

THE NEW YORK  
CONSERVATORY FOR  
DRAMATIC ARTS  
FILM + TELEVISION + THEATER

# SEXUAL VIOLENCE PREVENTION & RESPONSE POLICY

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## The New York Conservatory for Dramatic Arts

The New York Conservatory for Dramatic Arts complies with Federal and New York State policies regulations surrounding sexual violence prevention and misconduct.

## **SECTION I: DEFINITION OF AFFIRMATIVE CONSENT**

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.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- 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.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

## **SECTION II: POLICY FOR ALCOHOL AND/OR DRUG AMNESTY IN SEXUAL AND INTERPERSONAL VIOLENCE CASES**

The health and safety of every student at the New York Conservatory for Dramatic Arts is of utmost importance. NYCDA recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. However, NYCDA strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to school officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to NYCDA officials or law enforcement will not be subject to NYCDA's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **SECTION III: CAMPUS CLIMATE ASSESSMENT POLICY**

NYCDA will conduct Campus Climate assessments in order to better understand the experience of its student body, and to make informed decisions when it comes to providing a safe educational environment. Every other year, NYCDA will conduct a Campus Climate survey that ascertains student experience with, and knowledge of, reporting and NYCDA investigation and response processes for sexual harassment, including sexual violence, and other related crimes.

The survey will address student knowledge about:

- The Title IX Coordinator's role;
- Campus policies and procedures addressing sexual assault;
- How and where to report sexual violence as a victim/survivor or witness;
- The availability of resources on and off campus, such as counseling, health and academic assistance;
- The prevalence of victimization and perpetration of sexual assault, domestic violence, dating violence, and stalking on and off campus during the two years of their attendance at the school;
- Bystander attitudes and behavior;
- Whether victims/survivors reported to NYCDA and/or police, and reasons why they did or did not report;
- The general awareness of the difference between the NYCDA's policies and the penal law; and
- The general awareness of the definition of affirmative consent.

NYCDA will take steps to ensure that answers remain anonymous and that no individual is identified. Results will be published on the campus website providing no personally identifiable information shall be shared.

## SECTION IV: STUDENTS' BILL OF RIGHTS

You have the right to make a report to local law enforcement, and/or State Police or choose not to report; to report the incident to NYCDA; to be protected by NYCDA from retaliation for reporting an incident; and to receive assistance and resources from NYCDA.

**NYCDA strictly prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking.**

NYCDA is committed to providing options, support, and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in NYCDA programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights:

**All students have the right to:**

1. Make a report to local law enforcement and/or state police.
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.
3. Make a decision about whether or not to disclose a crime or violation and participate in the NYCDA conduct process and/or criminal justice process free from pressure from NYCDA.
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 references to health care and counseling services.

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 institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
8. Be protected from retaliation by NYCDA, any student, the accused and/or the respondent, and/or their friends, family, and acquaintances within NYCDA's jurisdiction.
9. 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 throughout 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 NYCDA.

### **Options in Brief:**

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive references to resources, such as counseling and medical attention.
- Confidentially or anonymously disclose a crime or violation (for detailed information on confidentiality and privacy see the [Options for Confidentially Disclosing Sexual Violence](#) section of this policy.)
- Make a report to:
  - An employee with the authority to address complaints, including the Title IX Coordinator.
  - Local law enforcement and/or;
  - Family Court or Civil Court

Copies of this Students' Bill of Rights will be distributed annually to students, made available on the NYCDA website at <http://www.nycda.edu/wp-content/uploads/2018/05/Students-Bill-of-Rights.pdf> and posted on the NYCDA campus and in the NYCDA residence halls.

## **SECTION V: SEXUAL VIOLENCE RESPONSE POLICY**

In this description, NYCDA advises reporting individuals (that is, anyone who is a victim, survivor, complainant, bystander, witness, etc., who brings a report of a violation) of their right to the following:

- notify proper law enforcement authorities, including local or state police.
- be assisted by NYCDA in notifying law enforcement authorities if the victim so chooses.
- decline to notify such authorities.

