



## Sexual Misconduct Policy

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# Sexual Misconduct Policy

## Introduction

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

For the purposes of this Policy, sexual and interpersonal violence is referred to as sexual misconduct and includes any act of sex discrimination, sexual harassment, sexual assault, stalking, sexual battery, sexual exploitation, dating violence or domestic violence that does not fall under “covered sexual harassment” or within NYFA’s educational program or activity per the Final Rule under the Title IX of the Education Amendments of 1972, *See*, [85 Fed. Reg. 30026](#) (May 19, 2020).

Consistent with this commitment and complying with all applicable laws and governmental regulations, this Policy establishes a standard of zero tolerance for sexual misconduct in all its forms. NYFA will promptly respond in a fair and impartial manner to all allegations of sexual misconduct, 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 Sexual Misconduct Policy?

Prior to August 14, 2020, NYFA’s Sex-Based Discrimination and Sexual Misconduct Policy was used to investigate and resolve all complainants of a sex-based discrimination and sexual misconduct experienced by a member of the NYFA community, regardless of when or where the alleged conduct occurred. This Policy was written and enforced in accordance with Title IX of the Education Amendments of 1972, prior to the effective date of the Final Rule on August 14, 2020.

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.

NYFA created the **Title IX Grievance Policy and Procedure** to comply with the Final Rule under Title IX of the Education Amendments of 1972. NYFA is committed to creating and

maintaining a safe learning, living, and working environment, and responding to complaints of sexual harassment that do not meet the narrow standards defined under the Title IX Final Rule. This **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 **do not** fall within 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 sex discrimination, NYFA retains authority to investigate and adjudicate the allegations under the policies and procedures defined within this Sexual Misconduct Policy through these procedures.

## **General Rules of Application**

### **Effective Date**

**NYFA's Sexual Misconduct Policy** became effective on August 14, 2020 and applies to alleged sexual misconduct which occurred on or after August 14, 2020. Alleged sexual misconduct that occurred prior to August 14, 2020 will be resolved through the policies or procedures in place at that time. This Title IX Grievance Policy will not be applied retroactively.

Alleged covered sexual harassment that occurred between August 1, 2024 and January 9, 2025 were initially referred to NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Procedure (2024). On January 9, 2025, the [United States District Court for the Eastern District of Kentucky](#) issued a decision vacating the 2024 Title IX Final Rule from April 29, 2024. Additionally, the [Department of Education's "Dear Colleague Letter" from February 4, 2025](#) issued guidance. Therefore, the 2024 Title IX federal regulations and related resources are no longer applicable in any jurisdiction which means that NYFA's 2024 Title IX Sex Discrimination and Sexual Misconduct Grievance Policy is no longer applicable. In accordance with the [2020 Final Rule](#), NYFA has re-implemented NYFA's Title IX Grievance Policy and Procedure and NYFA's Sexual Misconduct Policy, previously effective August 14, 2020 and effective once more as of February 4, 2025 for all NYFA campuses.

Alleged conduct previously covered under NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Procedure (2024) shall be investigated and adjudicated under the NYFA's Title IX Grievance Policy and/or NYFA's Sexual Misconduct Policy. NYFA's Title IX Sex Discrimination and Sexual Misconduct Grievance Procedure (2024) is no longer applicable to NYFA's policies and procedures.

## **Policy Application**

This Sexual Misconduct Policy covers sexual misconduct that falls outside the purview of the Title IX Grievance Policy and Procedure, but covers sexual misconduct that would interfere with an individual's ability to equally access NYFA educational activities and programs, or for employees and staff, work activities. This Policy applies in its entirety to NYFA students, student groups, faculty, and staff.

This Policy shall govern the behavior of students, student groups, faculty, and staff on NYFA premises or facilities contracted by NYFA or under which NYFA has substantial control, at NYFA-sponsored events or activities, at NYFA-related activities that occur in-person or online, or at other off-campus or online locations if the reported conduct meets the definition of sexual misconduct defined within this Policy.

