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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 Title IX and sexual violence prevention.

## INTRODUCTION

NYCDA does not discriminate in its employment practices or in its educational programs or activities on the basis of sex. NYCDA policy prohibits harassment or discrimination based on race, religion, creed, color, national origin, ancestry, sex, military or veteran status, physical or mental disability, medical condition, age, sexual orientation, gender, gender identity or expression, genetic information or any other basis protected by the federal, state or local law. NYCDA prohibits sexual violence, which includes domestic violence, dating violence, stalking, and sexual assault. NYCDA also prohibits retaliation against any person reporting sexual violence or participating in an investigation or complaint process internally or externally.

This policy shall be disseminated to the NYCDA community through publication(s), the NYCDA website, new employee orientations, new student orientations, and other appropriate channels of communication. NYCDA will respond quickly to reported violations and will take appropriate action to prevent, to correct, and if necessary, to discipline individuals who violate this policy. This policy applies whether the violation occurs on or off campus.

If you believe that you have experienced or witnessed harassment or discrimination on the basis of a protected category other than sex, please follow the procedure outlined in the Non-Discrimination/Anti-Harassment policy located in the Catalog.

In accordance with federal and New York state requirements, NYCDA maintains a Federal Title IX policy as well as this Sexual Violence Prevention and Response policy. Individuals who wish to file a complaint of discrimination on the basis of sex should do so with the Title IX Coordinator. NYCDA will apply both policies when receiving such complaints.

## 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 violence.

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 under Student Resources at <https://www.nycda.edu/student-resources/> and posted on the NYCDA campus.

## 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)











individual. Please note: No contact orders are institutional documents that do not have the legal effect of order of protection, which are obtained through a court.

- 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/respondent is a student and presents a continuing threat to the health and safety of the community, to subject the accused/respondent to interim suspension pending the outcome of a conduct process. Both the accused/respondent 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 /Student Services Manager, Kim Sosa  
O: 646-216-2872  
C: 631-532-7620  
ksosa@nycda.edu

Deputy Title IX Coordinator/☎☎☎☎☎☎  
O: 646-216-286☎  
C: ☎☎  
lvaldez@nycda.edu

Artistic Director, Sara  
Buffamanti  
sbuffamanti@nycda.edu  
39 West 19<sup>th</sup> Street, 2<sup>nd</sup> floor  
New York, NY 10011  
T (646) 216-2863

Associate Artistic Director, Naima Warden  
[nwarden@nycda.edu](mailto:nwarden@nycda.edu)  
39 West 19<sup>th</sup> Street, 2<sup>nd</sup> floor  
New York, NY 10011  
T (646) 812-4033

## 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 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, available on the NYCDA website under Student Resources at <https://www.nycda.edu/student-resources/>

- 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 date, time, location and 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.

### **Complaints of Sexual Violence**

The New York Conservatory for Dramatic Arts takes all allegations of sexual violence 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 violence in order to stop prohibited conduct, prevent its recurrence, and address any lingering effects on campus.

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

If you believe that you have experienced or witnessed sexual violence, NYCDA urges you notify the Title IX Coordinator as soon as possible after the incident. Do not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation. There is no specific time frame for individuals who have experienced sexual violence to file a complaint pursuant to this Policy. Individuals are, however, encouraged to make a report soon after the incident to order to maximize NYCDA's ability

to investigate and reach a finding. An employee may also notify ADP, our HR provider, or any other NYCDA employee.

In order to facilitate the investigation, your complaint should include details of the incident or incidents, names of the individuals involved and names of any witnesses. Individuals may make an anonymous report concerning an instance of sexual violence. Depending on the extent of information available about the incident or the individuals involved; NYCDA's ability to respond to an anonymous report may be limited.

NYCDA ensures that its employee(s) designated to serve as Title IX Coordinator(s) have adequate training on what constitutes sexual violence, they understand how this policy operates, and understand how to conduct an investigation that protects the safety of victims and promotes accountability. Because reports can also be filed with an employee's supervisor or ADP, these employees also receive training on NYCDA's procedures and any other procedures used for investigating reports of sexual violence.

