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POLICY AGAINST  
SEX-BASED  
DISCRIMINATION

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HARASSMENT  
&  
SEXUAL MISCONDUCT

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## KEY RESOURCES FOR REPORTING

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**IMPORTANT INFORMATION:**

Note: This information is provided in greater detail within this handbook.

Any member of the SVA community who has a question, concern, or wishes to file a report related to discrimination, harassment, or sexual misconduct should contact the Title IX Coordinator.

SVA's Title IX Coordinator is:

**Laurel Christy**

Business Office: 340 East 24th Street

Ground Floor, New York, NY 10010

Email: [lchristy@sva.edu](mailto:lchristy@sva.edu)

Phone: 212.592.2153

Website: [sva.edu/sexualmisconduct](http://sva.edu/sexualmisconduct)

**REPORTING TO LAW ENFORCEMENT**

If you are in immediate danger, dial 911 and/or Security Services at 212 696 4632, and attempt to get to a safe place.

Acts of violence, including sexual assault, domestic violence, dating violence, and stalking, are against the law. If you are not in immediate danger and would like to report an incident to the police, you can do so by contacting the NYPD as follows. A staff member from SVA can accompany you to make a report with the police.

- The New York City Police Department Sex Crimes Unit at 212.374.5076, or
- NYPD 13th Precinct at 230 East 21st Street, New York, NY, 10010

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## **RIGHTS IN CASES OF SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE AND STALKING**

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## **STUDENTS' BILL OF RIGHTS**

All students have the right to:

- make a report to local law enforcement and/or state police;
- have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- make a decision about whether or not to disclose a crime or violation and participate in the complaint process and/or criminal justice process free from pressure by the institution;
- participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- be treated with dignity and to receive from the institution courteous, fair, and respectful healthcare and counseling services, where available;
- be free from any suggestion that the reporting individual was at fault when these crimes and violations were committed, or should have acted in a different manner to avoid such crimes or violations;
- describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- be protected from retaliation by the institution, any student, the responding party and/or their friends, family and acquaintances within the jurisdiction of the institution;
- access to at least one level of appeal of a determination;
- be accompanied by an advisor of choice who may assist and advise a reporting individual or responding party throughout the complaint, investigation, hearing and appeal process including during all meetings and hearings related to such process; and
- exercise civil rights and practice of religion without interference by the investigative, judicial or conduct process of the institution

The following link will direct you to SVA's website where this information is also available:

[sva.edu/sexualmisconduct](http://sva.edu/sexualmisconduct)

## **RIGHTS OF ALL REPORTING PARTIES:**

- The right to request interim measures to ensure his or her safety during the complaint process.
- The right to a prompt, thorough, fair and impartial investigation and appropriate resolution of all credible complaints of sexual misconduct.
- The right to be treated with respect by SVA staff throughout the process.
- The right to be notified of available counseling, mental and physical health services on and off campus.
- The right to identify witnesses and to request that the Investigator contact those individuals as part of the investigation.
- The right to have an advisor present in a support or advisory role during the complaint, investigation, hearing and appeal process.
- The right to report the incident to off-campus authorities and/or law enforcement and to be assisted by SVA staff in doing so.
- The right to know what provisions of this policy the responding party is charged with violating.
- The right to be informed of the final determination and sanctions, if any, in writing to the extent permissible by law.
- The right to privacy and the assurance that information regarding the complaint will be shared only with those necessary.
- The right to receive timely notice of any meeting relating to the complaint process at which the both the reporting and responding party will be present.

## **RIGHTS OF THE RESPONDING PARTY**

- The right to a prompt, thorough, fair and impartial investigation and appropriate resolution of all credible complaints of sexual misconduct.
- The right to be treated with respect by SVA staff throughout the process.
- The right to a presumption of innocence before a determination is made.
- The right to be notified of available counseling, mental and physical health services, on and off campus.
- The right to identify witnesses and other parties, and to request that the Investigator contact those individuals as part of the investigation.
- The right to have an advisor present in a support or advisory role during the complaint, investigation, hearing and appeal process.
- The right to receive written notice of the policy provisions he or she is alleged to have violated.
- The right to be notified of possible sanctions that may result if the responding party is found responsible for violating this policy.
- The right to be informed of the final determination and any sanctions in writing.
- The right to privacy and the assurance that information regarding the complaint will be shared only with those necessary.
- The right to receive timely notice of any meeting relating to the process at which both the respondent and the reporting party will be present.

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**POLICY AGAINST SEX-BASED  
DISCRIMINATION, HARASSMENT AND  
SEXUAL MISCONDUCT**

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## STATEMENT OF EQUAL OPPORTUNITY

The School of Visual Arts is committed to providing a working, learning, and living environment free from unlawful discrimination and harassment. SVA does not discriminate on the basis of any protected characteristic, in admissions, financial aid, employment, or in the administration of any SVA program or activity.

SVA's policies regarding discrimination, including sexual and other unlawful harassment, reflect its responsibility as an educational institution whose environment must be conducive to learning and mutual trust. Its concern is for all members of the College community—students, faculty and staff. Its procedures are designed to address any alleged violations of policy promptly and with equity to all involved, to maintain privacy if possible and to ensure that retaliation does not occur when rights under this policy are exercised. SVA is committed to provide those who feel that they have been subjected to conduct in violation of this policy with mechanisms for seeking redress and resources for support. Accordingly, SVA prohibits retaliation against any person for complaining of a violation of this policy or for participating in any investigation or proceedings related to an alleged violation.

The School of Visual Arts is committed to providing equal treatment and opportunity for its students, to maintaining an environment that is free of bias, prejudice, discrimination and harassment, and to establishing fair complaint procedures. The School of Visual Arts does not discriminate on the basis of race, color, religion, creed, sex, sexual orientation, gender (including gender identity or expression), pregnancy, age, disability, national origin, military or veteran status, marital status, parental or familial status, alienage or citizenship status, domestic violence status, genetic predisposition or carrier status, partnership status or any other legally protected characteristic ("protected characteristics") in employment,

student admission, or any other programs or activities. The College is firmly committed to the rights of all members of its community— students, faculty and staff—who must interact through mutual respect and trust to ensure that the campus remains a center of learning. Any student, faculty or staff member who violates College policy by subjecting another to discrimination or harassment of any kind (including sexual discrimination and harassment) will be subject to appropriate disciplinary action, including immediate expulsion from the College or termination of employment, in accordance with the policies and procedures outlined in this Handbook.

## TITLE IX COORDINATOR

SVA's Title IX Coordinator, under the direction of the Title IX Officer, has overall responsibility for the administration of this Policy and has been designated to coordinate compliance activities under this Policy and applicable federal, state and local laws, including without limitation Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act.

The School of Visual Arts Title IX Coordinator is:

- Knowledgeable and trained in SVA's policies and procedures and relevant federal, state and local laws;
- Available to answer questions about this policy and the associated procedures;
- Able to advise regarding available resources for support and reporting options; and
- Available to receive complaints of violations of this policy.

SVA's Title IX Coordinator is:

### **Laurel Christy**

Business Office: 340 East 24th Street  
Ground Floor, New York, NY 10010

Email: [lchristy@sva.edu](mailto:lchristy@sva.edu)

Phone: 212.592.2153

**Any member of the SVA community who has a question, concern, or wishes to file a report related to discrimination, harassment, or sexual misconduct should contact Laurel Christy directly.**

### **ACADEMIC FREEDOM**

Nothing in this policy shall abridge academic freedom or the College's educational mission or prohibit genuine contributions to the marketplace of ideas. Prohibitions against discrimination and harassment do not extend to statements or written materials that are germane to the classroom subject matter and circulated in the context of legitimate classroom discourse.

### **PROHIBITED CONDUCT**

All members of the School of Visual Arts community, including applicants, students, employees (both faculty and staff) and third parties doing business with SVA are prohibited from engaging in discrimination, sex-based or otherwise, discriminatory harassment, sexual or sex-based harassment, sexual assault, dating violence, domestic violence, sexual exploitation, stalking, and retaliation as those terms are defined below. Any attempt to engage in prohibited conduct may itself constitute a violation of this policy. Any actions knowingly taken to aid, facilitate or encourage another to engage in prohibited conduct and any actions taken for the purpose of interfering in the investigation of an allegation of prohibited conduct shall constitute a violation of this policy. Anyone found to have violated this policy will be subject to disciplinary action as set forth in the procedures below.

### **TITLE IX**

SVA is committed to complying with Title IX of the Higher Education Amendments Act of 1972, and which prohibits discrimination on the basis of sex in educational programs or activities, admission and employment. Under certain circumstances, sexual misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX.

