



Appendix A Sexual Misconduct Policy

Effective Date: February 18, 2019

I. POLICY PURPOSE AND SCOPE

ASA College (the “College”) is committed to protecting the safety, health, and well-being of its students, employees, and all people who come into contact with the College community. In support of this commitment, and in keeping with applicable federal and state requirements, the College has created this policy that prohibits sexual misconduct, as well as retaliation against an individual for making a good faith report of conduct prohibited under this policy. For purposes of this policy, “sexual misconduct” means a wide range of unwelcome sexual behavior that is committed without consent or by intimidation, coercion, threat or force, including, but not limited to, sex discrimination, sexual harassment, sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking.¹

This policy also informs the campus community of the College’s procedures for reporting incidents of sexual misconduct, and for the investigation and remediation of such reports. The College will take prompt and equitable action to address instances of sexual misconduct, to prevent its recurrence, and to remediate its effects. The College also conducts prevention, awareness, and training programs for students and employees to facilitate the goals of this policy.²

Like the College’s Annual Security and Fire Safety Report, this policy is designed to comply with the Jeanne Clery Disclosure of Campus Security policy and Campus Crime Statistics Act (the “Clery Act”), Title IX of the Education Amendments of 1972 (“Title IX”), Title VII of the Civil Rights Act of 1964, and the implementing regulations and guidance issued in connection with such laws. Finally, this policy also is designed to comply with applicable state laws and standards, including those of New York State and of the State of Florida.

With oversight from the College’s executive management and Board of Trustees, and with the assistance of College counsel, this policy has been formulated and issued jointly by the College’s Title IX Coordinators, Office of the Ombud, Office of Human Resources (HR), and Campus Security. It supersedes all prior policies and guidance relating to the topics discussed herein.

The protections in this policy apply regardless of race, color, ethnicity, 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.

This policy, and as it may be amended from time to time, is available on the College’s website at <http://www.asa.edu/title-ix.asp> . Notice of the Policy’s availability is distributed to all prospective students and employees prior to enrollment or employment, as applicable. In addition, the policy is distributed annually to all current students and employees and is featured in the College’s training and outreach efforts relating to sexual misconduct.

¹ The full definition of “sexual misconduct,” along with definitions of other key terms used in this policy, is included in this policy’s Glossary.

² A discussion of the College’s prevention, awareness, and training programs is included in the body of the College’s Annual Security and Fire Safety Report.



Appendix A Sexual Misconduct Policy

Covered Parties

This policy applies to the College’s students, to its employees, including faculty, visiting faculty, staff, and administration, to any contractors, vendors, or other third parties within the College’s control, and to any visitors or guests of the College (collectively referred to as “Covered Parties”). This policy is one of the many written policies adopted by the College governing student and employee behavior, rights, and responsibilities while such individuals are enrolled or employed by the College.

Definitions Applicable to this Policy

The definitions of key terms used in this policy are included in the final section titled “Glossary of Terms used in the ASA College Annual Security and Fire Safety Report and Sexual Misconduct Policy.”

ASA College Title IX Coordinators

The College’s designated Title IX Coordinators are responsible for administering this policy and ensuring that the campus community is educated regarding the various obligations detailed herein. In fulfilling their role, the Title IX Coordinators oversee the College’s management of reports and complaints that involve allegations of sexual misconduct, monitor outcomes of policy and training efforts, identify and address any patterns, and assess effects on the campus climate. In addition, the Title IX Coordinators carry out training for students and employees, assist individuals who have experienced sexual misconduct, including on an emergency basis, oversee the provision of accommodations and interim measures, and carry out monitoring and advising activities.

As discussed in more detail below, individuals may contact a Title IX Coordinator for a number of purposes, including to:

- File a complaint or otherwise make a report of alleged sexual misconduct or retaliation;
- Seek information or training about students’ rights and courses of action available to resolve reports or complaints that involve potential sex discrimination, including sexual misconduct;
- Notify the College of an incident or policy or procedure that may raise potential concerns under this policy; or
- Obtain information about available resources (including confidential resources) and support services relating to sexual misconduct.

Contact information for the College’s Title IX Coordinators is set out in the following chart:

Title IX Coordinators		
Name	Jayne Weinberger, EdD	Jennifer Ross, Esq.
Title	Chair, OPT Program/Title IX Coordinator	Faculty, Legal Studies Division/Title IX Coordinator (Florida Campuses)
Campus	ASA College - New York	ASA College - Miami
Street	1293 Broadway, Room 602	225 East Dania Beach Blvd., Room 208
State	New York, NY 10001	Dania Beach, Florida 33004
Phone	212-672-6450 (ext. 1431)	786-279-1741 (ext. 4055)
Email	jweinberger@asa.edu	jross@asa.edu

If you have any questions regarding the information or procedures set out in this policy, you may contact any one



Appendix A Sexual Misconduct Policy

of the College's Title IX Coordinators using the contact information above, or by emailing TitleIX@asa.edu. Questions regarding Title IX also may be referred to the U.S. Department of Education's Office for Civil Rights at 400 Maryland Avenue, SW, Washington DC 20202 or (800) 421-3481.

II. PROHIBITION AGAINST SEXUAL MISCONDUCT AND RETALIATION

The College does not tolerate, and therefore strictly and expressly prohibits, sexual misconduct by or against members of the College community. This policy applies to sexual misconduct committed by or against any Covered Party if the sexual misconduct has a reasonable connection to the College. This includes sexual misconduct that occurs:

- On College premises;
- In the context of College employment or a College education program or activity, including College-sponsored internship or externship programs, study-abroad experiences, or athletics; or
- Outside the context of College employment or a College education program or activity, but results in an adverse impact that occurs on the College's premises or otherwise negatively impacts the College community.

The College also strictly and expressly prohibits retaliation against any person who reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including participating as a witness. Prohibited retaliation may include taking adverse action or treatment that leads to a negative impact on an individual's employment or educational experience. Any member of the College community or third party who attempts either directly or indirectly to intimidate, threaten, retaliate, interfere with, restrain, coerce, or discriminate against a complainant violates this policy. Similarly, anyone who harasses any person for reporting, attempting to report, responsibly pursuing a complaint, acting as a witness or otherwise cooperating in a College investigation, is in violation of this policy. Reports of retaliation will be investigated, and such conduct may result in disciplinary action independent of the sanction(s) or interim remedies imposed in response to allegations of sexual misconduct.

All Covered Parties are encouraged to report any acts of sexual misconduct or retaliation that violate this policy to the College's Title IX Coordinator (reporting options are discussed in more detail below). College employees who learn of an incident of sexual misconduct or retaliation have an obligation to promptly report any such incident to one of the College's Title IX Coordinators, unless the employee is recognized by the College as a confidential reporting option.

Finally, some forms of discrimination and retaliation, including discrimination based on race, religion, and disability, will not be covered by this policy. However, individuals may still report these forms of discrimination and retaliation to a Title IX Coordinator, who can direct them to an appropriate resource.

III. EMERGENCY AND MEDICAL ASSISTANCE FOR INDIVIDUALS WHO HAVE EXPERIENCED SEXUAL MISCONDUCT

If any Covered Party believes that he or she has experienced sexual misconduct, the individual's **first** priorities should be (1) to locate a place of safety and (2) to obtain any necessary medical treatment. In instances involving physical assault or injury, the College strongly encourages the individual to obtain a medical examination immediately to



Appendix A Sexual Misconduct Policy

determine the extent of any injuries and to ensure the preservation of evidence.³ It is important to understand that time is a critical factor for evidence collection and preservation, and that preserving evidence may be necessary to prove that sexual misconduct occurred, or to obtain a protection order.

