



## Manhattan School of Music Title IX/Sexual Misconduct Policy

### 1. Introduction

#### What is the purpose of the MSM Title IX Grievance Policy?

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

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

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

*See*, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, Manhattan School of Music will implement the following Title IX Grievance Policy, effective August 14, 2020 and applicable to conduct that occurs on or after August 14, 2020 and is the subject of a formal complaint of sexual harassment brought on or after August 14, 2020.

#### How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, the School must narrow both the geographic scope of its authority to act

under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

Accordingly, this Title IX Grievance Policy does not apply to alleged acts of sexual harassment, as defined by the Final Rule, that occur off-campus, in a private setting, and outside the scope of the College’s education programs and activities. This policy also does not apply to sexual harassment, as defined by the Final Rule, that occurs outside the geographic boundaries of the United States, even if the sexual harassment occurs in the College’s education programs and activities, such as a study abroad program.

Allegations of sexual misconduct not covered by this Title IX Grievance Policy, as well as other conduct offenses, may be prohibited by the **Student Code of Conduct** if committed by a student, the **Faculty Handbook** if committed by a faculty member, or the **Staff Handbook** if committed by any other employee.

- **Student Code of Conduct:**  
<https://3fv92513fnvf2m1ou93dy4td-wpengine.netdna-ssl.com/wp-content/uploads/2019/07/Code-of-Conduct-2019.pdf>
- **Faculty and Staff Handbook:** this policy can be found in both handbooks  
[www.msmnyc.edu/equal-employment-educational-opportunity-policies](http://www.msmnyc.edu/equal-employment-educational-opportunity-policies)

To the extent that alleged misconduct falls outside this Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations through a separate investigation or grievance proceeding, as provided for within the Student Code of Conduct, Faculty Handbook, or Staff Handbook, as appropriate.

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

### **How does this Title IX Grievance Policy impact the handling of complaints?**

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

## 2. The Title IX Grievance Policy

### Table of Contents

<b>I. General Rules of Application .....</b>	<b>5</b>
Effective Date .....	5
Revocation by Operation of Law.....	5
Non-Discrimination in Application .....	5
<b>II. Definitions .....</b>	<b>5</b>
Covered Sexual Harassment .....	5
Consent .....	6
Incapacitation.....	7
Education Program or Activity .....	7
Formal Complaint .....	8
Complainant.....	8
Relevant evidence and questions .....	8
Respondent.....	8
Privacy vs. Confidentiality.....	8
Disability Accommodations.....	9
Understanding Hostile Environment Sexual Harassment .....	9
<b>III. Making a Report Regarding Covered Sexual Harassment to the Institution .....</b>	<b>10</b>
Confidential Reporting .....	10
Anonymous Reporting .....	11
<b>IV. Non-Investigatory Measures Available Under the Title IX Grievance Policy .....</b>	<b>12</b>
Supportive Measures .....	12
Emergency Removal .....	12
Administrative Leave or Interim Measures Regarding Non-Student Respondents.....	12
<b>V. Special Advice for Individuals Reporting Sexual Assault, Domestic Violence, Dating     Violence, or Stalking .....</b>	<b>12</b>
<b>VI. Amnesty .....</b>	<b>14</b>
<b>VII. The Title IX Grievance Process.....</b>	<b>14</b>
Filing a Formal Complaint .....	14
Informal Resolution .....	15
Multi-Party Situations .....	15
<b>VIII. Determining Jurisdiction – Jurisdictional Elements .....</b>	<b>15</b>