In accordance with the [Students' Bill of Rights](#), reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

## A. REPORTING

Reporting individuals have the following rights:

- To disclose *confidentially* the incident to a hotline; New York State service is available at the following: <http://www.opdv.ny.gov/help/dvhotlines.html>

Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages:

<http://www.opdv.ny.gov/help/index.html>

(or by calling 1-800-942-6906)

See Resources below for further listing of resources and hotlines.

- To disclose the incident to the NYCDA officials listed below, who can offer privacy and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. (For a description of the difference between confidentiality and privacy, see the [Options for Confidentially Disclosing Sexual Violence](#) section of this policy.)
- These officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by NYCDA from retaliation, and to receive assistance and resources from NYCDA.
- These officials will disclose that they are private and not confidential resources, and they may be required by law and NYCDA policy to inform one or more NYCDA officials about the incident, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or a district attorney. Also see the [Plain Language Explanation of Distinctions between the New York State Penal Law and the College Disciplinary Processes](#) section of this policy.

Title IX Coordinator, Deanna Bertini

[dbertini@nycda.edu](mailto:dbertini@nycda.edu)

39 West 19<sup>th</sup> Street, 2nd floor

New York, NY 10011

(646) 216-1580

An online reporting form can be found here: <https://tinyurl.com/TitleIXComplaintForm>

Director of Education, Richard Omar

[romar@nycda.edu](mailto:romar@nycda.edu)

39 West 19<sup>th</sup> Street, 2<sup>nd</sup> floor

New York, NY 10011

(646) 216-2863

Student Services Associate, Kim Sosa  
[ksosa@nycda.edu](mailto:ksosa@nycda.edu)  
39 West 19<sup>th</sup> Street, 2nd floor  
New York, NY 10011  
(212) 812-4099

Resident Advisor on Duty  
81 East 3<sup>rd</sup> Street  
New York, NY 10003  
(646) 866-1370

To file a criminal complaint with local law enforcement and/or state police:

New York Police Department, 9<sup>th</sup> Precinct  
321 East 5<sup>th</sup> Street  
New York, NY 10003  
(212) 477-7811  
(near residence hall)

New York Police Department, 10<sup>th</sup> Precinct  
230 West 20<sup>th</sup> Street  
New York, NY 10011  
(212) 741-8211  
(near school)

New York Police Department Special Victims Division 24-hour hotline: 646-610-7272.

State police 24-hour hotline to report sexual assault in New York: 1-844-845-7269.

- To receive assistance from NYCDA in finding resources to help with initiating legal proceedings in family court or civil court.
- To file a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with NYCDA policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may call a listed hotline anonymously to discuss the situation and available options.

When the accused is an employee, a reporting individual may also report to the Title IX Coordinator. Disciplinary proceedings will be conducted in accordance with applicable employee/faculty guidelines. When the accused is an employee of an affiliated entity or vendor of NYCDA, NYCDA officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and NYCDA policy.

- The reporting individual may withdraw their complaint or involvement from the NYCDA process at any time.
- Every NYCDA representative shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to a NYCDA representative, the following information shall be presented to the reporting individual: “You have the right to make a report to local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

## B. RESOURCES

Confidential assistance can be obtained through the following. (For the definition of *confidentiality* versus *privacy* see Options for Confidentially Disclosing Sexual Violence below.)

Confidential hotlines and referrals:

- NYSCASA: <http://nyscasa.org>
- NYSCADV: <http://www.nyscadv.org>.
- RAINN: <https://www.rainn.org/get-help>.
- Safe Horizons: <http://www.safehorizon.org> 1-800-621-4673
- New York State Department of Health Rape Crisis and Sexual Violence Prevention Program: [https://www.health.ny.gov/prevention/sexual\\_violence](https://www.health.ny.gov/prevention/sexual_violence)
- New York State Domestic Violence 24 Hour Hotline: 1-800-942-6906
- National Domestic Violence 24 Hour Hotline 1-800-799-7233
- National Sexual Assault Hotline: 800-656-4673

Sexual Violence Helplines:

- Report sexual assault on a New York college campus to the New York State Police: 1-844-845-7269
- Office of Victim Services: <https://ovs.ny.gov>
- New York City: 1-800-621-HOPE (4673) or 311.
- New York-Presbyterian/Weill Cornell Medical Center hotline: 212-746-9414

Legal Assistance:

- SurvJustice: <http://survjustice.org> – (fee required)
- Legal Momentum: <https://www.legalmomentum.org/> - (for referrals)

(Note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to NYCDA. Reporting individuals are encouraged to additionally contact an NYCDA resource so that the school can take appropriate action in these cases).

Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency

funds. For more information call 1-800-247-8035. Options are explained here:  
<http://www.ovs.ny.gov>

To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy.

For a forensic examination, victims should go to:

**Mount Sinai Beth Israel Emergency Department**

1<sup>st</sup> Avenue at 16<sup>th</sup> Street  
New York, NY 10003  
(212) 420-2840

Confidentiality, assistance and resources, including free testing for STI's and emergency contraception are available from:

**Heidi Ross, LCSW**

**Patrick Walsh, LCSW**

**Terceira Monlar, LCSW**

**Chauntel Gerdes, LCSW**

Mount Sinai Beth Israel Campus Sexual Assault Prevention and Response Team  
212 420 4516

Mount Sinai Beth Israel  
317 East 17<sup>th</sup> Street  
New York, NY 10003

At Mount Sinai you can:

- Have an advocate/social worker present
- Have a medical exam
- Receive treatment for HIV, STIs, and the morning after pill (there is a fee for these services which can be billed through insurance)
- Have photos taken of any injuries
- Have a Sexual Assault Forensic Examination (SAFE) including evidence collection (The New York State Office of Victim Services (OVS) covers the cost of a rape exam following a sexual assault. Please contact OVS if you have any financial concerns. OVS contact information is listed above.)
- Have a drug facilitated Sexual Assault evidence collection (DFSA) kit
- Have Emergency Department staff contact NYPD to make a police report

Other services:

- Crisis intervention
- Information, referrals and advocacy
- Individual short-term psychotherapy
- Volunteers on call to accompany victims and assist them through the process.

Other confidential resources:

Manuel Moscoso, Clinician  
St. Mark's Place  
Institute for Mental Health  
57 St. Mark's Place  
New York, NY 10003  
[mmoscoso@unitas-nyc.org](mailto:mmoscoso@unitas-nyc.org)  
Psychiatry and psychotherapy  
(There is a fee for services at this facility.)

## C. PROTECTION AND ACCOMMODATIONS

Reporting individuals have the following rights:

- When the accused is a student, to have NYCDA issue a "No Contact Order", consistent with NYCDA policy and procedure, meaning that continuing to contact the protected individual is a violation of NYCDA policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with NYCDA policy. Parties may submit evidence in support of their request
- To have assistance from NYCDA in finding resources to initiate legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection.
- To receive a copy of the Order of Protection and have an opportunity to meet or speak with an NYCDA official who can find resources to explain the Order and answer questions about it, including information from the Order about the accused's responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- To have assistance from NYCDA to call on and assist local law enforcement in effecting an arrest for violating such an order.
- When the accused is a student and presents a continuing threat to the health and safety of the community, to subject the accused to interim suspension pending the outcome of a conduct process. Both the accused and the reporting individual may request a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and will be allowed to submit evidence in support of the request.
- When the accused is not a student but is a member of the NYCDA community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with the Employee Handbook, and NYCDA policies and rules.

- When the accused is not a member of the NYCDA community, to have assistance from NYCDA officials in obtaining a persona non grata letter, subject to legal requirements and NYCDA policy.
- To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Both the accused and the reporting individual may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. While reporting individuals may request accommodations through anyone referenced in this policy, the following points of contact can serve to assist with these measures:

Title IX Coordinator, Deanna Bertini  
[dbertini@nycda.edu](mailto:dbertini@nycda.edu)  
 39 West 19<sup>th</sup> Street, 2<sup>nd</sup> floor  
 New York, NY 10011  
 (646) 216-1580

Director of Education, Richard Omar  
[romar@nycda.edu](mailto:romar@nycda.edu)  
 39 West 19<sup>th</sup> Street, 2nd floor  
 New York, NY 10011  
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Student Services Associate, Kim Sosa  
[ksosa@nycda.edu](mailto:ksosa@nycda.edu)  
 39 West 19<sup>th</sup> Street, 2nd floor  
 New York, NY 10011  
 (212) 812-4099

## D. STUDENT CONDUCT PROCESS

### **Reporting individuals have the following rights:**

- To request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the NYCDA Code of Student Conduct as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.

