

Title IX Sex Discrimination Policy

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I. **Non-Discrimination Notice and General Policy Statement**

The Manhattan School of Music (the “School” or “MSM”) does not discriminate on the basis of sex and prohibits Sex Discrimination in its Education Programs or Activities as required by Title IX of the Education Amendments of 1972 and its implementing regulations, Title VII of the Civil Rights Act of 1974, and other applicable state and local laws. The School’s prohibition on Sex Discrimination extends to all aspects of its operations, including admissions and employment. The School also prohibits various forms of Retaliation as provided by law. Reports and Complaints of Sex Discrimination may be made to the School’s Title IX Coordinator, whose contact information is specified below.

This Policy implements the School’s prohibition on Sex Discrimination, contains information on how to report Sex Discrimination, and sets forth the School’s processes for investigating and adjudicating allegations of Sex Discrimination. The Policy prohibits all forms of Sex Discrimination, including Adverse Treatment Sex Discrimination, Policy or Practice Sex Discrimination, and Sex-Based Harassment, which includes Quid Pro Quo Harassment, Hostile Environment Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Members of the School Community who commit Sex Discrimination are subject to the full range of School discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; demotion; fines; permanent separation from the institution (that is, termination or dismissal); physical restriction from School property; cancellation of contracts; and any combination of the same.

The School will provide persons who have experienced Sex Discrimination ongoing remedies as reasonably necessary to restore or preserve access to the School’s Education Programs or Activities.

Consistent with Title IX, the School also provides certain supports and accommodations for persons who are experiencing pregnancy or pregnancy related conditions. The School has a separate Pregnancy Modifications Policy that governs the provision of such supports and accommodations.

The School has designated a Title IX Coordinator to respond to questions about the Policy and Title IX and its implementing regulations; to receive Reports and Complaints of Sex Discrimination as further explained in the Policy, and to coordinate and oversee the School’s response to Sex Discrimination as dictated by the Policy and applicable laws and regulations. The Title IX Coordinator’s name and contact information is:

Carol Matos
Vice President for Administration and Human Resources
A-427 Andersen Hall
136 Claremont Ave
New York, NY 10027
(917) 493-4450
cmatos@msmny.edu

The Title IX Coordinator may assign one or more designees to carry out some of the School’s responsibilities for compliance with Title IX and its implementing regulations, but the Title IX Coordinator retains ultimate oversight for those responsibilities.

In addition to the Title IX Coordinator, questions about Title IX and its implementing regulations may be referred to the U.S. Department of Education’s Office for Civil Rights (“OCR”). Contact information for OCR is available at:

New York Office
Office for Civil Rights
U.S. Department of Education
26 Federal Plaza, Suite 31-100
New York, NY 10278-9991
Telephone: 646-428-3800
Email: OCR.NewYork@ed.gov

II. Definitions

Capitalized terms have the meaning described in Appendix 1 “Definitions”.

III. Scope

This Policy applies to Sex Discrimination that occurs within the School’s Education Programs or Activities and that is committed by a member of the School Community, except for Sex-Based Harassment involving a Student Complainant or Student Respondent. Those complaints are addressed exclusively by the School’s Sex-Based Harassment Policy (Students).

This Policy does not apply to Sex Discrimination that occurs outside the scope of the School’s Education Programs or Activities. Nevertheless, the School will address a sex-based hostile environment under its Education Programs or Activities even when some conduct alleged to be contributing to the hostile environment occurred outside the Education Programs or Activities or outside of the United States.

While this Policy and the Sex-Based Harassment Policy for Students are the exclusive policies governing Sex Discrimination that occurs within the School’s Education Programs or Activities, Reports and Complaints of Sex Discrimination may implicate conduct that violates other School policies and standards. The School retains full discretion to enforce its other policies and standards with respect to applicable conduct, whether prior to, at the same time as, or after allegations of Sex Discrimination have been resolved pursuant to this Policy.

IV. Reporting Sex Discrimination

Employee Reporting and Notice of Obligations

All School Employees, who are not designated as Confidential Employees, are required to promptly report potential Sex Discrimination in the School’s Education Programs or Activities to the Title IX Coordinator. An Employee’s duty to Report is triggered when: (1) the Employee receives a Report of potential Sex Discrimination from another person; (2) the Employee observes potential Sex Discrimination; or (3) the Employee learns about potential Sex Discrimination through some other means. Aside from this reporting obligation, employees will, to the fullest extent possible, maintain the privacy of an individual’s information, consistent with FERPA.

