



HUMAN RESOURCES POLICIES AND PROCEDURES

Chapter 4: Workplace Conduct

Policy: 4.5a - Sexual Misconduct, Relationship Violence, and Stalking Policy and Procedure for NYU Grossman School of Medicine and NYU Long Island School of Medicine

Responsible HR Department: Title IX Office titleix@nyulangone.org or (212) 404-3825

1. Introduction

The NYU Grossman School of Medicine and NYU Long Island School of Medicine (collectively referred to herein as “Schools of Medicine”) seek to maintain a safe learning, living, and working environment. This document sets forth the Sexual Misconduct, Relationship Violence, and Stalking Policy and Procedure (“Title IX Policy and Grievance Procedures”) for students, faculty and staff of NYU Grossman School of Medicine, Long Island School of Medicine, Sackler Institute of Graduate Biomedical Sciences and the Department of Environmental Medicine.¹

This policy applies to NYU Grossman School of Medicine students, including graduate students enrolled at the Sackler Institute at NYU Grossman School of Medicine and the Department of Environmental Medicine and NYU Long Island School of Medicine students (collectively referred to herein as “Students”); residents, fellows, and interns (collectively referred to herein as “Trainees”); NYU Grossman School of Medicine and NYU Long Island School of Medicine faculty, visiting faculty, professional staff, and administrators (collectively referred to herein as “Employees”).

Please contact the Title IX Coordinator with any questions about the applicable Title IX Grievance Procedure.

What is the purpose of the Sexual Misconduct, Relationship Violence, and Stalking Policy?

¹ This Title IX Policy and Grievance Procedure does not apply to the NYU Langone Health System, NYU Langone Hospitals (including all inpatient and ambulatory facilities), Family Health Centers at NYU Langone and NYC Health and Hospitals, and all entities that are controlled by any of them, except where specifically included.

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Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with an individual's ability to equally access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how the Schools of Medicine **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that the Schools of Medicine **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, the Schools of Medicine implemented the following Sexual Misconduct, Relationship Violence, and Stalking Policy, effective August 14, 2020.

How does the Sexual Misconduct, Relationship Violence, and Stalking Policy impact other campus disciplinary policies?

In recent years, "Title IX" cases have become a shorthand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, the Schools of Medicine must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.



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The Schools of Medicine remain committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

The Schools of Medicine have other policies and procedures including, but not limited to:

- ***Code of Conduct, Avoiding Workplace Harassment and Discrimination Policy, Disruptive Behavior Policy, Compliance Hotline Complaint Policy, and Violence-Free Workplace*** that define certain behavior as a violation of institution policy, (together “Conduct Policies”).

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the Schools of Medicine retain authority to investigate and adjudicate the allegations under the policies and procedures defined within the “Conduct Policies” through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the Schools of Medicine for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes and may not be cited for or against any right or aspect of any other policy or process.

How does the Sexual Misconduct, Relationship Violence, and Stalking Grievance Policy impact the handling of complaints?

The existing Title IX office and reporting structure remains in place. What has changed is the way the Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.



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2. The Title IX Grievance Policy

General Rules of Application

Effective Date

This Sexual Misconduct, Relationship Violence, and Stalking Grievance Policy or Title IX Grievance Policy became effective on August 14, 2020, and will only apply to Formal Complaints of sexual harassment that occurred on or after August 14, 2020.

Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should this Policy be revoked in this manner, any conduct covered under this Grievance Policy shall be investigated and adjudicated under the existing Sexual Misconduct, Relationship Violence, and Stalking Grievance Policy.

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the Schools of Medicine's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

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Definitions

Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. Sexual Assault means Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact as further defined below:
 - a. **Non-Consensual Sexual Intercourse:** Non-Consensual Sexual Intercourse is having or attempting to have sexual intercourse with another individual (i) by force, threat of force, or coercive conduct; (ii) without affirmative consent; or (iii) where that individual is incapacitated. Sexual intercourse includes anal or vaginal penetration, however slight, with a body part (e.g., penis, finger, hand, or tongue) or an object, or oral-genital contact.
 - b. **Non-Consensual Sexual Contact:** Non-Consensual Sexual Contact is having or attempting to have sexual contact with another individual (i) by force, threat of force, or coercive conduct; (ii) without affirmative consent; or (iii) where that individual is incapacitated. Sexual contact includes intentional touching, fondling or other intentional contact with the breasts, buttocks, groin genitals or other intimate parts. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.