Individuals with questions or concerns that pertain to Title IX are encouraged to speak with SVA's Title IX Coordinator. Students can also seek guidance from the State Education Department and the New York State Office of Campus Safety as well as the U.S. Department of Education's Office of Civil Rights.

The safety and well-being of every member of the College is of primary importance. SVA is committed to providing programs, activities and an educational environment free from sex discrimination and fostering a community that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints.

### **POLICY APPLICATION**

#### **When and to whom does this policy apply?**

This policy applies to School of Visual Arts' applicants, students and employees, including faculty and staff, as well as third parties doing business with SVA or attending SVA sponsored programs or activities.

This Policy applies to any allegation of sexual misconduct regardless of where the alleged prohibited conduct occurred, or if the conduct is related to the College's academic, educational, or extracurricular programs or activities. This policy shall apply to conduct that occurs on SVA's campus, on SVA technological systems, at SVA sponsored programs, activities and events, as well as off-campus when the accused is a matriculated SVA student or when the conduct has a continuing adverse impact upon the SVA work or school environment. While the College will take all necessary remedial measures related to policy violations committed by third parties, the College's disciplinary authority, however, may not extend to third parties who are not students or employees of the College. Additionally, while this Policy is not limited to on-campus conduct, SVA's ability to investigate off-campus conduct may be limited.

Each student shall be responsible for his or her conduct from the time of application for admission through the awarding of a degree, as well as during periods between terms of actual enrollment, study abroad and leaves of absence or suspension.

### **CONSENSUAL ROMANTIC RELATIONSHIPS**

The integrity of the teacher-student relationship is the foundation of the SVA educational mission. As mentor, educator and evaluator, the teacher is entrusted with considerable, and disproportionate, power. This can heighten the vulnerability of the student, and the potential for coercion. Whenever a teacher is responsible for directly supervising a student, a romantic or sexual relationship between them is inappropriate. Any such relationship jeopardizes the integrity of the education process by creating a conflict of interest, and may lead to an environment not conducive to learning. Therefore, College policy prohibits faculty from having a romantic and/or sexual relationship with their students, including those for whom they are likely to have future supervisory responsibility. Likewise, they must not directly supervise any student with whom they have or have had a sexual relationship.

For purposes of this policy, "direct supervision" includes the following activities (on or off campus): course teaching; evaluations; grading; advising for a formal project such as a thesis or research; recommendations for employment, fellowship or awards. "Teachers" include faculty members as well as graduate and professional students serving as teaching fellows or in similar institutional roles. "Student" refers to those enrolled in any and all programs of the College.

Romantic/sexual relationships between students and staff are likewise prohibited. Such personal relationships often interfere with the efficient operation of SVA, as these relationships can form the basis for misunderstandings, complaints of favoritism, and even claims of sexual harassment.

Exceptions to the application of this policy with regard to staff will only be granted in extraordinary circumstances. It is the responsibility of any staff member seeking an exception to this policy to contact the Human Resources Department. It is also the responsibility of any staff member contemplating activities that might be covered by this policy to consult the Human Resources Department to obtain any desired clarification of whether this policy applies to the activity under consideration.

Violations of, or failure to correct violations of these conflict-of-interest principles by the faculty or staff member will be grounds for disciplinary action, up to and including termination of employment.

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## FILING A COMPLAINT

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## **INTERNAL COMPLAINT PROCEDURES**

### **Complaints of Sexual Misconduct, Including Sexual or Gender-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence, Sexual Exploitation, Stalking and Related Retaliation Claims**

Regardless of whether a community member decides to file a complaint with SVA, SVA strongly encourages anyone who believes they may have been the victim of sexual violence to seek immediate assistance. In the event of an assault or other act of sexual violence, contact Security Services at 212.592.2025, New York City Police at 911, or the New York City Police sexual crimes unit at 212.374.5076. It is extremely important that victims of physical assault receive comprehensive medical attention promptly, both to ensure their health and safety and to preserve physical evidence. In the case of sexual assault, in particular, victims should go immediately to a hospital emergency room. Resources are available to assist victims both on campus and off-campus.

Individuals are protected from sexual misconduct regardless of their 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 or any other protected characteristic.

## **FILING AN INTERNAL COMPLAINT**

It is in the best interest of the entire SVA community for individuals to report incidents of sexual misconduct. The Title IX Coordinator as well as the Assistant Title IX Coordinators and designated Investigators, are trained to investigate reported incidents, address inquiries and coordinate SVA's compliance efforts. Any member of the SVA community who believes he or she has been subjected to sexual misconduct should submit a complaint, if possible in writing, to the Title IX Coordinator or the Director of Student Affairs. The complaint should clearly describe the alleged incident, when and where it occurred, who was involved, if known, and the desired remedy, if known. Additionally, the initiator of a formal complaint should submit any supporting materials as quickly as possible. SVA's Title IX Coordinator works closely with the Director of Student Affairs to oversee the counseling and investigation of all matters involving student allegations of sexual misconduct. Individuals who observe or become aware of an incident of sexual misconduct are strongly encouraged to report the incident. All reports of sexual misconduct involving students made to any SVA employee, except staff designated as confidential resources within the Counseling and Health Services Office, must be reported to SVA's Title IX Coordinator.

Responsible employees are required to report any incident of sexual misconduct involving a student and of which they become aware, to the Title IX Coordinator.

Responsible employees include:

- senior administrators
- department chairs
- department coordinators
- faculty
- program directors
- program staff, including but not limited to:
  - Student Affairs staff
  - Residential Life staff (including RAs)
  - Admissions staff
  - Security Services staff
  - Officers of the College
  - Human Resources staff

Reports from Individuals other than the Victim: If SVA receives a report of an incident of sexual misconduct anonymously or from a third party, the alleged victim will be informed of the report promptly. The policy and procedures will be applied in the same manner as if the alleged victim reported the incident.

**Alcohol and/or Drug Use Amnesty:** The health and safety of every student at SVA is of utmost importance. SVA 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. SVA strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to SVA officials. Any victim or bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SVA or law enforcement will not be subject to SVA'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.

**Passage of Time:** Community members are encouraged to make complaints of sexual misconduct at any time and can do so by contacting a responsible employee. Please note that a delay in reporting could weaken SVA's ability to gather information that will be used to determine whether a person is responsible for sexual misconduct. Furthermore, the ability of SVA to take action may be limited by the matriculation or employment status of the responding party.

**Unknown or Unaffiliated Assailant:** If the responding party is unknown or is not a member of the SVA community, SVA's ability to carry-out the investigation and remediation process may be adversely affected. The Title IX Coordinator will assist the reporting party in identifying appropriate resources and contacting local law enforcement if the reporting party would like to file a report. SVA will take appropriate steps as necessary to protect the reporting party and the community from future policy violations or misconduct.

## **REPORTING TO LAW ENFORCEMENT**

*If you are in immediate danger, dial 911 and/or Security Services at 212 696 4632 and attempt to get to a safe place.*

Acts of violence, including sexual assault, domestic violence, dating violence, and stalking, are against the law. If you are not in immediate danger and would like to report an incident to the police, you can do so by contacting:

- The New York City Police Department Sex Crimes Unit at 212.374.5076, or
- NYPD 13th Precinct at 230 East 21st Street, New York, NY, 10010

If you would like someone to assist you in contacting the police or to go with you to the police department, any of the following individuals at SVA can assist you:

- Title IX Coordinator
- Director of Human Resources
- Director of Student Affairs

- Associate Director of Student Affairs
- Associate Director of Student Health and Counseling Services
- Associate Director of Residence Life

SVA will investigate a violation of this policy regardless of whether a criminal investigation is being conducted. SVA will not delay its investigation, except when delay is specifically requested by law enforcement and, absent special circumstances, will not delay for more than 10 days. SVA may coordinate with law enforcement as appropriate to avoid compromising the criminal investigation.

Victims may report an incident to law enforcement regardless of whether they choose to report the incident to SVA. Conversely, reporting an incident to SVA does not require the reporting party to report the incident to law enforcement. The School of Visual Arts reserves the right to report any crime to law enforcement, but, as a general rule, will not alert law enforcement to an incident of sexual misconduct without the reporting party's permission, except where there is a serious and immediate threat to the campus community, when a minor is involved, or as otherwise required by law.

In addition to the interim measures that SVA may take, law enforcement may be able to provide additional protections, such as a restraining order. SVA can assist students in contacting law enforcement and legal services organizations to learn about additional remedies that may be available.

