

# **SEX-BASED MISCONDUCT POLICY AND PROCEDURE**

## **STATEMENT OF POLICY AND GOALS**

Pace University is committed to providing a safe 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 use of alcohol or other drugs will not be accepted as a defense to a violation of this Policy and Procedure.

The University prohibits retaliation against any individual for reporting an incident of Sex-Based Misconduct or for participating in any investigation or proceeding related to any such report.

Members of the University community who believe that they have been subjected to Sex-Based Misconduct are encouraged to report such incidents to the University and, where applicable, to local law 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 does not constitute a contract and can be amended at any time in the University's sole discretion.

### **PROHIBITED SEX-BASED MISCONDUCT DEFINED**

**Sexual Harassment** is defined as unwelcome conduct of a sexual nature, including but not limited to sexual advances, requests for sexual favors or other physical, verbal or visual conduct of a sexual nature, including rape, sexual assault and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence and stalking may also be forms of sexual harassment. This definition prohibits conduct which is intentional and also conduct which, regardless of intent, has the effect or impact of creating an intimidating, hostile or offensive working or learning environment on the basis of sex. It makes no difference in determining whether conduct violates this Policy, that the person accused of violating the Policy was "just joking," "teasing," or being "playful" or had an evil motive. The fact that a person does not object to the alleged harassing conduct or does not request that the harassing conduct stop, does not necessarily mean that he/she welcomes the conduct. Unwelcome conduct of a sexual nature constitutes sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education, campus life activities or employment (quid pro quo harassment);
- submission to, or rejection of such conduct by an individual is used as the basis for employment, academic or other student life decisions affecting such individual (quid pro quo harassment); or
- such conduct has the purpose or effect of interfering unreasonably with an individual's academic performance or ability to participate in or benefit from the University's programs or activities, or creating an intimidating, hostile or offensive academic or work environment that is, or would be, offensive to a person of reasonable sensitivity and sensibilities (hostile environment sexual harassment).

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

- subtle or persistent pressure for sexual activity;
- unwelcome touching of a sexual nature or impeding or blocking movements;
- requesting or demanding sexual favors concerning employment, academic activities or other activities;
- unwelcome communications (verbal, written, electronic, etc.) of a sexual nature;
- failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior;
- engaging in visual conduct such as leering or making sexual gestures;
- displaying sexually suggestive or degrading objects, pictures, cartoons, posters;

**Last Updated: October 2017**

- distributing sexually suggestive, pornographic or obscene material;
- making derogatory comments on the basis of sex; sexual propositions; sexually explicit jokes or jokes concerning gender-specific traits or sexual preference;
- making sexually explicit comments about an individual's body or clothing; comments about an individual's sexual desirability; or using sexually degrading words to describe an individual; and
- engaging in verbal or written slurs, degrading or negative stereotyping.

To make a determination of whether sex-based harassment created a hostile environment, the University will consider the severity, persistence or pervasiveness of the sex-based harassment. The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. A single instance of sex-based harassment may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if each instance of the Sex-Based Misconduct is not particularly severe.

**Gender Based Harassment** is verbal or physical conduct that belittles or shows hostility or aversion toward an individual because of his or her gender and that substantially interferes with an individual's educational, campus life or employment experience. Gender-based harassment includes verbal and/or physical aggression toward another based upon a perception that the other fails to conform to stereotypical notions of expected characteristics for males or females.

**Sexual Assault** encompasses two categories of misconduct—Nonconsensual Sexual Contact and Nonconsensual Sexual Intercourse.<sup>1</sup>

**Nonconsensual Sexual Contact** is any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, of the private body parts (including genitalia, anus, groin, breast, inner thigh or buttocks) without Affirmative Consent. This may include non-penetrative acts, touching directly or with an object and/or touching the private body parts of another over clothing. This may also include forcing or causing another without Affirmative Consent to touch one's own private body part.

**Nonconsensual Sexual Intercourse** is any sexual intercourse, however slight, with any object or body part by a person against another person that is without Affirmative Consent and/or by force.

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<sup>1</sup> Sex offenses under New York State law are defined in Article 130 of the NYS Penal Code. A summary of New York State Penal Code 130 sex offenses and the penalties for commission of sex offenses is which is available online at <http://codes.lp.findlaw.com/nycode/PEN/THREE/H/130>.

Further information about sex offenses and resources for victims is available at [http://www.svfreenyc.org/survivors\\_legal.html#A](http://www.svfreenyc.org/survivors_legal.html#A).

References to Penal Code sections are provided for information purposes only. The University enforces its Policy and not the Penal Code provisions.

Sexual assaults of this type can be sub-defined by the following:

**Rape:** 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, forcibly or without consent or where the victim is incapable of consent due to mental or physical incapacity.

**Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

Examples of nonconsensual sexual intercourse include, but are not limited to:

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

**Sexual Exploitation** occurs when, without Affirmative Consent, an individual takes sexual advantage of another. Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy and voyeurism (e.g., observing or recording others engaged in sexual activity, whether in-person or through audio or video recording or streaming, without the consent of all involved);
- taking intimate pictures of another, but then distributing the pictures to others without the photographed person's consent;
- engaging in sexual activity with another while knowingly infected with a sexually transmitted disease without informing the other person of such infection;
- exposing of a person's genitals in non-consensual circumstances; • prostituting or soliciting another community member; and
- incest.

**Domestic Violence** refers to physical violence, threats of violence or acts of physical intimidation or coercion, isolation, stalking or other forms of verbal, emotional, sexual or economic abuse directed towards (i) a current or former spouse or intimate partner; (ii) a person with whom one shares a child; or (iii) anyone who is protected from the Respondent's acts under the domestic or family violence laws of New York. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.<sup>2</sup>

**Dating Violence** refers to physical violence, threats of violence or acts of physical intimidation or coercion committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship would be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence would include, but would not be

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<sup>2</sup> Information about New York State Domestic Violence related laws is available online at <http://statelaws.findlaw.com/new-york-law/new-york-domestic-violence-laws.html>.

limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts that meet the definition of “domestic violence.”

**Stalking** is a course of conduct directed at a specific person that would cause a reasonable person to feel fear for her, his or others’ safety, or to suffer substantial emotional distress.<sup>3</sup> Examples of stalking include but are not limited to:

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

**Retaliation** occurs when an adverse action is taken against an individual because the individual engaged in an activity protected by law or this Policy, including intimidating, threatening, coercing an individual who reported or complained of Sex-Based Misconduct or participated in a school or government investigation or other proceedings related to allegations of Sex-Based Misconduct.

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

**Affirmative Consent** is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender, gender identity or gender expression.