Reported acts of sexual misconduct that fall outside of NYFA's education program or activity, as defined in the Title IX Grievance Policy, may be adjudicated using this Policy, NYFA's Sexual Misconduct Policy. If the alleged sexual misconduct, as defined in this Policy, is reported to have occurred within NYFA's educational program or activity, NYFA's Title IX Policy and Grievance Procedure may be used.

This Policy, specifically the sections on information, resources, and procedures, also applies to third parties who report sexual misconduct they have allegedly experienced by a member of NYFA's community, and for members of the NYFA community who have allegedly experienced sexual misconduct by a third party. Although NYFA is at times limited in its control of third parties, the prohibited behaviors defined in this Policy describes the behavioral expectations NYFA holds for third parties.

NYFA prohibits other forms of discrimination, harassment, and retaliation. NYFA does not discriminate on the basis of sex or gender in its educational programs and activities, including admissions, financial aid, and/or other types of NYFA programs or NYFA-related activities. NYFA's policies and procedures outside of the Sexual Misconduct Policy and the Title IX Grievance Policy, including NYFA's Diversity and Non-Discrimination Policy, NYFA's Student Grievance Review & Resolution Process, NYFA's Student Code of Conduct, and NYFA's Employee Prohibition Against Harassment, Discrimination & Retaliation, address such conduct if a member of the NYFA community has experienced discrimination, harassment, or retaliation on the basis of race, ethnicity, nationality, disability, gender, age, sexual orientation, religion, political beliefs, military status, or any basis protected by law.

## **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. Students, faculty, and staff who wish to file a complaint about the institution's policies or processes may contact the Department of Education's Office for Civil Rights:

Office for Civil Rights U.S. Department of Education  
400 Maryland Avenue, SW, Washington, DC 20202-1100  
Telephone: 800-421-3481; Fax: 202-453-6012  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

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

- Title IX Grievance Policy and Procedure
- Student Code of Conduct
- Discrimination, Harassment, and Retaliation Policy
- Student Grievance and Resolution Process
- Employee Prohibition Against Harassment, Discrimination & Retaliation
- Employee Standards of Conduct
- Employee Grievance Policy

### **Definitions**

#### **Affirmative Consent**

For the purposes of this Sexual Misconduct 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.

### **Bad Faith Complaint of Sexual Misconduct**

Knowingly reporting a false allegation of sexual misconduct, making a false counter-complaint, or providing false information related to a complaint of sexual misconduct.

### **Complainant**

For the purposes of this Sexual Misconduct 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.

### **Employee**

Any person hired by NYFA to perform a job function as a faculty or staff.

### **Formal Complaint**

For the purposes of this Sexual Misconduct 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 or designee, alleging sexual misconduct against a Respondent requesting initiation of the procedures consistent with this Sexual Misconduct Policy to investigate the allegation of sexual misconduct.

### **Privacy vs. Confidentiality**

Consistent with the Title IX Grievance 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 or designee to investigate, provide supportive measures, and/or seek a resolution.

**Respondent**

For the purposes of this Sexual Misconduct 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.

**Retaliation**

For the purposes of this Sexual Misconduct Policy, retaliation is defined as any adverse action taken against anyone for reporting, supporting, or assisting in the reporting and/or adjudication of any of the behaviors prohibited in this Policy, or against anyone perceived to be involved in any of these actions, whether or not the alleged conduct involves sexual misconduct. No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. Retaliation is a violation of this policy whether or not the underlying complaint is found to be a violation of policy.

**Student**

A student is defined as any person enrolled in or registered for courses at NYFA, either full-time or part-time, pursuing a degree or certificate program. Persons who withdraw after allegedly violating this Policy, who are not officially enrolled for a particular term but who have a continuing relationship with NYFA, or who have applied for admission are considered students. Additionally, this Policy defines a student as a person who has previously been enrolled and is eligible to return following a voluntary or involuntary medical withdrawal, leave of absence, or vacation break. This Policy also applies to former students who committed violations of this Policy during their time as a student.