## **DIFFERENCES BETWEEN COLLEGE PROCEDURES AND CRIMINAL PROCEDURES**

While conduct prohibited by College policy may also be unlawful (sexual harassment, for example), the College's procedures, both formal and informal, are not a substitute for the protections and judicial process provided by the courts. College action does not follow the same rigid rules of formal legal proceedings, often includes counseling for those involved, and aspires to resolve the problem with a concern for the dignity of all. If disciplinary measures are deemed appropriate, they will be taken.

Hearings are informal in nature and do not necessarily involve formal rules of evidence. College fact-finding proceedings are conducted privately and are not open to the public. Every effort is made to preserve the confidentiality of both informal and formal proceedings, and the records produced by them.

The involvement of an individual on either a formal or informal basis in the proceedings described in this policy (i.e., with the College), is neither an invitation to institute more formal proceedings outside the institution nor does it prevent an individual from doing so. The College has no control over these actions and will handle internal complaints in accordance with the policies and procedures contained herein.

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## PROCESSING A COMPLAINT INVESTIGATION

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Title IX requires that SVA investigate all incidents about which it knows or has reason to know in order to protect the health and safety of the SVA community. Upon receipt of a complaint, the Title IX Coordinator will review the complaint to make an initial assessment of whether the facts as alleged would constitute a violation of SVA policy. If additional information is necessary to make this determination, the Title IX Coordinator will meet with the reporting party to gather additional, preliminary information.

If the Title IX Coordinator determines that the allegations may constitute a violation of SVA policy, the Title IX Coordinator will provide the reporting party with a written copy of this Policy and Procedure, explain the investigation process and identify available interim measures and support resources as appropriate (described below).

As soon as possible but no later than two business days after determining that a policy violation may have occurred, the Title IX Coordinator or an Assistant Title IX Coordinator will contact the responding party to provide a written copy of this Policy and Procedure, explain the investigation and adjudication process, identify and explain any interim measures imposed that impact the responding party, identify the provision of this policy the responding party has been accused of violating and possible sanctions, and identify available support resources. The Title IX Coordinator and/or Assistant Title IX Coordinator may interview the responding party during this meeting or at a separate meeting.

If the facts as alleged in the complaint do not constitute a violation of SVA policy, as determined by the Title IX Coordinator, the reporting party will be notified and no formal investigation will occur.

SVA will endeavor to complete the investigation and adjudication process, excluding any appeal, within 60 days of the receipt of the complaint, if not sooner. Should this process

last longer than 60 days, the Title IX Coordinator will maintain communication and provide an updated timeline to all parties.

### **PRIVACY**

SVA employees who cannot guarantee confidentiality will maintain the reporting party's privacy to the greatest extent possible. The information the reporting party provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator and/or designated Investigator to investigate and/or seek a resolution. Only people who have a need to know about the incident will be informed, and information will be shared only as necessary with investigators, the complainant, witnesses and the responding party to ensure an effective and thorough investigation. While SVA will take all appropriate steps to safeguard the privacy of the parties, the information collected during the investigation process may be subpoenaed in civil or criminal proceedings.

### **INTERIM MEASURES**

After reviewing the complaint, the Title IX Coordinator may take interim measures to protect the safety and well-being of the individuals involved and the SVA community. Interim measures are preliminary, and only in effect until the process is complete and a decision is rendered.

Example interim measures are listed below. SVA will determine which measures are appropriate on a case-by-case basis. Not all of the measures listed below will be necessary in every case to keep students, faculty and employees safe and ensure their equal access to educational programs and activities. If either the reporting party or responding party identifies additional interim measures beyond those offered, SVA will consider whether the request can be granted. In those instances where interim measures affect both the reporting party and the responding party, SVA will minimize the burden on the reporting party when appropriate.

**Available interim measures include:**

- An order directing the parties not to contact one another intentionally;
- changes in SVA housing accommodations;
- housing suspensions;
- changes in academic schedules or other academic accommodations;
- changes in SVA work schedules, locations or reporting lines;
- changes in SVA provided transportation arrangements;
- campus restrictions;
- supplying an escort to ensure the student feels safe;
- interim suspension.

These actions may be instituted at any point during the investigation process. Reporting and responding parties are encouraged to request interim measures when needed.

Interim measures will be kept confidential to the extent possible. Only those individuals who need to be informed in order to effectuate the measures will be informed. For instance, if the individual requests a change in work schedule, the individual's supervisor(s) will need to be informed in order to effectuate the change.

Student reporting and responding parties may request review and modification of any interim measure(s) that directly impacts them, including review of the need for and terms of the interim measure(s), by submitting a letter to the Title IX Coordinator along with any evidence they wish to present. In the event the interim measure impacts the other party, they will be given an opportunity to state their position and present evidence as appropriate. The Title IX Coordinator or her designee will review the submissions and make a determination.

At the conclusion of the investigative process and once a final decision has been rendered, some or all of the interim measures may be lifted or they may be continued to assist the student, even if it is determined that

some or all of the allegations have not been substantiated.

Failure to comply with a directive relating to an interim measure may lead to further disciplinary action.

In addition to the measures that the School of Visual Arts may take, law enforcement may be able to provide additional protections, such as a restraining order. SVA can assist reporting parties in contacting law enforcement and legal services organizations to learn about additional remedies that may be available in criminal matters.

**ADVISORS**

Reporting and responding parties have a right to be accompanied by an advisor of their choice at all meetings, interviews and hearings, if any, related to allegations of sexual misconduct. In cases involving allegations of domestic violence, dating violence, sexual assault or stalking, the advisor may be an attorney.

During hearings and interviews, advisors are not permitted to advocate on behalf of the individual or to address the Title IX Investigator, the Title IX Coordinator or the hearing panel directly. The party may confer with the advisor, and the advisor may pass notes to the party. If the advisor is disruptive or otherwise fails to comply with these parameters, they may be asked to leave the room.

**NOTICE**

All parties will receive reasonable and advance written or electronic notice of any meeting they are required or eligible to attend.

In cases of sexual assault, domestic violence, dating violence and stalking, each party will be given prompt notice of any meeting relating to the investigation and/or adjudication process at which either the reporting or responding party will be present, except that the responding party will not be notified of

meetings with the reporting party relating solely to interim measures and other supportive accommodations, and vice versa.

### **CONFLICT OF INTEREST**

Both the reporting and responding parties have the right to have a fair and impartial investigation, determination and appeal process. If either party has any reason to believe that the Title IX Coordinator, the Assistant Title IX Coordinator, the Title IX Investigator, the hearing panelists or the appeal panelists have a conflict of interest or would otherwise be unable to be fair and impartial, the concerned party should submit a letter explaining the basis for their concern. Concerns regarding the Title IX Investigator, the hearing panel or the appeal panel should be submitted to the Title IX Coordinator.

Concerns regarding the Title IX Coordinator should be submitted to the Title IX Officer. The other party will be provided with a copy of the letter and will have an opportunity to respond. If based upon the submissions and any independent inquiry the decision-maker may choose to make, the decision-maker determines that there is a conflict of interest, another trained SVA employee will be appointed to take on the role of the conflicted individual. If it is found that there is no such conflict, the individual will continue to fulfill their appointed role. Concerns regarding conflicts of interest should be raised as soon as they are identified and prior to the rendering of any determination, e.g. prior to the submission of the investigation report, the determination, or the appeal decision.

### **MEDIATED RESOLUTION**

Where appropriate and with the consent of the reporting party, the Title IX Coordinator may attempt to mediate a resolution of the matter as amicably and privately as possible. If a satisfactory resolution is reached, the matter will be considered closed. If it becomes clear that a mediated resolution will not be possible, the matter will be investigated. Complaints of sexual assault, domestic

violence or dating violence, however, will not be mediated under any circumstances.

### **FORMAL INVESTIGATION**

Within seven days of receiving a complaint which has been determined to allege a potential violation of SVA policy, the Title IX Coordinator, the Assistant Title IX Coordinator or a designated Title IX Investigator will commence an investigation. During the investigation, both parties will have the opportunity to be heard, to present evidence and to suggest witnesses. Both parties will be provided with a written copy of this Policy and Procedure and will be kept informed of the status of the investigation as deemed appropriate. If any interim measures are put in place during the investigation, they will be communicated to each party, as appropriate.