Allegations Potentially Falling Under Two Policies .....	16
Mandatory Dismissal.....	16
Discretionary Dismissal.....	16
Notice of Dismissal.....	16
Notice of Referral.....	16
<b>IX. Notice of Allegations .....</b>	<b>17</b>
Contents of Notice of Allegations .....	17
Ongoing Notice of Additional Allegations .....	18
<b>X. Advisor of Choice and Participation of Advisor of Choice .....</b>	<b>18</b>
Notice of Meetings and Interviews .....	19
Delays .....	19
<b>XI. Investigation .....</b>	<b>19</b>
General Rules of Investigations .....	19
Inspection and Review of Evidence.....	20
Investigative Report .....	21
<b>XII. Hearing .....</b>	<b>21</b>
General Rules of Hearings .....	21
Continuances or Granting Extensions.....	22
Newly-discovered Evidence .....	22
Participants in the live hearing .....	22
Hearing Procedures.....	24
Live Cross-Examination Procedure .....	25
Review of Transcript or Recording.....	25
<b>XIII. Determination Regarding Responsibility .....</b>	<b>25</b>
Standard of Proof.....	25
General Considerations for Evaluating Testimony and Evidence .....	25
Components of the Determination Regarding Responsibility .....	26
Timeline of Determination Regarding Responsibility .....	27
Finality.....	27
<b>XIV: Range of Sanctions .....</b>	<b>27</b>
<b>XIV. Appeals.....</b>	<b>28</b>
<b>XV. Retaliation .....</b>	<b>29</b>
<b>XVI. Bad Faith Complaints and False Information.....</b>	<b>30</b>
<b>XVII. Outside Appointments, Dual Appointments, and Delegations.....</b>	<b>30</b>

## **I. General Rules of Application**

### Effective Date

This Title IX Grievance Policy will become effective on August 14, 2020. It will only apply to formal complaints of sexual harassment brought on or after August 14, 2020 that are premised upon conduct occurring or alleged to have occurred on or after August 14, 2020. Complaints brought prior to August 14, 2020 or reflecting conduct prior to August 14, 2020 will be or, in the School's discretion, may be investigated and adjudicated according to the Sexual Misconduct/Title IX Policy effective prior to August 14, 2020.

### Revocation by Operation of Law

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

### Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

## **II. Definitions**

### Covered Sexual Harassment

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

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity ("hostile environment sexual harassment");
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York's domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria or that is not actionable under this Title IX Grievance Policy may still be prohibited under the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or the Staff Handbook if committed by any other employee.

### Consent

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

Past consent does NOT imply future consent. Someone who is incapacitated cannot consent. Consent to engage in one sexual activity does NOT necessarily constitute consent to any other

sexual act. Consent can be withdrawn at any time. Consent must be free of coercion, force, intimidation, restraint or threat of harm. A person initiating sexual activity is still responsible to obtain consent even if the initiating person is under the influence of drugs or alcohol. When consent is withdrawn or can no longer be given, sexual activity must stop.

### Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

### Education Program or Activity

For the purposes of this Title IX Grievance Policy, Manhattan School of Music’s “education program or activity” includes:

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

### Formal Complaint

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

### Complainant

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

### Relevant evidence and questions

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

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

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

### Respondent

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

### Privacy vs. Confidentiality

References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme



circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean Manhattan School of Music offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The School will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored. Even MSM offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

### Disability Accommodations

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

### Understanding Hostile Environment Sexual Harassment

In determining whether a hostile environment exists, the School will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The School will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The School encourages members of the MSM community to report any and all instances of sexual harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute sexual harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity

- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

### **III. Making a Report Regarding Covered Sexual Harassment to the Institution**

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

Please note that if an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, the institution is not obligated to begin an investigation based on such information. The institution may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

Contact Information for the Title IX Coordinator:

Name: Carol Matos  
 Title: Vice President for Administration and Human Relations  
 Office Address: A-427 Andersen Hall  
 Email Address: [cmatos@msmny.edu](mailto:cmatos@msmny.edu)  
 Telephone Number: (917) 493-4450

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

#### Confidential Reporting

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

- Title IX Coordinator or designee
- Deputy Title IX Coordinator, Hannah DeBlock:

- Office Address: Room 216 in the Main Building
- Email Address: [hdeblock@msmnyc.edu](mailto:hdeblock@msmnyc.edu)
- Telephone Number: (917) 493-4401
- Director of Residence Life:
  - MSM provides emergency access to a trained official, the Director of Residence Life, when a student needs assistance outside of regular business hours. She/he can be reached at (917) 376-2418 or (917) 683-7864 at any time and can help students understand their options and their rights. Tell whoever picks up the phone that you wish to speak to the Director of Residence Life about a Title IX matter.
- Students who wish to report a violation of this Policy may also approach any employee of Manhattan School of Music, including any faculty member or administrator -- including the Student Affairs staff, the Provost, etc. All employees of Manhattan School of Music, other than the Campus Health Nurse and counseling staff identified below, are Reporting Officials who are required to report an allegation of conduct prohibited under this policy to the Title IX Coordinator.

