

New York Tech Pre-August 2024 Title IX Policy and Procedure Document

Applies to any gender-based misconduct reports which
allege misconduct occurring prior to August 1, 2024

Current as of July 2024

Gender-Based Misconduct Policy

Introduction and Scope

New York Institute of Technology is committed to providing an educational and working environment that is free from Gender-Based Misconduct. No form of Gender-Based Misconduct will be tolerated at NYIT. This includes activity by students, staff, and faculty, on or off campus, and any vendors or visitors on NYIT's campuses.

Gender-Based Misconduct, as more particularly defined below, includes sexual assault, sexual harassment, and other forms of nonconsensual sexual activity, as well as stalking and relationship violence.

To ensure compliance with federal and state laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, NYIT has developed this policy and the accompanying [Title IX Procedure](#) that provide a prompt, fair, and impartial process for those involved in an allegation of Gender-Based Misconduct.

When an alleged violation of this policy is reported, the allegations are subject to resolution using either the Title IX Procedure, or using the procedures set forth in the [Discriminatory Harassment Policy](#) for employees or the Student Code of Conduct for students. The applicable procedure will be determined by the Title IX Coordinator, as detailed below.

Note: "Code of Conduct" refers to both the [Student Code of Conduct: U.S. Campuses](#) and the [Student Code of Conduct: NYITCOM](#).

Definition of Gender-Based Misconduct

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the New York State Human Rights Division regard most Gender-Based Misconduct as an unlawful discriminatory practice, although there are some distinctions regarding the conduct covered. Additionally, state law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, they are separate and distinct from a criminal violation.

NYIT has adopted the following definitions of sexual or gender-based acts for which disciplinary charges may be brought against a student or employee.

Acts of gender-based misconduct defined below may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved.

For purposes of this policy, *Complainant* means an individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity. *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.

Title IX Gender-Based Misconduct includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

1. *Quid Pro Quo Sexual Harassment*:

1. an employee of the institution,
2. conditions (implicitly or explicitly) the provision of an aid, benefit, or service of the institution,
3. on an individual's participation in unwelcome sexual conduct.

2. *Title IX Sexual Harassment*:

1. **unwelcome** conduct
2. of a sexual nature or based on a person's gender / gender stereotypes, including sexual orientation, gender identity or expression
3. determined by a reasonable person,
4. to be so severe, and
5. pervasive, and,
6. objectively offensive,
7. that it effectively denies a person equal access to the institution's education program or activity.

*Note: **Unwelcomeness** is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances.*

3. *Sexual assault, defined as*:

1. Sex Offenses, Forcible:
 - Any **sexual act** directed against another person,
 - without the consent of the Complainant,
 - including instances in which the Complainant is incapable of **giving consent**.
2. Sex Offenses, Non-forcible:
 - Incest:
 1. Non-forcible sexual intercourse,
 2. between persons who are related to each other,
 3. within the degrees wherein marriage is prohibited by applicable state law.
 - Statutory Rape:
 1. Non-forcible sexual intercourse,

2. with a person who is under the statutory age of consent of the applicable state.

*For the purposes of this definition, **sexual acts include**:*

Forcible Rape:

- 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 Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age# or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

*The definition of **consent** (as applied to the offenses listed above which include a non-consensual component):*

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

Furthermore:

1. Consent of any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
 2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 3. Consent may be initially given but withdrawn at any time.
 4. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
 - It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.
 5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 6. When consent is withdrawn or can no longer be given, sexual activity must stop.
4. *Dating Violence, defined as:*
1. violence,
 2. on the basis of sex,
 3. committed by a person,
 4. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
 1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 2. Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence, defined as:

1. violence,
2. on the basis of sex,
3. committed by a current or former spouse or intimate partner of the Complainant,
4. by a person with whom the Complainant shares a child in common, or
5. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
6. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the applicable state or
7. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the applicable state.

6. Stalking, defined as:

- engaging in a course of conduct,
- on the basis of sex,
- directed at a specific person, that
 1. would cause a reasonable person to fear for the person's safety, or
 2. the safety of others; or
 3. suffer substantial emotional distress.

For the purposes of this definition:

1. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
3. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

OTHER INSTITUTIONAL SEX-BASED OFFENSES

In addition to the forms of gender-based misconduct described above, which fall within the coverage of Title IX, NYIT additionally prohibits the following offenses as forms of sexual or gender-based misconduct outside of Title IX.