The Investigator will conduct a prompt, fair, impartial, and thorough investigation. During the investigation, the Investigator will:

- interview the reporting party, the responding party, and any material witnesses (the Investigator will not interview witnesses whose sole purpose is to provide character information);
- gather all relevant documentary and/or physical evidence from the reporting party, the responding party, and witnesses; (This may include, but is not limited to, texts, emails, photos, social media posts, voicemail messages, etc.)
- complete the investigation in a timely manner, without unnecessary deviation from the intended timeline; and
- maintain communication with the reporting and responding parties on the status of the investigation and overall process.

Prior to reaching a conclusion as to whether the alleged violation occurred, the Investigator will present each party with a written recitation of the facts and evidence the Investigator collected during their interview. Upon receipt of the Investigator's written summary, each party has two business days

to correct any inaccuracies or misstatements in the written summary. The Investigator will not share one party's statement or evidence with the other party.

**Information Re: Romantic and Sexual History:** Neither the Investigator, nor any hearing panel, will consider information concerning the romantic or sexual history of either the reporting party or the responding party, except as provided by the reporting party and/or responding party relating to their shared sexual history. If either offers such information, the other will have the right to respond.

**Information Re: Mental Health Diagnosis or Treatment History:** Each party shall have the right to object to the Investigator and/or the hearing panel's consideration of their own mental health history or treatment. In the event such an objection is raised, neither the Investigator, hearing panel, nor appeal panel will consider information regarding mental health diagnosis or treatment.

**Prior Conduct Violations:** The Investigator will not consider prior conduct violations in assessing whether a policy violation occurred but such information may be considered by the Investigator, Title IX Coordinator, hearing panel or appeal panel in determining appropriate sanctions.

**Declining to Participate:** Reporting parties have the right to withdraw a complaint at any time. If the reporting party chooses to withdraw the complaint prior to the completion of the investigation, the Title IX Coordinator will determine whether SVA will continue to pursue the complaint.

When weighing a reporting party's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:

- whether there have been other sexual violence complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the allegation indicates an escalation of unlawful conduct by the alleged perpetrator;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators;
- the seriousness of the alleged conduct;
- the alleged perpetrator's rights to receive information under FERPA;
- whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether SVA possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead SVA to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, SVA will likely respect the reporting party's request for confidentiality.

No adverse inference will be made against a responding party as a result of their decision not to participate in an investigation, but the Investigator will complete the investigation and a determination will be made based upon the information available.

## **DETERMINATION OF RESPONSIBILITY AND DISCIPLINE**

At the conclusion of the investigation, the Investigator will determine whether, based on the evidence collected, it is more likely than not that the alleged violation occurred.

If the Investigator finds the responding party responsible for violating SVA policy, the Investigator will propose an appropriate disciplinary sanction after considering the relevant factors, which include the severity of the violation, the circumstances surrounding the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.), the responding party's state of mind (intentional, knowing, reckless, negligent, etc.), the responding party's history of misconduct, including prior findings of sexual misconduct, the ongoing impact on the complainant, the ongoing impact on the campus environment, and any ongoing threat to the campus community. In determining the appropriate sanction, the Investigator may consult with the Title IX Officer if the responding party is a faculty member, or the responding party's manager if the responding party is a staff member.

### **Sanctions may include:**

- revocation of degree,
- suspension,
- expulsion,
- demotion,
- termination of employment,
- revocation of honors or awards,
- warning or reprimand,
- disciplinary probation,
- loss of housing privilege,
- loss of other privileges (including but not limited to use of facilities and participation in campus organizations and activities),
- community service, and/or, mandated training and education

The Investigator will present their findings and proposed sanctions, if any, in a written report which must be submitted to the Title IX Coordinator within four weeks of

commencement of the investigation, absent unanticipated circumstances.

The Title IX Coordinator (or Title IX Officer in cases where the Title IX Coordinator acted as the Investigator), will review the Investigator's report, including the findings and recommended sanctions. The Title IX Officer or Coordinator will either accept, reject or modify the Investigator's findings and/or sanctions. In instances where the Investigator's findings not accepted, the Investigator may be directed to collect additional information and submit a supplemental report.

## **FINAL NOTICE OF DETERMINATION**

Once the investigation is complete, the Title IX Coordinator/Officer will report the decision and sanctions, if any, in a written Final Notice of Determination that is shared with the parties.

In cases of sexual assault, dating violence, domestic violence and/or stalking, the reporting party and the responding party will be informed simultaneously and in writing of any sanctions imposed. In other cases of sexual misconduct, the reporting party will only be informed of discipline to the extent such sanctions relate to the reporting party. For instance, if the responding party has been restricted from being present in the reporting party's residence hall, the reporting party would be informed of that restriction. If either party disputes the investigation findings, as stated in the Final Notice of Determination and/or the sanctions imposed, that party may contest the Final Notice of Determination and request a Title IX Adjudication Hearing.

## **TITLE IX ADJUDICATION HEARING**

If a party wishes to contest the Final Notice of Determination, they must do so in a written statement to the Title IX Coordinator, within two weeks of receipt of the Final Notice of Determination.

Upon receipt of a written statement contesting the Final Notice of Determination, a Title IX Adjudication Panel will be convened and the parties will proceed to an adjudication hearing. The hearing panel will be composed of three SVA staff members who receive annual training on the College's policies and procedures, issues relating to sexual assault, domestic violence, dating violence and stalking, the effects of trauma, impartiality, and the responding party's right to a presumption of being not responsible until a finding of responsibility is made. One member of the panel will be designated as the chair. Students are not permitted serve on the hearing panel. SVA staff members who have a conflict of interest will not be permitted to serve on the panel either.

Prior to the hearing, the reporting party and the responding party will each have an opportunity to review the investigation report and any other materials that were collected during the investigation. The names and other identifying information of other students will be redacted from such materials in accordance with the Family Educational Rights and Privacy Act (FERPA), except to the extent that doing so would interfere with the purpose of Title IX to eliminate sex-based discrimination. The Title IX Coordinator will supervise this review and ensure that reasonable time is afforded for review prior to the hearing.

Each party will be notified in writing of the date, time and location of the Title IX Adjudication Hearing with as much advance notice as possible. The scheduling and timing of hearing sessions shall be undertaken with due regard to the importance of completing the hearing in an expeditious manner and with consideration of the schedules and commitments of all participants. The hearing is a closed proceeding and nobody other than the parties and their respective advisors, the panel, witnesses (when called to appear) and necessary SVA personnel may be present during the hearing. In the event that either

party cannot be physically present during the hearing, arrangements will be made to allow the individual to participate in the proceeding remotely whenever possible. Upon request, arrangements will also be made to allow the parties to participate in the hearing without being in the same room at the same time. If a party chooses not to participate in a hearing, it may be held in his or her absence, depending upon the circumstances.

Generally, the Title IX Adjudication Hearing Panel will question the Investigator, the reporting party, the responding party and any other necessary witnesses in that order. The reporting party and responding party will each be permitted to make a closing statement, which may include an impact statement.

During the course of the hearing, the parties will have an opportunity to suggest witnesses and propose questions. The parties are not, however, permitted to directly question each other or any other witnesses. The panel has the discretion to determine which witnesses to call and to revise and/or decide not to ask proposed questions. The panel will not hear character testimony.

The hearing will be audio recorded or transcribed. The hearing record will be maintained for at least five years, and each party will be afforded an opportunity to have access to the full record of the hearing.

The Title IX Hearing Panel will evaluate the evidence and determine whether it is more likely than not that a policy violation occurred. If a policy violation is found the hearing panel will determine the appropriate sanction.

**Sanctions may include:**

- expulsion,
- revocation of degree,
- suspension,
- demotion,
- termination of employment,

- revocation of honors or awards,
- warning or reprimand,
- disciplinary probation,
- loss of housing privilege,
- loss of other privileges (including but not limited to use of facilities and participation in campus organizations and activities),
- community service, and/or,
- mandated training and education.

In determining the appropriate sanction, the hearing panel will consider the following relevant factors: the severity of the violation, the circumstances surrounding the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.), the responding party's state of mind (intentional, knowing, reckless, negligent, etc.), the responding party's history of misconduct, including prior findings of sexual misconduct, the ongoing impact on the reporting party, the ongoing impact on the campus environment, and any ongoing threat to the campus community. In determining the appropriate sanction, the hearing panel may consult with the Title IX Coordinator, Title IX Officer and/or the Director of Student Affairs.

After the hearing is complete, the reporting party and the responding party will receive simultaneous notification, in writing, of the hearing panel's determination. In cases of sexual assault, dating violence, domestic violence and/or stalking, the reporting party and the responding party will be informed simultaneously and in writing of any sanctions imposed. In other cases of sexual misconduct, the reporting party will only be informed of discipline to the extent such sanctions relate to the reporting party. For instance, if the responding party has been restricted from being present in the reporting party's residence hall, the reporting party would be informed of that restriction.