The following Officials may provide confidentiality<sup>1</sup>:

- The Campus Health Nurse.
  - Office Address: Room 105 in the Main Building
  - Email Address: [campushealth@msmnyc.edu](mailto:campushealth@msmnyc.edu)
  - Telephone number: (917) 493-4278.
- School counselors
  - Office Address: Room 104 and Room 106 in the Main Building
  - To contact a School Counselor for an appointment, please fill out the [MSM Counseling Center Scheduling Form](#)
  - In case of emergency please call (917) 493-4000

### Anonymous Reporting

To make an anonymous report of sexual harassment or misconduct, see the School's Campus Health Nurse or a member of the counseling staff during business hours, or fill out our anonymous on-line *Sexual Misconduct Report Form* [www.msmnyc.edu/sexual-misconduct-report-form/](http://www.msmnyc.edu/sexual-misconduct-report-form/)

---

<sup>1</sup> The School's Campus Health Nurse and counselors are subject to Mandated Reporter requirements under New York State Law regarding abuse or maltreatment of persons under the age of eighteen.

## **IV. Non-Investigatory Measures Available Under the Title IX Grievance Policy**

### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Manhattan School of Music regardless of whether they desire to file a complaint. As appropriate, supportive measures may include, but are not limited to: counseling, restricting contact between the Complainant and the Respondent, altering class schedules, altering on-campus work schedules, changes in work or housing locations, providing academic support, extensions of deadlines or other course-related adjustments, leaves of absence, and increased security and monitoring of certain areas of the campus. Supportive measures are non-disciplinary and non-punitive.

### **Emergency Removal**

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

If the School determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The individual who hears the challenge to the removal determination will not be involved in any decision regarding responsibility or appeal of that decision regarding responsibility.

### **Administrative Leave or Interim Measures Regarding Non-Student Respondents**

The School also retains the authority to place a non-student employee respondent on administrative leave or take other appropriate interim action during the Title IX Grievance Process, consistent with the provisions of the Faculty Handbook and/or Staff Handbook.

For all other Respondents, including independent contractors and guests, the School retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of sexual harassment or otherwise.

## **V. Special Advice for Individuals Reporting Sexual Assault, Domestic Violence, Dating Violence, or Stalking**

If you believe you are the victim of sexual assault, domestic violence, or dating violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a

protection order. For those who believe that they are victims of sexual assault, domestic violence, or dating violence, the School recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one’s mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred—preserve for law enforcement
- Preserve all forms of electronic communication that occurred before, during, or after the assault
- Contact law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Title IX Grievance Process.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of sexual harassment investigations.

Once a report of sexual assault, domestic violence, dating violence, or stalking is made, the victim has several options such as, but not limited to:

- Obtaining supportive measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a formal complaint
- requesting that no further action be taken

The Title IX Coordinator and/or the Deputy Title IX Coordinator can assist individuals in obtaining a personal protection order (“PPO”).

## **VI. Amnesty**

The health and safety of every student at MSM is of utmost importance. MSM recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence (including but not limited to domestic violence, dating violence, stalking, or sexual assault) occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. MSM strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to School officials. A bystander acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to MSM’s officials or law enforcement will not be subject to MSM’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 addition, at a Complainant’s request, the School will review any disciplinary actions taken against the Complainant to see if there is a connection between the incident of sexual assault, domestic violence, dating violence, or stalking and the misconduct that may have resulted in the Complainant being disciplined (e.g., absence from class).