7. Sexual Exploitation, defined as:

1. taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and
2. such conduct does not otherwise constitute a violation under this policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism

- Taking and/or sharing pictures, video, or audio recording of another in a sexual act when there is a reasonable expectation of privacy during the activity, without the consent of all involved
- Prostituting another person
- Forcing a person to take an action against that person's will by threatening to show, post, or share information that depicts the person's nudity or sexual activity
- Creation, possession, or dissemination of child pornography

8. Non-Consensual Sexual Contact:

- Contact with Respondent
 1. Either through force or without the person's consent,
 2. intentionally causing the other person to touch or make contact with Respondent's sexual or intimate parts
- Other Sexual-Based Contact
 1. Touching non-private parts of the body (e.g. squeezing, grabbing or pinching) of another person
 2. for the purpose of sexually degrading or abusing them or for the purpose of gratifying Respondent's sexual desire.

9. New York State Sexual Harassment:

- unwelcome conduct,
- of a sexual nature or based on a person's gender / gender stereotypes, including sexual orientation, gender identity or expression
- determined by a reasonable person
- to be more than a petty slight or trivial inconvenience
- that unreasonably interferes with an individual's work performance or ability to participate in or benefit from the institution's programs or activities or creates an intimidating, hostile, or offensive environment for working, learning or otherwise participating in NYIT programs and activities.

Reporting Rights

If any NYIT community member has experienced Gender-Based Misconduct, they have the right to make a criminal report to law enforcement, and/or to make a report to NYIT, but do not have to do either. While it is an individual's decision whether to make a report of any kind, employees should be aware of their obligations as [Mandated Reporters](#).

In deciding whether to make a report, students and employees should also be aware of NYIT's limitation on confidentiality as described in this policy (See [Reporting to NYIT](#) and [Mandated Reporters and Confidentiality](#)). Law enforcement will likewise have its own obligations once a report is made to them that individuals should be aware of.

Reporting to the Police

At NYIT's campuses, [Campus Security](#) is responsible for the safety and security of students, staff, and faculty members. At the NYITCOM-Arkansas campus, the University Police Department is responsible for campus security. All security guards (New York) and police officers (Arkansas) are trained in emergency response procedures. Campus Security can assist a student in making a report to the local police department, or the student may contact the police department directly.

In an emergency, call 911 first.

Long Island

Campus Security: 516.686.7789

Nassau County Special Victims Squad: 516.573.8055

New York City

Campus Security: 212.261.1536

NYPD Special Victims Division: 646.610.7272

NYITCOM-Arkansas

Arkansas State University Police: 870.972.2093

Jonesboro Police: 870.935.5657

It is important to remember that the criminal justice process is separate and distinct from NYIT's conduct process, and that the standards of proof and evidence are different in the criminal justice process. Any questions about whether a specific incident violated the penal law should be addressed to law enforcement. Decisions by law enforcement regarding whether or not to arrest or prosecute an individual do not determine if a violation of NYIT policy has occurred.

Reporting to NYIT

NYIT's Title IX Coordinator is responsible for overseeing and coordinating the institution's Title IX and Gender-Based Misconduct compliance efforts, including ensuring the prompt and effective investigation and response to complaints. The Title IX Coordinator also provides leadership to the Deputy Title IX Coordinators who assist in compliance efforts. NYIT's Deputy Title IX Coordinators serve as the primary Title IX officials for students.

Students and employees should contact the Title IX Coordinator or one of the Deputy Title IX Coordinators to make a complaint or report an alleged violation of this policy or to discuss questions or concerns related to this policy; however, please note that these individuals cannot guarantee confidentiality to those who report, as discussed further in [Mandated Reporters and Confidentiality](#).

Making a Report

Notice or complaints under this policy may be made using any of the following options:

1. File a complaint with, or give verbal notice to, the Title IX Coordinator or one of the Deputy Title IX Coordinators. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address listed below for each individual, or by mail to the office address listed below for each individual.
2. Report online, using the [internal reporting form](#).
3. Report online or via telephone using the [NYIT Compliance and Ethics Hotline](#).

Title IX Coordinator

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Deputy Title IX Coordinator for faculty and staff:

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Deputy Title IX Coordinators for students:

Long Island/New York City

Deanna Bertini
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Filing a Formal Complaint

A Formal Complaint means a document filed or signed by the Complainant (or signed by the Title IX Coordinator, if indicated) alleging a policy violation by a Respondent and requesting that the institution investigate the allegation(s).

A "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and that they are requesting a formal investigation.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by NYIT, and to have the incidents investigated and properly resolved through the applicable procedures.

A Complainant has the right to withdraw a formal complaint at any time, subject to the considerations set forth in [When Complainant Does Not Wish to Proceed](#).

Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the institution's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Mandated Reporters and Confidentiality

All NYIT employees (faculty, staff, administrators) are expected to report incidents of Gender-Based Misconduct to the Title IX Coordinator immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware

of confidentiality and mandatory reporting requirements when consulting campus resources.

On campus, some resources may maintain confidentiality, meaning they are not required to report Gender-Based Misconduct to any NYIT official or outside agency. However, if a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following further describes the disclosure options at NYIT.

Confidential Disclosure

- On-campus licensed professional counselors and staff (Counseling and Wellness)
- On-campus health service providers and staff (Academic Health Care Center/Student Health Center)
- Any off-campus agencies or counselors

The above-listed individuals will maintain strict confidentiality except in extreme cases of immediate threat or danger or abuse of a minor. Additional information on these resources is provided in [Appendix 2](#).

Mandated Reporter Disclosure

All employees of NYIT, other than Counseling and Wellness and Academic Health Care Center professionals, are required to promptly report details of incidents disclosed to them to the Title IX Coordinator. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Failure of a Mandated Reporter to report an incident of gender-based misconduct of which they become aware is a violation of NYIT policy and can be subject to disciplinary action for failure to comply. However, a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

Therefore, disclosing parties may want to consider carefully whether they share personally identifiable details with non-confidential employees.

However, even NYIT offices and employees who cannot guarantee confidentiality will maintain a disclosing party's privacy to the greatest extent possible. The information a disclosing party provides to a non-confidential resource will be relayed only as necessary for the institution to investigate and/or seek a resolution. This means

information may be shared with investigators, witnesses and the responding party, but the circle of people with this knowledge will be kept as tight as possible to preserve a disclosing party's rights and privacy. But it is important to remember that NYIT cannot guarantee that other parties will not disseminate information on their own.

Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the disclosing party clearly indicates that they wish a report to be made. Supportive measures may result from such disclosures without formal institutional action.

When Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the disclosing party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus community and comply with state and federal law.

Declining to consent to a formal grievance process shall be honored unless the institution determines in good faith that failure to do so does not adequately mitigate a compelling risk to the health and/or safety of the Complainant or other members of the community. In weighing such a request, the Title IX Coordinator will consider the following factors:

1. Whether the responding party has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct on behalf of the responding party;
3. The increased risk that the responding party will commit additional acts of violence;
4. Whether the responding party used a weapon or force;
5. Whether the disclosing party is a minor; and
6. Whether the institution 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.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the institution's ability to pursue a Formal Grievance Process fairly and effectively.

If the institution determines that a formal grievance process is required, the Title IX Coordinator will sign a formal complaint to initiate a grievance process. The Title IX Coordinator will also notify the Complainant of this decision in writing and take immediate action as necessary to protect and assist them.

When the institution proceeds in this manner, neither the Title IX Coordinator, nor the institution, become the Complainant. Rather, the Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation and may have as much or as little involvement in the process as they wish.

In cases where the disclosing party requests confidentiality and the circumstances allow NYIT to honor that request, the institution will offer supportive measures to the disclosing party and the community, but will not otherwise pursue formal action. This means that NYIT's ability to remedy and respond to a reported incident may be limited if the Complainant does not want the institution to proceed with a formal grievance process.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

Amnesty Policy

The health and safety of every student at NYIT is of the utmost importance. NYIT recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that Gender-Based Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. NYIT strongly encourages students to report Gender-Based Misconduct to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of Gender-Based Misconduct to NYIT officials or law enforcement will not be subject to NYIT's Code of Conduct action for violations of alcohol and/or drug policies occurring at or near the time of the commission of the Gender-Based Misconduct.

Prohibition on Retaliation

No individual will be penalized or retaliated against in any way for their participation in the Gender-Based Misconduct grievance process.

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Retaliation is a serious violation of NYIT policy and will be treated as another possible instance of misconduct. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. NYIT is prepared to take

appropriate steps to protect individuals who fear that they may be subjected to retaliation.

NYIT and any member of its community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or 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 or the [Title IX Procedure](#).

Filing or pursuing a complaint under other policies, such as the [Student Code of Conduct](#), could be considered retaliatory if those charges could be brought under the Title IX Procedure, and the other charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within the Title IX Procedure that is not provided by either the [Discriminatory Harassment Policy](#) or the Student Code of Conduct. Therefore, the institution vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and the Title IX Procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Reporting by NYIT

NYIT is required to report incidents of certain crimes that include some forms of Gender-Based Misconduct. These crimes are reported in the school's [Annual Security Report](#). For reporting purposes, parties' identifying information and specifics of the incident will be kept confidential.