## **APPEAL**

After receiving written notification of the Title IX Adjudication Hearing Panel's determination, both the reporting party and the responding party have two weeks to appeal the decision. During that time, both parties will have an opportunity to thoroughly review the hearing record (redacted to remove the names and personally identifying information of other students consistent with FERPA), but copies of the record will not be provided to them. In order to initiate an appeal, the appealing party must submit a formal letter of appeal specifying the grounds upon which the appeal is based, and must include the reasons or circumstances why they believe that the decision should be reevaluated, explaining how those grounds materially affected the outcome. The appeal should be made to the Title IX Coordinator in writing via email to [lchristy@sva.edu](mailto:lchristy@sva.edu) or addressed to the Title IX Coordinator, School of Visual Arts, 209 East 23rd Street, New York, NY 10010.

There are only three limited grounds for appeal, which include:

- new evidence, which was not available at the time the Investigator completed their review, has come to light;
- an error in the process, as outlined by this policy, which materially impacted the outcome;
- the sanction(s) imposed were not appropriate in light of the evidence presented.

A student's disagreement with the hearing panel's findings and/or sanctions is not, by itself, grounds for appeal. If the appeal letter does not bring forward sufficient grounds for appeal, the appeal will be denied and the matter will be closed.

If the appeal letter identifies arguable grounds for appeal, within two business days of receipt of the appeal letter, the Title IX Coordinator will (i) appoint a Title IX Appeal Panel of three trained SVA employees and (ii) provide the other party with an opportunity

to review the appeal. The party who is not appealing the decision, will have five calendar days from receipt of the appeal to submit materials in response.

A party's decision not to participate in the investigatory process does not preclude him or her from appealing the hearing panel's decision, however, except in extraordinary circumstances, a party who does not respond to the Investigator's inquiries during the investigatory process will be precluded from appealing on the ground that new evidence has come to light.

The Appeal Panel will hold a closed review session, during which time it will review the Title IX Investigator's report, including the Investigator's findings and recommended sanctions, the Title IX Coordinator's Final Notice of Determination, the Title IX Adjudication Panel's determination, including the hearing record, and any subsequent materials submitted by the parties in anticipation of the appeal. After a review of all of the information and evidence presented, the Appeal Panel may:

- affirm the decision of the Title IX Adjudication Panel. In this case, the decision is final and no further action will be taken.
- remand the matter back to the Adjudication Panel or Title IX Investigator to:
  - reevaluate the decision in light of the Appeal Panel's findings or
  - reopen the investigation;
- modify the sanctions imposed by the Adjudication Panel.

The Appeal Panel's decision will be transmitted in writing to the reporting party, the responding party, and the Title IX Coordinator simultaneously within 15 business days of the non-appealing party's submission. The finding of the Appeal Panel is final.

If neither party files an appeal within two weeks of the Adjudication Hearing Panel's decision, the Title IX Coordinator will provide both parties with a written notice that the

Adjudication Hearing Panel's determination is final.

All sanctions shall remain in full force and effect during the pendency of the appeal.

### **TRANSCRIPT NOTATIONS**

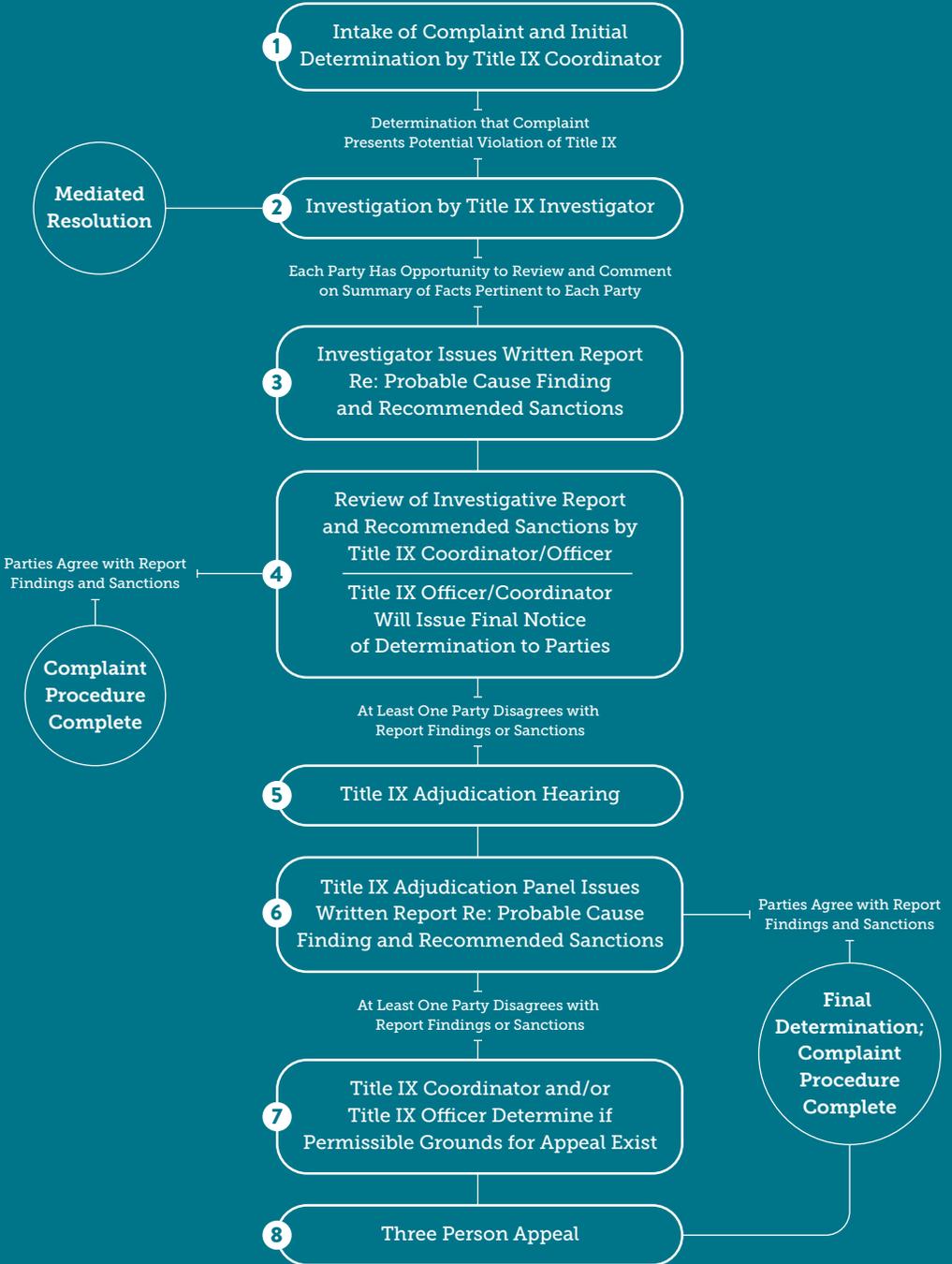
Any student who is found responsible for domestic violence, dating violence, sexual assault or stalking (or any other crime of violence) and suspended will have a notation on their transcript indicating, "suspended after a finding of responsibility for a code of conduct violation."

Any student who is found responsible for domestic violence, dating violence, sexual assault or stalking (or any other crime of violence) and expelled will have a notation on their transcript indicating, "expelled after a finding of responsibility for a code of conduct violation."

Any student who withdraws from SVA while a complaint of domestic violence, dating violence, or stalking is pending against him or her and declines to complete the investigatory and disciplinary process will have a notation on their transcript indicating, "withdrew with conduct charges pending."

If a finding of responsibility is vacated for any reason, the transcript notation will be removed. Students shall have the right to seek the removal of a notation of suspension after one year has elapsed since the end of the suspension. Students wishing to request removal should submit a letter to the Title IX Coordinator setting forth the justification for removal. Notations of expulsion cannot be removed.

# INVESTIGATION PROCESS



### **OVERVIEW OF THE PROCESS**

A flow chart outlining the major steps of the investigatory process is included on the left and will be provided to both parties so that they are informed and there is transparency as to what can be expected. The Title IX Office will endeavor to complete the process (excluding any appeal) within 60 days. If circumstances arise that require the extension of certain deadlines (including but not limited to the unavailability of witnesses due to winter or summer break or a simultaneous police investigation), the parties will be updated accordingly.

