Against Women Reauthorization Act of 2013, Title VII of the Civil Rights Act of 1964, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), New York State laws including but not limited to N.Y. Educ. Law Article 129-b (§§ 6439-6449).

The School is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the Complainant. Complainants shall not be identified in such timely warnings.

The Family Educational Rights and Privacy Act (“FERPA”) allows the School to share information with parents when (1) there is a health or safety emergency where disclosure is necessary to protect the health or safety of a student or others or as otherwise provided by FERPA; or (2) when the student is a dependent on either parent’s prior year federal income tax return. Generally, however, the School will not share information about reports of Sexual Misconduct with parents without the permission of the Complainant. The School’s FERPA policy can be found in the School Catalog and on the School’s Website. Copies of crime statistics for the School area are available in the School Administrative Office or through the U.S. Department of Education web site for campus crime statistics (<https://ope.ed.gov/campussafety>).

## **Appendix 1: Off Campus and Community Resources**

Outside of the School of Nursing, there are numerous organizations that provide support services for victims/survivors, often for little or no fee. While these groups are not affiliated with the School, they are included here as they can provide valuable support for members of our community. Contact information for these organizations is set forth below:

### **Rape Crisis Centers (affiliated with hospitals)**

#### **Bronx**

North Central Bronx Hospital  
Sexual Assault Treatment Program  
3424 Kossuth Avenue  
Bronx, NY 10467  
Phone: (718) 519-5722 or (718) 519-3100

#### **Brooklyn**

Coney Island Hospital

Rape Crisis Program  
2601 Ocean Parkway  
Brooklyn, NY 11235  
Phone: (718) 616-4209  
Hotline: (800) TEL-RAPE or (800) 835-7273

New York Methodist Hospital  
506 Sixth Avenue  
Brooklyn, NY 11215  
(Not an official rape crisis center but can collect  
evidence and provide other emergency medical  
services)  
Phone: (718) 780-3000

### **Manhattan**

Bellevue Hospital Center  
Sexual Assault Response Team SAFE Center  
462 First Avenue  
CD Building, Ground Fl. #GA74  
New York, NY 10016  
Phone: (212) 562-3435 or (212) 562-3755

Mount Sinai Beth Israel  
Rape Crisis & Domestic Misconduct Intervention  
Program/Victims Services Program Department of Social  
Work  
317 East 17<sup>th</sup> Street  
New York, NY 10037  
Phone: (212) 420-4516

Harlem Hospital, R. 6111 MLK  
Center for Victim Support SAFE Center  
506 Lenox Avenue  
New York, NY 10037  
Phone (212) 939-4609

New York-Presbyterian Hospital/Weill Cornell  
Medical Center  
Department of Social Work  
525 East 69<sup>th</sup> Street, Box 143  
New York, NY 10021  
(VIP) Victim Intervention Program--Phone: (212) 746-9414  
SAFE Horizon Hotline: (212) 577-7777

NYU Langone Medical Center  
550 First Avenue

New York, NY 10016  
(Not an official rape crisis center but can collect evidence and provide other emergency services) Phone: (212) 263-7300

Mount Sinai St. Luke's  
Crime Victims Treatment Center  
411 West 114<sup>th</sup> Street, Suite 2C  
New York, NY 10025  
Phone: (212) 523-4728

### **Queens**

Elmhurst Hospital  
(SAVI) Sexual Assault and Violence Intervention Program  
79-01 Broadway  
Elmhurst, NY 11373  
Phone: (718) 736-1288  
Hotline: (718) 334-1418

### **Staten Island**

Staten Island University Hospital  
475 Seaview Avenue  
Staten Island, NY 10305  
Safe Horizon Domestic Misconduct Hotline  
Phone: 1-800-621-HOPE (4673)

Rape Advocacy Agency, Staten Island  
Phone: (718) 720-2591  
Safe Horizon (borough-wide) Phone: (212) 227-3000 (available 24 hours)

### **Resources with access to confidential counseling**

NYC Gay and Lesbian Anti-Misconduct Project  
(212) 714-1141\* Safe Horizon: Rape and Sexual  
Assault Hotline (212) 227-3000\* Safe Horizon:  
NYC Domestic Misconduct Hotline (800) 621-  
4673\*

### **Non-confidential resources**

NYC Alliance Against Sexual Assault (212) 229-0345  
NYS Crime Victim's Board (718) 923-4325  
NYS Victim Information and Notification Everyday (888) VINE-  
4NY or (888) 846-3469 \*Indicates 24-hour number.