### **Throughout conduct proceedings, the respondent and the reporting individual will have:**

The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Code of Student Conduct, page 13; <https://www.nycda.edu/wp-content/uploads/2018/05/Code-of-Student-Conduct.pdf>

- The right to a prompt response to any complaint and to have their complaint investigated and

adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made according to the provisions of Education Law Article 129B and NYCDA conduct procedures and other issues related to sexual assault, domestic violence, dating violence, and stalking.

- The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
- The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions. At the imposition of sanctions, the disciplinary hearing chair will provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed
- The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by New York City and New York State while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
- The right to offer evidence during an investigation and to review available relevant evidence in the case file held by NYCDA.
- The right to present evidence and testimony at a hearing, where appropriate.
- The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
- The right to exclude their own prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in NYCDA disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- The right to ask questions of the decision maker(s) and via the decision makers, indirectly request responses from other parties and any other witnesses present.
- The right to make an impact statement during the point of the proceeding where the decision maker(s) is/are deliberating on appropriate sanctions.
- The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.

- The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions may include suspension with additional requirements and expulsion/dismissal.
- Access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest.
- In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual must be similarly provided to a respondent and any rights provided to a respondent must be similarly provided to a reporting individual.
- The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years by:

Registrar's Office  
 39 West 19<sup>th</sup> Street, 2nd floor  
 New York, NY 10011  
 (212) 812-4070

- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

The New York Conservatory for Dramatic Arts takes all allegations of sexual misconduct seriously and is committed to providing information, resources, and clear direction to members of the NYCDA community so that together we can help prevent and address this conduct. The NYCDA will always respond to complaints, reports, allegations, and information about sexual misconduct that it knows about, in order to stop prohibited conduct, prevent its recurrence, and address any lingering effects on campus.

Sexual misconduct is a term used to encompass unwelcome conduct of a sexual nature that is prohibited by NYCDA. It includes, but is not limited to non-consensual or forced sexual contact/activity, sexual coercion, sexual exploitation, sexual harassment, sex/gender discrimination, stalking, and relationship violence, see the [Key Terms and Definitions](#) section of this policy.

NYCDA is committed to ensuring that students have all the resources necessary to help themselves or someone they know who has been impacted by sexual violence. Student Services can help to identify or provide assistance in the following ways:

- Offer academic support, by facilitating discussions with faculty members or rescheduling exams.
- Help a student if they want assistance in changing living or travel arrangements, or class schedules.

- Refer student to a local clinic, crisis center, or mental health services, and, if timely, will encourage the student to go to the emergency room, and accompany them.
- Refer student to long-term mental health, victim advocacy, legal assistance services, and other available community resources.
- Offer information about the school's sexual assault policy.
- Remind the student that they may file criminal charges, and support the student in filing a police report, and taking further action, if desired.
- Accompany the student to any appointment

The Title IX coordinator will conduct investigations into complaints and make a report to NYCDA's disciplinary hearing board. Upon receipt of a report, NYCDA's disciplinary hearing board, made up of administrators, staff, and faculty, will make a decision about how to proceed with all involved students as detailed in the Student Conduct Process described in the Code of Student Conduct, pages 7-21. In the event that a student is under active investigation following a police report, he/she may be suspended until completion of the investigation. In cases where an incident is not reported to police or other authorities, both students are generally allowed to remain enrolled in the program, with necessary accommodations. NYCDA will examine all facets of the report on a case-by-case basis to finalize their decisions.