Each person involved in the sexual activity is responsible to ensure that they have the Affirmative Consent of the other or others to engage in the sexual activity. A person who has been drinking alcohol or using drugs is still responsible for ensuring that he/she has the other person’s Affirmative Consent to engage in any sexual activity. Affirmative Consent must be ongoing throughout a sexual activity and can be withdrawn at any time, and, if it is, the sexual activity must stop. Consenting to a specific sexual activity does not constitute consent to any other sexual act. Consent is not assumed based on previous consensual encounters or implied by a relationship. Consent to a sexual encounter with one person does not constitute consent to such an encounter with another.

Consent does not exist when there is the presence of threat, coercion, force or intimidation. Lack of protest 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

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<sup>3</sup> In addition to being a violation of this Policy and Procedure, stalking is a violation of NYS law. Stalking offenses under New York State law are defined in NYS Penal Code Sections 120.45–120.60, which are available online at <http://codes.lp.findlaw.com/nycode/PEN/THREE/H/120>.

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.

**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.

### **JURISDICTION AND SCOPE-When and to whom do this Policy and Procedure apply?**

This Policy and Procedure applies to acts of Sex-Based Misconduct and violence that occur on University owned or controlled premises or at University-sponsored off-campus programs or events. This Policy and Procedure applies to all students, faculty and staff, as well as to visitors, guests, vendors, contractors and other third parties. However, the University's academic and employment environment extends throughout the United States and abroad, wherever the University's students and employees and those of third parties associated with the University participate in or support University activities and programs. Conduct and behavior at off-campus activities and programs (e.g., off-campus classes, lectures, athletic events, development activities, alumni events, study abroad, etc.) are regulated by this Policy. The University may take action pursuant to this policy with respect to any behavior regardless of where and in what context it occurs if the conduct had an impact or effect on or poses a risk to the work or learning environment of persons covered by this Policy. Therefore, this Policy may be violated even if the prohibited conduct occurs off-campus or during an employee's or student's or third party's off duty time.

The Complaint Procedure below applies if the alleged victim (the "Complainant") or the Respondent is a Pace University undergraduate, graduate or professional school student, faculty member, staff member, administrator or third party.

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. Reasonable accommodations will be provided to individuals with disabilities when necessary to allow them

to fully utilize this Policy and Procedure (e.g. to make a report, file a complaint, participate in investigatory interviews and exercise other procedural rights).

### **ADMINISTRATION AND ENFORCEMENT-Who administers this Policy and Procedure?**

The Title IX Coordinator/Affirmative Action Officer is responsible for ensuring the University's compliance with Title IX of the Education Amendments of 1972 and for administering this Policy and Procedure. The Title IX Coordinator/Affirmative Action Officer is Arletha (Lisa) Miles. She can be reached at (212) 346-1310 or (914) 923-2610 or at amiles@pace.edu. Her Office is located at 163 William Street, 10<sup>th</sup> Floor, Rm. 1017, New York, NY 10038.

The Title IX Coordinator/Affirmative Action Officer is available to answer any questions that members of the University community may have about this Policy and Procedure and to assist them in gaining access to available resources. Inquiries concerning the application of Title IX and implementing regulations, as well as inquiries concerning the application of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Title VI of the Civil Rights Act, may be referred to the Title IX Coordinator/Affirmative Action Officer (with contact information) or Assistant Secretary for Office for Civil Rights [www.ed.gov/ocr](http://www.ed.gov/ocr)."

### **MEDICAL ATTENTION AND EVIDENCE PRESERVATION**

Victims of sexual assault or other acts of violence are encouraged to seek prompt medical attention. Medical attention is available through University Health Care or at local hospital emergency rooms (listed below). To gain assistance in getting to an emergency room, a victim can call 911 or notify Security. Medical staff will collect evidence, check for injuries, address pregnancy concerns and the possibility of exposure to sexually transmitted infections.

Communications with medical staff are confidential. Medical staff will not report the incident to the University.

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

#### **New York City Campus**

*University Health Care*

41 Park Row, Rm. 313

(212) 346-1600

M–F, 9:00 a.m.–5:00 p.m.

#### **Hospitals**

*Mount Sinai Medical Center Sexual Assault and Violence Intervention Program (SAVI)*

One Gustave Levy Place

New York, NY 10029  
(212) 423-2140  
[www.mssm.edu/SAVI](http://www.mssm.edu/SAVI)

*New York-Presbyterian/Lower Manhattan Hospital*  
170 William Street  
New York, NY 10038  
(212) 312-5000  
[www.nyp.org/lowermanhattan](http://www.nyp.org/lowermanhattan)  
*\*Available 24/7*

*New York Presbyterian Hospital/Columbia Campus*  
622 W. 168th Street  
New York, NY 10032  
(212) 305-2500  
*Domestic and Other Violent Emergencies Program*  
622 W. 168th Street, HP2  
New York, NY 10032  
(212) 305-9060

*New York Presbyterian Hospital/Weill Cornell Medical Center*  
525 E. 68th Street  
New York, NY 10065  
(212) 746-5454

*Bellevue Hospital Center*  
462 First Avenue  
New York, New York 10016  
General Information Number: (212) 562-4141  
Emergency Room (Adult): (212) 562-4347  
*Rape Crisis Program*  
First Avenue and 27th Street. C&D Building, 4th Floor, Rm 408  
New York, NY 10016  
(212) 562-3755

*Beth Israel Medical Center, Petrie Division*  
16th Street and First Avenue  
New York, NY 10003  
General Number: (212) 420-2000  
Emergency Services: (212) 420-2840  
*Rape Crisis and Domestic Violence Intervention Program*  
Department of Social Work - (212) 420-4516  
317 E. 17th Street New York, NY 10003



*Harlem Hospital Center*  
506 Lenox Avenue  
New York, New York 10037  
(212) 939-1000

*Center for Victim Support*  
Harlem Hospital Center, Rm. 6111 MLK  
506 Lenox Avenue  
Phone: (212) 939-4621  
Hotline: (212) 939-4613

*St. Luke's-Roosevelt Hospital*  
Roosevelt Hospital  
1000 Tenth Avenue at 58th Street  
(212) 523-4000

*St. Luke's Hospital*  
1111 Amsterdam Avenue at 114th Street  
(212) 523-4000  
*Crime Victims Treatment Center*  
411 W. 114th Street, Suite 2C  
(212) 523-4728

**Westchester Campus (Serving Pleasantville and White Plains)**

*University Health Care*  
Fitness Center, Rm. 125  
(914) 773-3760  
M–F, 9:00 a.m.–5:00 p.m.