**Student Group**

A student group is defined as any number of persons from the NYFA community who have created a group or organization which:

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

**Third Party**

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

**Working Days**

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

**Definitions of Prohibited Conduct****Sexual Misconduct**

For the purposes of this Sexual Misconduct Policy, sexual misconduct is a broad term encompassing any unwelcome and/or unwanted behavior of a sexual nature that is committed without consent, creates a hostile environment, and/or has the purpose or effect of threatening, intimidating, or coercing a person. Sexual misconduct may vary in severity and may consist of a range of behaviors or attempted behaviors. It can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can occur between members of the same or different sex or gender.

### 1. **Sexual Assault**

For the purposes of this Sexual Misconduct Policy, sexual assault (as defined in the Clery Act), includes any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault is an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

- a. **Rape**: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b. **Statutory Rape**: Sexual intercourse with a person who is under the statutory age of consent.
- c. **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- d. **Incest**: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

### 2. **Dating Violence**

For the purposes of this Sexual Misconduct Policy, 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. Where 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.
- c. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- d. Dating violence does not include acts covered under the definition of domestic violence.

### **3. Domestic Violence**

For the purposes of this Sexual Misconduct Policy, 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.

### **4. Stalking**

For the purposes of this Sexual Misconduct Policy, stalking (as defined in the VAWA amendments to the Clery Act), means 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.

Acts are considered stalking when there are two or more acts that include directly, indirectly, or through third parties, monitoring, observing, surveilling, threatening, or communicating to or about a person, or interfering with a person's property. These repeated acts cause the victim mental suffering or anguish that may (but does not necessarily) require medical or other professional treatment or counseling.

### **5. Sexual Harassment**

For the purposes of this Sexual Misconduct Policy, sexual harassment is defined as unwelcome conduct of a sexual nature when:

- a. It is implicitly or explicitly suggested that submission to or rejection of the conduct will be a factor in academic or employment decisions, evaluations, or permission to participate in a NYFA activity; or
- b. The conduct is sufficiently severe, pervasive, and/or objectively offensive that it unreasonably interferes with, denies or limits an individual's ability to receive access to education.

The terms in this prohibited conduct are defined as follows:

- a. Conduct of a sexual nature: This includes conduct that is verbal, visual, or physical. Conduct of a sexual nature may either be explicitly sexual or may involve conduct that derives its sexual nature from the circumstance in which the conduct occurs or when combined with other conduct that occurs in a sexual context. Conduct does not need to express any sexual desire or

be directed to a specific person and can include conduct that attempts to demean, control, or stereotype others on the basis of their sex.

- b. Unwelcome conduct: Conduct is considered “unwelcome” if, under the totality of the circumstances, it is 1) neither solicited nor incited, and 2) is regarded by the recipient as undesirable or offensive.
- c. Objectively Offensive: Conduct that would be offensive to reasonable persons under similar circumstances and with similar identities; considering the totality of the known circumstances.

## **6. Sex-Based Discrimination**

For the purposes of this Sexual Misconduct Policy, sex-based discrimination is defined as any act of discrimination on the basis of actual or perceived sex, sexual orientation, gender identity, and/or gender expression that creates a hostile learning, living, or working environment or limits an individual’s ability to participate in or benefit from any NYFA educational programs.

## **7. Sexual Battery**

For the purposes of this Sexual Misconduct Policy, sexual battery is defined as any intentional sexual contact, however slight, with any body part or object, without consent. Sexual contact includes contact above or beneath clothing with the breasts, buttocks, genitals, or areas directly adjacent to genitals (for instance, the inner thigh); touching another with any of these body parts; making another touch someone or themselves with or on any of these body parts; or any other bodily contact in a sexual manner.