Below is a brief list of emergency and medical assistance providers that serve the College’s New York City and Miami locations and that can be contacted directly.⁴ If any individual requires assistance obtaining emergency and medical assistance, the College’s Title IX Coordinators or Campus Security Authorities can assist. In addition, the College’s Title IX Coordinators can provide information for additional resources, as well as information regarding rights and options for moving forward.

Emergency and Medical Assistance Providers		
Campus	Organization	Telephone No.
All	Local Police and Emergency Assistance	Call 911
All	Safe Horizon Rape and Sexual Assault Hotline	(212) 227-3000
All	Safe Horizon Domestic Violence Hotline	(800) 656-HOPE (4673)
NYC	NYPD Sex Crimes Hotline	(212) 267-RAPE (7273)
NYC	NY District Attorney’s Hotline	(212) 335-4308
NYC	New York State Office of Victims Services	(800) 247-8035
NYC	New York State Police Sexual Assault Hotline	(844) 845-7269
NYC	The Brooklyn Hospital	(718) 250-8000
NYC	New York Presbyterian/Lower Manhattan Hospital	(212) 312-5000
NYC	Brooklyn Methodist Hospital	(718) 780-3000
NYC	Bellevue Hospital, 462 First Avenue	(212) 562-4141
NYC	Mount Sinai / Elmhurst Hospital Sexual Assault & Violence Intervention Program	(212) 423-2140 (718) 736-1285
NYC	NYPD Special Victims Division	(646) 610-7272
NYC	Wyckoff Heights Medical Center, Violence Intervention and Treatment	(718) 906-3846
NYC	CAMBA	(718) 282-5575
Miami-Dade	Rape Hotline	(305) 585-RAPE (7273)
Miami-Dade	Sexual Crimes Investigation Unit	(305) 715-3300
Miami-Dade	Domestic Crimes Investigation Unit	(305) 418-7200
Miami / Broward	Lauren’s Kids	(786) 288-5045
Broward	Nancy J. Cotterman Center	(954) 357-5775
Broward	Women in Distress	(954) 761-1133

IV. REPORTING INCIDENTS OF SEXUAL MISCONDUCT

Reporting Sexual Misconduct to the College

Subsequent to securing safety and medical care, and assuming the individual has not already done so, the College encourages any Covered Party who believes that he or she has experienced or witnessed sexual misconduct to report the incident to one of the College’s Title IX Coordinators.⁵ There is no time limit for reporting sexual

³ A hospital, with the individual’s permission, will collect physical evidence by conducting a medical examination. Hospitals are required by law to preserve such evidence for a minimum period of time. Consenting to an examination does not obligate the individual to pursue criminal charges.

⁴ Some service providers may charge a service fee.

⁵ Though encouraged to do so, Covered Parties are not required to report incidents of sexual misconduct to the College.



Appendix A Sexual Misconduct Policy

misconduct to the College under this policy. However, Covered Parties are encouraged to report alleged sexual misconduct as soon as possible in order to maximize the College’s ability to obtain evidence and to conduct a timely, thorough, impartial, and reliable investigation. Reports made to the College’s Title IX Coordinators may be made in person or via telephone. Contact information for the College’s Title IX Coordinators is once again set out below:

Title IX Coordinators		
Name	Jayne Weinberger, EdD	Jennifer Ross, Esq.
Title	Chair, OPT Program/Title IX Coordinator	Faculty, Legal Studies Division/Title IX Coordinator (Florida Campuses)
Campus	ASA College - New York	ASA College - Miami
Street	1293 Broadway, Room 602	225 East Dania Beach Blvd., Room 208
State	New York, NY 10001	Dania Beach, Florida 33004
Phone	212-672-6450 (ext. 1431)	786-279-1741 (ext. 4055)
Email	jweinberger@asa.edu	jross@asa.edu

In the event that a Covered Party, for any reason, does not wish to make a report with any of the Title IX Coordinators, he or she may instead make the report to the College’s Controller, or, if the matter involves an employee, to the Human Resources Department.⁶ Contact information for these individuals is set out below:

Alternative Contacts for Reporting Sexual Misconduct to the College		
Name	Mark Mirenberg	Aridelle Campos
Title	Campus Controller	Human Resources Manager
Street	1293 Broadway	1293 Broadway
City/State	New York, NY 10001	New York, NY 10001
Phone	212 776 4626 ext. 1102	212 776 4626 ext. 1100
Email	mmirenberg@asa.edu	acampos@asa.edu

Confidential Reporting to the College

There is an important distinction between “confidentiality” and “privacy.” “Confidentiality” may only be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials (*e.g.*, licensed mental health counselors, medical providers, or pastoral counselors). In contrast, an individual who is required by law to report incidents of sexual assault or other crimes can only offer “privacy,” meaning that they will not disclose information learned from a reporting individual or bystander any more than is necessary to comply with legal and policy obligations. Individuals wishing to speak with a College employee who is able to offer confidentiality may contact the following individual(s):

Internal Confidential Resource		External Confidential Resource	
Name	Gloria S. Lynch, CLEM	Marcy Zingman, LMSW	
Title	Pastoral Minister	Violence Prevention Specialist	
Street	1293 Broadway	374 Stockholm Street – Room 1-38	
City/State	New York, NY 10001	Brooklyn, NY 11237	
Phone	609 658 4035	718 906-3857	
Email	glynch@asa.edu	MZingman@wyckoffhospital.org	

⁶ Inquiries or complaints that involve potential violations of Title IX also may be referred to the U.S. Department of Education’s Office for Civil Rights, which can be reached at OCR@ed.gov or (800) 421-3481.



Appendix A Sexual Misconduct Policy

In addition, the College has provided information in a table below regarding external resources that may be able to offer confidential reporting options. Prior to making a report, individuals seeking legal confidentiality are encouraged to verify with any individual who answers one of the external resource numbers listed below that he or she can indeed offer legal confidentiality.

Privacy of Information Reported to Non-Confidential College Resources

While the College’s Title IX Coordinators, Controller, Human Resources professionals, and other employees cannot offer legal confidentiality, they will take all reasonable steps to maintain privacy. Information reported will be relayed only as necessary for the College to investigate and, if applicable, seek a resolution.

For statistical reporting purposes, the College is required to include the occurrence of certain crimes in its Annual Security and Fire Safety Report. This statistical data does not include identifying information about the individuals involved in the crimes reported, including any crimes involving sexual misconduct. In the case of an emergency or dangerous situation, the College may issue a warning to the College community. In such instances, the College would withhold the name and identifying information of any complainant.

Generally, the College will not share information about a report of sexual misconduct with parents without the permission of the complainant. However, the Family Educational Rights and privacy Act (FERPA) allows institutions to share information with parents when there is a health or safety emergency, or when the student is a dependent on either parent’s prior year federal income tax return.