Hospitals

*Westchester Medical Center*  
100 Woods Road  
Valhalla, NY 10595  
(914) 493-7000

*Phelps Memorial Hospital Center*  
701 N. Broadway  
Sleepy Hollow, NY 10591  
(914) 366-3000

*Hudson Valley Hospital Center*  
1980 Crompond Road  
Cortlandt Manor, NY 10567  
(914) 737-9000

*Lawrence Hospital Center*  
55 Palmer Avenue  
Bronxville, NY 10708  
(914) 787-1000

*Mount Vernon Hospital*  
12 N. 7th Avenue  
Mount Vernon, NY 10550  
(914) 664-8000

*Northern Westchester Hospital*  
400 E. Main Street  
Mount Kisco, NY 10549  
(914) 666-1200

*St. John's Riverside Hospital*  
967 N. Broadway  
Yonkers, NY 10701  
(914) 964-7990

*Sound Shore Medical Center*  
16 Guion Place  
New Rochelle, NY 10801  
(914) 632-5001

*White Plains Hospital Center*  
41 E. Post Road  
White Plains, NY 10601  
(914) 681-0600

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

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

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

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

### **REPORTING AN INCIDENT OF SEX-BASED MISCONDUCT OR NON SEX-BASED DATING VIOLENCE, DOMESTIC VIOLENCE OR STALKING**

**This Policy and Procedure is intended to make all members of the University community aware of the various reporting and confidential and non-confidential resources available.**

**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.) A list of confidential resources is provided below in this policy, 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/Affirmative Action Officer.

Any University community member who has been the victim of a violation of this policy has the right to make a report to Campus Security or one of the University's Responsible Employees mentioned below, local law enforcement and/or the New York State Police or to choose not to report. If reported to the University under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from the University. A Students' Bill of Rights and an additional Statement of Rights for Cases Involving Sexual Assault, Domestic/Dating Violence and Stalking is found at the end of this policy.

A. Non-Confidential Reporting Resources.

- If you are in immediate danger, you should dial 911 or call Security at:

**New York City**  
One Pace Plaza, B-Level  
(212) 346-1800

Pleasantville  
Gannet Annex Building  
(914) 773-3700

**Last Updated: October 2017**

White Plains  
Pace Law School  
Preston Hall  
(914) 422-4111

Office of Student Services  
Aloysia Hall  
(914) 422-4136

- Reporting to Law Enforcement. Acts of violence, including sexual assault and stalking, are against the law. If you would like to report an incident to the police, you can do so by calling 911 or the following local police authorities:

### **New York City**

#### **Downtown (One Pace Plaza)**

New York City Police Department  
1 Police Plaza  
New York, New York 10038  
(646) 610-5000

#### **Midtown**

New York City Police Department  
Mid-Town North Precinct  
306 W. 54th Street  
New York, New York 10019  
(212) 767-8447 (Community Affairs Unit)

#### **Pleasantville**

Mt. Pleasant Police Department  
(914) 769-1941  
[www.mppdny.com](http://www.mppdny.com) (click on Sex Offender Registry)

#### **White Plains**

White Plains Police Department  
77 South Lexington Avenue  
White Plains, New York 10601  
(914) 422-6224 (Special Victims Unit)

The New York State Police Hotline, which can be reached at (844) 845-7269, may also be of assistance in reporting an incidence to law enforcement.

If you would like someone to assist you in contacting the police or go with you to the police department, any of the Security offices listed above can assist you.

Victims may report an incident to law enforcement regardless of whether they choose to report the incident to the University. Conversely, reporting an incident to the University does not require the Complainant to report the incident to law enforcement. The University reserves the right to report any crime to law enforcement, but, as a general rule, the University will not alert law enforcement to an incident of Sex-Based Misconduct without the Complainant's permission, except where there is a serious and immediate threat to the University community or as otherwise required by law.

Any internal University investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in the University's internal process may be requested by local law enforcement authorities for the purpose of gathering evidence. Any requested temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay. The University will cooperate with any criminal proceedings as permitted by law.

Pace University has adopted a Security and Police Coordination Plan for Investigation of Criminal Offenses (Including Violent Felony Offenses) and Missing Students Report, which provides for the investigation of any violent felony offense occurring at a University owned or leased facility or at a University-sponsored off campus program or event.<sup>4</sup> University Security officers and the local police can help ensure your safety at the scene as well as accompany you to the hospital for medical attention or arrange for ambulance service.

Reporting individuals should understand that not all Sex-Based Misconduct under this policy is a crime and that the standard law enforcement employs in processing complaints is different than the University's standard under this policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the local District Attorney.

- Reporting to the University—Non-Confidential “Responsible Employees”. The University encourages all members of the University community who are victims of Sex-Based Misconduct or believe that they may have been victims to report incidents to the University's Safety and Security Department and/or the Title IX Coordinator/Affirmative Action Officer, who is responsible for investigating violations of this Policy and Procedure. (The complete complaint and investigation procedure is described in detail below.) Employees who have been subjected to Sexbased Misconduct may report to the Vice President of Human Resources as well. The University recognizes that some individuals may feel more comfortable speaking to another member of the University community with whom they already have a personal relationship, such as the Campus Dean for Students, a Residence Assistant (RA), Residence Director (RD), a faculty member or other University supervisory personnel. University Security and these other non-confidential resources are deemed “Responsible Employees” and they have an obligation to report any incident of

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<sup>4</sup> The Pace University Security and Police Coordination Plan for Investigation of Criminal Offenses (Including Violent Felony Offenses) and Missing Students Reports is available online at <https://www.pace.edu/general-services/safety-security/policy-and-procedures>.

Sexbased Misconduct of which they become aware to the Title IX Coordinator/Affirmative Action Officer.

A report to a Responsible Employee constitutes a report to the University and will generally obligate the Title IX Coordinator/Affirmative Action Officer or her designee to investigate the incident and take appropriate steps to address the situation.

A Responsible Employee cannot guarantee that the University will be able to honor a victim's request for confidentiality. Responsible Employees, including Non-confidential Resources, will make their best effort to maintain the student's privacy and will only disclose what the student shares to the Title IX Coordinator/Affirmative Action Officer and as necessary to protect the safety of the victim and the University community.

Contact information for the University's non-confidential Responsible Employees is as follows:

**New York City**

*University Safety and Security*  
One Pace Plaza, B-Level  
(212) 346-1800

*Office of the AVP/Dean for Students, Student Affairs*  
41 Park Row, 9th Floor, Rm. 907  
(212) 346-1306

*Affirmative Action Office*  
163 William Street, 10th Floor  
(212) 346-1310

*Housing and Residential Life*  
106 Fulton Street, 2nd Floor  
(212) 346-1295  
24/7 On-call staff

**Westchester (Serving Pleasantville)**

*University Safety and Security*  
Gannet Annex Building  
(914) 773-3700

*Office of the AVP/Dean for Students, Student Affairs*  
Kessel Student Center, Rm. 207  
(914) 773-3351

*Title IX Coordinator/Affirmative Action Officer*  
(914) 923-2610

*Multicultural Affairs/Diversity Programs*  
(914) 773-3628

### **White Plains**

Pace Law School  
*Safety and Security*  
Preston Hall  
(914) 422-4111

*Office of Student Services*  
Aloysia Hall  
(914) 422-4136

*Housing and Residential Life*  
Dannat Hall  
(914) 422-4107  
24/7 On-call staff

### **All Campuses**

*Human Resources*  
100 Summit Lake Drive, 3rd Floor  
(914) 923-2730

- Other Supervisory Personnel and Faculty. Contact information for other University supervisory personnel and faculty members, all of whom are deemed Responsible Parties, are listed in the University White Pages, available online at <https://whitepages.pace.edu/>.