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4. Dating Violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic Violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Schools of Medicine's Conduct Policies.

Affirmative Consent

For the purposes of this Title IX Grievance Policy, "Affirmative Consent" means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Affirmative 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 cannot be obtained through: (1) the use of force or coercion; or (2) by taking

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advantage of the incapacitation of another individual. Consent cannot be given by someone who is under the legal age to consent.

In evaluating whether affirmative consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to the extent to which a Complainant affirmatively gives words or actions indicating a willingness to engage in sexual activity; whether a reasonable person in the Respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating an incapacity to consent.

Relying solely on nonverbal communication may result in a violation of this policy. It is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and clarifies, verbally, the willingness to continue.

Consent may be initially given, but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must cease. Prior consent does not imply current or future consent; consent to any sexual act or prior consensual sexual activity does not necessarily constitute consent to any other sexual act. Even in the context of an ongoing relationship, consent must be freely sought and given for each instance of sexual activity.

Force or Coercion: Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.

Coercion is conduct, including intimidation and express or implied threats of physical, psychological, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual activity.

Incapacitation: An individual who is incapacitated lacks the ability to knowingly choose to participate in sexual activity or make informed, rational judgments and thus cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or

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permanently, to give consent because an individual is mentally and/or physically helpless, involuntarily restrained, asleep, unconscious, or unaware that sexual activity is occurring. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one's own conduct. Physically helpless means a person is physically unable to communicate unwillingness to an act.

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred or incomprehensible speech, vomiting, unsteady gait, combativeness, or emotional volatility.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have been aware of the Complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position. Being intoxicated or impaired by drugs or alcohol is never an excuse for committing Prohibited Conduct and does not diminish one's responsibility to obtain informed and freely given consent. In other words, consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Education Program or Activity

For the purposes of this Title IX Grievance Policy, the Schools of Medicine's "education program or activity" includes:

- Any on-campus premises
- Any off-campus premises that the Schools of Medicine has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the Schools of Medicine's programs and activities over which the Schools of Medicine has substantial control.

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Formal Complaint

For the purposes of this Title IX Grievance Policy, “Formal Complaint” means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within the Schools of Medicine’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Complainant

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Relevant evidence and questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.



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Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Disability Accommodations

This policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Title IX Grievance Procedures. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other Schools of Medicine programs and activities.

Student Amnesty Policy

The health and safety of every Student is of utmost importance. The Schools of Medicine 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 Relationship Violence, Stalking, or Sexual Assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Schools of Medicine encourages Students to report incidents of Prohibited Conduct to the Schools of Medicine officials. A bystander, Complainant, or other individual making a report that discloses any incident of Prohibited Conduct to the Schools of Medicine's officials or law enforcement will not be subject to disciplinary action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the Prohibited Conduct.

Note that the Student Amnesty Policy only covers the student disciplinary process. This policy does not apply in the case of a clinical or residency placements where the prohibition on drug and alcohol use in the workplace is governed by federal or state law or regulation, national standards or accreditation requirements. For example, if a



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student reports being sexually assaulted in a hospital residency placement while under the influence of prescription drugs stolen from the hospital pharmacy, this section would not prevent the student from being removed from the placement or from having restrictions placed on participation in the placement. The student would have amnesty from student judicial or conduct charges for that prescription drug use.

Students' Bill of Rights

Under this Policy, all students have the right to:

1. Make a report to local law enforcement and/or state police.
2. Have disclosures of Relationship Violence, Stalking, and Sexual Assault treated seriously.
3. Make a decision about whether or not to disclose a crime or violation and participate in the University's disciplinary process free from pressure by the University.
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
5. Be treated with dignity and to receive from the University courteous, fair, and respectful health care and counseling services, where available.
6. Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations.
7. Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident.
8. Be reasonably protected from Retaliation by the University, any student, the Respondent or any other party to a report or proceeding under this Policy, and/or their friends, family and acquaintances within the University's jurisdiction.



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9. Access to at least one level of appeal of a determination.
10. Be accompanied by an Advisor of Choice who may assist and advise a Complainant or Respondent throughout the disciplinary process including during all meetings and hearings related to such process.
11. Exercise civil rights and practice of religion without interference by the investigative or disciplinary process of the University.