Reporting Sexual Misconduct to Law Enforcement

Subsequent to securing safety and medical care, the College also encourages any Covered Party who believes that he or she has experienced potentially criminal sexual misconduct to report the incident to law enforcement.⁷ As indicated in the chart above, emergencies may be reported to local law enforcement in person or via telephone at 911. Non-emergencies may be reported to local law enforcement in person or via telephone using the contact information below. If any individual requires assistance notifying local law enforcement, the College’s Title IX Coordinators will assist.

Local Law Enforcement Non-Emergency Contacts				
Campus	Manhattan	Brooklyn	Hialeah/North Miami	Dania Beach
Name	Midtown Precinct S.	84 th Precinct	Miami-Dade Special Victims Bureau	Broward Sheriff’s Office - Dania
Street	357 West 35 th Street	NYPD 301 Gold St.	1701 NW 87th Ave. Suite 100	4601 SW 30 th Ave.
City/State	New York, New York	Brooklyn, NY 11201	Doral, FL 33172	Ft. Lauderdale, FL 33312
Phone	212-239-9811	718-875-6811	305-715-3300	954-926-2400

⁷ Though encouraged to do so, Covered Parties are not required to report incidents of sexual misconduct to law enforcement.



Appendix A Sexual Misconduct Policy

Anonymous Reporting

The College recognizes that under certain circumstances Covered Parties who believe that they have experienced or witnessed sexual misconduct may wish to make an anonymous report of the crime. The College will accept anonymous reports, and has created an anonymous reporting form which is located online at the following address: <http://www.asa.edu/title-ix.asp>

If the College receives a report of sexual misconduct from an anonymous source, the College will respond to the report of sexual misconduct as if the Covered Party who experienced the sexual misconduct made the initial report (assuming the individual is identified). However, due to the nature of the anonymous reports, the College’s ability to take responsive action may be limited.

Individuals also may anonymously disclose an incident of sexual misconduct to the following organizations.

External Resources for Reporting Sexual Misconduct		
Campus	Organization	Telephone No.
All	Safe Horizon Rape and Sexual Assault Hotline	(212) 227-3000
All	Safe Horizon Domestic Violence Hotline	(800) 656 -HOPE (4673)
NYC	New York State Office of Victims Services	(800) 247 8035 Spanish: (800) 942-6908
NYC	New York State Police Sexual Assault Hotline	(844) 845-7269
NYC	The Brooklyn Hospital	(718) 250-8000
NYC	New York Presbyterian/Lower Manhattan Hospital	(212) 312-5000
NYC	Brooklyn Methodist Hospital	(718) 780-3000
NYC	Bellevue Hospital, 462 First Avenue	(212) 562-4141
NYC	Mount Sinai – Elmhurst Hospital Sexual Assault and Violence Intervention Program	(212)-423-2140 (718) 736 – 1285
NYC	NYPD Special Victims Division	(646) 610-7272
Miami	311 Contact Center	(311) or (305) 468-5900
Miami	Legal Aid Miami-Dade County	(305) 579-5733
Broward	First Call for Help (24-hour Crisis Line)	(211) or (954) 537-0211
Broward	Legal Aid Broward County	(954) 765-8950
Miami / Broward	Hearing or Speech-impaired Disability – Florida Relay	711 for TTY

Amnesty for Individuals Reporting Sexual Misconduct Involving Violations of Alcohol or Drug Policies

The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to sexual misconduct, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report sexual misconduct to College officials. A Covered Party acting in good faith who discloses any incident of sexual misconduct to the College’s officials or law enforcement will not be subject to action for violations of the College’s alcohol or drug use policies occurring at or near the time of the commission of the sexual misconduct.

V. RESPONDING TO AND RESOLVING REPORTS OF SEXUAL MISCONDUCT

When an individual reports an incident of sexual misconduct committed by or against any Covered Party and the sexual misconduct has a reasonable connection to the College, the College will take prompt and appropriate steps to respond to the reported conduct and to resolve the matter promptly and equitably. For purposes of this policy,



Appendix A Sexual Misconduct Policy

a Covered Party who reports an alleged violation of this policy to the College is a “complainant.” A complainant includes a victim, survivor, claimant, witness with victim status, or any other Covered Party who reports an alleged violation of this policy to the College.

Employee Response Obligations

At the **first report** of sexual misconduct by a Covered Party to **any** College employee, the employee shall inform the Covered Party reporting the sexual misconduct that he or she has the right (1) to report the incident to one of the College’s Title IX Coordinators, the Controller, or Human Resources; (2) to make a report to campus security, local law enforcement, or state police, or to choose not to report; (3) to be protected by the College from retaliation for reporting an incident; and (4) to receive assistance and resources from the College. The employee then must promptly report the incident to one of the College’s Title IX Coordinators, the Controller, or Human Resources, unless the employee is recognized by the College as a confidential reporting option.

Initial Response and Assessment

Upon receipt of a report of sexual misconduct, the Title IX Coordinator will carry out an initial response and assessment.⁸ The primary goals of this process are to address immediate health and safety needs, gather critical information, and to educate the complainant regarding resources and options for moving forward. This process will include:

- Explaining which authorities are able to offer “privacy” or “confidentiality” and the distinction between the two.
- Dialoguing with the complainant to more fully assess the nature and circumstances of the report.
- Addressing any immediate needs for physical safety and emotional well-being.
- Encouraging medical treatment, if appropriate, and describing the importance of preserving evidence and obtaining a sexual assault forensic examination.
- Reviewing this policy and providing a copy.
- Providing written information about on-campus and off-campus resources available (at no cost or for a fee), including: information regarding counselors and advocates they may contact regarding sexual misconduct; legal aid and other resources for initiating legal proceedings in family or civil court; information concerning intervention, mental health counseling, and medical services; information on sexually transmitted infections and sexual assault forensic examinations; and resources available through state offices of victim services.
- Providing information regarding the range of appropriate and available supportive measures and accommodations.
- Explaining that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated criminal law should be addressed to law enforcement or to the district attorney.
- Discussing the complainant’s preferences for resolution and any barriers to proceeding in accordance with those preferences.
- Advising the complainant that the College’s sexual misconduct policy prohibits retaliation.

⁸ The College will not investigate reports of sexual misconduct disclosed during a public awareness event such as candlelight vigils, protests, or other public events. However, the College may use the information provided at such an event to inform its efforts for additional education and prevention efforts.



Appendix A Sexual Misconduct Policy

The Students' Bill of Rights

During the initial response and assessment, the Title IX Coordinator also will review with the complainant the following "Students' Bill of Rights."⁹ These include the right to:

- Make a report of sexual misconduct to the College's Campus Security Authorities, Human Resources (if the respondent is an employee), local law enforcement, or state police, and to be assisted by the College in notifying these authorities, or to decline contact with any or all authorities.¹⁰
- Make decisions about whether or not to disclose a crime or violation and to participate in the judicial or conduct process or criminal justice process free from pressure by the College.
- Seek an order of protection or an equivalent protective or restraining order.¹¹
- Receive assistance and resources from the College.
- Have disclosures of sexual misconduct treated seriously.
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard, consistent with the provisions of this policy.
- Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available, as well as information regarding on-campus and off-campus resources.
- Be free from any suggestion that a complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations.
- Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident.
- Be protected from retaliation by the College, any student, the respondent or his or her friends, family and acquaintances within the jurisdiction of the College.
- Be accompanied by an advisor of choice who may assist and advise a complainant or respondent throughout the judicial or conduct process, including during all meetings and hearings related to such process.
- Access to at least one level of appeal of a determination, as set forth in this policy.
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