## **8. Sexual Exploitation**

For the purposes of this Sexual Misconduct Policy, sexual exploitation is defined as taking non-consensual or abusive sexual advantage of another person for the benefit or advantage of anyone, other than the exploited party. Examples of sexual exploitation include, but are not limited to, the following:

- a. Causing or attempting to cause the incapacitation of another person to gain a sexual advantage
- b. Prostituting another person
- c. Non-consensual streaming, sharing, or recording of audio, video, or photography, or any type of distribution of such
- d. Engaging in sexual activity in the presence of a non-consenting third party
- e. Exposing genitals to a non-consenting third party or in a public area
- f. Watching others when they are naked or engaged in sexual activity without their consent
- g. Knowingly transmitting a sexually transmitted infection/disease to another individual without their consent
- h. Stealing of clothing

## **9. Interpersonal Violence**

For the purposes of this Sexual Misconduct Policy, interpersonal violence are behaviors that are not physical in nature between individuals in dating or domestic relationships, that cause one to fear for their safety and well-being. Examples of behaviors may include but are not limited to non-physical abuse (mental, emotional, financial), monitoring behaviors that a reasonable person would consider to be inappropriate, coercion, or the controlling of monetary or tangible belongings.

## **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. The Complainant and Respondent (Parties) and Witnesses may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator or designee at any point before or during this Sexual Misconduct Policy that do not fundamentally alter the process or procedures. The Title IX Coordinator or designee will not affirmatively provide disability accommodations that have not been specifically requested by the Parties or Witnesses, even where the Parties or Witnesses may be receiving accommodations in other institutional programs and activities.

## **Education and Prevention**

### **Education and Prevention Programs**

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

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

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

1. NYFA's prohibition of crimes of dating violence, domestic violence, sexual assault, and stalking and the types of behaviors that constitute said crimes,
2. What affirmative consent is and what it is not,
3. Safe and positive options for bystander intervention,
4. Risk reduction, and

5. Options and resources for victims of covered sexual harassment as defined under this Sexual Misconduct 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.

## **Reporting Sexual Misconduct**

### **Confidential Reporting**

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

#### **New York Campus - Counseling Services**

Naomi Carey, LCSW  
Danielle Kaufman, LMSW  
17 Battery Place, 1st Floor  
New York, NY 10004

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

+1-212-674-4300

### **Los Angeles Campus - Counseling Services**

Stanley Tam, PsyD

Caitlin Westfall, LMSW

3300 W. Riverside Drive, 4th Floor

Burbank, CA 91505

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

+1-818-333-3558

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

#### **Los Angeles / Burbank**

- Peace Over Violence: <https://www.peaceoverviolence.org>
- Strength United: <https://www.csun.edu/eisner-education/strength-united/services>
- Rape Treatment Center, UCLA Medical Center: <https://www.uclahealth.org/locations/rape-treatment-center>
- YWCA Los Angeles: <https://www.ywcagla.org/sacs>
- YWCA Glendale, DV Project; <https://www.glendaleywca.org>
- Victim Assistance Program: <https://www.helpacrimevictims.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/>

### **National Hotlines**

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

## **Non-Confidential Reporting**

### ***Role of the NYFA Title IX Office***

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

Any person may report of sexual misconduct (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual misconduct), in person, by 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 Office: All NYFA Campuses and Online Programs**

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

[Title IX Online Reporting Tool](#)

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Reports may be made at any time (including during non-business hours) by using the Title IX Office email address, using the Title IX online reporting tool, by phone, in-person, or by mail to the office address listed.

***Employee Responsibility for Reporting***

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

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

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

**Considerations When Reporting**

***Timely Warnings***

When an incident of sexual misconduct is reported to NYFA and involves an alleged crime that constitutes a serious or active threat to the campus community, NYFA will evaluate each incident on a case-by-case basis to determine if a timely warning notice

will be distributed to the community to protect the health and safety of the community, in a manner consistent with the requirements of the Clery Act. In these instances, NYFA will not release personally identifying information about persons involved in an incident, unless identification of a Respondent is required by the timely warning for the safety of the campus community or is required by law. In addition, Counseling Services (confidential resources at NYFA) may submit anonymous statistical information for Clery Act purposes, unless they believe it would be harmful to their client, patient, or student.