Making a Report Regarding Covered Sexual Harassment to the Schools of Medicine

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

Name: Molree Williams-Lendor

Title: Director, Workplace Culture and Inclusion/Title IX Coordinator

Office Address: 1 Park Avenue, New York, NY 10016

Email Address: titleix@nyulangone.org

Telephone Number: (212) 404-3825

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.



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Confidential Reporting

Privacy vs. Confidentiality

References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or institutional officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean the Schools of Medicine's offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The Schools of Medicine will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

The following Officials may provide confidentiality:

- Pastoral Care
- Professional, licensed physicians, counselors and healthcare providers engaged in a physician – patient or equivalent relationship.

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee
- Employee Labor and Relations
- The Schools of Medicine Department of Security
- NYU Long Island School of Medicine Campus Security

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from



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the Schools of Medicine regardless of whether they desire to file a Complaint. Supportive measures are non-disciplinary and non-punitive.

As appropriate, supportive measures may include, but not be limited to:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

Emergency Removal

The Schools of Medicine retains the authority to remove a Respondent from the Schools of Medicine's program or activity on an emergency basis, where the Schools of Medicine (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If the Schools of Medicine determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

The Title IX Grievance Process

Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

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To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed Complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the Schools of Medicine, including as an employee. For Complainants who do not meet these criteria, the Schools of Medicine will utilize existing Conduct Policies.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The Schools of Medicine will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or Conduct Policies prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate institutional process.

Informal Resolution Process

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the Schools of Medicine's Informal Resolution Process.

The Schools of Medicine may seek a form of Informal Resolution Process in place of an Investigation or Disciplinary Process. Informal Resolution Process is not appropriate for all cases of covered Title IX misconduct, and the Schools of Medicine retains the discretion to determine which cases may be appropriate for Informal Resolution Process and the type of Informal Resolution Process that may be appropriate in a specific case.

Participation in Informal Resolution Process (including the specific form of Informal Resolution Process, such as Mediation) is voluntary. The Schools of Medicine will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from Informal Resolution at any time. The Schools of Medicine also reserves the right in its discretion to terminate an Informal Resolution process at any time. In addition, the Complainant, Respondent, and the Schools of Medicine must each agree before a case will be resolved through Informal Resolution Process.



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If an agreement acceptable to each of the Schools of Medicine, the Complainant, and the Respondent is reached through Informal Resolution, the matter is considered resolved and the terms are implemented. If an agreement is not reached, the matter will be referred for an Investigation under the Title IX Grievance Procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which typically will be completed within thirty (30) days of the initial report.

Multi-Party Situations

The Schools of Medicine may consolidate Formal Complaints alleging covered sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Determining Jurisdiction

The Title IX Coordinator or designee will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in the Schools of Medicine's education program or activity*; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

*All activities within the Schools of Medicine: education, clinical and research.

If all of the elements are met, the Schools of Medicine will investigate the allegations according to this Title IX Grievance Process.

Allegations Potentially Falling Under Two Policies



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If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of **only the allegations that constitute covered sexual harassment**.

Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator or designee will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

Discretionary Dismissal

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed by the Schools of Medicine; or,
- If specific circumstances prevent the Schools of Medicine from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the Title IX Coordinator or designee will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.



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Notice of Removal

Upon dismissal for the purposes of Title IX, the Schools of Medicine retains discretion to utilize the Conduct Policies to determine if a violation of Conduct Policies has occurred. If so, the Schools of Medicine will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the alternate conduct process.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable after the Schools of Medicine receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or an employee, and by other reasonable means if they are neither.

The Schools of Medicine will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of the School of Medicine's Title IX Grievance Process including the Informal Resolution Process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of

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the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an Advisor of their Choice, who may be, but is not required to be, an attorney;
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the School of Medicine does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source;
- A statement that the Schools of Medicine Health Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during a grievance process.

Ongoing Notice

If, in the course of an investigation, the Schools of Medicine decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the Schools of Medicine will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisor of Choice and Participation of Advisor of Choice

The Schools of Medicine will provide the parties equal access to advisors and support persons; any restrictions on Advisor participation will be applied equally.



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The Schools of Medicine has a long-standing practice of requiring individuals to participate in the process directly and not through an advocate or representative. A Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the Schools of Medicine.

The Schools of Medicine will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The Schools of Medicine's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other institutional policies apply to matters governed under this Policy, and the Schools of Medicine cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The Title IX Coordinator or designee shall make the determination of what is reasonable. The Schools of Medicine will not be obligated to delay a meeting or hearing under this process for more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the Schools of Medicine.