NYCDA is committed to protecting all students, and therefore also takes false accusations of sexual violence seriously. In compliance with Federal Title IV law, all incidents involving murder, assault, sex offenses, robbery, manslaughter, arson, liquor law violations, drug-related violations, weapons possession, or discriminatory crimes must be included in a crime statistics report each academic year.

## SECTION VI: OPTIONS FOR CONFIDENTIALLY DISCLOSING SEXUAL VIOLENCE

NYCDA wants you to get the information and support you need, regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself.

Confidentiality varies, and this section is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

### **Confidentiality versus Privacy:**

*Confidentiality* is a guarantee that no information will be shared with third parties without the reporter's permission. Individuals who are confidential resources are not required by law to report incidents of sexual assaults or other crimes to NYCDA officials without students' permission in a manner consistent

with state and federal law, except for extreme circumstances, such as a health and/or safety emergency. Examples of resources who are legally permitted to offer confidentiality are pastoral counselors, physicians, licensed medical professionals or supervised interns when they are engaged in physician/patient relationship, licensed mental health counselors and confidential victim advocates. NYCDA faculty, staff and employees cannot legally provide confidentiality.

*Privacy*; the resource may be obligated to report known names and facts to the Title IX Coordinator. NYCDA may take action. NYCDA faculty, staff and employees, who cannot guarantee confidentiality, will maintain students' privacy to the greatest extent possible. The information a student provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. NYCDA will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **Confidential and Private Resources:**

Students can receive *confidentiality* from the resources listed above on pages 7-9. Note that outside options do not provide any information to NYCDA:

To disclose confidentially the incident to a hotline or other New York State service available at the following:

<http://www.opdv.ny.gov/help/dvhotlines.html>.

Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages:

<http://www.opdv.ny.gov/help/index.html>

(or by calling 1-800-942-6906)

Off-campus counselors and advocates:

Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency. Check <http://nyscasa.org/> for more information on other crisis services.

Off-campus healthcare providers:

Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. (See OVS contact information above.)

- More information may be found here: [http://www1.nyc.gov/assets/nypd/downloads/pdf/collaborative\\_policing/ovs-ovsrightsofcvbooklet.pdf](http://www1.nyc.gov/assets/nypd/downloads/pdf/collaborative_policing/ovs-ovsrightsofcvbooklet.pdf) or by calling 1-800-247-8035.
- Options are explained here: <https://ovs.ny.gov/help-crime-victims>

Even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

Even NYCDA faculty, staff and employees, who cannot guarantee confidentiality, will maintain your *privacy* to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. NYCDA will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

**Requesting Confidentiality: How NYCDA Will Weigh the Request and Respond:**

If you disclose an incident to an NYCDA employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX coordinator must weigh your request against our obligation to provide a safe, nondiscriminatory environment for all members of our community, including you.

NYCDA will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. The Title IX Coordinator can serve as a primary point of contact to assist with these measures:

Title IX Coordinator, Deanna Bertini  
[dbertini@nycda.edu](mailto:dbertini@nycda.edu)  
39 West 19<sup>th</sup> Street, 2<sup>nd</sup> floor  
New York, NY 10011  
(646) 216-1580

We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

NYCDA may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless NYCDA's failure to act does not adequately mitigate the risk of harm to you or other members of the NYCDA community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If NYCDA determines that an investigation is required, NYCDA will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, NYCDA will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior, such as a situation that previously involved sustained stalking;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether NYCDA possesses other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If NYCDA determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and NYCDA will take immediate action as necessary to protect and assist them.

### **Public Awareness/Advocacy Events:**

If a student discloses a situation through a public awareness event such as “Take Back the Night,” candlelight vigils, protests, or other public event, NYCDA is not obligated to begin an investigation based on that information. NYCDA may use the information provided at such an event to inform the need for additional education and prevention efforts.

### **Anonymous Disclosure:**

For an anonymous reporting resource, you may call the New York State Hotline for Sexual Assault and Domestic Violence, 1 (800) 942-6906. The Hotline is for crisis intervention, resources, and referrals and is not a reporting mechanism to NYCDA or law enforcement.