### **COMPLIANCE WITH SANCTIONS AND ACCOMMODATIONS**

At the conclusion of the investigation and adjudication process, the Title IX Coordinator will be responsible for ensuring compliance with all imposed sanctions and providing accommodations with the goal of preventing the recurrence of sexual misconduct and assisting the reporting party. The responding party's failure to comply may result in further disciplinary action.

### **ONGOING ACCOMMODATIONS**

Regardless of the determination, both the reporting party and the responding party may request ongoing or additional accommodations. Such requests should be directed to the Title IX Coordinator. Determinations as to whether such accommodations are appropriate or feasible will be made by the Title IX Coordinator in consultation, where appropriate, with the Director of Student Affairs. Ongoing accommodations may include: moving the reporting party's residence, changing the reporting party's academic schedule, allowing the reporting party to withdraw from or retake a class without penalty, providing the reporting party with access to additional academic support.

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## RESOURCES AND SUPPORT FOR VICTIMS OF SEXUAL MISCONDUCT

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## **MEDICAL ATTENTION AND EVIDENCE PRESERVATION**

Victims of sexual violence, including sexual assault, dating violence, domestic violence and stalking, are encouraged to seek prompt medical attention and to report the incident to the police. To gain assistance in getting to an emergency room, a victim can call 911 or notify SVA's Security Services at 212.696.4632. The nearest emergency rooms to SVA are at:

### **Mount Sinai Beth Israel**

First Avenue and 16th Street  
212.420.2840

### **Bellevue Hospital Center**

First Avenue and 27th Street  
212.562.4347

### **NYU Langone Medical Center**

First Avenue and 30th Street  
212.263.7300

The hospital staff will do a detailed examination of the entire body, including an internal exam, and where appropriate, collect evidence, check for injuries, and address pregnancy concerns and the possibility of exposure to sexually transmitted infections.

Seeking medical attention will in no way obligate a victim to file a complaint or press criminal charges. Conversely, electing not to seek medical attention or to contact police will not impact SVA's decision to investigate.

Victims are advised that the best way to preserve evidence of sexual assault is to avoid bathing or washing yourself before being examined. You should not take a shower, wash hands or face, comb your hair or douche. Normal everyday behavior, such as going to the bathroom, can destroy or remove evidence of sexual assault; you should try to avoid doing so if possible. Similarly, you should try not to smoke or drink anything. Altering your appearance can hide bruising or lacerations that can be cited as evidence

when pressing charges. It is best not to apply make-up or any other substance that can change your appearance.

Evidence of the assault can be found in the fibers of your clothes, strands of your hair, or on other parts of your body, so it is important to try your best to preserve as much evidence as possible before seeking medical or professional help. Clothing, towels, sheets and other items should not be washed or moved, if possible. The clothing worn at the time of the assault should be brought to the hospital in a sanitary container, such as a paper bag or a clean sheet. If the clothing worn at the time of the assault is still being worn, it is advisable to bring a change of clothes to the hospital, if possible.

SVA Security Services can assist you in securing the scene to preserve evidence as well.

It is important to note that failure to take the steps described above does not preclude you from reporting an incident to SVA or to the police.

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## FREQUENTLY ASKED QUESTIONS

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## **WHO CAN I TALK TO? WILL IT BE CONFIDENTIAL?**

Support services are in place to help any member of the SVA community who feels they are a victim of sexual misconduct.

The School of Visual Arts encourages any person who has experienced sexual violence to talk to someone about what happened, so victims can get the support that they need, and so SVA can respond appropriately. Different employees on campus have different abilities to maintain confidentiality.

- Some are required to maintain near complete confidentiality; talking to them is sometimes call a “privileged communication.”
- Some employees are required to report all details of an incident involving a student (including the identities of both the victim and the alleged perpetrator) to the Title IX Coordinator. A report to these employees (called “responsible employees”) constitutes a report to SVA and generally obligates the Title IX Coordinator or his designee to investigate the incident and take appropriate steps to address the situation.

This policy is intended to make community members aware of the various reporting and confidential disclosure options available to them.

## **PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS**

When reporting a violation of SVA policy, there are resources that can provide confidentiality, sharing options and advice without any obligation to inform other College staff members unless requested. Such on-campus confidential resources include the counselors within Student Health and Counseling Services, located at 340 East 24th Street, ground floor, and by telephone at 212.592.2246.

Additionally, community members can seek assistance from an off-campus crisis center, which can maintain confidentiality.

## **WHO IS OBLIGATED TO REPORT WHAT I TELL THEM TO THE SCHOOL OF VISUAL ARTS?**

A “responsible employee” is an SVA employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty.

A responsible employee must report to the Title IX Coordinator all relevant details about any incident of sexual misconduct involving a student—including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling SVA’s response to the report. A responsible employee should not share information with law enforcement without the victim’s consent unless the victim has also reported the incident to law enforcement.

The following categories of employees are SVA’s responsible employees:

- Student Affairs staff
- Residential Life staff (including RAs)
- Admissions staff
- Security Services staff
- Officers of the College
- Human Resources staff
- Faculty

Before a reporting party reveals any information to a responsible employee, the employee should ensure that the person understands the employee’s reporting obligations—and,

if the reporting party wants to maintain confidentiality, direct them to confidential resources.

If the reporting party wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell them that the School of Visual Arts will consider the request, but cannot guarantee that SVA will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the reporting party's request for confidentiality.

Responsible employees will not pressure a reporting party to request confidentiality, but will honor and support the reporting party's wishes, including for SVA to fully investigate an incident. By the same token, responsible employees will not pressure a reporting party to make a full report if they are not ready to do so.

Even SVA officers and employees who cannot guarantee confidentiality will maintain a reporting party's privacy to the greatest extent possible. Any information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Only people who have a need to know about the incident will be informed, and information will be shared only as necessary with investigators, the reporting party, witnesses and the responding party to ensure an effective and thorough investigation. Although SVA will take all appropriate steps to safeguard the privacy of the parties, the information collected during the investigation process may be subpoenaed in civil or criminal proceedings.

### **PUBLIC AWARENESS EVENTS**

Sharing information regarding an incident of sexual misconduct at a public awareness event, such as Take Back the Night, the Clothesline Project, survivor speak-outs,

and other forums, does not constitute notice to SVA and will not trigger an investigation under this policy. However, because SVA is under a continuing obligation to address issues of sexual violence campus-wide, information shared at public awareness events may prompt the College to initiate broader remedial action—such as increased monitoring, supervision or security, increased education and prevention efforts, climate surveys and/or revisions to policies and practices—to ensure the safety of the SVA community.

### **CAN I REQUEST THAT THE SCHOOL OF VISUAL ARTS NOT TAKE ACTION REGARDING AN INCIDENT?**

If a victim of sexual assault, dating violence, domestic violence or stalking discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, SVA must weigh that request against its Title IX obligations, including the obligation to provide a safe, non-discriminatory environment for all members of the SVA community, including the victim. If in making a formal complaint, the reporting party requests confidentiality or asks that the complaint not be pursued, the College still must take all reasonable steps to investigate and implement any remedial measures while being mindful of the request.

If SVA honors the request for confidentiality, a victim must understand that SVA's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when SVA may not be able to honor a reporting party's request in order to provide a safe, non-discriminatory environment for the entire SVA community.

The Title IX Coordinator will evaluate requests for confidentiality once a responsible

employee is on notice of alleged sexual violence. When weighing a reporting party's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
  - whether there have been other sexual violence complaints about the same alleged perpetrator;
  - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
  - whether the allegation indicates an escalation of unlawful conduct by the alleged perpetrator;
  - whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
  - whether the sexual violence was committed by multiple perpetrators;
- the seriousness of the alleged conduct;
- the alleged perpetrator's rights to receive information under FERPA;
- whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether SVA possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead SVA to investigate and, if appropriate, pursue disciplinary action. If none of these factors are present, SVA will likely respect the victim's request for confidentiality.

If SVA cannot ensure confidentiality, the reporting party will be so informed prior to

the start of an investigation. To the extent possible, SVA will only share information with people responsible for handling SVA's response. Even if SVA chooses not to take disciplinary action against the alleged perpetrator because the reporting party insists on confidentiality, it may pursue other steps to limit the effects of the alleged conduct and prevent its recurrence.

SVA will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or SVA employees, will not be tolerated.

SVA will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, and health or mental health services;
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to campus or local law enforcement—and provide the victim with assistance if the victim wishes to do so.

SVA will not require a victim to participate in any investigation or disciplinary proceeding.