Notice of Meetings and Interviews

The Schools of Medicine will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Title IX Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties. For example, a request to take a



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five day pause made an hour before a hearing for which multiple parties and their Advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further pauses in the Process.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

The Schools of Medicine, not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the Schools of Medicine and does not indicate responsibility.

The Schools of Medicine cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The Schools of Medicine will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the



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inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the School of Medicine in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The Title IX Coordinator or designee will send the evidence made available for each party and each party's Advisor, if any, to inspect and review through an electronic format or a hard copy. The Institution is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension as their designated extension request.

The Schools of Medicine may provide the parties five (5) business days after the initial inspection and review of evidence, and before the investigator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the investigator. Those written responses will be disclosed to the parties.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.



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The parties and their Advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process.

The parties and their Advisors agree not to photograph or otherwise copy the evidence.

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of an individual. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their Advisors, if any.

Investigative Report

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) days prior to the hearing in an electronic format or a hard copy for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.



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Hearing

General Rules of Hearings

The Schools of Medicine will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

For Students

The live hearing and appeal for students will be conducted by the NYU Office of Student Conduct and Community Standards (OSC). The following hearing procedures do not apply to students.

For Trainees

The live hearing and appeal for trainees will be conducted by the Office of Graduate Medical Education (GME). The following hearing procedures do not apply to trainees.

For Employees

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the Schools of Medicine's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. This technology will enable participants simultaneously to see and hear each other. At its discretion, the Schools of Medicine may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded. That recording or transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their Advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.

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Continuances or Granting Extensions

The Schools of Medicine may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the Schools of Medicine will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The Schools of Medicine may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
 - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.
- The Schools of Medicine will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the Adjudicator cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.

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- The Adjudicator cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions.
- The parties shall be subject to the Schools of Medicine's Rules of Decorum.

The Adjudicator

- The hearing body will consist of a single Adjudicator.
- The Adjudicator will not serve as the Title IX Coordinator, Title IX investigator, or Advisor to any party in the case, nor may the Adjudicator serve on the appeals body in the case.
- The Adjudicator will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Adjudicator will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding an Adjudicator's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of Choice

- The parties have the right to select an Advisor of their Choice, who may be, but does not have to be, an attorney.
- The Advisor of Choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the Advisor. As a result, if a party does not select an Advisor, the Schools of Medicine will select an Advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The Advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Advisor is not prohibited from being a witness in the matter.

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- If a party does not attend the live hearing, the party's Advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their Advisor appear at the hearing, The Schools of Medicine will provide an Advisor to appear on behalf of the non-appearing party.
- Advisors shall be subject to the Schools of Medicine's Rules of Decorum, and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the Adjudicator cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.
- Witnesses shall be subject to the Schools of Medicine's Rules of Decorum

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Adjudicator will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Adjudicator will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Adjudicator conducts its initial round of questioning; During the Parties' cross-examination, the Adjudicator will have the authority to pause cross-examination at any time for the purposes of asking Adjudicator's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Adjudicator. A Party's waiver of cross-examination does not eliminate the ability of the Adjudicator to use statements made by the Party.



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Live Cross-Examination Procedure

Each party's Advisor will conduct live cross-examination of the other party or parties and witnesses. During this live cross-examination, the Advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Adjudicator will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Adjudicator, may be deemed irrelevant if they have been asked and answered.

Review of Recording

The recording of the hearing will be available for review by the parties within seven (7) business days or at such time as the recording becomes available, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or Advisors of Choice.

Determination Regarding Responsibility

Standard of Proof

The Schools of Medicine uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Adjudicator.

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Adjudicators shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Adjudicators will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institutional email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;



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4. Conclusions regarding which section of the Title IX Grievance Policy, if any, the Respondent has or has not violated.
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the Respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
6. The recipient's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the Schools of Medicine within ten (10) business days of the completion of the hearing.

Finality

The determination regarding responsibility becomes final either on the date that the Title IX Coordinator or designee provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);

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- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Adjudicator(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the Title IX Coordinator, or designee, will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by an Appeal panel who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing Adjudicator in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

Retaliation

The Schools of Medicine will keep the identity of any individual who has made a report or Complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing or judicial proceeding under this Title IX Grievance Policy.



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No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be reported to the Title IX Coordinator or designee.