### **Institutional Crime Reporting:**

Reports of certain crimes occurring in certain geographic locations will be included in the NYCDA Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of a reporting individual.

NYCDA is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parent’s prior year federal income tax return. Generally, NYCDA will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual.

## **SECTION VII: TRANSCRIPT NOTATION AND APPEALS POLICY FOR SEXUAL VIOLENT OFFENSES**

### **Transcript Notation**

For crimes of violence, including but not limited to sexual violence, after due investigation and process, NYCDA will make a notation on the transcript of the student found responsible that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for code of conduct violation.” If the student withdraws while the charges are pending, and declines to complete the disciplinary process, NYCDA will make a notation on the transcript of the student saying they “withdrew with conduct charges pending.”

## Transcript Notation Appeal Process

Transcript notations for a student suspended because of code of conduct violation may be removed after no less than one year's time following the completion of suspension. A student may request to have the transcript notation removed by submitting a Transcript Notification Appeal Form to the Registrar's Office. Such students may appeal to the Academic Leadership Team to have the notation removed. Appeals may be granted provided that:

1. One year has passed since the conclusion of the suspension;
2. The term of suspension has been completed and any conditions thereof; and
3. The Academic Leadership Team has determined that the student is once again "in good standing" with all applicable academic and non-academic standards.

Transcript notations for a student expelled because of code of conduct violation will not be removed and are not eligible for appeal.

If a finding of responsibility is removed for any reason, any such transcript notation shall be removed.

## SECTION VIII: KEY TERMS AND DEFINITIONS

Sexual misconduct can take a wide range of forms and have a wide range of effects. At NYCDA, we use the following terms to address the issue of sexual violence:

**Sexual Intercourse** - vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth-to-genital or genital-to-mouth contact), no matter how slight the contact.

**Non-Consensual Sexual Intercourse** - any sexual intercourse, however slight, by any person and upon any person, with any object, without effective consent and/or by force.

**Sexual Contact** - non-accidental contact with the breasts, buttock, groin, or genitals; and/or touching another with any of these body parts; and/or making another touch you or themselves with or on any of these body parts. It also includes any non-accidental bodily contact in a sexual manner, even if not involving contact with/of/by breasts, buttock, groin, genitals, mouth, or other orifice.

**Non-Consensual Sexual Contact** - any non-accidental sexual touching, however slight, by any person and upon any person, with any object, without effective consent.

**Sexual Harassment** - unwelcome, sexual or gender-based, verbal, non-verbal or physical conduct that is sexual in nature and sufficiently severe, persistent or pervasive and objectively offensive that it unreasonably interferes with, denies or limits someone's ability to participate in, or benefit from, the NYCDA's educational program and/or activities, and/or is based on power differentials and/or the creation of a hostile environment and/or retaliation (acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can take

many forms, including threats, intimidation, pressuring, continued abuse, violence, or other forms of harm to others.)

Sexual harassment includes sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature whether intentional or unintentional where:

- a) An individual's submission to the conduct is made, either explicitly or implicitly, a term or condition of employment, status in a course, program or activity is used as a basis for employment or academic decision; or
- b) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance, academic performance, or education experience, or of creating an intimidating, hostile, humiliating, or offensive working education or living environment.

Examples of sexual harassment include: Unwelcome sexual advances, whether they involve physical contact or not; sexual epithets, jokes, written or oral references to sexual conduct, or gossip regarding an individual's sex life; commenting about an individual's body, sexual activity, deficiencies or prowess; displaying sexually aggressive objects, pictures, or cartoons; unwelcome leering, whistling, gestures, or suggestive/insulting comments; inquiries into an individual's sexual experiences; and discussion of an individual's sexual activities.

**Dating or Relationship Violence** - any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

**Domestic Violence** - any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim or a person cohabitating with the victim as a spouse or intimate partner.

**Sexual Violence** - physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

**Sexual Coercion** - the use or attempted use of pressure and/or oppressive behavior with the goal of causing the person who is the object of the pressure and/or behavior to engage in unwelcome sexual activity. Coercion can be physical, verbal, and/or emotional. It can take the form of threats, intimidation, or the use of physical force, either expressed or implied, which places a person in fear of immediate harm or physical injury. Coercion can also take the form of threatening to "out" someone based on sexual orientation or gender identity or pressuring someone to consume alcohol or other drugs prior to engaging in a sexual act.