## **VII. The Title IX Grievance Process**

### Filing a Formal Complaint

The time frame for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) calendar days after the filing of the Formal Complaint, *provided that* the Process may be extended in the School’s discretion for a good reason, including but not limited to the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

To file a Formal Complaint, a complainant must provide to the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Manhattan School of Music, including as an employee. For complainants (or complaints) not meeting these criteria, the College will utilize existing policy in Student Code of Conduct for students, the Faculty Handbook for faculty, or the Staff Handbook for any other employee.

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

Nothing in this Title IX Grievance Policy the Student Code of Conduct prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

#### Informal Resolution

At any time after the parties are provided written notice of the Formal Complaint and before the completion of any appeal specified in “Appeal,” the parties may voluntarily consent, with the Title IX Coordinator’s approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. Additional information about this Process may be obtained from the Title IX Coordinator and viewed in the [MSM Procedures for Informal Resolution](#).

#### Multi-Party Situations

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

### **VIII. Determining Jurisdiction – Jurisdictional Elements**

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

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

If all of the elements are met, the School will investigate the allegations according to the Grievance Process.

### Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment under this Title IX Policy but also conduct that would not constitute covered sexual harassment under this Policy, the College retains the discretion to apply this Title IX Grievance Process to the investigation and adjudication of all allegations, if the allegations arise out of the same set of facts or circumstances. The School may also exercise its discretion to conduct multiple investigations under both this and other policies and to sequence and conduct such multiple processes in an efficient and equitable manner.

### Mandatory Dismissal

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

### Discretionary Dismissal

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

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

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

### Notice of Dismissal

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

### Notice of Referral

Upon dismissal for the purposes of Title IX, the School retains discretion to utilize Student Code of Conduct, Faculty Handbook, and/or Staff Handbook, as the case may be, to determine if a violation of Student Code of Conduct, Faculty Handbook, and/or Staff Handbook has occurred. If so, the



School will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and referral of the allegations to the Student Code of Conduct, Faculty Handbook, and/or Staff Handbook process.

Additionally, in the College's discretion and as noted above, conduct that is initially raised through a formal complaint under this Title IX Policy may also be addressed under the Student Code of Conduct, Faculty Handbook, and/or Staff Handbook, as appropriate, when: (i) the conduct at issue, or some part of it, may constitute violations of the Student Code of Conduct, Faculty Handbook, and/or Staff Handbook irrespective of whether it constitutes sexual harassment under the Title IX Policy; or (ii) a final determination of a formal complaint has been made under the Title IX Grievance Process and separate or additional action may be necessary to enforce conduct standards under the Student Code of Conduct, Faculty Handbook, and/or Staff Handbook.

## **IX. Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable after the institution receives a Formal Complaint of the allegations, usually within five (5) calendar days absent extenuating circumstances.

The parties will be notified through their institutional email accounts if they are students or employees with institutional email accounts and through any other reasonable means if they are neither.

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

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

### **Contents of Notice of Allegations**

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process, including the informal resolution process, and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in

the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source;
- A statement that the Title IX Policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process (see section entitled “Bad Faith Complaints and False Information,” below).

#### Ongoing Notice of Additional Allegations

If, in the course of an investigation, the School decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered “sexual harassment” falling within the Title IX Grievance Policy, the School will notify the parties whose identities are known of the additional allegations through their School email accounts or other reasonable means.

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

### **X. Advisor of Choice and Participation of Advisor of Choice**

The School will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

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

The School will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, *provided that* the Advisors of Choice act reasonably in

providing available dates and work collaboratively and collegially to find dates and times that meet all schedules.

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

#### Notice of Meetings and Interviews

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

#### Delays

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

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

## **XI. Investigation**

#### General Rules of Investigations

The Title IX Coordinator or Deputy Title IX Coordinator will investigate and may designate one or more investigators to perform an investigation under a reasonably prompt time frame of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

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

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

### Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

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

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

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

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. The institution will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any.

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

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

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. The parties and their advisors must also agree in writing not to photograph or otherwise copy the evidence.