Because SVA is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt SVA to consider broader remedial action—such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups;

conducting climate assessments/victimiza-  
tion surveys; and/or revisiting its policies  
and practices.

If SVA determines that it can respect a vic-  
tim’s request for confidentiality, it will also  
take immediate action as necessary to pro-  
tect and assist the victim.

**WILL INFORMATION ABOUT AN INCIDENT  
WILL BE SHARED WITH MY PARENTS?**

The Family Educational Rights and Privacy  
Act (FERPA) allows the School of Visual Arts  
to share information with parents when (i)  
there is a health or safety emergency or (ii)  
where the student is a dependent on the par-  
ent’s prior year federal tax return. Generally  
speaking, SVA will not disclose a report of  
domestic violence, dating violence, sexual  
assault or stalking to a student’s parents  
without the student’s permission.

**Duty to Report Statistics and  
Timely Warning**

The School of Visual Arts has a duty to report  
data about various forms of sexual miscon-  
duct in accordance with The Jeanne Clery  
Disclosure of Campus Security Policy and  
Campus Crime Act (Clery Act). No person-  
ally identifiable information is disclosed, but  
statistical information is disclosed as part of  
SVA’s Annual Security Report. The informa-  
tion to be shared includes the date, location  
type (residence hall, public property, off-  
campus, etc.), and specific crime category.

The Clery Act also requires SVA to issue a  
“timely warning” when it receives a report  
of a crime that poses a serious and continu-  
ing threat to the campus community, except  
in circumstances where the issuance of the  
warning may compromise pending law  
enforcement efforts or when the warning  
itself could potentially identify the reporting  
individual. No personally identifying infor-  
mation about the victim will be disclosed in  
a timely warning.

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## DEFINITIONS

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**FOR PURPOSES OF THESE POLICIES AND PROCEDURES, THE FOLLOWING DEFINITIONS APPLY:**

**Discrimination** is defined as:

- Treating individuals or groups less favorably because of their protected characteristic(s); or
- Having a policy or practice that has a disproportionately adverse impact on individuals based on a protected characteristic.

**Protected Characteristic** refers to any personal trait or category that is protected by law, including an individual's race, color, religion, creed, sex, sexual orientation, gender (including gender identity or expression), pregnancy, age, disability, national origin, military or veteran status, marital status, parental or familial status, alienage or citizenship status, domestic violence status, genetic predisposition or carrier status, partnership status or any other characteristic protected by law.

**Discriminatory Harassment** is defined as substantially interfering with an individual's living, learning or working environment by subjecting him or her to severe or threatening conduct or to repeated humiliating or abusive conduct, based on his or her protected characteristic(s). Under this policy, harassment is verbal or physical conduct that belittles or shows hostility or aversion toward an individual because of a protected characteristic, or that of his or her relatives, friends, or associates, and that:

- Has the purpose or effect of creating an intimidating, hostile, or offensive living, learning or working environment.
- Has the purpose or effect of unreasonably interfering with an individual's academic or job performance or limiting or depriving someone of the ability to apply for, participate in or benefit from SVA's educational programs, activities and/or employment; or
- Otherwise adversely affects an individual's academic or employment experience.

Harassing conduct includes, but is not limited to:

- Offensive or suggestive comments, letters, emails or telephone calls;
- Insults, jokes, teasing, threats, embarrassing comments, name calling or other remarks that put people down or make them uncomfortable;
- Conduct that is physically threatening, harmful or intimidating;
- Inappropriate pictures, cartoons or other objects;
- Making obscene or rude gestures, or ogling or leering at someone; and
- Mimicking a person's accent, or mocking or imitating a disability or stutter.

**Sexual or Sex-based Harassment** is defined as unwelcome sex-based verbal, visual or physical conduct that:

- Has the purpose or effect of creating an intimidating, hostile, or offensive living, learning or working environment;
- Has the purpose or effect of unreasonably interfering with an individual's academic or job performance or limiting or depriving someone of the ability to apply for, participate in or benefit from SVA's educational programs, activities and/or employment; or
- where submission to the conduct is explicitly or implicitly made a term or condition of an individual's education, employment, or participation in other activities sponsored by the School of Visual Arts; or
- where submission to or rejection of the conduct is used as the basis for admission, academic or employment decisions.

Examples of sex-based harassment that may cause a hostile environment include, but are not limited to:

- subtle or persistent pressure for sexual activity;
- unwanted or unnecessary touching, brushing against a person, or blocking someone's movement;

- requesting or demanding sexual favors in connection with admission, employment, academics, or SVA activities;
- unwelcome, offensive, or suggestive comments or communications (verbal, written, electronic, etc.) of a sexual nature;
- failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior;
- Verbal and/or physical aggression toward another based upon a perception that the other fails to conform to stereotypical notions of expected characteristics for masculinity or femininity.

**Sexual Assault** is divided into two categories of behavior: **Non-consensual Sexual Contact and Non-consensual Sexual Intercourse.**

**Sexual Assault–Non-consensual Sexual Contact** includes any intentional touching of a sexual nature, however slight, whether clothed or unclothed, with any object or body part by a person against another person that is without affirmative consent and/or by force. [1] Consent is required regardless of whether the person initiating the sexual contact is under the influence of drugs and/or alcohol. When consent is withdrawn or can no longer be given due to incapacitation, sexual activity must stop.

Examples of non-consensual sexual contact include, but are not limited to:

- intentional contact with the breasts, buttocks, groin, or genitals;
- intentional touching of another with breasts, buttocks, groin, or genitals;
- making another person touch someone or themselves in a sexual manner;
- any intentional bodily contact in a sexual manner.

[1] Conduct that is prohibited by this policy may also be prohibited by New York State law. Relevant definitions and provisions of New York law are contained in the appendix section which is provided for information

purposes only. The School of Visual Arts enforces only its policy. Those interested in filing a complaint with the police are encouraged to do so, and SVA will assist any reporting party in contacting law enforcement. (See the section on reporting to law enforcement on page 3).

**Sexual Assault–Non-consensual Sexual Intercourse** includes any form of sexual intercourse, however slight, with any object or body part by a person against another person that is without affirmative consent and/or by force. Consent is required regardless of whether the person initiating the sexual contact is under the influence of drugs and/or alcohol. When consent is withdrawn or can no longer be given due to incapacitation, sexual activity must stop.

Examples of non-consensual sexual intercourse include, but are not limited to:

- vaginal penetration by a penis, object, tongue or finger;
- anal penetration by a penis, object, tongue or finger;
- oral copulation (mouth to genital contact or genital to mouth contact).

**Domestic Violence** includes the use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards (i) a current or former spouse or intimate partner; (ii) a person with whom one shares a child; or (iii) anyone who is protected from the responding party's acts under the domestic or family violence laws of New York. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

**Dating Violence** includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of

such a relationship would be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence would include, but would not be limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts that meet the definition of "domestic violence."

**Sexual Exploitation** includes but is not limited to:

- invasion of sexual privacy and voyeurism (in-person or through audio or video recording);
- knowingly transmitting a sexually transmitted infection or disease;
- exposing of a person's body or genitals;
- prostituting or soliciting sex from another community member.

**Stalking** is a course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her own safety or the safety of others, or to suffer substantial emotional distress.

Examples of stalking include but are not limited to:

- constantly appearing at places the victim is known to frequent;
- persistent unwanted communication or contact whether in person, by telephone, text, or email;
- persistent unwanted gifts;
- following or surveillance.

**Sexual Misconduct** includes sexual assault, sexual exploitation, sexual or sex-based harassment, dating violence, domestic violence, and stalking.

**Retaliation** includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's informal or formal complaint of a

violation of this policy, participation in a school or government investigation or proceedings related to an alleged violation of this policy or related civil rights law, or advocating for others' Title IX rights. Federal, state and local civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws.

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

**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 must be freely and actively given; it cannot be obtained by coercive use of force, threats or intimidation. Use of coercion, force or threat invalidates consent. Consent to one form of sexual activity does not imply consent to other forms of sexual activity, nor does past consent to intimacy imply consent to future intimacy. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. In order to give consent, a person must be of the legal age of consent, which is 17 in New York. A person who is incapacitated for any reason, including in some instances, intellectual disability, cannot give consent. Consent can be withdrawn at any time.