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

### ***Preserving Information***

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

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

Mount Sinai Morningside Emergency Department  
443 W. 113th Street  
New York, NY, 10025  
+1-212-523-4000

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

NYC Health & Hospitals - North Central Bronx  
Social Work Department, Room 14A03,  
3424 Kossuth Avenue  
Bronx, NY 10467  
+1-718-519-3013

### **Los Angeles/ Burbank**

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

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

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

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

### ***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 Office. 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 Office 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 Office 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

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 Office, 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 or designee.

The Title IX Office 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 Office 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.

## **NYFA Response to Reports of Sexual Misconduct**

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

NYFA encourages the campus community to report all incidents of sexual misconduct to the Title IX Office. The Title IX Coordinator or designee is available to address any concerns, answer questions about this Policy, or receive a complaint of sexual misconduct. Contact information for the Title IX Coordinator is located in the Title IX Coordinator section of this Policy (above).

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

All NYFA employees (faculty and staff) shall report any allegations of conduct 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 Office'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 designee 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 designee 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 sexual misconduct and the right to consult the Title IX Coordinator or designee 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 Office or NYFA Security (LA) in initiating legal proceedings in family court or civil court; and
9. Withdraw a complaint or involvement at any time.

### **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.

### **Request for Anonymity or Not to Proceed**

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

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

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

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

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

### **Timeframe for Reporting**

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

NYFA encourages prompt reporting of allegations to allow for the collection and preservation of evidence that may be helpful during an investigation or criminal proceeding. Delay in filing a complaint may limit the Title IX Office's ability to respond. If the complaint is delayed to the point where one of the Parties has graduated or is no longer employed, NYFA will still seek to meet its obligation under this Policy by taking reasonable action to end the misconduct, prevent its recurrence, and remedy its effects.

### **Documentation and Records Retention**

NYFA will create and maintain the following records for a period of seven (7) years: records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of 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.

### **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 Office. 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.

## **Supportive and Protective Measures**

### ***Supportive Measures***

When a student, faculty, or staff member reports to the Title IX Coordinator or designee that they have experienced sexual misconduct, whether the incident(s) occurred on or off campus, the Title IX Coordinator or designee 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 Office 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 or designee, 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 sexual misconduct. 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 or designee 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, a Campus Dean will review the information upon which the Procedural Hold was based. The Campus Dean for LA will review Procedural Holds for the LA Campus; the Campus Dean for NY will review Procedural Holds for the NY Campus. 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 or designee 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 or designee will determine:
  - a. If the Procedural Hold is necessary
  - b. If the conditions of the Procedural Hold should be modified

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

## **Introduction to Sexual Misconduct Policy Procedures**

### **Filing a Formal Complaint**

The timeframe for this Sexual Misconduct Policy begins with the filing of a Formal Complaint. The Sexual Misconduct Policy 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 proceedings may be extended for reasons including but not limited to, the absence of a Party, a Party's Advisor, or Witnesses; concurrent law enforcement activity; or the need for language assistance or for an

accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator or designee 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.

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

### **Receipt and Outreach**

Once an allegation has been reported or a Formal Complaint has been made, the Title IX Coordinator or designee will contact the Complainant to explain their reporting options and resources on and off campus, supportive measures, and to extend an offer to meet in-person. This information is communicated through the individual's NYFA email address, or other reasonable means. It is the responsibility of Parties to maintain and regularly check their email accounts.

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

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

### **Intake**

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

### **Initial Assessment**

The Title IX Coordinator or designee will determine if this Sexual Misconduct Policy should apply to a Formal Complaint.

The Title IX Coordinator or designee will assess if the allegation, even if substantiated, does or does not rise to the level of a policy violation, or may determine there is or is not sufficient information to investigate the matter. If the allegation does not rise to a policy violation, or if there is not sufficient information to investigate the matter, the Title IX Coordinator or designee may dismiss the report and seek an alternative informal resolution. The Title IX Coordinator or designee will inform the Complainant and provide rationale for the determination.