### Investigative Report

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

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

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

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

## **XII. Hearing**

### General Rules of Hearings

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

At the School's discretion, a live hearing may be conducted (1) with all parties physically present in the same geographic location or (2) with any or all parties, witnesses, and other participants appearing virtually by use of video and audio technology enabling all participants to simultaneously to see and hear each other. All such formats are hereinafter encompassed within the term "live hearing." At its discretion, the School may delay or adjourn a live hearing based on technological errors not within a party's control.

All live hearings will be recorded through audio recording, audiovisual recording, or transcript at the School's discretion and consistent with applicable law. That recording or transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement committing, to the greatest extent permitted by law, not to disseminate any of the testimony heard

or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.

#### Continuances or Granting Extensions

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

#### Newly-discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-maker determines that both such requirements enumerated above are met, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

#### Participants in the live hearing

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

##### *Complainant and Respondent (The Parties)*

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and the institution may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party.
  - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and

social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.

- The School will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but the decision-maker may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.
- The parties are expected to engage with each other and with the decision-maker, witnesses, advisors, and other participants in professional and courteous fashion during the hearing and at all times during such a proceeding. The decision-maker has authority to enforce general standards of decorum and all parts of the proceeding.

#### *The Decision-maker*

- The hearing body will consist of a single, qualified decision-maker, who will be engaged at the School's expense for purposes of presiding over the hearing and rendering a decision consistent with this Policy and applicable law.
- The Decision-maker will not have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, and may not serve on the appeals panel in the case.
- The Decision-maker will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding the Decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination, or otherwise by the agreement of the parties.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.

- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, the School will provide an advisor to appear on behalf of the non-appearing party.
- Advisors shall be subject to the general requirements of civility and decorum during the hearing and may be removed by the decision-maker for violation of those expectations.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and they have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.
- Witnesses shall be subject to the general requirements of civility and decorum during the hearing and may be removed by the decision-maker for violation of those expectations.

#### Hearing Procedures

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

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



### Live Cross-Examination Procedure

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

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

### Review of Transcript or Recording

The recording or transcript of the hearing will be available for review by the parties within 5 calendar days unless there are any extenuating circumstances. The recording or transcript of the hearing will not be provided to parties or advisors of choice.

## **XIII. Determination Regarding Responsibility**

### Standard of Proof

The School uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing focuses upon, and the Decision-maker determines, whether it is more likely than not that a violation of the Policy occurred.

### General Considerations for Evaluating Testimony and Evidence

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

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

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

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

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

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

The Final Rule provides that the decision-maker may consider allowing expert and character witnesses to testify if they have relevant information, and only in matters processed under this Title IX Policy. While the expert witness may be allowed to testify and be crossed, the decision-maker may afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case may be afforded lower weight relative to fact witnesses.

Likewise, while character witnesses may be allowed to testify and be crossed, the decision-maker may afford very low weight to any non-factual character testimony of any witness.

The Final Rule provides that the decision maker may consider testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes, provided such information is relevant, and only in matters processed under this Title IX Policy. While such information may be considered by the decision maker, the decision-maker may be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness' credibility.

#### Components of the Determination Regarding Responsibility

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

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

3. Findings of fact supporting the determination;
4. Conclusions regarding the determination of responsibility for each separate potential incident of sexual harassment;
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

#### Timeline of Determination Regarding Responsibility

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

#### Finality

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

### **XIV: Range of Sanctions**

Sanctions will depend on the nature of the misconduct. Sanctions for individuals found responsible for violation of this Policy may include one or more of the following:

Sanctions for Employees:

- A written warning placed in the Respondent's personnel file
- Reassignment of responsibilities
- Suspension of employment
- Termination of employment
- Educational sanctions, such as counseling, courses in anger management, education on alcohol and/or drug use, written apology, substance abuse treatment

Sanctions for Students:

- Disciplinary warning or probation
- Reassignment of housing
- Removal from housing and/or the campus as a whole
- Adjustment of class schedule
- Reassignment or removal from on-campus employment

- Educational sanctions, such as counseling, courses in anger management, education on alcohol and/or drug use, reflection paper or written apology, substance abuse treatment, community service
- Suspension
- Dismissal
- Restrictions on reapplication to Manhattan School of Music

When students are found responsible for sexual assault or other violent offenses as defined by the Clery Act and are suspended or expelled as a result, it will be noted on their official transcripts as a finding of responsibility for a code of conduct violation. If a finding of responsibility is vacated for any reason, any such transcript notation will be removed.