### **Appendix 2**

Given the serious and sensitive nature of Sexual Misconduct claims, the School's students shall be afforded the following rights and safeguards in connection with Sexual Misconduct investigations, adjudications, and appellate reviews (collectively "Proceedings") of reports/complaints of Sexual Misconduct allegedly perpetrated by the School's students against the School's students:

**A.** The right to request that student conduct charges be filed against a Respondent in Proceedings governed by this Policy and in accordance with N.Y. Educ. Law Article 129-b.

**B.** The right to a process in connection with all alleged Policy violations that includes:

**i.** Notice to the Respondent describing the date, the time, location, and factual allegations concerning the violation, a reference to the specific code of conduct/School Sexual Misconduct Policy provisions alleged to have been violated, and possible sanctions.

**ii.** An opportunity to offer evidence during an investigation, to present evidence and testimony at a hearing (where appropriate and if there is a hearing), and to have access to a full and fair record of any such hearing, which record shall be preserved and maintained for at least ten (10) years from such a hearing and may include a transcript, recording or other appropriate record.

**iii.** Access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest.

**C.** Throughout Proceedings, the right:

**i.** For all Complainants and Respondents to be accompanied by an advisor of his/her choice who may assist and advise throughout the process, including during all proceedings (including meetings and hearings) attended by his or her advisee that are related to such process. All such advisors of choice, including attorneys, are permitted only to communicate with their respective advisees during all such proceedings, and shall be prohibited from speaking on the record, presenting evidence, making objections, or otherwise directly participating in any way in the proceedings, with the exception of at the Hearing, as described in the Policy. These limitations apply equally to advisors for Complainants and Respondents.

**ii.** To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive training in conducting investigations of Sexual Misconduct, the effects of trauma, impartiality, and the rights of the Respondent (including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made pursuant to the Policy).

**iii.** To an investigation and process that is fair, impartial, and provides a meaningful opportunity to be heard, that is not conducted by individuals with a conflict of interest.

**iv.** To have the School's investigation and adjudication processes run concurrently with a criminal justice investigation or proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days, except when law enforcement specifically



requests and justifies a longer delay.

**v.** To review and present available evidence in the case file, or otherwise in the possession or control of the School, and relevant to the conduct case, consistent with School policies and procedures.

**vi.** To exclude from consideration by any decision makers, including but not limited to the appropriate “designated arbiter” or an appellate hearing panel:

- a. Their own prior sexual history with persons other than the other party in the process (except in the limited circumstances discussed in the Policy).
- b. Their own mental health diagnosis and/or treatment.
- c. Past findings of domestic violence, dating violence, stalking, or sexual assault, except that such past findings *can* be considered in connection with determinations of discipline and sanctions after decisions regarding responsibility have already been reached.

**vii.** To receive written or electronic notice:

- a. A reasonable time in advance of any meeting they are required to or eligible to attend.
- b. Of the specific rule, rules, or laws alleged to have been violated, and in what manner.
- c. Of the sanction or sanctions that may be imposed based on the outcome of the process.
- d. Of any written statements detailing the factual findings supporting any determinations of violations of the Policy and the rationale for any sanctions imposed.

**viii.** To submit an “impact statement” during the point of the Proceedings where decision makers are deliberating on appropriate sanctions (whether the “impact statement” will be submitted orally or in writing is left to the discretion of the decision maker).

**ix.** To simultaneous (among the parties) notification (via e-mail) of the outcome of the processes, including the sanction or sanctions imposed on the Respondent (if any) based upon the outcome of the processes, and the rationale for the actual sanction imposed.