## **B. Confidential Resources and Support—Who Can I Talk to Confidentially?**

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.”

### **Confidential Resources**

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 City**

### **On Campus**

#### *Counseling Center*

156 William Street, 8th Floor  
(212) 346-1526  
24/7 On-call staff

#### *University Health Care*

41 Park Row, Rm. 313  
(212) 346-1600  
M–F, 9:00 a.m.–5:00 p.m.

### **Off Campus**

#### *Beth Israel Medical Center Rape Crisis Intervention Program*

317 E. 17th Street, 4th Floor  
(212) 420-4516 [www.bethisraelny.org](http://www.bethisraelny.org)

## **Westchester (Serving Pleasantville and White Plains) On Campus**

#### *Counseling Center*

Administrative Center  
(914) 773-3710  
24/7 On-call staff

#### *University Health Care*

Fitness Center, Rm. 125  
(914) 773-3760  
M–F, 9:00 a.m.–5:00 p.m.

#### *Center for Spiritual Development*

(914) 773-3598  
E-mail: [chaplain@pace.edu](mailto:chaplain@pace.edu)

#### *Pace Women's Justice Center*

78 N. Broadway, Pace Law School  
Helpline: (914) 287-0739

### **Off Campus**

#### *Victim's Assistance*

Westchester Community Opportunity Program, Inc.  
(855) 827-2255 or  
[www.westcop.org/victims-assistance](http://www.westcop.org/victims-assistance)



All services are free and confidential. Victim's Assistance Services collaborates closely with sister agencies throughout the county, including Hope's Door Domestic Violence Shelter ([www.hopesdoorny.org](http://www.hopesdoorny.org)), Pace's Women's Justice Center ([www.law.pace.edu/wjc](http://www.law.pace.edu/wjc)) and The Loft ([www.loftgaycenter.org](http://www.loftgaycenter.org)).

### **Online and Hotline Resources New York City**

*Safe Horizons* [www.safehorizon.org](http://www.safehorizon.org)

*Safe Horizon Rape and Sexual Assault and Incest Hotline*  
(212) 227-3000 (available 24 hours a day)

*Safe Horizon Alternatives to Violence Program*  
(718) 834-7471

*NYC Alliance Against Sexual Assault*  
32 Broadway, Suite 1101  
New York, NY 10004  
Phone: (212) 229-0345 (English)  
Fax: (212) 229-0676 fax E-mail:  
[contact-us@svfreenyc.org](mailto:contact-us@svfreenyc.org)  
<http://www.svfreenyc.org/about.html>

*New York City Police Department Sex Crimes Report Line*  
(212) 267-7273 (available 24 hours a day)

### **Westchester**

*Mental Health Association of Westchester Rape Hotline*  
(914) 345-9111 (available 24 hours a day)

*Victims Assistance Services*  
*Westchester Community Opportunities Program*  
2269 Saw Mill River Rd, Bldg. #3  
Elmsford, NY 10523  
(914) 345-3113  
Hotline: 1 (800) 726-4041

### **New York State**

*New York State Coalition Against Sexual Assault*  
1 (800) 942-6906 [www.nyscasa.org](http://www.nyscasa.org)

*RAINN—Rape Abuse and Incest National Network*  
1 (800) 656-HOPE (4673) [www.rainn.org](http://www.rainn.org)

*New York State Office of Victim Services* [www.ovs.ny.gov](http://www.ovs.ny.gov)

*New York State Office for the Prevention of Domestic Violence*

80 Wolf Road

Albany, NY 12205

NYS Hotline: English: (800) 942-6906 | Spanish: (800) 942-6908

Phone: (518) 457-5800 Fax:

(518) 457-5810

<http://www.opdv.ny.gov/>

## **National**

*National Domestic Violence Hotline*

(800) 799-SAFE

For the hearing impaired: 1 (800) 787-3224

## **Miscellaneous University Resources and Information**

Pace University Employee Assistance Program (for employees and faculty only) (24 hours)

1 (866) 248-4096

[www.liveandworkwell.com](http://www.liveandworkwell.com)

Access Code: 61530

Sources for List of Individuals Registered as Sex Offenders:

In accordance with the Campus Sex Crimes Prevention Act, law enforcement agencies must maintain a list of individuals that have registered as sex offenders with a state requiring registration, including employees, students or persons carrying on a vocation with an educational institution within the jurisdiction of the local law enforcement agency. A list of the local law enforcement agencies having jurisdiction over each Pace site where a list of registered sex offenders is maintained is available online at <http://www.pace.edu/general-services/safetysecurity/security-guide/campus-sex-crime-prevention-act>. Information may also be found at the New York State Offender Registry Information Line at 1 (800) 262-3257; <http://criminaljustice.state.ny.us/nsor/index.htm>.

## **How Will the University Respond if I Request Confidentiality after Reporting to a Responsible Employee?**

If a victim discloses an incident to a Responsible Employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all members of the University community, including the victim.

If the University honors the request for confidentiality, a victim must understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action

**Last Updated: October 2017**

against the alleged perpetrator(s) may be limited. In some rare instances, it may be possible for the University to maintain the Reporter's confidentiality and still take responsive action, including disciplinary action if appropriate. For example, if any one of a number of individuals experienced or witnessed the conduct, it may be possible for the University to proceed without revealing the name of the person who made the report.

The Title IX Coordinator/Affirmative Action Officer will evaluate requests for confidentiality. When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator/Affirmative Action Officer will consider a range of factors, including the following:

- 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);
  - 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.

If the University determines that it cannot maintain a victim's confidentiality, the Title IX Coordinator/Affirmative Action Officer will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response and as necessary to conduct a thorough investigation.

### **AMNESTY FOR INDIVIDUALS WHO REPORT SEX-BASED MISCONDUCT**

The health and safety of every student at Pace is of utmost importance. The University realizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Pace strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to University officials. A student bystander or student incident participant acting in good faith, who reports or discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Pace University officials or law enforcement will not be subject to the University's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault, in accordance with the University's Drug and Alcohol Amnesty Policy ([www.pace.edu/amnestypolicy](http://www.pace.edu/amnestypolicy)).

