

# Title IX Grievance Policy and Procedure

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## **Title IX Grievance Policy and Procedure**

### **Introduction**

The New York Film Academy (NYFA) is committed to creating and maintaining a learning, living, and working environment free of sex-based discrimination 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-based discrimination in all its forms, as defined by the Final Rule under Title IX of the Educational Amendments of 1972. NYFA will promptly respond in a fair and impartial manner to all allegations of sex-based discrimination, provide assistance and support to those affected, and take appropriate disciplinary action upon finding a violation of this Policy

### **What is the Purpose of the Title IX Grievance Policy and Procedure?**

#### ***NYFA Drug and Alcohol Policy for Students***

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access NYFA's educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how NYFA must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that NYFA must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, NYFA will implement the following Title IX Grievance Policy and Procedure, effective August 14, 2020. See , [85 Fed. Reg. 30026](#) (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

## **How does the Title IX Grievance Policy and Procedure Impact Other Campus Disciplinary Policies?**

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex-based discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, NYFA must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule’s definition of covered sexual harassment will be investigated pursuant to Title IX Rules and Regulations and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

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 [NYFA’s Title IX Grievance Policy and Procedure](#). Specifically, [NYFA’s Student Code of Conduct](#) and [NYFA’s Employee Standards of Conduct](#) defines certain behavior as a violation of campus policy, also [NYFA’s Sexual Misconduct Policy](#) addresses the types of sex-based offenses constituting a violation of campus policy and the procedures for investigating and adjudicating those sex-based offenses that fall outside the scope of [NYFA’s Title IX Grievance Policy and Procedure](#).

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, NYFA retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Sexual Misconduct Policy through a separate proceeding.

The process and procedures established in the Title IX Grievance Policy and Procedure under the Final Rule have no effect and are not applicable to any other NYFA policy for any violation of the Student Code

of Conduct, Sexual Misconduct Policy, employment policies, or any civil rights violation except as narrowly defined in this Policy. However, if the alleged conduct includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Policy and Procedure will be applied in the investigation and adjudication of all of the allegations.

## **THE TITLE IX GRIEVANCE POLICY**

### **General Rules of Application**

#### **Effective Date**

NYFA's Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to alleged covered sexual harassment which occurs on or after August 14, 2020. Alleged covered sexual harassment that occurs prior to August 14, 2020 will be resolved through the policies or procedures in place at that time. The Title IX Grievance Policy and Procedures will not be applied retroactively.

#### **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, [85 Fed. Reg. 30026](#) (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this Policy, this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the opinion or order 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 that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the Sexual Misconduct Policy.

#### **Non-Discrimination in Application**

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about NYFA's Policy or Procedure 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 South Beach 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

## **Other Relevant NYFA Policies and Procedures**

- Sexual Misconduct Policy
- Student Code of Conduct
- Student Grievance and Resolution Process
- Employee Prohibition Against Harassment, Discrimination & Retaliation
- Employee Standards of Conduct
- Employee Grievance Policy

## **Definitions**

### **Covered Sexual Harassment**

For the purposes of the Title IX Grievance Policy, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);

2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes 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. here the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship;
    - ii. The type of relationship;
    - iii. The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under state domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of 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 South Beach campus, Florida state law will apply.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - a. Fear for their safety or the safety of others; or
  - b. Suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Sexual Misconduct Policy.

### **Affirmative Consent**

For the purposes of the Title IX Grievance Policy, "affirmative 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. 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.
4. 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.
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.
8. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

The definition of affirmative consent does not vary based on a participant's sex, sexual orientation, gender identity, gender expression or relationship status.

### **Education Program or Activity**

For the purposes of the Title IX Grievance Policy, NYFA's "education program or activity" includes:

1. Any on-campus premises.
2. Any off-campus premises that NYFA has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
3. Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of NYFA's programs and activities over which the New York Film Academy has substantial control.
4. Any locations, events, or circumstances in which NYFA exercises substantial control over both the Respondent and the context in which the covered sexual harassment occurs.

### **Formal Complaint**

For the purposes of the Title IX Grievance Policy, "Formal Complaint" means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within NYFA's education program or activity and requesting initiation

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

### **Complainant**

For the purposes of the Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this Policy.

### **Respondent**

For the purposes of the Title IX Grievance Policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this Policy.

### **Relevant Evidence and Questions**

Relevant evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Procedure:

Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:

1. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
2. They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. [34 C.F.R. § 106.45\(6\)\(i\)](#).

Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.

Any Party’s medical, psychological, and similar records unless the Party has given voluntary, written consent. See , [85 Fed. Reg. 30026, 30294](#) (May 19, 2020).

### **Privacy vs. Confidentiality**

Consistent with the Sexual Misconduct Policy, references made to “confidentiality” refer to the ability of identified confidential resources 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.

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.

### **Working Days**

Working days are Monday through Friday, excluding all official holidays or NYFA campus closures.

### **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. Parties 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, even where the Parties may be receiving accommodations in other NYFA programs and activities.