**Incapacitation** is a state where someone cannot make rational, reasoned decisions.

A person may be incapacitated due to mental disability, sleep, unconsciousness, physical restraint, or from the consumption (voluntary or otherwise) of incapacitating drugs or quantities of alcohol. Sexual activity with someone whom you know or, reasonably should know, is mentally or physically incapacitated (i.e., by alcohol or other drug use, unconsciousness or blackout) constitutes a violation of this policy. Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, the odor of alcohol on a person's breath or clothing, inability to maintain balance, vomiting, unusual or irrational behavior, and unconsciousness. Incapacity may be indicated by the quantity of alcohol consumed. The presence of one or more of these cues does not necessarily indicate incapacity, nor does the absence of these cues necessarily indicate capacity.

**Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion to overcome resistance.

**Coercion** is unreasonable pressure. The use of emotional manipulation to persuade someone to do something they may not want to do, such as being sexual or performing certain sexual acts, constitutes coercion. Coercing someone into having sex or performing sexual acts does not constitute obtaining consent and is considered sexual misconduct.

**Reporting Party** is the person(s) who allege(s) that this policy has been violated.

**Responding Party** is the person who is accused of violating this policy.

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## ADDITIONAL GOVERNMENT RESOURCES

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The government resources listed here may provide additional assistance for students wishing to file an external complaint of sexual misconduct or students with inquiries regarding the application of Title IX and its implementing regulations:

- **NotAlone:** [notalone.gov](http://notalone.gov)
- **U.S. Department of Education, Office for Civil Rights:** [ed.gov/ocr](http://ed.gov/ocr)
- **U.S. Department of Justice, Office on Violence Against Women:**  
145 N Street, NE, Suite 10W.121,  
Washington, DC 20530  
202.307.6026 • [ovw.usdoj.gov](http://ovw.usdoj.gov)
- **US Department of Education, Office for Civil Rights**  
New York – Region II, 32 Old Slip, 26th  
Floor, New York, NY 10005  
646.428.3800 • [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

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## APPENDIX - NEW YORK STATE PENAL LAW

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Although the College only enforces its own policies, community members should be aware that some of the conduct prohibited by the Policy against Discrimination, Harassment and Sexual Misconduct may also be a violation of the New York state penal law.

The Penal Law and Social Services Law definitions in this document are provided for information purposes only. Those interested in filing a complaint with the police are encouraged to do so, and SVA will assist any reporting party in contacting law enforcement.

#### **NEW YORK PENAL CODE SECTION:**

##### **130.05 Sex offenses; lack of consent.**

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.
2. Lack of consent results from:
  - (a) Forcible compulsion; or
  - (b) Incapacity to consent; or
  - (c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or
  - (d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.
3. A person is deemed incapable of consent when he or she is:
  - (a) less than seventeen years old; or

- (b) mentally disabled; or
- (c) mentally incapacitated; or
- (d) physically helpless; or
- (e) committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital. For purposes of this paragraph, "employee" means

- (i) an employee of the state department of corrections and community supervision who, as part of his or her employment, performs duties: (A) in a state correctional facility in which the victim is confined at the time of the offense consisting of providing custody, medical or mental health services, counseling services, educational programs, vocational training, institutional parole services or direct supervision to inmates; or (B) of supervising persons released on community supervision and supervises the victim at the time of the offense or has supervised the victim and the victim is still under community supervision at the time of the offense; or
- (ii) an employee of the office of mental health who, as part of his or her employment, performs duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law in which the inmate is confined at the time of the offense, consisting of providing custody, medical or mental health services, or direct supervision to such inmates; or
- (iii) a person, including a volunteer, providing direct services to inmates in a state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual

arrangement with the state department of corrections and community supervision or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; or

**(f)** committed to the care and custody of a local correctional facility, as such term is defined in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, "employee" means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for inmates. For purposes of this paragraph, "employee" shall also mean a person, including a volunteer or a government employee of the state department of corrections and community supervision or a local health, education or probation agency, providing direct services to inmates in the local correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; or

**(g)** committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. For purposes of this paragraph, "employee" means an employee of the office

of children and family services or of a residential facility in which such person is committed to or placed at the time of the offense who, as part of his or her employment, performs duties consisting of providing custody, medical or mental health services, counseling services, educational services, vocational training, or direct supervision to persons committed to or placed in a residential facility operated by the office of children and family services; or

**(i)** a resident or inpatient of a residential facility operated, licensed or certified by **(ii)** the office of mental health; **(iii)** the office for people with developmental disabilities; or **(iv)** the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, "employee" means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the

provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact.

### **§ 130.20 Sexual misconduct.**

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or
3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

### **§ 130.25 Rape in the third degree.**

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

### **§ 130.30 Rape in the second degree.**

A person is guilty of rape in the second degree when:

1. being 18 years old or more, he or she engages in sexual intercourse with another person less than 15 years old; or
2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

### **§ 130.35 Rape in the first degree.**

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than 11 years old; or
4. Who is less than 13 years old and the actor is 18 years old or more.

Rape in the first degree is a class B felony.

### **§ 130.40 Criminal sexual act in the third degree.**

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being 21 years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

### **§ 130.45 Criminal sexual act in the second degree.**

A person is guilty of criminal sexual act in the second degree when:

1. being 18 years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than 15 years old; or
2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Criminal sexual act in the second degree is a class D felony.

### **130.50 Criminal sexual act in the first degree.**

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than 11 years old; or
4. Who is less than 13 years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.

### **§ 130.52 Forcible touching.**

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such

person; or for the purpose of gratifying the actor's sexual desire.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

### **§ 130.53 Persistent sexual abuse.**

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous 10 year period, excluding any time during which such person was incarcerated for any reason, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony.

### **§ 130.55 Sexual abuse in the third degree.**

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old, and (b) such other person was more than 14 years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

### § 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than 17 years old; or
2. Less than 14 years old.

Sexual abuse in the second degree is a class A misdemeanor.

### § 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than 11 years old; or
4. When the other person is less than 13 years old and the actor is 21 years old or older.

Sexual abuse in the first degree is a class D felony.

### § 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:
  - (a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or
  - (b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

### § 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:
  - (a) By forcible compulsion; or
  - (b) When the other person is incapable of consent by reason of being physically helpless; or
  - (c) When the other person is less than 11 years old.
2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.
3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

### § 130.67 Aggravated sexual abuse in the second degree.

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:
  - (a) By forcible compulsion; or
  - (b) When the other person is incapable of consent by reason of being physically helpless; or
  - (c) When the other person is less than 11 years old.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

**§ 130.65 Sexual abuse in the first degree.**

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than 11 years old; or
4. When the other person is less than 13 years old and the actor is 21 years old or older.

Sexual abuse in the first degree is a class D felony.

**§ 130.90 Facilitating a sex offense with a controlled substance.**

A person is guilty of facilitating a sex offense with a controlled substance when he or she:

1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and
2. commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance is a class D felony.

**§ 130.95 Predatory sexual assault.**

A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct

against a child in the first degree, as defined in this article, and when:

1. In the course of the commission of the crime or the immediate flight therefrom, he or she:
  - (a) Causes serious physical injury to the victim of such crime; or
  - (b) Uses or threatens the immediate use of a dangerous instrument; or
2. He or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons; or
3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in section 263.05 of this chapter.

Predatory sexual assault is a class A-II felony.

**§ 130.96 Predatory sexual assault against a child.**

A person is guilty of predatory sexual assault against a child when, being 18 years old or more, he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and the victim is less than 13 years old.

Predatory sexual assault against a child is a class A-II felony.

### § 120.45 Stalking in the fourth degree.

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

For the purposes of subdivision two of this section, "following" shall include the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device.

Stalking in the fourth degree is a class B misdemeanor.

### 120.50 Stalking in the third degree.

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate

transactions, for which the actor has not been previously convicted; or

2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding 10 years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding 10 years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

### § 120.55 Stalking in the second degree.

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shuriken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument

- or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
  3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
  4. Being 21 years of age or older, repeatedly follows a person under the age of 14 or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of 14 in reasonable fear of physical injury, serious physical injury or death; or
  5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against 10 or more persons, in 10 or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

**§ 120.60 Stalking in the first degree.**

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or

2. commits a class A misdemeanor defined in article 130 of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

**Social Services Law section 459-a provides**

1. "Victim of domestic violence" means any person over the age of 16, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member.
2. "Family or household members" mean the following individuals:
  - (a) persons related by consanguinity or affinity;
  - (b) persons legally married to one another;
  - (c) persons formerly married to one another regardless of whether they still reside in the same household;
  - (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time;
  - (e) unrelated persons who are continually or at regular intervals living in the same

household or who have in the past continually or at regular intervals lived in the same household;

**(f)** persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; or

**(g)** any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

3. “Parent” means a natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.