## **UNIVERSITY DUTY TO REPORT CRIME STATISTICS**

The University has a duty to report data about various forms of Sex-Based Misconduct in accordance with *The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Act* (Clery Act). No personally identifiable information is disclosed, but statistical information is disclosed as part of the University's Annual Security Report. The information to be shared includes the date, location type (residence hall, public property, off-campus, etc.) and specific crime category.

The University may also be required to issue a timely warning to the University community when it receives a report of certain crimes that pose a serious or continuing threat. Such warning will not include any personally identifying information about the victim.

## **PROTECTIVE AND REMEDIAL MEASURES**

After reviewing the complaint, the Title IX Coordinator/Affirmative Action Officer in consultation with the relevant Deans for Students and Academic Deans may take interim protective measures to protect the safety and well-being of the individuals involved and the University community. The University will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. These actions may be instituted at any point during the complaint and investigation process, including at the determination stage, or even if the victim does not wish to pursue the complaint and investigation process.

If the University determines that it can respect a victim's request for confidentiality, the University will still take action as necessary to protect and assist the victim. The request for confidentiality may, however, limit the type of protective measures that can be taken.

Information regarding the protective measures taken will be treated as confidentially as possible and will only be shared with those necessary to effectuate the protective measures.

Protective measures include:

- Directing the Complainant and Respondent not to have contact with one another;
- Moving a student's residence;
- Adjusting a work schedule, location or reporting line for University employment;
- Changing a student's academic schedule;
- Allowing a student to withdraw from a class without penalty;
- Providing access to tutoring or other academic support;
- Changing transportation arrangements;
- Restricting the Respondent's access to campus or to certain campus buildings; and
- Providing the Complainant with an escort when needed to ensure that she or he feels safe.

Depending upon the circumstances, some or all of the protective measures may be lifted once the process is complete and a decision is rendered or they may be continued to assist the Complainant after a determination has been made, even if it is determined that some or all of the allegations have not been substantiated.

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

Upon request, the Complainant or accused may request a prompt review of the need for and terms of any protective measures and accommodations imposed or requested that directly affects him/her, including the potential addition, modification or elimination of those measures. Such a request may be made by submitting a written request for review to the Title IX Coordinator/Affirmative Action Officer, providing the basis for that request and any evidence in support of the request. Upon receipt of such a request, the Title IX Coordinator/Affirmative Action Officer will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Title IX Coordinator/Affirmative Action Officer may, in his/her discretion, modify or suspend the protective measures or accommodations on a temporary basis while the parties are submitting their information and responses. The Title IX Coordinator/Affirmative Action Officer will respond to any such requests as soon as possible, but generally no later than one calendar week of the request and the parties' submission of any evidence.

Because the University is under a continuing obligation to address the issue of Sex-Based Misconduct campus-wide, reports of Sex-Based Misconduct (including non-identifying reports) will also prompt the University to consider broader remedial action—such as increased monitoring, supervision or security at locations where the reported Sex-Based Misconduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

In addition to the measures that the University may take, law enforcement may be able to provide additional protections, such as an order of protection. Orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a Pace University community member or other person. In appropriate circumstances, an order of protection may be available that restricts the accused's right to enter or remain on University property, and the University will abide by a lawfully issued order of protection. University officials will, upon request, provide reasonable assistance to any member of the campus community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order, including providing that person with:

- a copy of an order of protection or equivalent when received by the University and providing that person with an opportunity to meet or speak with a University representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges and interim suspension; and
- assistance in contacting local law enforcement to effect an arrest for violating such an order of protection.

The University can assist members of the University community in contacting law enforcement and legal services organizations to learn about additional remedies that may be available.

### **SANCTIONS FOR VIOLATING THIS POLICY**

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

- Warning
- Probation
- No contact order
- Community service
- Restriction of access to University facilities
- Loss of privileges and access to University activities (including participation in athletics and other student organizations)
- Changing of academic schedule
- Transfer of housing
- Removal from student housing
- Suspension from school (for one or more semesters)
- Expulsion
- Revocation of honors or awards
- Revocation of degree
- Suspension from University employment
- Termination of University employment

In determining the appropriate sanction, the Decision Maker will consider a variety of factors including: the specific misconduct at issue, the circumstances surrounding the lack of consent (e.g. whether force, threat, coercion or intentional incapacitation were involved), the Respondent's state of mind (e.g. knowing, reckless, intentional, etc.), the impact of the misconduct on the Complainant, the Respondent's prior disciplinary history, the risk that the Respondent will engage in Sex-Based Misconduct again and the Respondent's conduct during the pendency of the investigation.

For those crimes of violence that Pace University is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation:

- Suspended after a finding of responsibility for a code of conduct violation;
- Expelled after a finding of responsibility for a code of conduct violation; or
- Withdrew with conduct charges pending.

Transcript notations for suspensions may be removed at the discretion of the University, but no earlier than one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

## **COMPLAINT PROCEDURE**

This Complaint Procedure provides for (i) a prompt, appropriate and impartial investigation of any complaint of Sex-Based Misconduct or retaliation; (ii) appropriate disciplinary action against an individual found to have engaged in prohibited conduct<sup>5</sup>; and (iii) appropriate remedies for a victim of Sex-Based Misconduct or retaliation.

Upon receipt of a complaint of Sex-Based Misconduct or retaliation or notification of an incident, the Title IX Coordinator/Affirmative Action Officer will meet with the alleged victim to explain the complaint and investigation procedures and will advise him or her of the availability of counseling, medical and other support services, including available interim protective measures.

### ***THE COMPLAINT***

Complaints of Sex-Based Misconduct may be made verbally or in writing to the Title IX Coordinator/Affirmative Action Officer but Complainants, or other persons reporting such conduct, are encouraged to file a written complaint. Complainants may, but are not required to, use the Complaint Form annexed hereto as “Appendix A.” Complaints or reports should be as detailed as possible and should include: the name(s) of the individual(s) involved; the name(s) of any witness(es); a description of the complained of conduct, including when and where the conduct occurred; any relevant correspondence, including text messages, e-mail and social media posts; and whether or not the conduct complained of has been reported to the University before and if so, when, to whom and what the resolution of the previous complaint was.

### ***TIMELINESS OF COMPLAINT***

There is no statute of limitations with respect to alleged violations of this Policy. However, Complainants or persons with knowledge of a violation are urged to report the alleged violation as soon as possible in order to permit the best possible investigation to be conducted. The availability and memory of witnesses and the availability of documentary evidence, particularly electronic evidence, may be diminished by the passage of time.