A report may be made to either or both the police and the Title IX Coordinator. In order to ensure availability of witnesses and fresh memories of the alleged sexual violence, all reports should be made as promptly as possible after the alleged conduct. Where there is any question about whether an incident of sexual violence occurred, a report should be made to the Title IX Coordinator for assistance in determining the nature of the incident.

The Title IX Coordinator oversees all Title IX complaints and is also responsible for identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

The Title IX Coordinator will conduct investigations into complaints and make a report to NYCDA's disciplinary hearing board, made up of administrators, staff, and faculty. NYCDA will reach a prompt and equitable resolution through a reliable and impartial investigation of complaints. The Title IX Coordinator will communicate with both the reporting individual and respondent. Both parties will receive equal opportunity to provide information, witness statements, evidence, and other information that may be necessary. Both the reporting individual and the respondent will be afforded equitable rights and access during the investigative process.

Refer to the [Student Conduct Process](#) in the Code of Student Conduct for detailed information regarding investigations and disciplinary hearings. Generally, this investigation will consist of the Title IX Coordinator conducting interviews with the reporting individual, the respondent, and any witnesses. The Title IX Coordinator will, barring any extenuating circumstance, complete the investigation and make a determination regarding whether sexual violence has occurred. If so, the matter will be referred to the disciplinary hearing board and a disciplinary hearing will be held. The disciplinary hearing board will decide on the necessary discipline of the respondent and remedies to reporting individual within approximately sixty (60) days of the date that the report is first received by the Title IX Coordinator and/or ADP. Timelines may vary based on the complexity of the case, number of witnesses and the nature of the academic calendar. Each party will be presented with the results of the investigation before any disciplinary action is finalized—giving the parties the opportunity to respond to the investigative report in writing in advance of a decision. In the event of a delay, the Title IX Coordinator will provide written notice to the reporting individual and the respondent explaining the reason for the delay. If there is a conflict of interest between the Title IX Coordinator and the reporting individual/respondent, an alternative trained individual will conduct the investigation. The

“preponderance of the evidence” standard will apply to investigations, meaning NYCDA will evaluate whether it is more likely than not that the alleged conduct occurred.

Refer to the [Grievance Procedure](#) in the NYCDA Title IX Policy for investigations and hearings of Sexual Harassment including Sexual Assault, Dating Violence, Domestic Violence and Stalking as defined below.

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. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation. However, when a reporting individual or third-party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, that individual may be subject to disciplinary action.

In compliance with Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (“Clery Act”), all incidents involving criminal homicide, murder and non-negligent manslaughter, manslaughter by negligence, rape, fondling, incest, statutory rape, dating violence, domestic violence, stalking, hate crimes, robbery, aggravated assault, burglary, motor vehicle theft, arson, drug and alcohol violations, and illegal weapons possession 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.

Reports about sexual violence do not have to be formal signed complaints. NYCDA is committed to protecting the confidentiality of victims and will work closely with individuals who wish to obtain confidential assistance regarding an incident of sexual violence, and will maintain the privacy of information to the extent permitted, even if the victim does not specifically request confidentiality. A victim’s personally identifying information will not be included in any publicly available recordkeeping, including Clery Act reporting and disclosures such as this Annual Security Report. Memoranda describing any formal reprimand or disciplinary action for violating this policy will be placed in a student’s permanent academic file and an employee’s permanent personnel file. These documents are maintained in a locked filing cabinet that only applicable administrative staff has access to.

Reporting individual(s) should be aware that in an investigation, due process generally requires that the identity of the charging party and the substance of the complaint be revealed to the person charged with the alleged sexual violence. Once NYCDA decides to open an investigation that may lead to



disciplinary action against the accused, NYCDA will provide written notice to the accused/respondent of the allegations constituting the potential violation, and the date and location of the alleged incident.