Supportive Measures and Accommodations

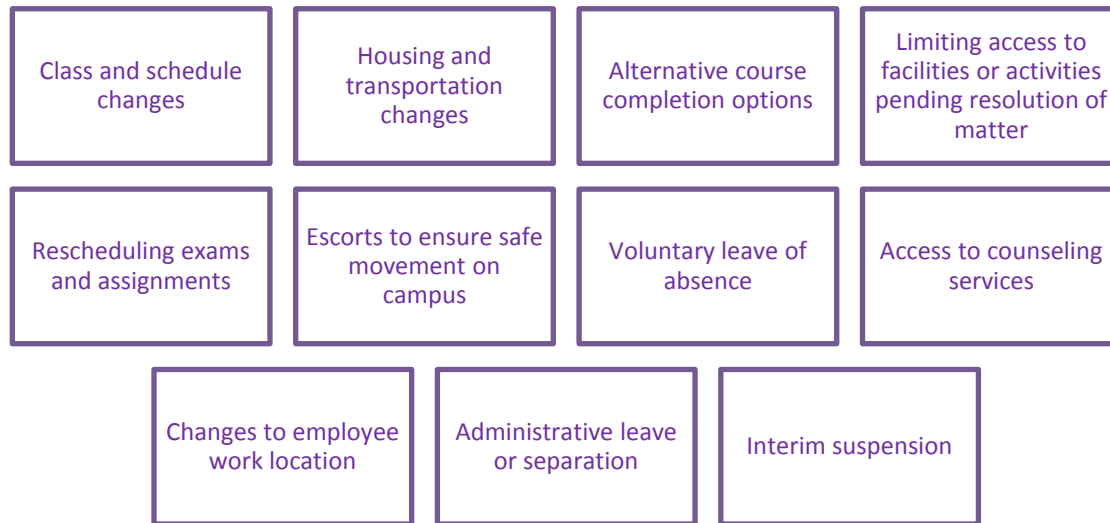
At any time following a report of sexual misconduct, the College may institute supportive measures or accommodations for either complainants or respondents. The complainant and respondent may request a

⁹ This Students' Bill of Rights was created pursuant to New York State Education Law § 6443. The College guarantees these rights to all of its students, including those attending its Florida campuses. The College also guarantees these rights, as applicable, to employees that report incidents of sexual misconduct. The College distributes the Students' Bill of Rights annually in conjunction with the distribution of its Annual Security and Fire Safety Report. In addition, it is available on the College's website at <http://www.asa.edu/securityreport.asp>, is posted in designated student lounges, and is distributed to all freshmen during Freshmen Orientation and Freshmen Social Week.

¹⁰ For purposes of this policy, the "respondent" is the individual alleged to have committed sexual misconduct.

¹¹ A complainant may request assistance from the College to acquire an Order of Protection either from Family Court or Criminal Court. Once the complainant receives the Order of Protection, he or she is required to share this document with the College with the understanding that the Order of Protection will be shared with the respondent. The Title IX Coordinator will meet with each party to explain the order, answer questions about it, and inform each party about the consequences of violating such an order, including but not limited to arrest, additional conduct charges, and interim suspension. The respondent will be asked to concur his or her understanding of the Court Order's instructions to stay away from the protected person or persons. If the Order of Protection is violated, the complainant may request assistance from the College in calling local law enforcement to inform them of the violation.

supportive measure or accommodation, and each has the right to a prompt review of the need for and terms of any such measure or accommodation that directly affects him or her, as well as the right to submit evidence in support of his or her request. The following table sets out examples of such measures and accommodations, which may be temporary or permanent.



At its own discretion, or at the request of a complainant or respondent, the College also may implement one of the following contact restrictions.

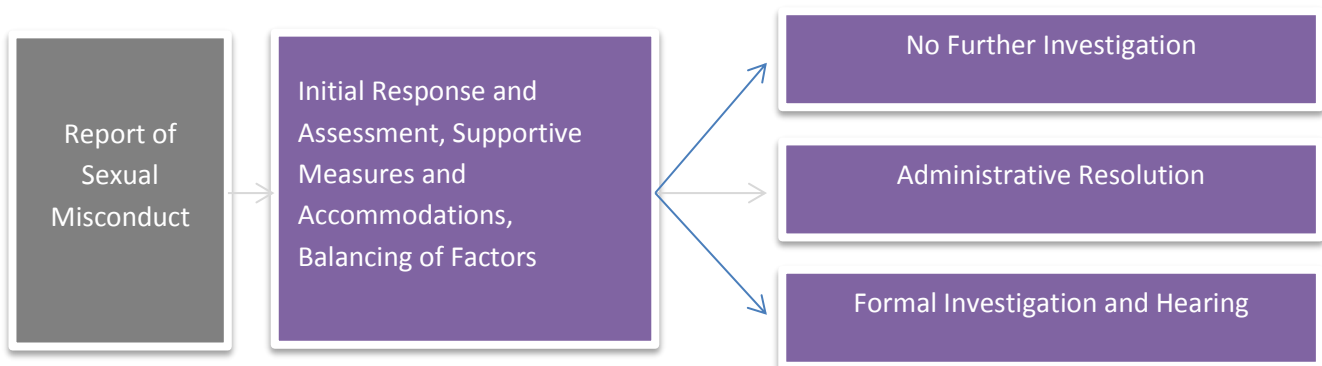
- College No Contact Order.** The College may issue a directive to the individuals involved in an allegation of sexual misconduct to refrain from engaging in any form of contact with one another.¹² While under a No Contact Order, if the respondent and complainant observe each other in a public place, it is the responsibility of the respondent to leave the area immediately without directly contacting the complainant.
- Court No Contact Order.** A complainant may request the assistance of the College in acquiring an Order of Protection from a court of competent jurisdiction. If a complainant secures an Order of Protection from a court, he or she is required to share this document with the College with the understanding that the Order of Protection will be shared with the respondent. The Title IX Coordinator will meet with each party to explain the terms of the Order and to answer questions.
- College Safe Space Order.** The College may issue a directive to a complainant or a respondent that prevents that individual from entering a designated building or participating in a program or activity. The purpose of such a directive is to create a “safe space” and to prevent encounters that may give rise to conflicts or feelings of being unsafe.
- Interim Suspension.** Where appropriate, and at its discretion, the College may impose an interim suspension pending the outcome of the College’s investigation and resolution process.

¹² This includes contact in person, in writing, by phone, by email, by texts or other electronic messaging, through social media, or through a third party.

To the extent practicable, the College will maintain the privacy of the complainant and the respondent while providing accommodations or supportive measures under this policy. Both the complainant and the respondent may request the modification of any interim measure, accommodation, or directive, and will be afforded an opportunity to submit evidence in support of his or her request. Requests for modification should be made to a Title IX Coordinator. The respondent will be notified if the College takes action that would impact the respondent.

Options for Resolution of Complaints of Sexual Misconduct

As described above, the College will respond to all reports of sexual misconduct covered by this policy, to include an initial response and assessment and, as appropriate, the implementation of supportive measures and accommodations. The subsequent resolution of the report will be managed based on preferences expressed by the complainant, and a balancing of factors by the College. As discussed below, a complainant might request that no further investigation take place, that the matter be resolved through administrative resolution, or that the matter proceed to a formal investigation and hearing. The College, for its part, will consider such requests along with its own responsibility to provide for the safety of the College community. The following graphic illustrates the three paths to resolution, which are described in more detail below.



