

SEX-BASED MISCONDUCT POLICY AND PROCEDURE

I. STATEMENT OF POLICY AND GOALS

Pace University is committed to providing a safe¹ environment for every member of its community and to ensuring that no student, faculty or staff member is excluded from participation in or denied the benefits of any University program or activity on the basis of sex. Accordingly, the University prohibits the following forms of Sex-Based Misconduct: sexual assault, sexual harassment, gender-based harassment, dating violence, domestic violence, sexual exploitation and stalking. This Policy also applies to dating violence, domestic violence and stalking that is not sex-based (definitions of these terms can be found below). All references in this Policy to “Sex-Based Misconduct” shall also be deemed to apply to non sex-based dating violence, domestic violence and stalking. Under certain circumstances an attempt to violate this Policy and Procedure may itself be considered a violation. The ~~un~~ encouraged to report such incidents to the University and,

enforcement. Pursuant to the procedures detailed below, upon receiving a report, the University will respond promptly and fairly. When appropriate, the University will take steps to prevent future incidents and to ameliorate the effects of past incidents.

Pace University is committed to the following goals:

- Establishing a culture of respect for others;
- Educating the University community regarding the meaning and importance of consent;
- Providing information to help members of the University community identify Sex-Based Misconduct;
- Providing clear and concise guidelines for students and other members of the University community to follow in the event that they or someone they know have (or think they have) been the victim of Sex-Based Misconduct;
- Providing educational programs to help students and other members of the University community prevent Sex-Based Misconduct, including bystander intervention training;
- Educating and training staff members, including counselors, security officers and Student Affairs and Residential Life staff to assist victims of Sex-Based Misconduct;
- Assisting victims of Sex-Based Misconduct in obtaining necessary medical care and counseling; and
- Ensuring that reports of Sex-Based Misconduct are addressed promptly and in accordance with the University’s investigatory and disciplinary procedures and that such procedures are fair and impartial.

Nothing in this Policy and Procedure shall abridge academic freedom or the University's educational mission. Prohibitions against Sex-Based Misconduct and other forms of discrimination and harassment do not extend to statements or written materials that are reasonably germane to the classroom subject matter.

This Policy and Procedure applies regardless of the Complainant's or the Respondent's sexual orientation, sex, gender identity or expression, age, race, color, creed, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, national origin, religion, disability or other status protected by law.

This Policy and Procedure does not constitute a contract and can be amended at any time in the University's sole discretion.

The University's Title IX Coordinator is Bernard Dufresne, Executive Director of Institutional Equity, 163 William Street, 10th Floor (212) 346-1310 or (914) 923-2610; bdufresne@pace.edu.

II. POLICY AND PROCEDURE SUMMARY

This Policy prohibits all forms of sex and gender related misconduct, referred to here as "Sex- Based Misconduct". A person who has experienced Sex-Based misconduct has several options:

A report to a Confidential Resource. A confidential resource provides emotional support and/or medical services and maintains confidentiality. A report to a confidential resource does not result in a University investigation or any other University action to respond to the incident.

- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").
- 2. **Sexual assault.** "Sexual assault" is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:
 - a. Non-consensual sexual intercourse. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes conduct committed against both males and females.
 - b. Non-consensual sexual contact. The touching of the private body parts² of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
- 3. **Dating violence.** "Dating violence" means violence committed on the basis of sex by a person:
 - (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (2) 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; and (iii) the frequency of interaction between the persons involved in the relationship.
- 4.

B.

! requesting or demanding sexual favors concerning employment, academic activities
or other activities;
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Violation as defined above because of the basis on which it occurs or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the University's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University's education program or activity).

6. **Sexual Exploitation.** Sexual Exploitation occurs when, without Affirmative Consent

or resistance does not mean consent. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent.

All references to “consent” in this policy refer to “Affirmative Consent.”

Incapacitation is a state where someone lacks the ability to knowingly choose to participate in sexual activity. A person may be incapacitated due to mental disability, sleep, unconsciousness, physical restraint or from the consumption (voluntary or otherwise) of drugs or alcohol. In New York a person under age 17 is also incapable of giving consent. Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, the odor of alcohol on a person’s breath, inability to maintain balance, vomiting, unusual or irrational behavior and unconsciousness. 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 Sex-Based Misconduct.