NYIT is also required to issue timely warnings of certain crimes that occur at on-campus locations if the crime represents a serious or continuing threat to the campus community. NYIT will ensure that a disclosing party's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

Supportive Measures

NYIT will offer and implement appropriate and reasonable supportive measures to the parties upon notice of Gender-Based Misconduct.

Supportive measures are non-disciplinary, non-punitive individualized services without fee offered to the parties to restore or preserve access to NYIT's education program or activity, including measures designed to protect the safety of all parties or the institution's educational environment, and/or deter Gender-Based Misconduct.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the institution will inform the Complainant, in writing, that they may file a formal complaint with the institution either at that time or in the future, if they have not done so already. However, a formal complaint does not have to be filed for supportive measures to be implemented.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

NYIT will maintain the privacy of the supportive measures, provided that privacy does not impair its ability to provide the supportive measures. The institution will act to ensure as minimal an academic / occupational impact on the parties as possible.

NYIT will implement measures in a way that does not unreasonably burden the other party. These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties (see below)
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Both parties have the right to request prompt review of the need for and terms of a no-contact order, including requests for modification, and will be allowed to submit

evidence in support of such requests. This right to review, upon request, applies to all other supportive measures that directly impact a party.

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

Emergency Removal

NYIT can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal, when such threat arises out of allegation(s) of Gender Based Misconduct.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Threat Assessment Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, both Complainants and Respondents will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified in its terms. Both parties will be allowed to submit evidence in support of their request.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. If this meeting is not requested, objections to the emergency removal will be deemed waived. There is no appeal process for emergency removal decisions.

Both parties may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. Both parties will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The institution will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, alternative coursework options, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. Alternative coursework options may be pursued

For employees, NYIT reserves the right to place a Respondent employee on administrative leave pending the completion of the grievance process, subject to compliance with any applicable collective bargaining agreement.

Jurisdiction

This policy applies to the education program and activities of New York Institute of Technology meaning the institution exercises substantial control over both the Respondent and the context in which the Gender-Based Misconduct occurs. This includes conduct that takes place on the campus or on property owned or controlled by the institution, at institution-sponsored events, or in buildings owned or controlled by institution's recognized student organizations. The Respondent must be a member of NYIT's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to institution's educational program. The institution may extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial institutional interest. In such instances, the [Student Code of Conduct](#) or [Discriminatory Harassment Policy](#) would apply, rather than the [Title IX Procedure](#).

Regardless of where the conduct occurred, the institution will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial institutional interest includes:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
3. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
4. Any situation that is detrimental to the educational interests or mission of the institution.

If the Respondent is unknown or is not a member of the NYIT community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of NYIT's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the institution may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from institution property and/or events.

Appendix A: Student Bill of Rights Under New York State Law

Applies to students at all NYIT campuses:

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 conduct process and/or criminal justice process free from pressure by the institution
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful healthcare and counseling services, where available
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances with the jurisdiction of the institution
9. Have access to at least one level of appeal of a determination
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused or respondent through the conduct process including during all meetings and hearings related to such process
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution

Appendix B: Important Information for Complainants

Preservation of Evidence

NYIT recognizes that making the decision to report Gender-Based Misconduct often takes time. Nevertheless, pending the decision to report, individuals are strongly encouraged to take immediate steps to preserve all evidence that might support a future report or investigation by the police, by NYIT, or both.

Such evidence may include:

- A forensic sexual assault examination, or a medical examination for non-sexual bodily injuries.
- Any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags).
- Electronic exchanges (e.g., text messages, emails, and Facebook, Instagram, Snapchat or other social media posts, to the extent that they can be captured or preserved).
- Photographs (including those stored on smartphones and other devices).
- Voicemail messages and other physical, documentary, and/or electronic data that might be helpful or relevant in an investigation.
- Written account of what happened as close to the event as possible (consider doing so electronically for date stamping)

Immediate Medical Treatment

In cases of sexual assault, Complainants are advised not to shower, eat, drink or change their clothes, as these activities destroy important physical evidence. They are also encouraged to seek medical attention, even if there are no obvious physical injuries.

A forensic sexual assault examination needs to be performed within the first 96 hours after a sexual assault to collect evidence and to evaluate a person's physical condition. This exam will help maintain a victim's legal options and will also allow the individual to get important preventative treatment and information for pregnancy and sexually transmitted infections, including HIV.