**x.** To choose whether to disclose the outcome of the Proceedings or judicial process.

**xi.** To have all information obtained during the course of the Proceedings be protected from public release until all levels of review are completed and exhausted, unless otherwise required by law.

### **Appendix 3: Sanctions and Remedial Actions**

Designated Arbiters are empowered to impose what they believe to be the appropriate sanctions and/or remedial actions following a determination that the PSON Sexual Misconduct Policy was violated. Such sanctions and remedies include, but are not limited to:

- A. Disciplining the Respondent, up to and including expulsion and discharge/termination;

- B. Providing counseling for Complainants, Respondents, and other parties as appropriate;
- C. Issuing “No Contact” orders;
- D. d. Providing effective escorts to ensure that the Complainant can move safely between classes and activities;
- E. Ensuring that the Complainant and the Respondent do not share classes, workspaces, or extracurricular activities;
- F. Moving the Complainant (if the Complainant requests to be moved) or Respondent to a different residence hall or housing assignment; and
- G. Placing notations on the Respondent’s transcript regarding the subject violations.

### **Notes Regarding Transcript Notations**

It should be noted here that New York State law requires that, for crimes of violence, including but not limited to sexual violence (defined as crimes that meet the reporting requirements pursuant to the federal Clery Act, 20 U.S.C. § 1092(f)(1)(I)-(VIII)), institutions such as the School make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For Respondents who withdraw from the School while conduct charges are pending and decline to complete the disciplinary process, the School shall make a notation on their transcript stating that they “withdrew with conduct charges pending.”

Respondents can seek removal of transcript notations for suspensions by filing a written request with the Designated Arbiter who made the initial determination regarding responsibility and sanctions (or if that person is no longer available, his or her replacement or designee), who shall have complete discretion to decide whether the request for the notation removal should be granted, provided that such notations shall not be removed before one year after the conclusion of the suspension. Respondents cannot seek removal of transcript notations for expulsions, which shall not be removed unless otherwise provided for herein.

If a finding of responsibility is vacated for any reason, all related transcript notations shall be removed.

### **Appendix 4: Training and Education**

During orientation and at the beginning of the academic year, all new incoming students shall receive training on the following topics:

1. The School’s prohibition of Sexual Misconduct and sexual and interpersonal violence and its offering of resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the School.
2. Relevant definitions, including but not limited to the definitions of Sexual Misconduct, sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and Affirmative Consent.
3. The equal application of the School’s policies regardless of sexual orientation, gender identity, or gender expression.
4. The role of the Title IX Coordinator, Hospital Security, and other relevant offices that address Sexual Misconduct, including domestic violence, dating violence, stalking, and sexual assault prevention and response.

5. Awareness of violence and the importance of taking action to prevent violence when one can safely do so.
6. Risk assessment and reduction, including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institutional officials who can answer general or specific questions about risk reduction.
7. Consequences and sanctions for individuals who commit these crimes and Code of Conduct violations.

### **Appendix 5: Campus Climate Surveys**

Under N.Y. Educ. Law § 6445, the School is required to conduct bi-annual “campus climate assessments” to ascertain general awareness and knowledge of the provisions of N.Y. Educ. Law Article 129-b. Responsibility for development of the School’s “campus climate assessment” will be vested in the office of the Title IX Coordinator, who is empowered to utilize all reasonable and necessary resources to do so. The “campus climate assessment” shall be developed using standard and commonly recognized research methods, and shall include questions covering, but not limited to, the following topics:

- A. The Title IX Coordinator’s role;
- B. Campus policies and procedures addressing Sexual Misconduct;
- C. How and where to report Sexual Misconduct as a victim, survivor, or witness;
- D. The availability of resources on and off campus, such as counseling, health and academic assistance;
- E. The prevalence of victimization and perpetration of Sexual Misconduct on and off campus during a set time period;
- F. Bystander attitudes and behavior;
- G. Whether Complainants disclosed to the School and/or law enforcement, experiences with reporting and School processes, and reasons why they did or did not report;
- H. The general awareness of the difference, if any, between the School’s policies and the penal law; and
- I. General awareness of the definition of Affirmative Consent.