<p><i>Mount Sinai Beth Israel Medical Center</i> First Ave. at 16th Street - (212) 420-2000/(212) 420-2840</p> <p><i>St. Luke's-Roosevelt Hospital</i> 1000 Tenth Ave. at 58th St. - (212) 523-4000</p> <p><i>St. Luke's Hospital</i> 1111 Amsterdam Avenue at 114th Street (212) 523-4000</p> <p><i>Rape Crisis & Domestic Violence Intervention Program</i> Dept. of Social Work - 317 E 17th St. (212) 420-4516</p>	
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VI. CONFIDENTIAL RESOURCES

The University encourages any person who has experienced sexual assault or other forms of Sex- Based Misconduct to talk to someone about what happened, so she or he can get the support needed. There are a variety of confidential resources available to members of the University community. Some of these resources maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.”

What is the difference between a confidential and non-confidential resource?

A confidential resource does not reveal the information shared with him/her without the disclosing person’s consent. (There may be instances where a confidential resource must disclose information in a criminal or civil court proceeding, but those are very limited circumstances. Similarly, a report of sexual abuse of a minor under 17 years of age in the context of a University program, activity or facility will not be treated as confidential.) A list of confidential resources is provided below, but usually confidential resources are counselors and healthcare providers. **The only University employees who can offer confidentiality are those listed as confidential resources below.**

A non-confidential resource is a person who must report information to others with a need to know. A University employee who is a non-confidential resource will disclose to as few individuals as possible, but a non-confidential resource does not have the ability to promise that he/she will not tell others within the University about the information that has been shared with him/her. At a minimum, a non-confidential resource will share all information with the Title IX Coordinator.

The following **Confidential Resources** are available to members of the University Community on and off campus in each of our locations. The University’s on-campus health, counseling and pastoral services noted below are available to students free of charge.

New York Campus

On-Campus Resources

Pace University Counseling Center 156 William Street, 8th Floor, (212) 346-1526 Available 24/7

**Office of Sexual and Interpersonal Wellness
(212) 346-1931**

**Peer Advocates Against Sexual Assault (PAASA)
paasa@pace.edu**

**University Health Care
Maria's Tower, 6th Floor East (212) 346-1600**

Off-Campus Resources

Anti-Violence Center (AVC) 110 W. 11th St. New York, NY 10011 (212) 346-1526

REPORTING TO THE UNIVERSITY: *REPORTING TO A
“RESPONSIBLE EMPLOYEE”*

Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the University's educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties.

Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course- related adjustments or allowing a withdrawal from a course without penalty;

- Changes to housing, transportation and campus working situations if those changes are requested by a party and reasonably available;

- Mutual "No Contact" orders and, possibly, in rare cases, such as when legal restraining orders or orders of protection have been issued, one

After determining a student respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the complainant and respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

If a student respondent disagrees with the decision to be removed from campus, the respondent may appeal the decision. The respondent

The Title IX Coordinator will consider the wishes of the complainant not to proceed with the investigation and adjudication process. However, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that the allegations are such that it would be unreasonable not to proceed despite the wishes of the complainant.

In making this determination, the Title IX Coordinator will consider, among other factors, the risk that the alleged perpetrator will commit additional acts of Sex-Based Misconduct or other violence, which may be assessed by evaluating:

- whether there have been other 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 alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators
- whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the University possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence); and
- 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.

Additionally, where the respondent is not enrolled at the University and is not employed by the University, the University may decline to process the complaint through the Grievance Process. Instead, the University will take the steps it deems appropriate under the circumstances.

A complainant or respondent with a disability who requires accommodation in the complaint, investigation, hearing or any other phase of the process is responsible for disclosing the need for accommodation to the Title IX Coordinator. The Title IX Coordinator may consult with the

and issued simultaneously to both the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the dismissal of a Title IX Category or University Category violation. A decision to dismiss a Title IX Category or University Category violation is immediately appealable by the complainant, by filing an appeal with the Title IX Coordinator, which will be decided by the Appeal Officer(s) as designated in the Appeal section of this Policy.

Even if a Title IX Category violation is subject to dismissal, the University may continue to process the allegations as University Category violations, assuming that the allegations, if true, would constitute University Category violations.

3. Informal Resolution.

Informal Resolution may be offered to the parties after a formal complaint is filed by the Complainant. The University reserves the right not to offer Informal Resolution in cases where the University determines Informal Resolution to be inappropriate based on the allegations or other circumstances (including but not limited to a situation where an employee is alleged to have committed sexual misconduct against a student). Informal Resolution will be pursued only where both the Complainant and Respondent agree to utilize the process. Either party in an Informal Resolution process may terminate it at any time and, if that occurs, the complaint will proceed to the formal investigation and adjudication process set forth below. Similarly, the Title IX Coordinator may decide to end an Informal Resolution process, including if new facts come to light rendering an Informal Resolution inappropriate.