Privacy, Requests to Restrict Information, and Requests to Forgo Investigation or Disciplinary Action

At the time a report of sexual misconduct is made, or any time thereafter, a complainant is free to request that his or her name or other identifying information not be shared with a respondent, that no investigation (or further investigation) be conducted, or that no disciplinary action be taken against the respondent. If any such request is made, the College will balance this request for privacy against the College's obligation to ensure a safe, non-discriminatory environment for the College community, including for the complainant. The request will be evaluated by the Title IX Coordinator in consultation with senior College administrators. When considering whether to honor a complainant's request for privacy or that no investigation or disciplinary action be pursued, the College will consider a range of factors, including:

- Whether there have been other sexual misconduct allegations made against the respondent.
- Whether the respondent has a history of arrest or other records indicating a history of violence.
- Whether the incident represents an escalation in unlawful conduct by the respondent.
- Whether there is an increased risk that the respondent will commit additional acts of violence.
- Whether the sexual misconduct was committed by multiple perpetrators.
- Whether the complaint reveals a pattern of sexual misconduct at a given location or by a particular group.



Appendix A Sexual Misconduct Policy

- Whether the sexual misconduct was perpetrated with a weapon.
- The seriousness of the alleged conduct.
- The age of the victim.
- Whether the College has alternative means by which to obtain relevant evidence (*e.g.*, security cameras, witnesses).

Generally, it is the College's intent to grant a complainant's request, whether it is for privacy, or that no investigation or disciplinary action be pursued. Accordingly, the College will do so, where possible, based on the facts and circumstances. Complainants should recognize, however, that in those instances in which the College agrees to maintain privacy or to forgo further investigation at the request of the complainant, the College may be unable to implement certain measures or accommodations. Complainants also should understand that a matter will be considered closed once the College has implemented the general measures or accommodations it deems appropriate. Despite the foregoing, a report that was closed because the College agreed to a request to maintain privacy or to forgo an investigation may be reopened later at the discretion of the Title IX Coordinator.¹³

Where the balance of factors requires that further investigation be conducted, that disciplinary action be taken, or that the identity of the complainant be disclosed, the College will inform the complainant of its intent to move forward, despite the complainant's request. The College will inform the complainant prior to commencing its investigation or disclosing the identity of the complainant, and will take reasonable measures to protect and assist the complainant. In such cases, the College will also make reasonable efforts to protect the privacy of the complainant consistent with the needs of the investigation and resolution of the matter. However, the complainant should be aware that an investigation normally involves speaking with the respondent and others who may have relevant information about the incident and disclosing the identity of the complainant, as necessary, during those conversations. A complainant may receive support and safety services regardless of his or her level of participation or engagement with any investigation or hearing processes discussed in this policy.

Administrative Resolution

At the time a report of sexual misconduct is made, or any time thereafter, a complainant also is free to request that the matter be resolved through administrative resolution. The College, in its discretion, also may recommend an administrative resolution of a sexual misconduct complaint. An administrative resolution endeavors to address the effects of the reported behavior, and to prevent similar behavior in the future, without conducting or concluding, as applicable, a formal investigation and hearing.¹⁴ Participation in administrative resolution is entirely voluntary, and the complainant, the respondent, and the College must all agree to participate to initiate the process. Once begun, any of the complainant, respondent, or the College may withdraw from and terminate the administrative resolution process. The terms of an administrative resolution, if successful, may include any of the supportive measures or accommodations discussed above, as well as other arrangements agreed to by the parties. If an agreement acceptable to the College, the complainant, and the respondent is reached through administrative resolution, the matter is considered to be resolved and the terms are implemented. The Title IX Coordinator will maintain records of all administrative resolutions.

Formal Investigation

¹³ For example, if it is believed necessary to ensure a safe, non-discriminatory environment for the College community, or if a complainant who initially was hesitant to move forward later seeks an investigation.

¹⁴ Administrative Resolution is not appropriate for all cases of sexual misconduct (*e.g.*, cases involving sexual violence). The College retains sole discretion to determine when Administrative Resolution may be pursued.



Appendix A Sexual Misconduct Policy

If a complainant requests a formal investigation and hearing, or the Title IX Coordinator determines that the balance of factors requires that a formal investigation and hearing be conducted, a formal investigation will proceed in accordance with the following parameters:

- **Designation of an Investigator.** As a first step, the Title IX Coordinator will designate an internal or external investigator (“Investigator”) to conduct a prompt, thorough, and impartial investigation of the reported sexual misconduct. The Title IX Coordinator may consult with the College’s senior administrators regarding the designation of the Investigator. Any individual designated as an Investigator will satisfy the training requirements mandated by applicable federal and state laws and be free of conflicts of interest. The Title IX Coordinator may not serve as the Investigator.
- **Notice of Charges and Procedure.** Following his or her designation, the Investigator will notify the parties to the complaint that the College has determined to move forward with an investigation, and provide the parties with information regarding the investigation process. The Investigator’s notice to the parties will also include written notice of the charges made against the respondent. The notice will be specific and provide 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. As the investigation proceeds, the Investigator will provide notice to each party to the complaint regarding meetings at which such party may or must be present. The Investigator also will provide the parties with an updated notice of the charges or basis for the charges if either changes during the course of the investigation.
- **Fact-Finding.** The Investigator will notify and seek to meet with all involved parties separately (*e.g.*, the complainant, the respondent, and identified witnesses) and also will gather other evidence and information relevant to the determination as to whether or not a policy violation has occurred. The investigation may include, to the extent relevant, interviews of other witnesses and the review of pertinent documentation (*e.g.*, student or personnel files, relevant law enforcement documents). At all points during the fact-finding aspect of the investigation, the process will remain impartial and balanced.
- **Opportunity to be Heard.** The complainant and respondent will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. However, witnesses cannot participate solely to speak about an individual’s character; they must have information deemed relevant to the investigation by the Investigator.
- **Prior Sexual History or Mental Health Diagnosis.** A complainant’s or respondent’s prior sexual history with persons other than the other party involved in the investigation or their own mental health diagnosis or treatment will not be considered as evidence during an investigation or hearing. However, where there is a current or ongoing relationship between the complainant and the respondent, and the respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties.
- **Use of Advisors during an Investigation.** Throughout the investigation process, the complainant and respondent both have the right to be accompanied and counseled by an advisor of his or her choice. The advisor may be any person who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors (at the party’s own expense if the advisor is a paid advisor) at any meeting or proceeding related to the investigation and resolution of a complaint. The advisor cannot



Appendix A Sexual Misconduct Policy

actively participate or speak on behalf of the complainant or respondent. The Title IX Coordinator and Investigator must be advised in writing that an advisor will be present at least 24 hours before any scheduled meeting or proceeding.¹⁵ The College reserves the right to have its own legal counsel present. If any advisor's conduct is not consistent with these guidelines, he or she may be excluded from the process.