While Confidential Employees are not required to report potential Sex Discrimination to the Title IX Coordinator, Confidential Employees must:

- Explain their confidential status to any person who informs the Confidential Employee about potential Sex Discrimination, including the circumstances in which the Confidential Employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute Sex Discrimination.
- Provide such person with contact information for the Title IX Coordinator.

- Explain how the individual may make a complaint of Sex Discrimination directly to the Title IX Coordinator.
- Explain that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

The provisions of this section notwithstanding, a Confidential Employee must comply with any applicable state or local law that requires the Confidential Employee to report certain conduct to a state agency or local law enforcement, such as laws mandating the reporting of sexual abuse of minors, imminent threats of suicide or physical violence, or the abuse of the elderly or persons who are under a conservatorship.

Reporting to the School

Any person may report Sex Discrimination to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's Report. In-person Reports must be made during normal business hours, but Reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

Reports may be made to the following officials:

- Title IX Coordinator or designee
- Deputy Title IX Coordinator, Hannah Deblock:
 - Office Address: Room 216 in the Main Building
 - Email Address: hdeblock@msmny.edu
 - Telephone Number: (917) 493-4401
- Assistant Deputy Title IX Coordinator, Jacob Poulos
 - Office Address: Room 407 in the Main Building
 - Email Address: jpoulos@msmny.edu
 - Telephone Number: (917) 493-4114
- 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.

From time to time, the School may host public awareness events regarding Sex Discrimination, whether such events occur in person on campus or through an online platform. When potential Sex Discrimination is disclosed in the context of a public awareness event, the School will not act on the

information solely because of the disclosure at the public awareness event, unless the information reveals an immediate and serious threat to the health or safety of any person. However, the Title IX Coordinator will use information disclosed during a public awareness event to inform efforts to prevent Sex Discrimination, including by providing tailored training and education. Employees who learn about potential Sex Discrimination at a public awareness event must follow their reporting obligations described above.

The Title IX Coordinator will monitor the School's Education Programs or Activities for any barriers to reporting potential Sex Discrimination and take steps reasonably calculated to address any such barriers.

V. Special Advice for Individuals who Have Experienced Sexual Assault, Domestic Violence, Dating Violence, or Stalking

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, the School recommends the following:

- If the incident has just occurred, get to a safe place as soon as possible.
- Contact law enforcement by calling 911.
- Try to preserve all physical evidence related to the incident—avoid bathing, using the toilet, rinsing one's mouth, or changing clothes to facilitate the efficacy of a forensic examination. 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.
- Get medical attention and consider consenting to a forensic examination. A forensic examination may result in the collection of evidence that will be needed if you decide to make a report to police. Most local hospitals have forensic examination protocols and those that do not can refer you elsewhere. Take a full change of clothing, including shoes, for use after a medical examination.
- Preserve all forms of electronic communication that occurred before, during, or after the assault.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor, chaplain, or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore potential avenues for investigation and determination under this Policy.

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, and social media exchanges, rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sex-Based 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.
- Pursuing criminal or civil legal action against the perpetrator.
- Submitting a Complaint to the Title IX Coordinator.
- Requesting that no further action be taken.

The School's Title IX Coordinator and/or Deputy Title IX Coordinator can also assist individuals in obtaining a personal protection order ("PPO") through civil courts.

VI. Preliminary Assessment

After receiving a Report of potential Sex Discrimination, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or may fall within the scope of this Policy (see "Scope"); and
- Whether the conduct, as reported, constitutes or may constitute Sex Discrimination.

If the Title IX Coordinator determines that the conduct reported does not and could not fall within the scope of the Policy, and/or does not and could not constitute Sex Discrimination, even if investigated further, the Title IX Coordinator will close the matter and may notify the reporting party if doing so is consistent with FERPA. The Title IX Coordinator may refer the report to other School offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of this Policy, and/or could constitute Sex Discrimination, if investigated further, the Title IX Coordinator will proceed to contact the Complainant (see "Contacting the Complainant").

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the Report.

VII. Contacting the Complainant

If a Report is not closed as a result of the preliminary assessment (see "Preliminary Assessment") and the Complainant's identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see "Supportive Measures"); to discuss and consider the Complainant's wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without making a Complaint; to explain the process for making a Complaint; and to advise the Complainant of the investigation and adjudication procedures set forth in this Policy. The Complainant will also be provided options for filing complaints with local law enforcement and information about resources that are available on campus and in the community.

VIII. Supportive Measures

A. Availability of Supportive Measures

If a Report is not closed as a result of the preliminary assessment (see "Preliminary Assessment"), the Title IX Coordinator will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to make a Complaint.