### **Making a Report Regarding Covered Sexual Harassment to NYFA**

Any person may report of covered sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute covered sexual harassment), in person, by mail, 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 the Title IX Coordinator(s):**

#### **New York Campus and Online Programs**

Carlye Bowers

Director of Campus Life & Title IX Coordinator

17 Battery Place, 5th Floor, Suite 501

New York, NY 10004

[NYtitle9@nyfa.edu](mailto:NYtitle9@nyfa.edu)

[NY Title IX Online Reporting Tool](#)

212-674-4300, ext. 209

#### **Los Angeles Campus**

Susan Ashe

Dean of Students & Interim Title IX Coordinator

3300 Riverside Drive, 2nd Floor, Suite 220

Burbank, CA 91505

[LAtitle9@nyfa.edu](mailto:LAtitle9@nyfa.edu)

[LA Title IX Online Reporting Tool](#)

818-333-3558, ext. 1134

### South Beach Campus

Carlye Bowers  
Interim Title IX Coordinator  
17 Battery Place, 5th Floor, Suite 501  
New York, NY 10004  
[SBtitle9@nyfa.edu](mailto:SBtitle9@nyfa.edu)  
[SB Title IX Online Reporting Tool](#)  
212-674-4300, ext. 209

Such a report may be made at any time (including during non-business hours) by using the campus-specific Title IX Office email address, using the campus-specific Title IX online reporting tool, or by mail to the office address listed for the campus-specific Title IX Offices.

### **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

Jacquelyn Hunt, LCSW  
17 Battery Place, 1st Floor  
New York, NY 10004  
[counseling@nyfa.edu](mailto:counseling@nyfa.edu)  
212-674-4300, ext. 276

#### Los Angeles Campus - Counseling Services

Stanley Tam, PsyD  
Kathia Rabelo, LMFT  
3300 W. Riverside Drive, 4th Floor  
Burbank, CA 91505  
[stanley.tam@nyfa.edu](mailto:stanley.tam@nyfa.edu)  
[kathia.rabelo@nyfa.edu](mailto:kathia.rabelo@nyfa.edu)  
818-333-3558

#### South Beach Campus - Counseling Services

Vivina Eglueta, PhD  
420 Lincoln Road, 3rd Floor  
Miami, FL 33139  
[vivina.eglueta@nyfa.edu](mailto:vivina.eglueta@nyfa.edu)  
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.

### **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

- NYC Alliance Against Sexual Assault: <http://www.svfreencyc.org>
- New York State Domestic Hotline: <http://www.opdv.ny.gov/help/dvhotlines.html>
- Office for the Prevention of Domestic Violence: <http://www.opdv.ny.gov/help/index.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/santa-monica/rape-treatment>
- YWCA Los Angeles: <https://ywcagla.org/what-we-do/programs/sexual-assault/>
- YWCA Glendale, DV Project; <https://www.glendaleywca.org>
- Victim Assistance Program: <https://www.help4crimevictims.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

- Victim Response Inc. The Lodge: <https://www.thelodgemiami.org>
- Florida Council Against Sexual Violence: <https://www.fcasv.org>
- Coordinated Victims Assistance Center: <https://casa-us.org/cvac-office/>
- The Florida Bar: <https://www.floridabar.org>
- Roxy Bolton Rape Treatment Center: <http://jacksonhealth.org/services-rape-treatment.asp>
- 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: 1-800-273-8255
- Rape Abuse and Incest National Network (RAINN) 1-800-656-4673

## **Non-Investigatory Measures Available Under the Title IX Grievance Policy**

### **Supportive Measures**

Upon receipt of a complaint, 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.

Complainants who report allegations that could constitute sexual misconduct under this Policy have the right to and shall be offered supportive measures from NYFA regardless of whether they desire to file a complaint. 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.

Supportive measures are non-disciplinary and non-punitive individualized services 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 covered sexual harassment. NYFA will maintain the confidentiality of supportive measures provided to the Complainant, Respondent, and Witnesses to the extent that maintaining such confidentiality will not impede the provisions of such supportive measures, and as permitted by law.

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. 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
2. Mental health services, such as counseling
3. Providing resources available for medical assessment, treatment, and crisis response
4. Change in housing: switching residence hall rooms or assistance in finding alternative third-party housing
5. Providing resources and options available for contacting law enforcement
6. Providing an escort for the student to move safely between NYFA classes and programs
7. Providing increased security and monitoring of certain areas of the campus
8. Transportation and parking assistance
9. Assistance in identifying additional resources off campus
10. No Contact Order (NCO)

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)

## **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 student Respondents or an Administrative Leave for employee Respondents.

### Procedural Hold for Student Respondents

NYFA retains the authority to remove a student Respondent from 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 immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal. For NYFA, this process is referred to as a Procedural Hold.

If the Title IX Coordinator or designee determines a Procedural Hold is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the implementation of the Procedural Hold. A Procedural Hold may include exclusion from classes, or from specified NYFA activities, or from NYFA property.

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 the Title IX Grievance proceedings arising from the conduct which prompted the Procedural Hold.

### Administrative Leave for Employee Respondents

NYFA retains the authority to remove an employee Respondent 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 physical health or safety of any student or other individual arising from the allegations of covered sexual harassment 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 the Title IX Grievance Policy proceedings arising from the conduct which prompted the Administrative Leave.