### ***PRELIMINARY DETERMINATION***

Prior to the commencement of an investigation under this Policy, the Title IX Coordinator/Affirmative Action Officer shall make a preliminary determination as to whether the complaint or report of an alleged violation is within the scope of this Policy (whether the complaint or report is describing facts and/or making allegations, which, if true, would constitute a violation of this Policy). If the Title IX Coordinator/Affirmative Action Officer determines that the complaint or report of an alleged violation is not within the scope of this Policy, the Complainant will be informed that the complaint has been dismissed on those grounds, or, where

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<sup>5</sup> If a tenured faculty member or full-time, non-tenured faculty member prior to expiration of a contract of appointment is determined pursuant to this Policy to have engaged in prohibited discrimination, harassment or retaliation, any suspension or termination of such faculty member will be subject to the University’s Academic Dismissal Policy and Procedure.

appropriate, the complaint or report will be referred to appropriate University administrators for their consideration in accordance with other applicable University policies.

### ***REPORTS FROM THIRD PARTIES***

If the University receives a report of an incident of Sex-Based Misconduct anonymously or from a third party, the alleged victim will be informed of the report promptly. This Policy and Procedure will be applied in the same manner as if the alleged victim reported the incident.

### ***PUBLIC AWARENESS EVENTS***

Sharing information regarding an incident of Sex-Based Misconduct at a public awareness event, such as Take Back the Night, the Clothesline Project, survivor speak-outs and other forums, does not constitute notice to the University and will not trigger an investigation under this Policy and Procedure.

### ***ADVISORS***

Student Complainants and Student Respondents are entitled to have an advisor of their choice accompany them to all meetings and interviews relating to an incident of Sex-Based Misconduct. Advisors are present to provide support and guidance to the student. Advisors are not permitted to advocate for or represent the Complainant or Respondent, to address the Investigator or otherwise intervene in the meeting or interview. Advisors are permitted to speak to their advisee quietly. Advisors who disrupt the proceedings may be asked to leave.

In cases involving allegations of sexual assault, dating violence, domestic violence and stalking, Complainants and Respondents who are employees or third parties are also entitled to have an advisor of their choice present as described above.

### ***MEDIATED RESOLUTION***

Where appropriate and with the consent of the Complainant, the Title IX Coordinator/Affirmative Action Officer or Investigator may attempt to mediate a resolution of the matter as amicably and privately as possible. If a satisfactory resolution is reached, the matter will be considered closed. If it becomes clear that a mediated resolution will not be possible, the matter will be investigated. Complaints of sexual assault, however, will not be mediated.

### ***THE INVESTIGATION***

Once the Title IX Coordinator/Affirmative Action Officer has determined that an investigation will be conducted, she will inform in writing both the Complainant and Respondent of the provision(s) of this Policy and Procedure that the Respondent has been accused of violating and that an investigation is being conducted in accordance with this Policy and Procedure. Both parties will be provided with a copy of this Policy and Procedure and will be given an opportunity to meet with the Title IX Coordinator/Affirmative Action Officer to ask any questions they may have about the Policy and Procedure before the investigation begins.



## ***SELECTION OF THE INVESTIGATOR***

In the ordinary course, the Investigator will be the Title IX Coordinator/Affirmative Action Officer. However, if the Title IX Coordinator/Affirmative Action Officer is unavailable or has a conflict of interest, or the University determines due to the circumstances that another Investigator should investigate the complaint or report, then the Investigator will be selected from a pool of individuals from the University who have been trained in the requirements of this Policy, on issues relating to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation that protects the safety of victims and promotes accountability. Similarly trained individuals from outside the University, who may be attorneys, may also be selected to be the Investigator. Selection of an Investigator will be by the Chief Administrative Officer in consultation with the Title IX Coordinator/Affirmative Action Officer and University Counsel when appropriate.<sup>6</sup>

## ***CONDUCT OF THE INVESTIGATION***

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

- give the Respondent proper notice of the complaint and investigation and provide him or her an opportunity to provide information;
- interview the Complainant, the Respondent and any material witnesses (the Investigator will not interview witnesses whose sole purpose is to provide character evidence);
- gather all relevant documentary and/or physical evidence;
- complete the investigation in a timely manner, without unnecessary deviation from the intended timeline<sup>7</sup>;
- maintain communication with the Complainant and the Respondent on the status of the investigation and overall process.

During the course of the investigation, the Complainant and the Respondent shall each be afforded an opportunity to present his/her version of the event(s) to the Investigator(s) as well as the names of witnesses and any other evidence. The Investigator will have sole discretion to determine which witnesses to interview. Neither the Complainant nor the Respondent will have the right to question any witnesses or to be present during such questioning. In addition, both the Complainant and Respondent shall have the right to have their own prior sexual history with persons other than the other party or their own mental health diagnosis and/or treatment excluded from admittance in any investigatory and/or disciplinary proceeding held under this policy. If either party offers information relating to the parties' sexual history with one another, the other will have the right to respond.

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<sup>6</sup> In the event that the Chief Administrative Officer has a conflict of interest, another appropriate University Administrator will select the Investigator, in consultation with the Title IX Coordinator/Affirmative Action Officer and University Counsel.

<sup>7</sup> Circumstances may arise that require time periods to be extended for good cause. When such circumstances arise, the Complainant and Respondent will be informed.

Efforts will be made to maintain privacy; only people who have a need to know about the incident will be informed, and information will be shared only as necessary with Investigators, the Complainant, witnesses and the Respondent.

All members of the University community are encouraged to participate in the investigation process. However, Complainants and Respondents may elect not to participate in the investigation process at all or may choose not to be interviewed and only to identify other witnesses and relevant documents. The University will not draw an adverse inference against either party for failing to participate in the investigation process, but the Investigator and Decision Maker can only draw conclusions from the information available. So, the failure of one party to present his or her version of events will likely have a substantial impact on the outcome of the investigation.

The time needed to complete an investigation will vary based upon several factors, including the complexity, severity and extent of the allegations. It is expected most investigations will be completed within thirty (30) calendar days.

At the conclusion of the investigation, the Investigator will prepare a written investigation report and recommendation.

### ***INVESTIGATOR'S REPORT***

Following the completion of the investigation, the Investigator shall prepare a written report of the investigation ("Investigation Report") that contains the following, except as prohibited by law:

- a copy of any written complaint filed by the Complainant and if none was filed by the Complainant, then a written summary of the complaint or report prepared by the Investigator;
- copies of any documents relevant to the investigation;
- to the extent known by the Investigator, the name(s) of the Complainant(s), the name(s) of the Respondent(s), the name of every person interviewed by the Investigator in connection with the investigation, the name of any persons presented by the parties as witnesses and a summary of any evidence provided;
- the name of each individual the Investigator attempted to interview but did not interview in connection with the investigation, the attempts that the Investigator made to interview such individual(s) and the reason(s) why such individual(s) was not interviewed;
- a summary of each interview conducted by the Investigator in connection with the investigation;
- a list of the relevant facts that the Investigator found during the investigation;
- a recommendation based on the evidence obtained by and available to the Investigator as to whether or not the complaint alleging a violation of the Policy is substantiated or unsubstantiated using a preponderance of the evidence standard<sup>8</sup>;

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<sup>8</sup> 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.