New York State has established Sexual Assault Forensic Examiner programs (SAFE) in hospitals that have specially trained health professionals who will ensure that compassionate, competent, and prompt care is provided, along with the use of advanced technology for evidence collection and preservation. A person may go directly to a center or may seek accompaniment from a victim advocate or from an NYIT official. The exam will be done at no cost to the victim.

Long Island:
North Shore University Hospital
300 Community Dr.
Manhasset, NY 11030
516.562.4125

New York City:
Mount Sinai West Hospital
100 10th Ave.
New York, NY 10032
212.305.2255

Arkansas:
St. Bernard's Regional Medical Center
224 East Matthews
Jonesboro, AR 72401
870.972.4288

View a full list of [SAFE HOSPITAL PROGRAMS IN NEW YORK >](#)

The [New York State Office of Victim Services](#) may be able to assist in compensating victims/survivors for healthcare and counseling services, including emergency funds. More information may be found by calling 800.247.8035.

Referrals and Resources: On-Campus Resources

Counseling and Wellness Services

This office coordinates student mental health services on both the Long Island and New York City campuses. Counselors are available from 9 a.m. to 5 p.m, Monday through Friday. Counselors can be seen on an emergency basis during office hours, and a counselor is always on call after business hours for emergencies. The on-call counselor can be reached by contacting [Campus Security](#).

Both NYITCOM campuses have their own counseling offices. At the NYITCOM-Arkansas campus, counseling services are provided by the Arkansas State University Counseling Center. The Counseling Center is open 8 a.m. to 5 p.m., Monday through Friday and offers daily drop-in hours for students to speak to a counselor without an appointment. After business hours, students can reach an on-call counselor by contacting the Arkansas State Police Department.

Services at all campuses are free and confidential.

Long Island
Student Activity Center, 3rd Floor
516.686.7976

New York City
33 W. 60th St., Room 308
212.261.1770

NYITCOM-Long Island
Student Activity Center, Room 318
kscore@nyit.edu
516.686.1328

NYITCOM-Long Island
Student Activity Center, Room 319
shalim@nyit.edu
516.686.7636

NYITCOM-Arkansas
Reng Student Services Center, Suite 2203
870.972.2318

Academic Health Care Center

Students at the Long Island campus may also visit the Riland Academic Health Care Center located in the first floor of the Riland Building. The hours are 8 a.m. to 5 p.m., Monday through Friday. The center can be reached at 516.686.1300.

Students at the NYITCOM-Arkansas campus may utilize the NYITCOM at Arkansas State University Medical Clinic located at 333B Red Wolf Blvd., adjacent to the football stadium. The hours are 8 a.m. to 5 p.m., Monday through Friday. The clinic can be reached at 870.972.2054.

Please note neither of these facilities can perform a sexual assault forensic exam.

Other On-Campus Resources

The Office of International Education is available to assist students with concerns related to their visa or immigration status.

Long Island
Harry J. Schure Hall, Room 141
516.686.7526

New York City
16 W. 61 St., Room 001
212.261.1684

The Office of Financial Aid is available to provide counseling to students regarding the impact of class withdrawals and other schedule and enrollment status changes on their financial aid package.

NYITCOM-Long Island (NYITCOM Students)
Serota Academic Center, 2nd Floor
516.686.7960

Long Island (non-NYITCOM Students)
Harry Schure Hall, 1st Floor
516.686.7680

New York City (non-NYITCOM Students)
16 West 61st St., 1st Floor
212.261.1590

NYITCOM-Arkansas (NYITCOM Students)
Wilson Hall, Student Affairs Suite, Room 220
870.680.8808

Referrals and Resources: Off-Campus Resources

The following organizations offer free and confidential mental health, victim advocacy, immigration, and legal services (including obtaining orders of protection) for victims of sexual assault, dating and domestic violence, and stalking, among other crimes:

Long Island:

The SAFE Center LI
15 Grumman Rd. W. #1000
Bethpage, NY 11714
516.465.4700
24-Hour Crisis Hotline: 516.542.0404

New York City:

Crime Victims Treatment Center
126 W. 60th St.
New York, NY 10023
212.523.4728
24-Hour Crisis Hotline: 1.800.621.HOPE

The organizations located in New York State can also help liaise victims with the New York State Office of Victim Services, which provides crime-related compensation for crime victims. Please note that this service requires that a police report be filed.

NYITCOM-Arkansas:

Family Crisis Center of Northeast Arkansas
870.972.9575
24 Hour Crisis Hotline: 870.933.9449

Court-Ordered Measures

Students may also seek an order of protection (sometimes known as a "restraining order"), which is issued by state courts. While NYIT does not issue orders of protection, the institution will assist a member of the community in obtaining an order of protection or pursuing other civil legal proceedings.