## **Information on Reporting**

### **Timely Warnings**

When an incident of covered sexual harassment is reported to NYFA and involves an alleged crime that constitutes a possible 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 in a manner consistent with the requirements of the Clery Act. NYFA will not release the name or identifying information about the Complainant.

## **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 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 or alternative 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.

## **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 Formal Complaint has yet to be made.

In incidents of sexual harassment, 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 sexual 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 during 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

Beth Israel Medical Center, Manhattan  
10 Nathan D Perlman Pl,  
212-420-2000

NYC Health + Hospitals/Gotham Health, Brooklyn  
295 Flatbush Avenue Extension  
718-388-5889

Los Angeles/ Burbank

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

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

Santa Monica-UCLA Medical Center  
Rape Treatment Center  
1250 16th Street  
Santa Monica, CA 90404  
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  
Roxy Bolton Rape Treatment Center  
1611 NW 12th Avenue  
Institute Annex, 1st Floor  
Miami, FL 33136  
305-585-7273

Nancy J. Cotterman Center  
Sexual Assault Treatment Center  
400 NE 4th Street  
Fort Lauderdale, FL 3301  
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, 818-415-3837
- 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.

### **Reporting to the Title IX Office**

NYFA encourages the campus community to report all incidents of covered sexual harassment, defined by the Final Rule under Title IX of the Educational Amendments of 1972, to the Title IX Coordinator.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged.

All NYFA employees (faculty and staff) are expected to report any allegations that may violate this Policy to the Title IX Coordinator, or a member of the Title IX Office, who may be able to address the violations. NYFA employees are encouraged to disclose all information, including the names of Parties, even when the person has requested anonymity. NYFA Counseling Services clinicians are able to keep information confidential, per licensing agreement regulations.

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.

Students, faculty, and staff who report to NYFA will be advised of their right to:

1. Notify NYFA Security (LA), 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 reporting individual 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 the penal law should be addressed to law enforcement or to the district attorney. The Title IX Coordinator or other appropriate official shall explain their abilities or limitations regarding confidentiality or privacy, and shall inform the reporting individual of other reporting options;
3. 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;
4. Privately disclose the incident and obtain services from the state or local government;
5. Privately disclose the incident to NYFA staff who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;

6. File a report of covered sexual harassment and the right to consult 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;
7. Privately disclose, if the accused is a NYFA employee, the incident to the Director of Human Resources or designee or the right to request that a confidential or private employee assist in reporting to the Director of Human Resources or designee;
8. Receive assistance from the Title IX Coordinator or NYFA Security (LA) in initiating legal proceedings in family court or civil court; and
9. Withdraw a complaint or involvement at any time.

### **Amnesty 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 violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. NYFA strongly encourages students to report 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 domestic violence, dating violence, stalking, or sexual assault.

## **Education and Prevention**

### **Education and Prevention Programs**

In an effort to uphold the goals of this Policy and the Sexual Misconduct 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 the Title IX Grievance 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](http://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.

## **THE TITLE IX GRIEVANCE PROCEDURE**

### **Filing a Formal Complaint**

The timeframe for the Title IX Grievance Procedure begins with the filing of a Formal Complaint. The Title IX Grievance Procedures will be concluded within a reasonably prompt manner, which may generally be within ninety (90) working days, after the filing of the Formal Complaint, provided that the Procedure 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 Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint (an electronic signature is sufficient) describing, in as much detail as possible, the facts of any incident(s) which give rise to the filing of the complaint. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of NYFA, including as an employee. For Complainants who do not meet this criteria, NYFA will deem the complaint as filed under the Sexual Misconduct Policy or one of NYFA's other relevant policies and procedures.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine if a Formal Complaint is necessary. NYFA will inform the Complainant of this decision in writing, and the

Complainant need not participate in the process further but will receive all notices issued under this Policy and Procedure.

Nothing in the Title IX Grievance Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **Informal Resolution**

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by NYFA for resolution of their complaints.

The Parties may elect to enter NYFA's informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process 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.

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 resumes. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease and only recommence upon reentry into the formal process.

#### **1. Determination to Approve Entry into Informal Resolution Process**

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.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student. See , 85 Fed. Reg. 30026, 30054 (May 19, 2020).

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.

## **2. Role of the Facilitator**

Informal resolution processes are managed by Facilitators. Facilitators shall not have a conflict of interest or bias in favor of or against any 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 training in the definition of sexual harassment under [34 C.F.R. § 106.30\(a\)](#), the scope of NYFA's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

## **3. Confidentiality**

In entering the informal resolution process, the Parties shall agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential while the Parties are participating 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 formal investigation and live hearing, provided that this information is disclosed and reviewed by the Parties under the investigatory and hearing procedures described in the Title IX Grievance Procedure.

## **4. Informal Resolution Options**

NYFA offers the following informal resolution procedures for addressing Formal Complaints of sexual harassment covered under this Policy

### *a. Administrative Resolution*

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

*b. 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 asked not to contact one another during the process. The Title IX Office 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 Title IX Office receives consent to mediate from both Parties, and will continue until concluded or terminated by either Party or the Title IX Office. 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.