MSM allows for an appeal to remove the notation for a suspension, but this may be granted only after one year of the suspension. The notation for an expulsion may never be appealed. New York State law requires that a notation be made on the transcript when a student leaves the School before the conclusion of an active investigation.

#### **XIV. Appeals**

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

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- Disproportionate or inappropriate sanctions; and/or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

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

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

Appeals may be no longer than 10 pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to

the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by an appellate panel. All members of the panel will be free of conflict of interest and bias, and will not have served as investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

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

## **XV. Retaliation**

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

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

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

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

Reports and formal complaints of retaliation may be made in the same manner as a report or formal complaint of sexual harassment under this policy. specified in this policy. Any report or formal complaint of retaliation will be processed under this policy in the same manner as a report or formal complaint of sexual harassment, as the case may be. The College retains discretion to consolidate a formal complaint of retaliation with a formal complaint of sexual harassment for investigation and/or adjudication purposes if the two formal complaints share a common nexus.

## **XVI. Bad Faith Complaints and False Information**

It is a violation of this Policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this Policy; instead, they will be addressed under the Student Code of Conduct in the case of students, the Faculty Handbook in the case of faculty, and the Staff Handbook for other employee.

## **XVII. Outside Appointments, Dual Appointments, and Delegations**

The College retains discretion to retain and appoint suitably qualified persons who are not College employees to fulfill any function of the College under this policy, including, but not limited to, the investigator, hearing officer, informal resolution officer, and/or appeals panel member.

The College also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, and/or informal resolution officer.

## New York State Sexual Misconduct Student Bill of Rights

All students have the right to:

1. Make a report to local law enforcement and/or state police.
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.
3. Make a decision about whether or not to disclose a crime or violation and to participate in the judicial or conduct process and/or criminal justice process free from pressure by the Institution.
4. Participate in a fair and impartial process that provides adequate notice and a meaningful opportunity to be heard.
5. Be treated with dignity and to receive from the Institution courteous, fair and respectful health care and counseling services where available.
6. 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.
7. Describe the incident to as few Institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident.
8. Be protected from retaliation by the Institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the Institution.
9. Access at least one level of appeal of a determination. (At Manhattan School of Music, appeals may be made to a panel chaired by the Provost or their designee.)
10. 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.
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the Institution.

## Resources and Services for Students who Experience Sexual Misconduct

### MSM Resources:

- MSM Counseling Center provides confidential counseling. The MSM Counseling Center is located on the first floor of the main building at MSM (rooms 104 & 106) and is open to all students. Counselors see students by appointment booked through the [MSM Counseling Center Scheduling Form](#). Please fill out this form if you are looking to meet with one of our counselors. In case of a mental health emergency, please call: (917) 493-4000.
- MSM Campus Health Nurse provides confidential medical care. The MSM Campus Health & Wellness Office is located on the first floor of the main building across from the Counseling Center. The waiting and check-in area is Room 105. To schedule an appointment, please call the nurse at (917) 493-4278 or send an email to [campushealth@msmny.edu](mailto:campushealth@msmny.edu).

### Local, State, and National Resources:

- [NYPD Special Victims Unit](#) 24-Hour Hotline: (646) 610-7272 or (212) 267-7273
- [Columbia University Sexual Violence Response Services](#) – Available free to MSM students
- [Crime Victims Treatment Center](#)
- [New York State Office of Victim Services](#)
- [New York State Coalition against Sexual Assault](#)
- [Mt. Sinai Morningside Hospital Support Groups](#)
- [RAINN National Sexual Assault Hotline: Confidential 24/7 Support](#)

For a comprehensive list of resources available throughout New York State, please visit:  
[SUNY Sexual Assault & Violence Response \(SAVR\)](#)