NYIT will also ensure that those impacted by an order of protection understand the availability of an order, the content and parameters of an order, and the consequences for violating an order, including but not limited to arrest, additional conduct charges, and interim suspension.

Campus Security at all campuses will also provide assistance to reporting parties in calling on and assisting local law enforcement in effecting an arrest for violation of an order of protection.

Title IX Procedure

Overview

New York Institute of Technology (NYIT) will act on any formal or informal notice of violation of the [Gender Based Misconduct Policy](#) that is received by the Title IX Coordinator or other Official with Authority by applying one of two procedures. The first is set forth below, known as the Title IX Procedure. This is a method of formal resolution designated by the institution to address conduct which complies with the requirements of the Title IX regulations (34 CFR §106.45).

The procedures below apply **only** to qualifying allegations of Title IX gender-based misconduct, as defined in the Gender Based Misconduct Policy, involving students, staff, or faculty members.

It does not apply to Other Institutional Sex-Based Offenses as defined in the Gender-Based Misconduct Policy, offenses which are subject to complaint dismissal under this procedure, or offenses that otherwise do not meet the jurisdictional requirements for Title IX misconduct. Those offenses are handled by the procedures set forth in the [Discriminatory Harassment Policy](#) for employees, and the [Student Code of Conduct](#) for students. *Note: In addition to the linked Student Code of Conduct for U.S. Campuses, the [NYITCOM Student Code of Conduct](#) may also apply when involving NYITCOM students.*

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct. All other allegations of misconduct unrelated to incidents covered by the Gender-Based Misconduct Policy will be addressed through procedures described in the Student Code of Conduct and Discriminatory Harassment Policy.

Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Gender-Based Misconduct Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the institution needs to take.

The Title IX Coordinator will initiate one of three responses, provided a complaint is not subject to dismissal as described below:

1. Offering only supportive measures because the Complainant does not want to file a formal complaint; or
2. An informal resolution (upon submission of a formal complaint); or
3. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

NYIT uses the Formal Grievance Process to determine whether or not the Gender-Based Misconduct Policy has been violated. Options 2 and 3 will always include the offer of supportive measures.

Initial Assessment

Following receipt of notice or a complaint of an alleged violation of the Gender-Based Misconduct Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures and determine whether the Complainant also seeks an informal resolution option, or a formal investigation and grievance process.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process set forth below.
 - If it does not, the Title IX Coordinator will dismiss the Title IX aspect of the complaint and assess whether resolution under the [Student Code of Conduct](#) or [Discriminatory Harassment Policy](#) is indicated.

Dismissal (Mandatory and Discretionary)

Note: These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

NYIT **must** dismiss a formal complaint or any allegations therein under these procedures if, at any time during the investigation or hearing, it is determined that:

1. The conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined above, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by the institution (including buildings or property controlled by recognized student organizations), and/or the institution does not have control of the Respondent; and/or

3. The conduct did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.

NYIT **may** dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the recipient; or
3. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. Dismissal from the Title IX Procedure does not preclude NYIT from bringing charges under the [Discriminatory Harassment Policy](#) or [Student Code of Conduct](#). The parties will receive written notice of any charges being brought under those policies.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

Counterclaims

NYIT is obligated to ensure that the grievance process is not abused for retaliatory purposes. NYIT permits the filing of counterclaims but uses an initial assessment to assess whether the allegations in the counterclaim are made in good faith. Counterclaims made with retaliatory intent will not be permitted and may constitute a violation of the [Gender-Based Misconduct Policy's](#) prohibition on retaliation.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor. However, choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-

interest. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, which must be conducted by the parties' Advisors. If a party does not have an Advisor for a hearing, or if their Advisor is unwilling to conduct questioning, then NYIT will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

Advisor Conduct

Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address institutional officials in a meeting or interview unless invited to. The Advisor may not speak on behalf of the advisee except during a hearing proceeding, to conduct cross-examination.

Sharing Information with the Advisor

NYIT expects that the parties may wish to have the institution share documentation and evidence related to the allegations with their Advisors. The Title IX Coordinator will provide a consent form that authorizes NYIT to share information directly with their Advisor. Advisors are expected to maintain the privacy of the records shared with them.

Expectations of the Parties with Respect to Advisors

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

For parties who are entitled to union representation, NYIT will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors.