The Title IX Coordinator will also offer and coordinate Supportive Measures for the Respondent as appropriate once the School initiates the investigation and adjudication procedures set forth in this Policy or offers an informal resolution process to the parties. Supportive Measures may also be available to a Respondent when a Complaint is dismissed.

Supportive Measures that burden a Respondent will only be imposed after a Complaint is made and will be terminated at the conclusion of the investigation and adjudication process. Supportive Measures that burden a Respondent must be no more restrictive of the Respondent than is necessary to restore or preserve the Complainant's access to the School's Education Programs or Activities and will not be imposed for punitive or disciplinary reasons.

For Supportive Measures, other than those that burden a Respondent, the School may, as appropriate, modify or terminate such Supportive Measures at the conclusion of the investigation and adjudication process or at the conclusion of any informal resolution process, or the School may continue them beyond that point.

Either party may request that the Title IX Coordinator modify, augment, or terminate Supportive Measures, after their imposition, if circumstances have changed materially.

If a party affected by Supportive Measures qualifies as a person with a disability under applicable law, the Title IX Coordinator may consult, as appropriate, with the individual or office at the School designated to provide support to persons with disabilities to ensure that the School complies with relevant disability law in the implementation of Supportive Measures.

Supportive Measures are confidential and will not be disclosed to persons other than the party to whom the Supportive Measure pertains unless wider disclosure is necessary to provide the Supportive Measure. The School may inform a party of Supportive Measures provided to or imposed on the other party only if necessary to restore or preserve that party's access to the School's Education Programs or Activities.

B. Right to Challenge Supportive Measure Decisions

A party may challenge the School's decision to provide, deny, modify, or terminate supportive measures when such measures are applicable to them. An impartial employee will be designated to consider modification or reversal of the School's decision to provide, deny, modify, or terminate supportive measures.

Such a challenge must be made in writing and generally must be made within seven (7) business days of the date the party is notified of the decision that the party wishes to challenge, provided, however, that the Dean of Students may hear challenges made outside the seven (7) day window for good cause shown, after considering all the facts and circumstances. If the Supportive Measures at issue affect both parties, the Dean of Students will notify the other affected party and allow that party to submit a written response, prior to deciding the appeal. The decision of the Dean of Students is final and not subject to further review.

If the Coordinator's decision about a Supportive Measure impacts the Respondent, the Respondent will be given an opportunity to appeal the imposition of the Supportive Measure prior to the Supportive Measure taking effect unless such pre-imposition appeal is impractical, in which case the Respondent will be given an opportunity to appeal as soon as possible after the Supportive Measure has taken effect.

The Title IX Coordinator has the discretion to implement or modify supportive measures. Violation of the parameters of supportive measures may violate existing codes or handbooks.

IX. Interim Removal

At any time after receiving a report of Sex Discrimination, the Title IX Coordinator may remove a Student Respondent from one or more of the School's Education Programs or Activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the health or safety of any Student or other individual arising from the allegations of Sex Discrimination justifies removal. In the event the Title IX Coordinator imposes an interim removal, the interim removal is subject to appeal pursuant to the appeal procedure specified in "Right to Challenge Supportive Measure Decisions."

In the case of a Respondent who is a non-student Employee (e.g., administrator, faculty, or staff), and in its discretion, the School may place the Respondent on full or partial administrative leave at any time after receiving a report of Sex Discrimination, including during the pendency of the investigation and adjudication process (see "Investigation" and "Adjudication").

For all other Respondents, including volunteers, guests, and independent contractors, 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 Sex Discrimination or otherwise.

X. Making a Complaint

A person may make a Complaint with the Title IX Coordinator requesting that the School investigate and adjudicate Sex Discrimination in accordance with the provisions "Investigation" and "Adjudication." Provided, however, that the person must (1) meet the definition of Complainant; (2) be a person who has the legal right to act on a Complainant's behalf; or (3) be the Title IX Coordinator.

Complaints may be made to the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in "Reporting Sex Discrimination."