- a description of any prior substantiated complaints made against the Respondent, the resolution of any prior complaints, whether any information from the previous complaints was relied upon by the Investigator in making any findings of fact or recommendations in the report<sup>9</sup>;
- a recommendation as to what, if any, remedial measure(s) (e.g., harassment training, etc.) should be taken in light of the complaint and/or factual determination; and
- a recommendation as to what, if any, sanction(s), including suspension, expulsion or termination, should be taken against the Respondent.

Prior to submitting the Investigation Report to the Decision Maker, the Investigator shall give the Complainant and Respondent an opportunity to review, on campus, the draft report and the information in the case file (subject to appropriate redaction, including as permitted and/or required by law), but neither will be provided with a copy of the report. In most cases, the draft Investigation Report will be prepared and available for the parties' review within ten (10) calendar days of the conclusion of the investigation. This time may be extended based on the complexity of the allegations and the scope of the investigation. Both the Complainant and Respondent will have five (5) calendar days to submit written comments to the Investigator. The Complainant and Respondent will then be given an opportunity to review the submission of the other party. The Investigator will revise, if appropriate, and finalize the Investigation Report (including the findings of fact and recommendations) and deliver it to the appropriate Decision Maker listed in the Complaint Procedure Diagram, or his/her designee. In most cases, the Investigator will finalize the Investigation Report and provide it to the Decision Maker within seven (7) calendar days, but this time may be extended, if necessary due to the content of the parties' submissions following their review of the draft Investigation Report. Upon written request to the Investigator, the Complainant and Respondent shall then have an opportunity to review, on campus, the final Investigation Report (subject to appropriate redaction, including as permitted and/or required by law), but they shall not be provided a copy and shall not be permitted to submit a response.

If the Respondent is a faculty member, then the Investigator, at least five calendar days prior to submitting the Investigation Report to the Decision Maker, shall submit the final report to a Faculty Review Committee. The Faculty Review Committee will consist of three faculty members selected from and by the appropriate Location Faculty Council Grievance Committee. The Faculty Review Committee shall have five days to submit their written comments/recommendation, if any, regarding the Investigation Report to the Decision Maker before the Decision is made.

### ***ASSIGNED DECISION MAKER AND APPEAL OFFICER***

The following Complaint Procedure Diagram identifies the Decision Makers and Appeal Officers who will be involved in resolving the complaint. As you can see, the identity of these

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<sup>9</sup> Notwithstanding the existence of a prior complaint or complaints, a determination as to whether this Policy has been violated in a given situation will be based on the information obtained during the Investigation into that specific situation. However, if the Respondent is found to have engaged in such prohibited conduct in the current case, then previous violations may be considered by the Investigator, Faculty Review Committee, Decision Maker and Appeal Officer, with respect to the severity of remedial/disciplinary action in the current case.

persons varies depending upon whether the Respondent is a student, faculty member, other employee or a third party. In the event there is no actual complaint from a Complainant, the University will nonetheless address any report of a violation of this Policy by making a reasonable effort to follow the steps contained in the Complaint Procedure Diagram. All Decision Makers and Appeal Officers shall receive annual training on the requirements of this Policy and on issues relating to Sex-Based Misconduct, including sexual harassment, sexual assault, dating violence, domestic violence, stalking and retaliation and on how to conduct an investigation and determination process that protects the safety of victims and promotes accountability.

**Complaint Procedure Diagram**

<b>Respondent</b>	<b>Investigator</b>	<b>Decision Maker</b>	<b>Appeal Officer(s)</b>
Faculty Member	Title IX Coordinator/ Affirmative Action Officer or Another Investigator From a Trained Pool	Provost (with prior opportunity for comment/recommendation from the Faculty Review Committee)	President
Student	Title IX Coordinator/ Affirmative Action Officer 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/ Affirmative Action Officer
Staff	Title IX Coordinator/ Affirmative Action Officer or Another Investigator From a Trained Pool	Vice President for Human Resources	Chief Administrative Officer
Third Party	Title IX Coordinator/ Affirmative Action Officer or Another Investigator From a Trained Pool	Chief Administrative Officer	Chief Financial Officer
President or Senior Executives who Report to him/her	Title IX Coordinator/ Affirmative Action Officer or Another Investigator From a Trained Pool	Executive Committee of Board of Trustees (with the recusal of the President and Chair of the Board of Trustees)	Chair of the Board of Trustees

***OBJECTIONS TO THE INVESTIGATOR, DECISION MAKER OR APPEAL OFFICER(S)***

The Complainant or Respondent may object to the participation of the particular Investigator, a member of the Faculty Review Committee (defined on page 26 of this Policy and Procedure), the Decision Maker or Appeal Officer(s) based on a conflict of interest or other facts suggesting that that the Investigator, Faculty Review Committee member, Decision Maker or Appeal Officer is

unable to fulfill his or her responsibilities in an impartial manner. Such objection must be made in writing to the Title IX Coordinator/Affirmative Action Officer prior to any recommendation or decision being issued by the person and in no event, later than two calendar days after the Respondent or Complainant, if any, learn the identity of the person or persons who will be serving in these roles. In all cases except when the objection is to a member of the Faculty Review Committee, the Title IX Coordinator/Affirmative Action Officer will refer the objection to the Chief Administrative Officer, who will evaluate the objection and, in consultation with the Title IX Coordinator/Affirmative Action Officer 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 Administrative Officer in consultation with the Title IX Coordinator/Affirmative Action Officer and University Counsel.<sup>10</sup> If the objection is to a member of the Faculty Review Committee, the Title IX Coordinator/Affirmative Action Officer will refer the objection to the appropriate Location Faculty Grievance Committee. The Location Faculty Grievance Committee, in consultation with the Title IX Coordinator/Affirmative Action Officer 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 Administrative 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/Affirmative Action Officer.