During mediation, a 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 Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

*c. 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 student accused of wrongdoing. Additionally, all involved Parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Title IX Office 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 Title IX Office receives written agreements from all involved Parties. The conference will continue until the conference is successfully concluded or until the Title IX Office 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 Office will monitor the Parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

### **Multi-Party Situations**

NYFA may consolidate Formal Complaints alleging covered sexual harassment 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 covered sexual harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The Title IX Coordinator will determine if the Title IX Grievance Procedure should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;

3. The conduct is alleged to have occurred in NYFA's education program or activity; and
4. The conduct is alleged to constitute covered sexual harassment as defined in this Policy.

If all of the elements are met, NYFA will investigate the allegations according to the Title IX Grievance Procedure.

### **Allegations Potentially Falling Under Two Policies**

If the alleged conduct includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Procedure will be applied in the investigation and adjudication of all of the allegations.

### **Formal Complaint Dismissal**

#### **Mandatory Dismissal**

If any one of these elements are not met, the Title IX Coordinator will notify the Parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Either Party may appeal this dismissal using the procedure outlined in the Appeals section (below).

#### **Discretionary Dismissal**

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
2. The Respondent is no longer enrolled or employed by NYFA; or,
3. If specific circumstances prevent NYFA from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any Party may appeal a dismissal determination using the process set forth in the Appeals section (below).

#### **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, NYFA will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the Parties through their NYFA email accounts. It is the responsibility of Parties to maintain and regularly check their NYFA email accounts.

## **Notice of Removal of Formal Complaint from Title IX Grievance Procedure**

Upon dismissal for the purposes of the Title IX Grievance Policy, NYFA retains discretion to utilize other relevant policies or procedures including the Student Code of Conduct and/or the Sexual Misconduct Policy to determine if a violation has occurred. If so, NYFA will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Procedure.

## **Notice of Allegations**

If it is deemed by the Title IX Coordinator, or their designee, that the Title IX Grievance Procedure should apply to a Formal Complaint, the Title IX Coordinator will draft and provide the Notice of Allegations to any Party to allegations of covered sexual harassment. Such notice will occur as soon as practicable, after NYFA receives a Formal Complaint of the allegations, 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.

NYFA will provide sufficient time for the Parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator, or their designee, may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any Party to the allegations of covered sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

## **Contents of the Notice of Allegations**

The Notice of Allegations will include the following:

1. Notice of NYFA's Title IX Grievance Policy and Procedure, including any informal resolution process and a hyperlink to a copy of the Policy and Procedure.
2. Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the Parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
3. Notice of the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the Title IX Grievance Procedure.
4. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX Grievance Procedure.
5. A statement that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, as required under [34 C.F.R. § 106.45\(b\)\(5\)\(iv\)](#);

6. A statement that before the conclusion of the investigation, the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which NYFA does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source, as required under [34 C.F.R. § 106.45\(b\)\(5\)\(vi\)](#);
7. A statement to student Parties that the Student Conduct Code (see Item 9, “falsifying information”) prohibits knowingly making false statements or knowingly submitting false information during the Title IX Grievance Procedure; or a statement to employee Parties that the Employee Standards of Conduct has an expectation of honest cooperation and participation during the Title IX Grievance Procedure.

### **Ongoing Notice**

If, in the course of an investigation, NYFA decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered sexual harassment falling within the Title IX Grievance Policy, NYFA will notify the Parties whose identities are known of the additional allegations by their NYFA email accounts or other reasonable means.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Advisor of Choice and Participation of Advisors**

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

NYFA has a long-standing practice of requiring students to participate in the Procedure process directly and not through an advocate or representative. Students participating as a Complainant or Respondent in this Procedure may be accompanied by an Advisor of their choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors shall not participate directly in the process as per NYFA's standard policy and practice. At hearings, Advisors are permitted to cross-examine the other Party and Witnesses, as described below.

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

NYFA's obligations to investigate and adjudicate in a prompt timeframe under the Title IX Grievance Policy and other NYFA policies apply to matters governed under this Policy, and NYFA cannot agree to extensive delays solely to accommodate the schedule of an Advisor. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. NYFA will not be obligated to delay a meeting or hearing



under this process more than five (5) working days due to the unavailability of an Advisor, and may offer the Party the opportunity to obtain a different Advisor of their choice or utilize one provided by NYFA.

## **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 hearings, investigative interviews, or other meetings with a Party, with sufficient time for the Party to prepare to participate.

### **Delay**

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 overly inconvenience other Parties.

For example, a request to take a five-day delay made an hour before a hearing for which multiple Parties and their Advisors 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.

## **Investigation**

### **General Rules of Investigations**

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

NYFA, and not the Parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Policy has occurred. 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 an investigation or hearing. This does not shift the burden of proof away from NYFA and does not indicate responsibility.

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 and disprove the allegations) as described below.

### **Inspection and Review of Evidence**

Prior to the completion of the investigation, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the Parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by NYFA 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.