**Sexual Exploitation** - occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to: prostituting another person; going beyond the boundaries of consent (e.g. surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved); non-consensual sharing or streaming of images, photography, video, or

audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances; knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge; sexually-based stalking and/or bullying; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

**Sexual Assault** – a physical or sexual act or acts committed against another person without consent. Sexual assault is an extreme form of sexual harassment. Sexual assault includes what is commonly known as “rape” (including what is commonly called “date rape” and “acquaintance rape”), fondling, statutory rape and incest. For statutory rape, the age of consent in New York State is 17 years old. No student should engage in sexual behavior towards another individual against their will and without their affirmative consent. Unwanted sexual behavior includes, but is not limited to, touching, pinching, patting, or pressing up against someone, exposing genitalia, sexual based stalking or bullying, sexual exploitation; invasion of sexual privacy, non-consensual use of photographs, video or audio-taping of sexual activity.

**Rape** - defined as sexual intercourse with a person:

- a) that is forced, manipulated or coerced through use of verbal coercion, intimidation (emotional and/or physical), threats, physical restraint and/or physical violence; and/or
- b) where affirmative consent was not given.

**Stalking** - intentionally and for no legitimate purpose engaging in a course of conduct (two or more acts by which the stalker directly, indirectly or through third parties follows, monitors, observes, surveils, threatens or communicates about a person or interferes with his or her property) directed at a specific person that would cause a reasonable person to fear for their or others' safety, or to suffer substantial emotional distress. Stalking may include, but is not limited to, unwelcome and repeated visual or physical proximity to a person, repeatedly conveying oral or written threats, extorting money or valuables, implicitly threatening physical conduct, or any combination of these behaviors directed at or toward a person. Stalking also includes using electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact to pursue, harass, or make unwelcome contact with another in an unsolicited fashion.

**Incapacitation** - a state where an individual cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or are physically helpless. An individual is incapacitated, and therefore unable to give consent, if they are asleep, unconscious, or otherwise unaware that sexual activity is occurring. Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's: decision-making ability; awareness of consequences; ability to make informed judgments; or capacity to appreciate the nature and the quality of the act. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known, that the Complainant was incapacitated.

**Retaliation** - seeking or attempting to seek retribution against anyone involved in an allegation of sexual misconduct. It is a violation of NYCDA policy to retaliate in any way against an individual because s/he raised allegations of sexual misconduct, sexual harassment, sexual violence, sexual exploitation, stalking, or intimate partner violence. NYCDA recognizes that retaliation can take many forms, may be committed

by or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation. NYCDA will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

## **SECTION IX: NYCDA STUDENT ONBOARDING AND ONGOING EDUCATION REGARDING SEXUAL VIOLENCE PREVENTION**

NYCDA is committed to educating all new and current students using a variety of best practices aimed at educating the entire community in a way that decreases violence and maintains a culture where sexual assault and acts of violence are not tolerated.

All new students are required to attend Orientation. At this onboarding event, students will receive training on the following topics:

- NYCDA prohibits sexual harassment, including sexual violence, domestic violence, dating violence, stalking, other violence or threats of violence, and will offer resources to any victims/survivors of such violence while taking administrative and conduct action regarding any accused individual within NYCDA's jurisdiction.
- Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent.
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression.
- The role of the Title IX Coordinator and other NYCDA staff and faculty members who address domestic violence, dating violence, stalking, and sexual assault prevention and response.
- Awareness of violence, its impact on victims/survivors and their friends and family, and its long-term impact.
- The Students' Bill of Rights and Sexual Violence Prevention and Response Policy, including:
  - How to report sexual violence and other crimes confidentially to NYCDA officials and/or local law enforcement.
  - How to obtain services and support.
  - Bystander Intervention and the importance of taking action, when one can safely do so, to prevent violence.
  - The protections of the Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases
  - Risk assessment and reduction including, but not limited to, steps that potential victims/survivors and potential assailants and bystanders to violence can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of NYCDA officials who can answer general or specific questions about risk reduction.