### **Dismissal of a Formal Complaint**

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under this Sexual Misconduct Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation:

1. If a Complainant notifies the Title IX Coordinator or designee in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint.
2. If specific circumstances prevent NYFA from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.
3. If the allegation does not rise to the level of a violation of this Policy, or if there is not sufficient information to investigate the matter.

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, or other reasonable means.

### **Multi-Party Complaints**

NYFA may consolidate Formal Complaints alleging sexual misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual misconduct arise out of the same facts or circumstances.

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

If the alleged conduct includes conduct that would constitute sexual misconduct as defined in this Sexual Misconduct Policy and covered sexual harassment as defined in the Title IX Grievance Policy, the Title IX Grievance Procedure will be applied in the investigation and adjudication of all of the allegations.

## **Pending Criminal Investigation and/or Proceeding**

NYFA is obligated to investigate any allegation of sexual misconduct in a timely, equitable manner, even if a criminal complaint has been filed with law enforcement. The fact-finding portion of NYFA's investigation may be temporarily delayed, at the request of a law enforcement agency.

## **Notice of Allegations**

If it is deemed by the Title IX Coordinator or designee that this Sexual Misconduct Policy should apply to a Formal Complaint, the Title IX Coordinator or designee will draft and provide the Notice of Allegations to any Party about the allegations of sexual misconduct. 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.

## ***Contents of Notice***

The Notice of Allegations will include the following:

1. Notice of NYFA's Sexual Misconduct Policy, including any informal resolution process and a hyperlink to a copy of this Policy.
2. Notice of the allegations potentially constituting sexual misconduct, 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 sexual misconduct; 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 proceedings.
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 proceedings.
5. A statement that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney.
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.

7. A statement that knowingly making false statements or submitting false information during the Sexual Misconduct Policy proceedings is a violation of this Policy.

### **Notice of Meetings and Interviews**

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

### **Role of an Advisor**

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

An Advisor is an individual who may accompany a Complainant or Respondent during the investigative process. This includes interviews and meetings related to the appeals process. There may only be one Advisor in a meeting or other proceeding; however, that person does not need to be the same individual throughout the entire process. The Complainant and Respondent may have any individual of their choosing serve as their Advisor.

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

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

### **Delay**

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 meeting for which multiple Parties have traveled to and prepared for shall generally not be granted, while a request for a five-day pause in the middle of investigation interviews to allow a Party to obtain certain documentary evidence shall generally be granted.

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

### **Conflicts of Interest**

NYFA is committed to fair, impartial, objective decisions in its investigative and adjudication processes. If any administrator involved in the investigation or adjudication of a complaint presents a conflict of interest, the Title IX Coordinator will identify and appoint a different, trained administrator to carry out this Policy. The Title IX Coordinator will notify the Complainant and Respondent of any administrative changes to the investigation and adjudication processes. If a conflict of interest submission is denied, the Title IX Coordinator will provide reasoning, in writing, to the Complainant or Respondent who expressed concern.

A Complainant or Respondent must identify in writing, to the Title IX Coordinator, any real or perceived conflict of interest within three (3) working days of receiving notification on who has been designated as the Investigator and/or adjudicator. If the conflict of interest is the Title IX Coordinator, the Complainant or Respondent can identify any real or perceived interest, in writing, to the Campus Dean. The Title IX Coordinator will notify the Complainant and Respondent of the decision to appoint a different administrator or the reason for not moving forward with a different administrator. If a conflict of interest submission is denied, the Title IX Coordinator will provide reasoning, in writing, to the Complainant or Respondent who expressed concern.

### **Informal Resolution Procedure**

Complainants and Respondents (Parties) may request at any time that the conduct reported under this Policy be addressed through informal resolution, even if the investigative process has been initiated. Informal resolution is designed to address the reported behavior, prevent reoccurrence, and remedy the effects without completing a formal investigation.

The Parties may elect to enter the 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 resolution, including a statement that any agreement reached through informal resolution is binding on the Parties.

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

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

### **Determination to Approve Entry into Informal Resolution**

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or designee 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 designee 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.