Exceptions to the above include all evidence which is privileged under federal or local state law (e.g., statements made to/from doctors, therapists, attorneys, student records or any item protected by Family Educational Rights and Privacy Act Regulations (FERPA)), evidence of prior sexual behavior unless it shows consent or that someone other than Respondent committed the alleged misconduct.

All Parties must submit any evidence they would like the investigator to consider prior to when the Parties' time to inspect and review evidence begins. See , [85 Fed. Reg. 30026, 30307](#) (May 19, 2020).

NYFA will send the evidence made available for each Party and each Party's Advisor, if any, to inspect and review through an electronic format or a hard copy. NYFA is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The Parties will have ten (10) working days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the Parties' written responses before completing the Investigative Report.

NYFA will provide copies of the Parties' written responses of the review to all Parties and their Advisors, if any. See , [85 Fed. Reg. 30026, 30307](#) (May 19, 2020).

NYFA will provide the Parties five (5) working days after the initial inspection and review of evidence, and before the investigator completes the Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the Parties five (5) working days to inspect, review, and respond to the Party's additional evidence through a written response to the investigator. Those written responses will be disclosed to the Parties. See , [85 Fed. Reg. 30026, 30307](#) (May 19, 2020).

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The Parties and their Advisors must sign an agreement 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 the Title IX Grievance Procedure. See , [85 Fed. Reg. 30026, 30435](#) (May 19, 2020).

The Parties and their Advisors shall not photograph or otherwise copy the evidence. See , [85 Fed. Reg. 30026, 30435](#) (May 19, 2020).

### **Inclusion of Evidence Not Directly Related to the Allegations**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

### **Investigative Report**

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence.

The Investigative 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 – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See , [85 Fed. Reg. 30026, 30304](#) (May 19, 2020).

### **Hearing**

#### **General Rules of Hearings**

NYFA will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing, unless the Title IX Grievance Procedure has been resolved through one of the Informal Resolution Options referenced above.

The live hearing may be conducted with all Parties physically present in the same geographic location, or, at NYFA's discretion, any or all Parties, Witnesses, and other participants may appear at the live hearing virtually through Zoom, Skype, or similar technology. This technology will enable participants simultaneously to see and hear each other. At its discretion, NYFA may delay or adjourn a hearing based on technological errors not within a Party's control.

All proceedings will be recorded either through audio recording, audiovisual recording, or transcript. That recording or transcript will be made available to the Parties for inspection and review.

### **Continuances or Granting Extensions**

NYFA may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, NYFA will notify all Parties and endeavor to accommodate all Parties' schedules and complete the hearing as promptly as practicable.

### **Participants in the Live Hearing**

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

1. Complainant and Respondent (The Parties)
  - a. The Parties cannot waive the right to a live hearing.
  - b. NYFA may still proceed with the live hearing in the absence of a Party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that Party. See , [85 Fed. Reg. 30026, 30361](#) (May 19, 2020).
    - i. For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the Formal Complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
  - c. NYFA will not threaten, coerce, intimidate or discriminate against the Party in an attempt to secure the Party's participation. See, [34 C.F.R. § 106.71](#); see also, [85 Fed. Reg. 30026, 30216](#) (May 19, 2020).
  - d. If a Party does not submit to cross-examination, the Decision-maker cannot rely on any prior statements made by that Party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that Party.
  - e. The Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing or refusal to answer

cross-examination or other questions. See, [34 C.F.R. §106.45\(b\)\(6\)\(i\)](#). See , Appendix A, Rules of Decorum.

## 2. The Decision-maker

- a. The hearing will be facilitated by and determined by a single Decision-maker.
- b. The Title IX Coordinator and the Title IX investigator shall be excluded from being the Decision-maker.
- c. No Decision-maker may have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case.
- d. The Decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.
- e. The Parties will have an opportunity to raise any objections regarding a Decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

## 3. Advisor of Choice

- a. The Parties have the right to select an Advisor of their choice, who may be, but does not have to be, an attorney. If a Party does not have an Advisor present at the live hearing, NYFA shall provide, without fee or charge, an Advisor, who shall be selected by NYFA.
- b. The Advisor may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of cross-examination.
- c. The Parties are not permitted to conduct cross-examination; cross-examination is permitted only by the Advisor. As a result, if a Party does not select an Advisor, NYFA will select an Advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the Party.
- d. The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case.
- e. The Advisor is not prohibited from being a Witness in the matter.
- f. If a Party does not attend the live hearing, the Party's Advisor may appear and conduct cross-examination on the absent Party's behalf. See , [85 Fed. Reg. 30026, 30340](#) (May 19, 2020).
- g. If neither a Party nor their Advisor appear at the hearing, NYFA will provide an Advisor to appear on behalf of the non-appearing Party. See , [85 Fed. Reg. 30026, 30339-40](#) (May 19, 2020).
- h. Advisors and all persons present shall be subject to NYFA's Rules of Decorum, and may be removed upon violation of those Rules. See , Appendix A, Rules of Decorum.

## 4. Witnesses

- a. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See , [85 Fed. Reg. 30026, 30360](#) (May 19, 2020).