- Consequences and sanctions for individuals who commit these crimes and Code of Student Conduct violations.
- NYCDA students will be offered ongoing training in sexual violence prevention. Methods of training and educating students may include, but are not limited to:
  - Artistic Director's welcome messaging;
  - Training sessions with Mount Sinai Beth Israel;
  - Safety training by former members of the NYPD
  - School-wide seminar on sexual health;
  - Social media outreach;
  - Posters, bulletin boards, and other targeted print and email materials;
  - Partnering with State and local community organizations that provide outreach, support, crisis intervention, counseling and other resources to victims/survivors of crimes to offer training and education.
- NYCDA will share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students.
- NYCDA will offer to all students both general and specific training in domestic violence, dating violence, stalking and sexual assault prevention and will conduct a campaign that complies with the Violence Against Women Act, 20 U.S.C. 1092(f), to educate the student population. NYCDA's training will include international students and students that are also employees. The youth of NYCDA's student body and the fact that many of them are new to New York City create a population that can be described as high risk. NYCDA offers specific training, particularly in self-protection, to every student.
- NYCDA regularly assesses its programs and policies to determine their effectiveness and relevance for its students.

## SECTION X: A PLAIN LANGUAGE EXPLANATION OF DISTINCTIONS BETWEEN THE NEW YORK STATE PENAL LAW AND THE COLLEGE DISCIPLINARY PROCESSES

	<b>Criminal Justice System</b>	<b>College Disciplinary System</b>
<b>Goals.</b>	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
<b>Governing Law.</b>	New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular colleges and universities.
<b>How to report and whether there must be action once a report is made.</b>	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various college employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the institution’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
<b>Who investigates?</b>	Police or other law enforcement officials.	Investigators employed or retained by the college or university; these individuals may work for different departments within the institution, including, but not limited to, the police/public safety department, student affairs and academic affairs.
<b>Procedures</b>	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	College/University policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures.
<b>Standard of Evidence.</b>	Crimes must be proven “Beyond a Reasonable Doubt”	A violation of disciplinary rules must be found by a “Preponderance of the Evidence” (more likely than not)
<b>Confidentiality.</b>	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Colleges and universities offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
<b>Privacy.</b>	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the college, the parties, and pursuant to law.

	<b>Criminal Justice System</b>	<b>College Disciplinary System</b>
<b>Who are the parties?</b>	The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	Varies by school—some consider the institution and the respondent to be parties, and confer on the reporting individual certain rights to participate, as the law provides. Otherwise, reporting individual and accused/respondent.
<b>Participation in the process</b>	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual’s participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in the college process. However, a college will be limited in its ability to respond if a reporting individual does not participate.
<b>Who initiates the proceedings?</b>	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The college or university initiates proceedings. While rules vary from school to school, they most provide an active role for the reporting individual.
<b>Testimony</b>	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	The rules are established by individual colleges and universities, but some institutions provide for alternative approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel, investigator, or representative of the reporting individual and/or respondent.
<b>Role of attorneys</b>	Both the state and the defendant are represented by counsel; counsel may question witnesses.	Varies by school. Many permit the parties to be advised by attorneys but some limit the attorney's’ roles to quietly speaking with their clients or passing notes.
<b>Mental Health and Sexual History</b>	In New York, a reporting individual’s prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact finding phase of the disciplinary process.
<b>Possible Results</b>	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> <li>• plead guilty or “no contest”</li> <li>• have the case dismissed by the judge (on legal grounds)</li> <li>• be found “guilty” or “not guilty” by a judge or jury</li> </ul>	In cases that do not involve sexual assault, some schools permit mediation or similar procedures if parties agree. If there is a formal proceeding, the respondent may be found “responsible” or “not responsible” for violations of the institution’s rules. Respondents may also accept responsibility before a finding by an adjudicator.
<b>Sanctions</b>	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating college policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the institution.

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