At any time after the commencement of the informal resolution process, the Title IX Coordinator or designee may determine that the informal resolution process is not an appropriate method for resolving the matter and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

### **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 misconduct under this Policy, 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.

### **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, provided that this information is disclosed and reviewed by the Parties under the procedures described in this Sexual Misconduct Policy.

### **Informal Resolution Options**

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

#### ***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 designee 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.

## ***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.

## ***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.

## **Investigation Procedure**

### **General Principles**

The Title IX Coordinator or an Investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute sexual misconduct after issuing the Notice of Allegations. The Title IX Coordinator may serve as the Investigator, however the individual serving as the Investigator may not be the same individual who reviews the final Investigation Report or issues a determination of responsibility.

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. 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 or disprove the allegations) as described below.

### **Fact-Finding**

The Investigator will meet separately with the Complainant, Respondent and identified Witnesses. To the extent possible, the Investigator will interview the Complainant, Respondent, or Witnesses either in-person, or through a method like Skype or Zoom, to

observe the demeanor and to assist in the determination of the credibility of all involved Parties, including witnesses.

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

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

### ***Information Collection***

Information, evidence, and material that is relevant to the alleged conduct will be collected and considered. The Investigator will determine if information is relevant and whether information should be considered or excluded from an investigation. Additionally, expert witnesses may be obtained by the Investigator to aid in the resolution of an investigation, or to help provide clarity about a scientific, technical, or professional matter.

Information that speaks to a Complainant's or Respondent's behavior or reputation that is not related to the conduct in question, otherwise known as character statements, will not be considered during an investigation.

A Complainant's, Respondent's, or Witness's prior sexual behavior will generally not be considered, unless it meets one of the two exceptions to the rape shield protections:

- a. Exception one: Sexual behavior is considered to prove that someone other than the Respondent committed the conduct alleged by the Complainant.
- b. Exception two: Specific incidents of the Complainant's prior sexual behavior with respect to the Respondent is considered to prove consent.

Note, the existence of a dating relationship or past sexual relations between Parties can never, by itself, be assumed to be an indicator of consent.

Information, evidence, and material 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 Investigation Report.

### **Information Review**

At the conclusion of fact-finding, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the information

review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for the information review process 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.

During the Information Review, the Complainant and Respondent each meet separately with the Investigator. An Advisor may accompany the Complainant and Respondent to their respective meetings. The Complainant and Respondent can each bring a written statement to the Information Review, can share their responses to the information being reviewed, and will be given a reasonable deadline by which to request that the Investigator gather additional relevant information, if applicable in the form of:

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

Requests to gather additional information may be denied, if deemed irrelevant by the Investigator.

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

Any new relevant and substantive information and/or materials provided by either Party will be shared with the other Party by the Investigator. The Investigator will schedule additional Information Review meetings to allow each Party to respond to the new information.

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

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

The Parties and their Advisors 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 this Sexual Misconduct Policy proceedings.

### **Investigation Report**

After Information Reviews have concluded, the Investigator will prepare the Investigation Report that fairly summarizes relevant evidence. The Investigator will prepare the report promptly and make it available to the Complainant and Respondent (Parties when requested). The Investigator will notify the Parties if an extension of this timeline is necessary.

The Investigation Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigation Report.

The Investigation Report will include an analysis of all disputed information identified throughout the process, an analysis of policy, and conclusion of whether or not there is a preponderance of evidence that the Respondent violated NYFA policy.

The Investigator may redact irrelevant information from the Investigation Report when that information is contained in documents or evidence that is/are otherwise relevant.

### **Determination Regarding Responsibility**

#### ***Decision-Making***

The Investigator will send the Investigation Report, for review, to a trained Decision-maker. The Decision-maker may be a Title IX staff member from one of NYFA's other campuses.

The Decision-maker will make a determination regarding the Respondent's responsibility for violations of NYFA policy and will make a determination about sanctioning.

The Decision-maker will make a determination of responsibility based upon evidence gathered throughout the process.