- b. If a Witness does not submit to cross-examination, as described below, the Decision-maker cannot rely on any statements made by that Witness in reaching a determination regarding responsibility, including any statement relayed by the absent Witness to a Witness or Party who testifies at the live hearing. See , [85 Fed. Reg. 30026, 30347](#) (May 19, 2020).
- c. Witnesses and all persons present shall be subject to NYFA's Rules of Decorum, and may be removed upon violation of those Rules. See , Appendix A, Rules of Decorum.

## **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Procedure, the process will be as follows:

1. The Decision-maker will open and establish rules and expectations for the hearing;
2. The Parties will each be given the opportunity to provide opening statements;
3. The Decision-maker will ask questions of the Parties and Witnesses;
4. Parties will be given the opportunity for live cross-examination after the Decision-maker conducts its initial round of questioning;
  - a. During the Parties' cross-examination, the Decision-maker will have the authority to pause cross-examination at any time for the purposes of asking follow up questions and any time necessary in order to enforce the established Rules of Decorum.
5. Should a Party or a Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.
6. At the request of either Party, NYFA shall provide for the entire live hearing (including cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other.
7. The Parties will be given a chance to make an impact statement during the part of the proceedings where the Decision-maker is deliberating on appropriate sanctions

## **Live Cross-Examination Procedure**

Each Party's Advisor will conduct live cross-examination of the other Party or Parties and Witnesses. During this live-cross examination the Advisor will ask the other Party or Parties and Witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Decision-maker will determine if the question is relevant. See , Appendix B, Guide for Determining Relevancy. Cross-examination questions that are duplicative of those already asked, including by the Decision-maker may be deemed irrelevant if they have been asked and answered.

## **Review of Recording or Transcript**

The recording or transcript of the hearing will be available for review by the Parties within ten (10) working days, unless there are any extenuating circumstances. The recording or transcript of the hearing will not be provided to Parties or Advisors.

## **Determination Regarding Responsibility**

### **Standard of Proof**

NYFA uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

### **General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

#### 1. Credibility

Decision-makers 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 testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a Party's or Witness's testimony is 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 Testimony

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

Except where specifically barred by the Title IX Final Rule, a Witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

### 3. Expert Witnesses

The Final Rule requires that NYFA allow Parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and will be subject to cross-examination as required by the Final Rule, the Decision-maker will be instructed to 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 the expert witness testimony is the subject of cross examination and regardless of whether all Parties present experts as witnesses.

### 4. Character Witnesses

The Final Rule requires that NYFA allow Parties to call character witnesses to testify. NYFA does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness and may limit the evidence of the character witness.

### 5. Polygraph Tests

The Final Rule requires that NYFA admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision-maker will afford lower weight to such processes relative to the testimony of fact witnesses.

## **Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all Parties through their NYFA email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Policy, if any, the Respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;



- b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the Respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
6. The recipient's procedures and the permitted reasons for the Complainant and Respondent to appeal, as described in the Appeal section(below).

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by NYFA within ten (10) working days of the completion of the hearing.

### **Transcript Notations**

Students that are found responsible for a policy violation may receive a notation on their transcript indicating a sanction of either Disciplinary Probation, Suspension, or Expulsion. Notations for Disciplinary Probation are temporary, and only appear during the duration of Disciplinary Probation. Notations for Suspension may be permanent. Notations for Expulsion are permanent. If findings of responsibility are vacated, any such transcript notation will be removed.

A transcript notation for Suspension, may be removed one year following the date Suspension 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. Transcript notations for Expulsion may not be removed.

Students who withdraw during an investigation may receive a notation on their transcript indicating the student withdrew with conduct charges pending.

### **Sanctioning for Students**

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

1. Warning
  - a. 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.
  - b. A warning carries no transcript notation.
2. Disciplinary Probation
  - a. 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.

- b. 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.
3. Deferred Suspension
- a. 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.
  - b. 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.
4. Suspension
- a. 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.
  - b. 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.
  - c. 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.
  - d. 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.
  - e. After the period of Suspension, the student will be reinstated if:
    - i. The student has complied with all conditions imposed as part of the suspension.
    - ii. The student is academically eligible.
    - iii. 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.
    - iv. The student meets the deadlines for filing all necessary applications, including those for readmission, registration, and enrollment.
    - v. Students are required to apply for readmission following a suspension of more than one academic term and must meet all requirements for readmission.
  - f. 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.
5. Deferred Expulsion

- a. 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.
  - b. Deferred expulsion carries a permanent transcript notation that indicates the duration of the deferred expulsion.
6. Expulsion
  - a. 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.
  - b. 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.
  - c. Expulsion carries a permanent transcript notation.
7. Revocation of Awarding Degree or Certificate
  - a. 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:
    - i. The Title IX Coordinator will submit a recommendation of revocation of the degree or certificate to the Campus Dean.
    - ii. 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.
    - iii. 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.
8. 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
9. 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
10. Limits on Sanctions
- 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.

### **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

### **Finality**

The determination regarding responsibility becomes final either on the date that NYFA provides the Parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in the Appeals section (below), or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **Appeals**

Each Party may appeal:

1. The dismissal of a Formal Complaint or any included allegations, and/or;
2. A determination regarding responsibility 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 was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
3. The Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against an individual Party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.
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 all 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 will not serve as investigator, Title IX Coordinator, or hearing Decision-maker in the same matter. The Appeals Decision-panel may be made up of one or more trained individuals.