- **Timing.** The Investigator will endeavor to complete an investigation expeditiously. The process may be extended for administrative resolution (discussed below) and also may be extended for good cause.¹⁶ Any extension of timeframes, other than for administrative resolution, and the reason for the extension, will be shared with the parties in writing. Delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.
- **Coordination with Local Law Enforcement.** The standards for finding a violation of this policy are different from the standards used by local law enforcement to determine whether criminal conduct may have occurred. Conduct that constitutes sexual misconduct under this policy may not constitute sufficient evidence of a crime, and law enforcement may choose to decline investigating or prosecuting it as a crime. In the event local law enforcement does investigate allegations of sexual misconduct, any such investigation is independent of any investigation by the College. The College typically will not wait for the conclusion of any criminal investigation or proceeding to commence its own investigation (or to institute any remedial measures), and will make its determinations in accordance with this policy.¹⁷ However, the College may elect to temporarily delay its investigation to enable law enforcement to gather evidence and engage in a preliminary investigation if, for example, the College believes such delay would benefit the College's own investigation.
- **The Investigation Report.** At the conclusion of the investigation, the Investigator will prepare an investigation report. The report will be limited to a summary of the facts disclosed during the investigation and will not include conclusions as to responsibility. The Investigator has the discretion to determine the relevance of any proffered evidence and may determine what factual evidence is to be included in the investigation report. Both the complainant and the respondent will be given the opportunity to review a draft of the investigation report, to submit any additional comment or information to the Investigator, and to identify any additional information or witnesses. The Investigator will designate a reasonable time for review and response. The purpose of the draft report review period is to enable the complainant and respondent an opportunity to review the evidence gathered, to clarify or expand upon information contained in the report, and to provide additional evidence. Responses to the draft report must be submitted by the complainant or respondent (not by an advisor).
- **Access to Evidence.** Both the complainant and respondent will have equal access to the evidence and information that will be used in reaching a decision on the charges at issue, including the final investigation

¹⁵ This notification should include the full name and title of the advisor of choice, as well as contact information (phone, email and address.)

¹⁶ Extending for "good cause" would include extending to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for the College breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

¹⁷ At the request of law enforcement, the College may agree to defer its Title IX Investigation until after the initial stages of a criminal investigation. In such instances, the College will promptly resume its Title IX Investigation as soon as it is notified by law enforcement that there is no longer a need to delay, or the College otherwise determines that it must proceed.

report. Such evidence will be provided to both parties in a timely fashion and, absent exigent circumstances, well before any hearing at which the evidence will be used.

Once the investigation is complete and the investigation report has been finalized, it will be provided to the Ombud office (if the respondent is a student) or HR (if the respondent is an employee) for further consideration and action, consistent with the procedures set out below.

Hearing and Appeal

The following graphic illustrates the four phases of the Hearing and Appeal process:



Pre-Hearing Preparations

The Investigator will issue the investigative report to the Ombud office (if the respondent is a student) or HR office (if the respondent is an employee). Upon review, the Ombud/HR office may accept the report as rendered or may request that the Investigator conduct additional interviews or seek out other evidence as deemed to be appropriate. The Investigator will complete any additional investigation, and any supplemental or revised report, as promptly as is reasonable. The following pre-hearing preparations also will be carried out:

- **Selection of Adjudicator:** The Ombud or HR offices, as applicable, will either designate an internal administrator, or refer the matter to an external adjudicator with expertise in adjudicating cases of sexual misconduct (in either case, the “Adjudicator”).¹⁸ The Adjudicator will conduct a hearing on the matter as described more fully below. Neither the College’s Title IX Coordinators, nor the Investigator, may serve as the Adjudicator. Any individual designated as an Adjudicator will satisfy the training requirements mandated by applicable federal and state laws and be free of conflicts of interest.
- **Notice of Hearing:** The Adjudicator will notify the complainant and respondent, in writing, of: the date, time, and location of the hearing; the charges to be reviewed by the Adjudicator; the factual allegations concerning the violation; the provisions of College policy alleged to have been violated; and, the sanctions that may be imposed.
- **Pre-Hearing Review of Documents:** In advance of the hearing, the complainant and respondent will each have the opportunity to review the final investigation report, including any supplemental report, and any relevant documents that will be provided to the Adjudicator. The Adjudicator will be provided with the same set of materials. Absent a good cause showing, additional information will not be considered by the Adjudicator at this juncture if such information could have been provided to the Investigator during the investigation (meaning that during the investigation it was discoverable through the exercise of due diligence).

¹⁸ Reasons for referring a hearing to an external adjudicator include but are not limited to the presence of a conflict of interest, if the complainant is not a member of the College community, or if a matter presents complex evidentiary issues.



Appendix A Sexual Misconduct Policy

- **List of Witnesses:** The Adjudicator will identify any witnesses that he or she wishes to hear from at the hearing based on a review of the investigation report. Also, the complainant and respondent each have the right to request the presence of any additional witnesses at the hearing, provided such witnesses were identified and interviewed as part of the investigation. The Adjudicator may permit the participation of a witness who was not interviewed during the investigation only if the Adjudicator determines that the new witness' participation at the hearing is relevant and appropriate under the circumstances. In such cases, the Adjudicator will refer the matter to the Investigator for additional investigation, and direct the Investigator to prepare a supplemental report, which may delay the timing of the hearing. Finally, the College cannot compel the attendance of any witness.
- **Timing:** The date, time, or location of a hearing may be changed for good cause, at the discretion of the Ombud/HR office. Good cause may include, but is not limited to: the availability of the parties; the availability of witnesses; the timing of College breaks; efforts to utilize administrative resolution; to comply with a request by external law enforcement; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; or, to address other legitimate reasons. Any change to the date, time, or location of a hearing will be shared with the parties in writing and will include the reason for the extension. Delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

Hearing Procedures

Any hearing involving allegations of sexual misconduct will be carried out in accordance with the following procedures, so as to ensure that it is fair, impartial and provides a meaningful opportunity to be heard:

- **Use of Advisors During the Hearing:** The complainant and the respondent both have the right to be accompanied and advised by an advisor of their choice at the hearing and any related meetings (at the party's own expense if the advisor is a paid advisor), provided that the advisor is not otherwise a party or witness who was involved in the investigation. At least 24 hours before any scheduled meeting, hearing, or proceeding, the parties must advise the Title IX Coordinator and Investigator, in writing, that an advisor will be present. The College reserves the right to have its own legal counsel present during the adjudication process. While the advisor may be present, the advisor may not speak or otherwise participate in the hearing or meetings, may not address the Adjudicator or question witnesses, and must comport himself or herself in a manner that is not disruptive to the hearing or meetings.¹⁹
- **Presence at Hearing:** Neither the complainant nor the respondent is required to participate in person at the hearing in order for the hearing to proceed. Either party may request alternative testimony options that would not require physical proximity to the other party. This request should be made no less than five (5) business days prior to the hearing. If, despite being notified of the date, time, and location of the hearing, the complainant or the respondent is not in attendance, the hearing may proceed and sanctions may be imposed. In doing so, the Adjudicator will consider the available testimony and evidence. The decision of the Adjudicator will stand in the absence of clearly convincing evidence that emergency circumstances beyond the control of the complainant or the respondent, as applicable, prevented such person from being present at the hearing.

¹⁹ Whether an advisor is comporting him or herself in a manner that is not disruptive to the hearing or meetings is determined in the sole discretion of the Adjudicator.