### ***THE DECISION***

The Decision Maker shall issue written notification to the Complainant and Respondent of the Decision Maker's determination as to whether the Respondent violated this policy, which determination, in whole or in part: (i) accepts the recommendations contained in the Investigation Report; or (ii) rejects the recommendations in the Investigation Report. In most cases, the Decision Maker will issue this written determination within seven (7) calendar days of receiving the Investigation Report, but this time may be extended, based on the complexity of the situation under consideration. In making the determination as to whether the Respondent violated this policy, the Decision Maker shall accept the Findings of Fact made by the Investigator if they are substantially supported by the evidence. If such Findings of Fact are not substantially supported by the evidence, the Decision Maker may reverse the Findings of Fact, modify them or remand the investigation to the Investigator or another Investigator for further action consistent with the Decision Maker's determination. If the Decision Maker concludes that the Respondent is responsible for violation of this policy, then both the Complainant and Respondent will be permitted to submit a written impact statement to the Decision Maker for purposes of the determination of appropriate sanctions. The parties will have two calendar days to submit their impact statement to the Decision Maker. The Decision Maker may consult with other University officials in determining any appropriate sanctions. The Decision Maker shall issue a written Decision outlining the relevant factual findings supporting the determination, the decision and the appropriate sanctions, if any, as well as the rationale for the decision and

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<sup>10</sup> In the event that the Chief Administrative Officer has a conflict of interest, another appropriate University Administrator will determine the objection and select an appropriate replacement or replacements, in consultation with the Title IX Coordinator/Affirmative Action Officer and University Counsel.

sanctions. In most cases, the written Decision will be issued within three (3) calendar days after the expiration of the time for the parties to submit impact statements, but this time may be extended if necessary. The persons to whom the written Decision shall be issued are: the Investigator, the Respondent, the Complainant, if any, and the Faculty Review Committee if the Respondent is a faculty member. The Decision Maker shall also forward copies of the parties' written impact statements, if any, to the Investigator and the Faculty Review Committee if the Respondent is a faculty member. In addition, the Decision Maker shall forward the Decision to any University officials the Decision Maker believes should be made aware of the Decision.<sup>11</sup>

## ***APPEALS***

Within five (5) calendar days of the date of receipt of the Decision, the Complainant, if any, or the Respondent may file a written appeal to 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 Complainant may base an appeal are as follows:

- the finding that the violation was unsubstantiated was not based on a preponderance of the evidence;
- material evidence exists that was not available to the Investigator or the Decision Maker during the investigation or prior to issuance of the Decision;
- the Investigator or Decision Maker made a substantial procedural error that may have affected the investigation or Decision;
- the Investigator or Decision Maker had a conflict of interest that may have affected the investigation or decision and was not known to the Complainant prior to the investigation or issuance of the decision; and/or
- any disciplinary measure to be taken against the Respondent is inadequate.

The sole grounds upon which a Respondent may base an appeal are as follows:

- the finding that the violation was substantiated was not based on a preponderance of the evidence;
- material evidence exists that was not available to the Investigator or Decision Maker during the investigation or prior to the issuance of the Decision;
- the Investigator or Decision Maker made a substantial procedural error that may have affected the investigation or the Decision;
- the Investigator or Decision Maker had a conflict of interest that may have affected the investigation or Decision and was not known to the Respondent prior to the investigation or issuance of the Decision;

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<sup>11</sup> If the Complainant or Respondent is a faculty member, the Decision Maker shall not issue a decision until after the earlier of his or her receipt of the Faculty Review Committee's comments/recommendations or the expiration of the five (5) calendar day Faculty Review Committee Investigation Report comment period. If the Decision Maker or Appeals Officer remands such investigation to the Investigator or another Investigator for further action, upon completion of the revised Investigation Report, the Investigator shall deliver the revised Investigation Report to the Faculty Review Committee, which shall have a new five (5) calendar day period within which to provide their comments/recommendations with respect to such revised Investigation Report and forward it to the Decision Maker.

- any disciplinary measure(s) to be taken against the Respondent is excessive.

Within five (5) business days of receiving the timely appeal, the appropriate Appeal Officer(s) shall request that the Investigator forward to the Appeal Officer(s): (i) the Investigation Report, (ii) copies of the parties' written impact statements, if any, (iii) the Decision made by the Decision Maker; and (iv) the Decision Maker's written communications to the Complainant and Respondent informing each of the outcome of the investigation. After receiving such a request, the Investigator shall forward these documents to the Appeal Officer(s) within three (3) business days. Within three (3) business days of receiving a timely appeal, the Appeal Officer(s) shall forward the appealing party's submission to the other party who shall have five (5) business days to submit a written response. In most cases, within seven (7) business days of receiving the other party's response to the appeal submissions, the Appeal Officer(s) shall decide the appeal and issue a written appeal decision, with the burden on the appealing party to prove one or more of the limited grounds for appeal by a preponderance of the evidence. The Appeal Officer(s) shall issue the written appeal decision to the Investigator, the Decision Maker, the Complainant, if any, and the Respondent. The time in which the Appeal Officer(s) will issue this written appeal decision may be extended, based on the complexity of the situation under review. The Appeal Officer(s) may affirm the decision in whole or in part, modify the decision, reverse the decision or send it back to the Investigator or Decision Maker for further investigation and/or consideration. In addition, the Appeal Officer(s) shall forward the appeal decision to any University officials the Appeal Officer(s) believes should be made aware of the appeal decision. Unless the Appeal Officer(s) sends the decision back for further investigation, the appeal decision is final. When a decision is sent back to the Investigator for further investigation, the Investigator shall issue a revised Investigative Report, which the Complainant and Respondent shall have an opportunity to review, and the Decision Maker will consider the new information and render a new decision. The parties will then have an opportunity to appeal that decision in accordance with the procedure set forth above.

### **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/Affirmative Action Officer 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.
- Students may utilize this Complaint procedure and/or they may complain directly to the Office of Civil Rights of the Department of Health and Human Services. Their website is [www.HHS.gov](http://www.HHS.gov).
- 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.

## **RECORDS DISCLOSURE**

Disciplinary proceedings conducted by the University are subject to the Family Educational Rights and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits disclosure of student information outside the University without the student's consent, but it does provide for release of student disciplinary information without a student's consent in certain circumstances.

Students should be aware, however, that information collected during the investigation process may be subpoenaed in civil or criminal proceedings. Additional information about the University's FERPA policies can be found at: <http://www.pace.edu/osa/student-records/paceuniversity-ferpa-policy>.

## **ADDITIONAL RESOURCES**

The government resources listed here may provide additional assistance for students wishing to file an external complaint of gender-based misconduct or students with inquiries regarding the application of Title IX and its implementing regulations: <http://www.notalone.gov>

US Department of Education, Office for Civil Rights <http://www.ed.gov/ocr> .

US Department of Education  
Office for Civil Rights  
New York—Region II  
32 Old Slip, 26th Floor  
New York, NY 10005  
(646) 428-3800  
[OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

US Department of Justice, Office on Violence Against Women <http://www.ovw.usdoj.gov>

US Department of Justice  
Office on Violence Against Women  
145 N Street, NE, Suite 10W.121  
Washington, DC 20530  
(202) 307-6026



**STUDENTS' 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 to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by Pace University;
- Participate in a process that is fair, impartial and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the University courteous, fair and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by Pace, any student, the accused and/or the Respondent and/or their friends, family and acquaintances within the jurisdiction of Pace;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of Pace University.

**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 the 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

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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 of the institution, 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.