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

### **Retaliation**

NYFA will keep confidential the identity of Complainants, Respondents and Witnesses, except as permitted by FERPA, See , [20 U.S.C. §1232g](#), or FERPA regulations, See, [34 C.F.R. §99](#), or as required by law, or to carry out the purposes of the Department of Education's expectations related to sex-based discrimination, See , [34 C.F.R. §106](#), including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance 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, See , [85 Fed. Reg. 30026](#).

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 Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations, See , [85 Fed. Reg. 30026](#), constitutes retaliation, whether or not the alleged conduct involves covered sexual harassment. Complaints alleging retaliation by a student may be filed in accordance with NYFA's Student Code of Conduct, and complaints alleging retaliation by an employee may be filed in accordance with NYFA's Employee Standards of Conduct.

*Published: August 14, 2020*

*Technical Corrections Updated: September 1, 2020*

## Appendix A: Rules of Decorum

### **RULES OF DECORUM**

#### **Purpose of the Rules of Decorum**

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any Party Advisor or Decision-maker from questioning Witnesses in an abusive, intimidating, or disrespectful manner.” See , [85 Fed. Reg. 30026, 30319](#) (May 19, 2020).

To achieve this purpose, NYFA may provide for reasonable rules of order and decorum, which may be enforced through the removal of an Advisor who refuses to comply with the rules. See , [85 Fed. Reg. 30320](#) At base, these Rules of Decorum require that all Parties, Advisors, and NYFA staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

#### **Rules of Decorum**

The following Rules of Decorum are to be observed in the hearing and applied equally to all Parties and Advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and Advisors will refer to other Parties, Witnesses, Advisors, and NYFA staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No Party may act abusively or disrespectfully during the hearing toward any other Party or to Witnesses, Advisors, or Decision-makers.
4. While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. The Advisor may not yell, scream, badger, or physically “lean in” to a Party’s or Witness’s personal space. Advisors may not approach the other Party or Witnesses without obtaining permission from the Decision-maker.
6. The Advisor may not use profanity or make irrelevant ad hominem attacks upon a Party or Witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.

7. The Advisor may not ask repetitive or redundant questions. This includes questions that have already been asked and answered. When the Decision-maker determines a question has been asked and answered or is otherwise not relevant, the Advisor must move on.
8. Parties and Advisors may take no action at the hearing that a reasonable person in the shoes of the affected Party would see as intended to intimidate that person into not participating in the process or meaningfully modifying their participation in the process.

### **Warning and Removal Process**

The Decision-maker shall have sole discretion to determine if the Rules of Decorum have been violated. The Decision-maker will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Decision-maker shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Decision-maker removes a Party's Advisor, the Party may select a different Advisor of their choice, or accept an Advisor provided by NYFA for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an Advisor be removed. A Party cannot serve as their own Advisor in this circumstance.

The Decision-maker shall document any decision to remove an Advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, Advisors may be prohibited from participating in future proceedings at NYFA in the Advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinator or a designee presented to the Dean of Students for cases involving students, Director of Human Resources for cases involving employees, or an appropriate NYFA Administrator. The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Dean of Students, Director of Human Resources, or an appropriate NYFA Administrator. Such evidence or explanation is due within fifteen (15) working days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, oral testimony, or cross-examination. The Dean of Students, Director of Human Resources, or an appropriate NYFA Administrator shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) calendar days unless extended for good cause. There is no appeal of this finding. Sanctions shall be higher for intentional re-disclosure of records than for negligent re-discourse. In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the Dean of Students, Director of Human Resources, or an appropriate NYFA Administrator no earlier than three-hundred and sixty-five (365) calendar days after the date of the findings letter.



**Relevant Questions Asked in Violation of the Rules of Decorum**

Where an Advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the Witness's or Party's personal space, the question may not be deemed irrelevant by the Decision-maker simply because of the manner it was delivered. Under that circumstance, the Decision-maker will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules). See , 85 Fed. Reg. 30331.

## Appendix B: Guide for Determining Relevancy

### GUIDE FOR DETERMINING RELEVANCY

#### **What is the purpose of this Guide?**

On May 19, 2020, the U.S. Department of Education issued Final Rules governing the Title IX Grievance Policy and Procedure, effective August 14, 2020. The Final Rule requires that all institutions hold a live hearing before making any determination regarding responsibility for covered sexual harassment. This hearing must provide for live cross-examination by the Parties' Advisors.

Any question posed by the Advisors must be evaluated for "relevance" in real time by the hearing officer. According to Final Rule, See , [34 C.F.R §106.45\(b\)\(6\)\(i\)](#):

Only relevant cross-examination and other questions may be asked of a Party or Witness. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

#### **What is a relevant question?**

The Department of Education encourages institutions to apply the "plain and ordinary meaning" of relevance in their determinations. See, [85 Fed. Reg. 30026, 30304](#) (May 19, 2020). A relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. See , [85 Fed. Reg. 30294](#). A question not directly related to the allegations will generally be irrelevant. Officials should use common sense in this understanding. Things may be interesting or surprising but may not be relevant.