If both parties consent to participate in the Informal Resolution process, the University will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be free from conflicts of interest and bias.

An Informal Resolution leads either to an agreement between the parties or no agreement. If no agreement is reached, the complaint returns to the formal investigation and adjudication process. The University reserves the right to disallow an Informal Resolution that the University finds unacceptable or inappropriate. An Informal Resolution may include disciplinary sanctions agreed to by the parties. An Informal Resolution, if achieved, will be agreed to by the parties in writing and is considered final.

VII. ASSIGNED HEARING OFFICER/DECISION MAKER AND APPEAL OFFICER(S)

The following Complaint Procedure Diagram identifies the Hearing Officer/Decision Maker and Appeal Officer(s) who will be involved in deciding the complaint. The identity of the persons appointed to a

determination as to whether a violation of this Policy has been established is determined based on a preponderance of evidence standard. A preponderance of the evidence means to prove that something is more likely so than not so and does not require proof to an absolute certainty or beyond a reasonable doubt.

Complaint Procedure Diagram⁶

Respondent	Investigator	Decision Maker/ Hearing Officer	Appeal Officer(s)
Faculty Member	Title IX Coordinator or Another Investigator From a Trained Pool	Provost (with prior opportunity for comment/recommendation from the Faculty Review Committee)	President
Student	Title IX Coordinator or Another Investigator From a Trained Pool	Campus Dean for Students for the campus other than where the incident occurred	Provost or their designee and two (2) trained University officials to be appointed by Title IX Coordinator
Staff	Title IX Coordinator or Another Investigator From a Trained Pool	Vice President for Human Resources	Vice President Finance/Controller
Third Party	Title IX Coordinator or Another Investigator From a Trained Pool	Vice President Finance/Controller	Chief Financial Officer

Committee, the Title IX Coordinator will refer the objection to the Chief Diversity Officer, who will evaluate the objection and, in consultation with the Title IX Coordinator and University Counsel, decide whether to uphold or deny the objection. If the objection is upheld, appropriate replacement or replacements will be selected by the Chief Diversity Officer in consultation with the Title IX Coordinator and University Counsel.⁷ If the objection is to a member of the Faculty Review Committee, the Title IX Coordinator will refer the objection to the appropriate Location Faculty Grievance Committee. The Location Faculty Grievance Committee, in consultation with the Title IX Coordinator and University Counsel, shall determine whether to uphold or deny the objection, and if the objection is upheld, select an appropriate alternate Faculty Review Committee member. The Chief Diversity Officer and the Location Faculty Grievance Committee shall set forth the reasons for their objection determinations in writing, which they shall transmit to the Complainant, the Respondent and the Title IX Coordinator.

The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the

If, in the course of the investigation, the University decides to investigate allegations that are not included in the

Efforts will be made to maintain privacy; only people

a recommendation as to what, if any, sanction(s), including suspension, expulsion or termination, should be taken against the Respondent.

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to completion of the Investigation Report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted

XI. HEARING PROCEDURES

These hearing procedures apply to the adjudication of any case involving a Title IX Category violation.

A. General

At least ten (10) calendar days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the Investigation Report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

A hearing before a Hearing Officer will be held not less than ten (10) calendar days after the parties have

the Respondent (as described below)

4. Questions for the Complainant by the Hearing Officer and, if desired, on behalf of the Respondent (as described below)
5. Questions for the Respondent by the Hearing Officer and, if desired, on behalf of the Complainant (as described below)
6. Questions for each witness by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
7. Closing Statement by the Respondent
8. Closing Statement by the Complainant

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the Investigation Report as described in the Investigation Procedures section will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. A party may not request to

the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, non-intimidating and non-abusive manner. If the Hearing Officer determines that an advisor of choice is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the University will assign an advisor of the University's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation.

The Hearing Officer may be advised by and/or consult with the University's legal counsel as the Hearing Officer deems necessary or appropriate. The Hearing Officer may be accompanied by an assistant who will not participate in the hearing or

such person. However, the Hearing Officer will not draw an inference as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions, including cross-examination questions.