Where a Respondent faces a potentially severe sanction (such as a lengthy suspension or expulsion for a student, or termination for an employee) and if the determination depends on the credibility of involved Parties or Witnesses, then:

1. The Decision-maker shall have the ability to observe live, either in person or by other means, such as through a method like Skype or Zoom, the demeanor of those Parties and/or Witnesses in deciding which Parties and/or Witnesses are more credible.
2. The Decision-maker shall allow for the opportunity for the Parties to cross-examine each other and/or Witnesses, either directly through an advisor, or indirectly by the Decision-maker. The Decision-maker has the discretion to omit questions that are irrelevant, inflammatory, or argumentative. The cross-examination may occur at a forum in which the Parties and/or Witnesses appear in person or by other means, such as through a method like Skype or Zoom, so that the Decision-maker can independently find facts and make credibility assessments.

The possible outcomes for an alleged violation are:

1. Responsible
2. Not responsible
3. Inconclusive

### ***Presumption of Innocence***

NYFA applies the presumption of innocence principle to all Respondents involved in an investigation. Meaning, a Respondent is considered not responsible until determined responsible through NYFA's investigation and adjudication process.

### ***Standard of Proof***

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

### ***General Considerations for Evaluating Evidence***

While the opportunity for information review is required in all Sexual Misconduct Policy proceedings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker. Formal rules of evidence, such as those applied in criminal or civil

court, may be used as guidelines by the Decision-maker but are not controlling for this Policy.

### **1. Credibility**

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

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

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

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

### **2. Weight of Statements**

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

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

### **3. Expert Witnesses**

NYFA allows Parties to call upon "expert witnesses." While the expert witness will be allowed to submit information and will be subject to questioning, the Decision-maker will afford lower weight to non-factual accounts of the expert relative to fact witnesses, and any expert account 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 is the subject of questioning and regardless of whether all Parties present experts as witnesses.

## **Determination Regarding Sanctioning**

### ***Mitigating and Aggravating Factors***

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

1. Sanctions previously imposed by NYFA for the same or similar violation.
2. Severity of the offense, and the harm, or potential harm to the NYFA community or member of the campus community.
3. The actual or potential consequences of the behavior in question.
4. The Respondent's past disciplinary record.
5. The Respondent's age or grade level, as the expectation of awareness of the inappropriateness and consequences of the Respondent's behavior may be impacted by the Respondent's maturity or experience in the NYFA community.
6. Use of force, weapons, foreign objects, coercion, intimidation, threats, humiliation.
7. Serious physical injury and/or intent to cause physical injury.
8. Premeditated behavior, planning, and/or predatory behavior.
9. Violation of disciplinary sanctions, including disciplinary probation, suspension, no contact directives, and/or interference with emergency protective measures.

### ***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 or designee 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 or designee 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 or designee 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 or designee 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 or designee may impose, as a sanction, a revocation of the degree or certificate, subject to the following procedures:
  - i. 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.
  - ii. 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.

### ***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 Employees***

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

1. Subbing or rescheduling an instructor from their class assignment(s)
2. Replacing an instructor from their class assignment(s)

3. Counseling session regarding Policy expectations
4. Verbal Warning
5. Written Warning
6. Final Written Warning
7. Suspension of employment status
8. Termination of employment status

## **Final Outcome**

### ***Final Outcome Letter***

The Decision-maker will notify both the Complainant and Respondent, in writing, of the finding(s), any imposed sanctions, and the rationale for the decision(s) via a Final Outcome Letter. This information is communicated through each Party's NYFA email account, or other reasonable means as necessary, and will include:

1. Identification of the allegations potentially constituting sexual misconduct;
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 this 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

The recipient's procedures and the permitted reasons for the Complainant and Respondent to appeal, as described in the Appeal section (below).

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

### ***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, or Decision-maker 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 both Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals should be submitted electronically to the Title IX Coordinator, who will forward to the Appeals Decision-panel. Appeals will be decided by an Appeals Decision-panel, who will be free of conflict of interest and bias, and will not serve as Investigator or Title IX Coordinator 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.

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