Assistance in Securing an Advisor

For representation, Respondents may wish to contact organizations such as:

- [FACE](#)
- [SAVE](#)

Complainants may wish to contact organizations such as:

- [The Victim Rights Law Center](#)
- [The National Center for Victims of Crime](#), which maintains the Crime Victim's Bar Association
- [The Time's Up Legal Defense Fund](#)

Informal Resolution Process

NYIT does not offer traditional alternative resolution options at this time, such as mediation or restorative justice processes. However, a form of informal resolution is available when the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process prior to a hearing.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the parties will be provided with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the institution.

The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the institution are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of institutional policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused. NYIT will ensure the informal resolution process is prompt and does not pause the formal process for more than 15 business days.

Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the institution presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the institution's policy on retaliation,
- Information on the need for each party to have an Advisor of their choosing,
- A statement informing the parties that the institution's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Information on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s),
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Resolution Timeline

NYIT will make a good faith effort to complete the resolution process within a sixty-to-ninety (60–90) business day time period, including appeal. This timeframe can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate.

The grievance process will run concurrently with any criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

If the Respondent is a graduating student or the resolution process will not be completed before the term ends, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal).

Investigator

Once the decision to commence a formal investigation is made, the Title IX Coordinator will promptly appoint an investigator to conduct the investigation. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality.

Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take several months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

NYIT will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation and when delays arise.

Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

The Investigator(s) will:

- Provide parties and witnesses with written notice of any interviews with reasonable time to prepare.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the institution does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties through secure electronic transmission or hard copy. The parties are also provided with a file of any directly related evidence that was not included in the report.

Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of NYIT are expected to cooperate with and participate in the institution's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless offered to: a) prove that someone other than the Respondent committed the conduct alleged by the Complainant, or b) prove consent, if regarding specific incidents of the Complainant's and Respondent's prior sexual behavior with one another.

Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing will not be less than ten (10) business days from the conclusion of the investigation.

The Title IX Coordinator will select a Decision-maker, which may be a single person or a panel of three individuals and may be institutional employees or external professionals. Any Decision-maker(s) selected by the institution will be vetted for bias and conflicts of interests and will be trained. If a panel is utilized, one of the Decision-makers will be appointed as the Chair who will be responsible for the pre-hearing and hearing obligations of the Decision-maker as set forth below. The Title IX Coordinator may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest.

Note: Whenever the singular "Decision-maker" is used in this procedure, it refers to either a single Decision-maker, or the Chair of a panel of Decision-makers.

Evidentiary Considerations in the Hearing

The Decision-maker(s) renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Gender-Based Misconduct Policy as alleged.

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered.

The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless offered to: a) prove that someone other than the Respondent committed the conduct alleged by the Complainant, or b) prove consent, if regarding specific incidents of the Complainant's and Respondent's prior sexual behavior with one another.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Decision-maker will send notice of the hearing to the parties. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Details regarding the Decision-maker(s) selected and whether it is a panel or single decider.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s).
- Notification that the parties will be required to have an Advisor present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the institution will appoint one.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- An invitation to each party to submit an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.

Pre-Hearing Preparation

The parties will be provided the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report at least ten (10) business days prior to the hearing. The Decision-maker(s) will receive such information at least five (5) business days prior.

If the parties seek to admit new evidence or witnesses prior to the hearing (but after the investigation), the Decision-maker must agree to such admission and may delay the hearing and instruct that the investigation be re-opened to consider that evidence.

Decision-maker(s) will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Decision-maker(s) has the authority to hear and make determinations on all allegations, even collateral ones that may not specifically fall within the Gender-Based Misconduct Policy.

Pre-Hearing Meetings

The Decision-maker may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Decision-maker can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Decision-maker must document and share with each party their rationale for any exclusion or inclusion made at a pre-hearing meeting.

The Decision-maker, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Decision-maker may consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Decision-maker may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Decision-maker may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The institution retains discretion as to whether it will record any pre-hearing meeting(s). If the institution decides to record the meeting, all parties and Advisors will be notified.

Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

Order of the Hearing

Introductions and Explanation of Procedure

The Decision-maker explains the procedures and introduces the participants. The Decision-maker then conducts the hearing according to the hearing script.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator.

Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors).

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on recommended findings or determinations. If such information is introduced, the Decision-maker will direct that it be disregarded.

Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors ("cross-examination").

All questions are subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question, the proceeding will pause to allow the Decision-maker to consider it (and state it if it has not

been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The Decision-maker has final say on all questions and determinations of relevance. The Decision-maker may consult with legal counsel on any questions of admissibility.

Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (for example, an email from the party that constitutes a quid pro quo ultimatum), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-maker(s) may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than gender-based misconduct are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

Recording Hearings

Hearings (but not deliberations) are recorded by the institution for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question using the preponderance of the evidence standard of proof. The hearing facilitator may be invited to attend the deliberation by the Decision-maker(s), but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may—at their discretion—consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided and will determine the appropriate sanction(s).

The Decision-maker(s) will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a written Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors simultaneously within 5 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the institution from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the institution is permitted to share such information under state or federal law; any sanctions issued which the institution is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the institution's educational or employment program or activity, to the extent the institution is permitted to share such information under state or federal law.

The Notice of Outcome will also include information on when the results are considered by the institution to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

Sanctions

NYIT reserves the right to impose any level of sanction, ranging from a warning to expulsion/termination for any offense under the Gender-Based Misconduct Policy, based on the facts and circumstances of the particular allegation. Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the misconduct
- The need for sanctions/responsive actions to prevent the future recurrence of such misconduct
- The need to remedy the effects of the misconduct on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any institutional policy will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either institution-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student (or housing) status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at NYIT.
- *Expulsion:* Permanent termination of student (or housing) status and revocation of rights to be on campus for any reason or to attend institution-sponsored events.
- *Withholding Diploma:* NYIT may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* NYIT reserves the right to revoke a degree previously awarded from the institution for fraud, misrepresentation, and/or other violation of institutional policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including institutional registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, NYIT may assign any other sanctions as deemed appropriate, such as education assignments or apology letters.

For crimes of sexual violence as defined under the Clery Act, NYIT will make a notation on the transcript of students found responsible and given a sanction of suspension and/or expulsion. Appeals to seek the removal of transcript notations of suspensions may be submitted in writing to the Title IX Coordinator no less than one year following the conclusion of the suspension period.

Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer or Reassignment*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with or without pay*
- *Termination*

NYIT may assign other responsive actions as deemed appropriate. Employee sanctions will be in accordance with applicable collective bargaining agreement provisions.

Withdrawal or Resignation While Charges Pending

Students

Should a student Respondent withdraw from NYIT, the resolution process ends, as the institution no longer has disciplinary jurisdiction over the withdrawn student.

If a student has an allegation pending for violation of the Gender-Based Misconduct Policy when they withdraw, NYIT may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. The institution will also place a notation on the Respondent's transcript indicating that they withdrew with conduct charges pending.

The student who withdraws or leaves while the process is pending may not return to NYIT. A hold will be placed on their ability to be readmitted. They may also be barred from institution property and/or events.

Employees

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as NYIT no longer has disciplinary jurisdiction over the resigned employee.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the institution, and the records retained by the Title IX Coordinator will reflect that status.

All institutional responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

Despite a Respondent's withdrawal or resignation, NYIT will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged misconduct.

Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

A three-member appeal panel chosen from a trained pool of administrators, vetted for conflicts of interest, will be designated by the Title IX Coordinator. No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal panel will be designated.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Grounds for Appeal

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
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; and
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Appeal Review Procedures

If any of the grounds in the Request for Appeal do not meet the grounds in this Procedure, that request will be denied by the Appeal Chair and the parties will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Procedure, then the other party, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be provided a copy of the appeal with the approved grounds and be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal within five (5) business days of receipt of the letter regarding the other party's appeal. If so, that will be reviewed to determine if it meets the grounds in this Procedure by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, and anyone else as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than seven (7) business days barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A written Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the institution is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the institution is permitted to share under state or federal law.

Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

NYIT may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the institution or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

- These remedies/actions may include, but are not limited to:
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees

- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the institution to the Respondent to ensure no effective denial of educational access.

NYIT will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the institution's ability to provide these services.

Failure to Comply with Sanctions, Remedies, and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the institution and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Recordkeeping

NYIT will maintain, for a period of at least seven years, records of:

1. Each gender-based misconduct investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the institution's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;

6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. NYIT will make these training materials publicly available on its website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - o The basis for all conclusions that the response was not deliberately indifferent;
 - o Any measures designed to restore or preserve equal access to the NYIT's education program or activity; and
 - o If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

NYIT will also maintain any and all records in accordance with state and federal laws.

Disabilities Accommodations in the Resolution Process

NYIT is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the institution's resolution process.

Anyone needing such accommodations or support should contact Accessibility Services for students, or Human Resources for faculty and staff, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Revision of this Procedure

NYIT reserves the right to make changes to this document as necessary, and once those changes are posted online with an updated effective date, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.