E. Hearing Determinations

Following conclusion of the hearing, the Hearing Officer will render as to whether the

Sanctions for Violating this Policy

Those found to have violated this Policy will be subject to disciplinary action. The University may impose any of the following sanctions:

- Warning
- Probation

XIII. APPEALS

Within five (5) calendar days of the date of receipt of the Decision, the Complainant or the Respondent may file a written appeal to the Title IX Coordinator, which appeal will be decided by the appropriate Appeal Officer(s) listed in the Complaint Procedure Diagram. The appeal must include a detailed statement setting forth the ground(s) upon which the appeal is based. The sole grounds upon which a party may base an appeal are as follows:

Procedural irregularity that affected the determination regarding responsibility or dismissal of the matter;

New evidence that was not reasonably available at the time the determination regarding responsibility

XIV. APPLICATION TO FACULTY AND STAFF

One or more of the University's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies to any situation where a student is the complainant or respondent. In all other situations (i.e., where a student is not a party), the University reserves the right to apply this policy or another applicable University policy or process. The University will apply this policy to any situation where the University determines that Title IX requires the application of this policy.

XV. MISCELLANEOUS PROVISIONS

All time periods may be extended by the University for good cause shown.

In the event the allegations of discrimination, harassment or retaliation are involved with other violations of University policies, the University reserves the right to select the process or processes to be used to determine all charges that arise out of the same incidents and/or allegations and whether any overlapping procedures are to be utilized sequentially, simultaneously or not at all.

The Title IX Coordinator will serve as the centralized record keeper of records concerning complaints and investigations. Additional records concerning complaints and investigations may also be maintained by the Vice President for Human Resources and University Counsel.

Any suspension or termination of a tenured faculty member or full-time non-tenured faculty member prior to expiration of a contract of appointment will be subject to the University's Academic Dismissal Policy and Procedure.

STUDENT'S BILL OF RIGHTS
IN CASES INVOLVING SEXUAL ASSAULT,
DOMESTIC/DATING VIOLENCE AND STALKING

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

**STATEMENT OF RIGHTS IN CASES INVOLVING SEXUAL ASSAULT,
DOMESTIC/DATING VIOLENCE AND STALKING**

Anyone reporting an incident of sexual assault, domestic or dating violence or stalking has the right to:

- A. Notify Campus Security, Local Law Enforcement or the New York State Police;
- B. Emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
 - 1) options to proceed, including the right to make a report to Campus Safety (reports to Campus Safety are reported to the Title IX Coordinator), Local Law Enforcement and/or the New York State Police or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University, as set out in the Pace University Sex-Based Misconduct Policy and Procedure;
 - 2) where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
 - 3) that the criminal justice process utilizes different standards of proof and evidence than the University's misconduct procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the District Attorney;
 - 4) whether the person they are reporting to is authorized to offer confidentiality or privacy; and
 - 5) any other reporting options;
- C. If they are a student, to contact the University's Health Care Unit and University Counseling Center, where they may be offered confidential resources pursuant to applicable laws and can be assisted in obtaining services for reporting individuals; or to contact non-University confidential resources, including the New York State Office of Victim Services at 1(800) 247-8035 or <https://ovs.ny.gov>;
- D. Disclose confidentially the incident and obtain services from the state or local government;
- E. Disclose the incident to the University's Responsible Employees who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, subject to the University's Sex-Based Misconduct Policy and Procedure, and can assist in obtaining resources for reporting individuals;
- F. File a report of sexual assault, domestic violence, dating violence and/or stalking and consult the Title IX Coordinator and other appropriate University personnel for information and assistance. Reports shall be investigated in accordance with University policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is not the same as confidentiality and private information can be shared as necessary to implement and fulfill the University's obligations under the law and its policies and procedures;

- G. Disclose, if the accused is a University employee, the incident to Human Resources or to request that a confidential or private employee assist in reporting to Human Resources;
 - H. Receive assistance from appropriate University representatives if interested in initiating legal proceedings in family court or civil court, such assistance to consist of facilitation in contacting appropriate local agencies who can provide direct assistance with court proceedings; and
 - I. Withdraw a complaint or involvement from the University processes at any time, with the understanding that in appropriate cases, the University may nonetheless be required to proceed even if the reporting individual does not wish to do so.
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COMPLAINT FORM

Date(s) of Incident(s): _____

Complainant: _____

Person(s) About Whom Complaint Is Made: _____

Description of Incident(s) (attach additional sheets if necessary): _____

Name(s) of Witness(es), if any: _____