In some cases, NYCDA may need to disclose some information about a victim to a third party to provide necessary accommodations or protective measures. The Title IX Coordinator will meet to weigh the victim's confidentiality against the impact on NYCDA being able to provide these necessary accommodations or protective measures. Should it be deemed necessary, they will determine what information about the victim needs to be disclosed and to whom it needs to be disclosed. The victim will be notified regarding which information will be shared, with whom it will be shared and why prior to NYCDA sharing the information. NYCDA will strive to share as limited information as possible in an effort to protect the victim's identity.

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, confidential victim advocates and rape or domestic violence crisis counselors. Note that these external resources do not provide any information to NYCDA. 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:**

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

<https://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:

<https://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 <https://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: [https://www1.nyc.gov/assets/nypd/downloads/pdf/collaborative\\_policing/ovs-ovsrightsofcvbooklet.pdf](https://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, 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 /Student Services Manager, Kim Sosa  
O: 646-216-2872  
C: 631-532-7620  
[ksosa@nycda.edu](mailto:ksosa@nycda.edu)

Deputy Title IX Coordinator/Student Accounts Specialist, Lisa Valdez  
O: 646-216-2867  
C: 646-301-4518  
[lvaldez@nycda.edu](mailto:lvaldez@nycda.edu)

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, 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. NYCDA will make every effort to ensure that a reporting individual'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 danger. NYCDA reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, or a change in student status.

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.

### **Additional Information**

Students and employees may contact the Title IX Coordinator or ADP, as applicable, with any questions related to this policy. In addition, the U.S. Department of Education Office for Civil Rights ("OCR") investigates complaints of unlawful harassment of students in educational programs or activities. This agency may serve as a neutral fact finder and will attempt to facilitate the voluntary resolution of disputes with the parties. For more information, visit the OCR website at: <http://www.hhs.gov/ocr/>. To the extent that an employee or contract worker is not satisfied with NYCDA's handling of a complaint, he or she may also contact the appropriate state or federal enforcement agency for legal relief.

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

### **Transcript Notation**

For crimes of violence, including but not limited to sexual violence (defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), 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 Committee 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 Committee 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 violence can take a wide range of forms and have a wide range of effects. At NYCDA, we use the following terms.

The following offenses are addressed according to NYCDA's Student Conduct process described above. For details of this procedure, see the NYCDA Code of Student Conduct under Student Resources at <https://www.nycda.edu/student-resources/>

**Accused** - a person accused of a violation who has not yet entered an institution's judicial or conduct process.

**Respondent** - a person accused of a violation who has entered an institution's judicial or conduct process.

**Reporting individual** - encompasses the terms victim, survivor, complainant, claimant or witness with victim status.

**Bystander** - a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation NYCDA rules and policies.

**Sexual Act** - A. contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration, however slight; B. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; C. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or D. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

**Sexual Contact** - the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

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

**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.

**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 violence. It is a violation of NYCDA policy to retaliate in any way against an individual because s/he raised allegations. NYCDA will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual violence from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

**Sexual Assault:** As defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

**Dating Violence:** As defined in 34 U.S.C. 12291(a)(10), means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and, the frequency of interaction between the persons involved in the relationship.

**Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Stalking:** As defined in 34 U.S.C. 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

\*Please note: Sexual Assault, Dating Violence, Domestic Violence and Stalking are collectively referred to as "Sexual Violence":

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

NYCDA maintain a student onboarding and ongoing education campaign to educate members of the NYCDA community about domestic violence, dating violence, staling, and sexual assault in compliance with applicable laws including the Clery Act as amended by the Violence Against Women Act reauthorization of 2010, 20 U.S.C. 1092(f). 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 misconduct, including sexual harassment, gender/sex discrimination, 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 sexual violence
- 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 and education in sexual violence prevention through the following methods :

- Artistic Director's welcome messaging;
  - Training sessions with Mount Sinai Beth Israel;
  - Safety training by former members of the NYPD
  - School-wide seminars on sexual health;
  - Posters, bulletin boards, and other targeted print and email materials.
- 
- 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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