Appendix A Sexual Misconduct Policy

- **Hearing Format:** The Adjudicator has the discretion to designate the specific hearing format. The following hearing format is presented as a general example:
 - The Adjudicator will explain the hearing process, provide an opportunity to all parties to ask questions about procedures, and read the charges.
 - The Investigator will provide a brief statement summarizing the investigation. The Adjudicator may then pose questions to the Investigator, including, at the discretion of the Adjudicator, additional written questions from the complainant or the respondent.
 - The Adjudicator may pose questions to the complainant, including, at the discretion of the Adjudicator, additional written questions from the respondent. The complainant may then supplement the information provided to the Adjudicator with a brief statement.
 - The Adjudicator may pose questions to the respondent, including, at the discretion of the Adjudicator, additional written questions from the complainant. The respondent may then supplement the information provided to the Adjudicator with a brief statement.
 - The Adjudicator will hear from witnesses that the Adjudicator determined to have information that is relevant to the matter, first on behalf of the complainant and then on behalf of the respondent. The Adjudicator will question each witness. Generally, the complainant and the respondent also will be given an opportunity to pose questions to the witnesses and to review the answers received (if one party is provided an opportunity to question a witness, the other party will be provided the same opportunity). However, the parties will not be permitted to directly question one another in person. Instead, each party will be allowed to submit questions to the Adjudicator who will pose the questions to the opposing party. The Adjudicator will then provide the answers received to the party that posed the questions. The Adjudicator reserves the right to reject questions that are irrelevant, inappropriate, or without factual basis.
 - At the conclusion of the presentation of all witnesses, the complainant and the respondent will each be given a brief final opportunity to address any outstanding issues of fact and to make an impact statement.

- **Recording:** No recording or transcript of the hearing will be prepared.

Determination of Violation and Sanctions; Notice of Outcome

At the conclusion of the hearing, the Adjudicator will objectively weigh the evidence that has been presented and, based on a preponderance of such evidence, conclude whether the respondent violated this policy. In the event the Adjudicator determines that there is a violation of this policy, he or she also will determine the appropriate sanction(s). In determining the appropriate sanction(s), the Adjudicator may consider a number of factors, including:

- The nature of the sexual misconduct at issue, including whether it involved violence.
- The impact of the sexual misconduct on the complainant.
- The impact of sexual misconduct on the College community.
- The ability of the College, going forward, to maintain a safe and respectful environment conducive to learning.
- Any previous conduct violations by the respondent, both at the College or elsewhere, as well as any criminal convictions.



Appendix A Sexual Misconduct Policy

Potential sanctions against a student for a violation of this policy include, but are not limited to: reprimand or warning; change to academic schedule; disciplinary probation; postponement of degree conferral; revocation of honor awards; restriction of access to college facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or expulsion. Sanctions may be issued individually, or a combination of sanctions may be imposed.

Potential sanctions against an employee for a violation of this policy include, but are not limited to: reprimand or warning; change to teaching schedule; disciplinary probation; revocation of titles or honors; restriction of access to college facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or termination of employment.

The complainant and respondent will be notified simultaneously in writing (which may include email) of the outcome of a hearing, relevant findings of fact, the rationale for the outcome, including any sanctions, and the options for appeal within five (5) business days of date of the completion of the hearing, unless circumstances warrant extending that timeframe.

Transcript Notations

Where the sexual misconduct determined to have occurred was committed by a student respondent, constitutes a “crime of violence” as defined under New York State Education Law § 6444(6), and where the sanction(s) imposed included either a suspension or expulsion, the transcript of the respondent will include the applicable notation on his or her transcript: “Suspended after a finding of responsibility for a code of conduct violation” or “Expelled after a finding of responsibility for a code of conduct violation.” If a respondent withdraws from the College with a charge of a violation of this policy pending, a notation will be made on such student’s transcript that he or she “Withdrew with conduct charges pending.” If a withdrawing respondent declines to complete the disciplinary process and the College elects, in its discretion, to defer scheduling a hearing until the respondent returns to the College, the notation of withdrawal will become permanent in the event that the respondent does not return within eighteen months.

If the Adjudicator’s decision provides for a transcript notation of suspension, a respondent may submit to the Ombud a written request that such notation be removed, provided that he or she has met any applicable requirements listed in the Adjudicator’s decision prior to making any such request. In addition, a transcript notation reflecting a suspension cannot be removed until one year after the conclusion of the suspension. Transcript notations of an expulsion will not be removed. In the event that a finding of responsibility is vacated by the College, any such transcript notation will be removed.

Right to Appeal

The complainant or respondent may appeal the Adjudicator’s determination to a sexual misconduct Appeal Panel within five (5) business days. The sexual misconduct Appeal Panel will consist of three persons designated by the Ombud/HR office, in consultation with the College’s senior administrators. All persons serving on the sexual misconduct Appeal Panel will have training or experience with respect to the adjudication of sexual misconduct and be impartial and free from bias or conflict of interest. Students may not serve on the panel.

Grounds for an appeal are limited to: (i) a material procedural error; (ii) relevant evidence, previously unavailable, that could affect the outcome; or, (iii) the sanction being substantially disproportionate to the violation. Each party will be notified if the other party files an appeal, and will be provided the opportunity to submit a responsive appeal statement within five (5) business days of being notified. Appeal statements should be no more than three pages and must be submitted by the complainant or respondent (not by an advisor). The parties do not appear before the Appeal Panel.



Appendix A Sexual Misconduct Policy

Following its review, the Appeal Panel may either: (i) affirm the Adjudicator’s determination; (ii) alter the sanctions rendered; or, (iii) send the matter back to an Adjudicator for further proceedings consistent with its decision. Unless the Appeal Panel sends the matter back to the Adjudicator for further proceedings, the decision of the Appeal Panel is final and the matter is closed.

Case File

Every complaint will trigger the creation of an investigatory file. The investigatory file will consist of the initial complaint, assessment, and accommodation documentation prepared by the Title IX Coordinator, the final investigative report, including a record of any sanctions or remedial action taken, any audio recording of the hearing, and any documents created or used during the investigation. The Office of the Ombud or HR, as appropriate, will maintain the investigatory file for the duration of the investigation and for a period of five years following its conclusion. The College may grant the parties reasonable access to the record during business hours, consistent with applicable state and federal privacy laws.

Disclosure of Outcome

The College will not share information obtained during the course of a sexual misconduct proceeding with parties external to the College unless compelled to do so, such as by receipt of a lawfully issued subpoena. The College may share information about the proceeding internally with “school officials” with a “legitimate educational interest” consistent with the Family Educational Rights and Privacy Act (FERPA). The parties to the proceeding choose whether they will disclose or discuss the outcome of a sexual misconduct proceeding.

Special Procedure Concerning Complaints against a Title IX Coordinator, the President, or a Senior Administrator

If a complaint involves alleged conduct on the part of the Title IX Coordinator, the President will designate the investigator and oversee all interim measures and accommodations. The investigation, adjudication, and resolution process will otherwise follow this policy.

If a complaint involves alleged conduct on the part of the College’s President or a senior administrator, the College’s Board of Trustees will determine whether to proceed with a formal investigation and hearing, designate an external, independent investigator if required, and oversee all interim measures and accommodations. Based on the information gathered by the investigation, the Board will prepare and issue a written report, which will include a determination, based on a preponderance of such evidence, as to whether the respondent violated this policy. In the event the Board determines that there is a violation of this policy, the Board will also determine the appropriate sanction(s). The determination of the Board is final and not subject to appeal.