Relevance decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the Decision-maker in making the underlying determination.

The relevance decision should not be based on:

- Who asked the question,
- Their possible (or clearly stated) motives,
- Who the question is directed to,
- The tone or style used to ask about the fact(s),
- The sex or gender of the Party for whom it is asked or to whom it is asked
- Their status as Complainant or Respondent,
- Their past status as Complainant or Respondent,
- Any organizations of which they are a member, or
- Any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

If a question is relevant but offered in an abusive or argumentative manner, the Decision-maker has the discretion to ask the Advisor to rephrase the question in an appropriate manner, consistent with NYFA's Rules of Decorum Policy for hearings.

### **What if the question is “prejudicial” and concerns sensitive or embarrassing issues?**

Much of the content within these hearings may be considered sensitive and/or embarrassing by Parties or Advisors. However, relevant questions need to be considered even if a Party or Advisor believes the danger of unfair prejudice substantially outweighs their probative value. Only irrelevant questions (detailed below), including about the Complainant's prior sexual history, may be excluded.

### **What is an irrelevant question?**

1. Question about Complainant's Prior Sexual Behavior or Sexual Predisposition  
Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
  - a. Such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - b. if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. See , [34 C.F.R. § 106.45\(6\)\(i\)](#).
2. Question regarding Privileged Information  
Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant. See , [34 C.F.R. § 106.45\(1\)\(x\)](#). Individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, nurse), psychologists, clergy, rape crisis counselors, and social workers, depend on the state. Each state has its own rules around privilege.
3. Questions about Undisclosed Medical Records  
Questions that call for information about any Party's medical, psychological, and similar records are irrelevant unless the Party has given voluntary, written consent. See , [85 Fed. Reg. 30026, 30294](#) (May 19, 2020).
4. Duplicative Questions  
Questions that repeat, in sum or substance, questions already asked by the Decision-maker prior to cross-examination, or by a Party's Advisor during cross-examination, may be ruled duplicative, and therefore irrelevant.

### **How should the Decision-maker reach a relevance determination?**

The Decision-maker may, at their discretion, exclude questions if the question's probative value is outweighed by the probability that the question's response may necessitate an undue consumption of time, may create substantial danger of undue prejudice, may confuse the issues, or may be misleading.

### **What should the relevance determination consist of?**

The Department of Education explains that the Final Rule "does not require a Decision-maker to give a lengthy or complicated explanation" in support of a relevance determination. Rather, "it is sufficient, for example, for a Decision-maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations." See , [85 Fed. Reg. 30343](#).

As such, the Decision-maker need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation:

1. Generally probative questions
  - a. The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
  - b. The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true. See , [85 Fed. Reg. 30026, 30343](#) (May 19, 2020).
2. Question about Complainant's Prior Sexual Behavior or Sexual Predisposition
  - a. The question is relevant because although it calls for prior sexual behavior information about the Complainant, it meets one of the two exceptions to the rape shield protections, See , [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#), and it tends to prove that a material fact at issue is more or less likely to be true:
    - i. Exception one: The question is asked to prove that someone other than the Respondent committed the conduct alleged by the Complainant.
    - ii. Exception two: The question concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is asked to prove consent.
  - b. The question is irrelevant because it calls for prior sexual behavior information about the Complainant without meeting one of the two exceptions to the rape shield protections, See , [34 C.F.R. § 106.45\(b\)\(6\)\(i\)](#).
3. Question regarding Privileged Information
  - a. The question is irrelevant because it calls for information shielded by a legally-recognized privilege.
  - b. The question is relevant because, although it calls for information shielded by a legally-recognized privilege, that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.
4. Questions about Undisclosed Medical Records

- a. The question is irrelevant because it calls for information regarding a Party's medical, psychological, or similar record without that Party's voluntary, written consent. See , [85 Fed. Reg. 30026, 30294](#).
  - b. The question is relevant because although it calls for a Party's medical, psychological, or similar records, that Party has given their voluntary, written consent to including this material, and it tends to prove that a material fact at issue is more or less likely to be true. See , [85 Fed. Reg. 30026, 30294](#).
5. Duplicative Questions
- a. The question is irrelevant because it is duplicative of a question that was asked and answered.

The Decision-maker may relay a longer explanation if necessary under the circumstances.

The relevance determination will be conveyed orally, except as needed to accommodate a disclosed disability of a hearing participant, and all relevance determinations will be preserved in the record of the proceeding.

**May the Parties and/or their Advisors ask the Decision-maker to reconsider their relevance decision?**

Any Party or their Advisor may request that the Decision-maker reconsider their relevance determination.

The Decision-maker may deny or grant the request to reconsider. This determination is final, but may be subject to appeal under the Title IX Grievance Policy and Procedure.

## **Appendix C: Student Bill of Rights**

### **STUDENT BILL OF RIGHTS**

During the process outlined within this Policy, Complainants and 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 the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from 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 accused and/or 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 reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of NYFA.