Appendix A Sexual Misconduct Policy

VI. GLOSSARY OF TERMS USED IN THE ASA COLLEGE ANNUAL SECURITY AND FIRE SAFETY REPORT AND SEXUAL MISCONDUCT POLICY

Affirmative Consent and **Consent** mean 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 action create clear permission regarding willingness to engage in 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. The following principles, along with the above definition, are used to evaluate whether sexual activity was consensual:

- Consent to form of sexual contact (such as kissing or fondling) or prior consensual activity between or with any party does not necessarily constitute consent to any other form of sexual activity or to sexual activity in the future.
- Current or previous dating relationship is not sufficient to constitute consent.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and alcohol.
- Consent may be initially given but withdrawn at any time during sexual activity by expressing in words or actions that they no longer want the sexual activity to continue.
- Consent cannot be given when a person is incapacitated, that is, if she/he lacks the physical or mental ability to make informed, rational decisions and therefore cannot consent to 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 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.

Sexual activity with a minor (a person under 18 years old) is not consensual, because a minor is considered incapable of giving consent due to age.

Bystander means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules and policies of the College. A bystander is an individual who witnesses or learns of violence or impending violence, but is not directly impacted as a victim or survivor of this violence.

Complainant encompasses the terms victim, survivor, claimant, witness with victim status, or any other term used by the College to reference a Covered Party who reports an alleged violation of this policy to the College.

Confidentiality may be offered by an individual who is not required by law to report known incidents of Sexual Assault or other crimes to College officials, in a manner consistent with State and federal law, including but not limited to limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681 (a). Licensed mental health counselors, medical providers, and pastoral counselors are examples of College employees who may offer confidentiality.

Course of Conduct means two or more acts, including, but not limited to, acts in which a stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person, or interferes with a person's property.



Appendix A Sexual Misconduct Policy

Dating Violence means violent or coercive behavior committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but it is not limited to, sexual, physical, or psychological abuse, or threat of such abuse.

Domestic Violence means a felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the complainant;
- a person with whom the complainant shares a child in common;
- a person who is cohabiting with or has cohabited with the complainant as a spouse or intimate partner;
- a person similarly situated to a spouse of the complainant under the domestic or family violence laws of New York; or
- any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of New York.

Forcible Rape means the carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity or because of his or her youth. This offense includes the forcible rape of both males and females.

Forcible Sodomy means oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity or because of his or her youth.

Incest means non-forcible sexual intercourse between people who are related to each other within the degrees wherein marriage is prohibited by law.

Intimidation means unlawfully placing another in reasonable fear of bodily harm through the use of threatening words or other conduct, but without displaying a weapon or subjecting the complainant to actual physical attack.

Intimidation means unlawfully placing another in reasonable fear of bodily harm through the use of threatening words or other conduct, but without displaying a weapon or subjecting the complainant to actual physical attack.

No Contact Order means a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

Non-consensual Sexual Intercourse means any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any body part or object by an individual upon another individual without consent or by force. Intercourse means vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact.)

Non-consensual Sexual Contact means any intentional sexual touching, however slight, with any body part or object by an individual upon another individual in a sexual manner without consent. Intentional sexual contact



Appendix A Sexual Misconduct Policy

includes contact with the breasts, buttocks, or groin or touching another with any of these parts; making another person touch any of these body parts; and any intentional bodily contact in a sexual manner.

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but will still not disclose information learned from a complainant or Bystander to a crime or incident more than necessary to comply with this and applicable laws, including informing appropriate College officials.

Respondent means the individual alleged to have committed acts constituting sexual misconduct, regardless of whether such individual has entered into the College's conduct process for responding to complaints of sexual misconduct.

Responsible Employee is a College employee who has a duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty. At the College, this definition encompasses virtually every College employee, including all faculty, staff and administrators.

Retaliation means taking any adverse action or attempting to take adverse action against an individual for making a good faith report of sexual misconduct or participating in an investigation or proceeding involving allegations of sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

Sexual Activity includes any "Sexual Act" or "Sexual Contact," as those terms are defined in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).

Sexual Act means:

- Contact between the penis and the vulva or the penis and the anus where penetration occurs, however slight;
- Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- The penetration, however slight of the anal or genital opening of another by 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
- The intentional touching, not through 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 Assault includes non-consensual sexual intercourse and non-consensual contact.

Sexual Assault with an Object means the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity or because of his or her youth.

Sexual Coercion is the application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

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



Appendix A Sexual Misconduct Policy

Sexual Exploitation means abuse or exploitation of another person's sexuality without consent, for the perpetrator's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Examples of sexual exploitation include:

- Causing or attempting to cause the incapacitation of another person for purposes of compromising that person's ability to give affirmative consent to the sexual activity;
- Causing the prostitution of another person;
- Electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person without the person's consent;
- Disseminating or posting images of private sexual activity;
- Engaging in voyeurism;
- Distributing intimate or sexual information about another person; or
- Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

Sexual Harassment means unwelcome conduct of a sexual nature including, but not limited to, sexual advances, request for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature when:

- Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education or campus life activities, or used as the basis of any academic, student life or employment decision (*quid pro quo*); or
- Such conduct is sufficiently severe, persistent or pervasive such that it unreasonably interferes with or limits an individual's ability to participate in, or benefit from the College's education or work programs or activities (hostile environment). Whether a hostile environment has been created will be evaluated from both a subjective and an objective perspective.

In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including, but not limited to:

- the degree to which the conduct affected one or more students;
- the type, frequency, and duration of the conduct;
- the identity of and relationship between the alleged harasser and the subject or subjects of the harassment;
- the number of individuals involved;
- the age and sex of the alleged harasser and the subject or subjects of the harassment;
- the locations of the incidents and the context in which they occurred;
- the effect of the conduct on the complainant's mental or emotional state;
- whether the conduct unreasonably interfered with the complainant's educational performance or participating in College programs and activities;
- whether the conduct implicates concerns related to academic freedom or protected speech; and
- whether the conduct arose in the context of other discriminatory conduct.

Sexual Misconduct means exposing a person to a wide range of unwelcomed prohibited sexual behavior that is committed without consent or by intimidation, coercion, threat, or force. Sexual misconduct includes, but is not limited to, sex discrimination, sexual harassment, sexual assault, sexual violence, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct can occur between strangers or



Appendix A Sexual Misconduct Policy

acquaintances, as well as persons involved in an intimate or sexual relationship. Sexual misconduct can occur in heterosexual and homosexual relationships.

Sexual Violence refers to a sexual act perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because of intellectual or other disability prevents the student from having the capacity to consent.) A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Stalking means to knowingly engage in a course of conduct directed at a specified person when that course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer other emotional distress. Stalking occurs when a person knowingly and without lawful justification, on at least two separate occasions, follows another person or places the person under surveillance or any combination thereof. Other examples of stalking may include:

- At any time, transmitting a threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person;
- Placing that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint of that person or a family member of that person;
- Making threatening gestures that intimidate a person;
- Voyeurism;
- Invading one's personal space; or
- Making a person feel he or she has to avoid certain places or activities.

Statutory Rape means non-forcible sexual intercourse with a person who is under the statutory age of consent.