In deference to the agency of alleged victims of Sex Discrimination, the Title IX Coordinator will exercise the authority to make a Complaint only after careful consideration of multiple factors suggests there is an immediate and serious threat to the health or safety of the Complainant or other person or where not making a Complaint would prevent the School from maintaining a non-discriminatory environment. Such factors to be considered include: (1) the Complainant's request not to proceed with initiation of a complaint; (2) the Complainant's reasonable safety concerns regarding initiation of a Complaint; (3) the risk of additional Sex Discrimination; (4) the severity of the alleged Sex Discrimination, including whether the discrimination, if established, would require the removal of the Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence; (5) the age and relationship of the parties involved, or whether the impacted person is a minor; (6) whether the alleged perpetrator is an Employee; (7) the scope of the alleged Sex Discrimination, including information suggesting a pattern, ongoing Sex Discrimination, or Sex Discrimination alleged to have impacted multiple individuals; (8) the availability of evidence; (9) whether the School could end the alleged Sex Discrimination and prevent its recurrence without initiating the investigation and adjudication procedures; (10) whether the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other persons, or that the conduct as alleged prevents the School from ensuring equal access on the basis of sex to its education program or activity; (11) whether the accused has a history of violent behavior or is a repeat offender; (12) whether the incidents represents an escalation on the part of the person accused; (13) whether the accused used a weapon or force; and (14) whether available information reveals a pattern of perpetration at a given location by a particular group.

If the Title IX Coordinator makes a Complaint, the Title IX Coordinator will notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures.

If the Complainant or the Title IX Coordinator makes a Complaint, the School will commence an investigation as specified in "Investigation" and proceed to adjudicate the matter as specified in "Adjudication," below. In all cases where a Complaint is made, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator makes a Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

If the Title IX Coordinator elects not to make a Complaint, and no other person makes a Complaint, the Title IX Coordinator will still evaluate the need for and, if appropriate, implement other prompt and effective steps to ensure that Sex Discrimination does not continue or recur in the School's Education Programs or Activities and to remedy its effects, if any.

XI. Consolidation of Complaints

The School may consolidate Complaints as to allegations of Sex Discrimination 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 Sex Discrimination arise out of the same facts or circumstances. Where the investigation and adjudication processes involve more than one Complainant or more than one Respondent, references in this Policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Complaint of Retaliation may be consolidated with a Complaint of Sex Discrimination.

The School also reserves the right to use this policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct under this policy. The Title IX Coordinator will address these consolidated complaints in collaboration and coordination with other appropriate offices, such as Student Services and Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this policy.

XII. Dismissal of complaint

Any time after a Complaint is made, the Title IX Coordinator may dismiss it for any of the following reasons:

- The School is unable to identify the Respondent after taking reasonable steps to do so.
- The Respondent is not participating in the School's Education Programs or Activities and is not employed by the School.
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, in writing, and the Title IX Coordinator determines that without the withdrawn allegations, the conduct that remains part of the Complaint, if any, would not constitute Sex Discrimination even if proven.
- After first taking reasonable efforts to clarify the allegations, the Title IX Coordinator determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex Discrimination.

Upon dismissal, the Title IX Coordinator must promptly notify the Complainant of the dismissal and its basis, in writing. If the dismissal occurs after the Respondent has been notified of the Complaint,

the Title IX Coordinator must also simultaneously notify the Respondent of the dismissal and its basis, in writing. The written notice to the Complainant and/or the Respondent, as applicable must advise the party of their right to appeal the dismissal pursuant to the procedures specified in “Appeal.”

Even when a Complaint is dismissed, the Complainant and, as applicable, the Respondent, are still eligible for Supportive Measures as set forth in “Supportive Measures,” and the Title IX Coordinator shall evaluate whether to take other prompt and effective steps to ensure that Sex Discrimination does not continue in the School’s Education Programs or Activities.

XIII. Notice of Complaint

Within five (5) business days of the Title IX Coordinator receiving a Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A full copy of this Policy, whether in physical or electronic form.
- Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident, the conduct alleged to constitute Sex Discrimination, and the date and location of the alleged incident, to the extent that information is available to the School.
- A statement that the Respondent is presumed not responsible for the alleged Sex Discrimination until an adjudication of responsibility is made final and that the parties will have an opportunity to present relevant evidence to a trained, impartial decisionmaker prior to such adjudication being made.
- A statement that the party is entitled to receive access to relevant evidence or to an investigative report that accurately summarizes the evidence; if the School provides the party with a summary of the relevant evidence, the parties will have an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- Notification to the Complainant and Respondent of the School’s prohibitions on Retaliation and false statements specified in “Bad Faith Complaints and False Information” and “Retaliation.”

If there are legitimate concerns for the safety of any person because of providing the written notice of Complaint, providing such written notice may be reasonably delayed to address the safety concern appropriately. Safety concerns that would justify delay of providing the written notice must be based on an individualized safety and risk analysis and not mere speculation or stereotypes. In any event, the written notice of Complaint will be provided to a party sufficiently in advance of their initial investigative interview such that the party has sufficient time to prepare.

Should the School elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the School will provide a supplemental written notice describing the additional allegations to be investigated.

XIV. Investigation

A. Commencement and Timing

After the written notice of a Complaint is transmitted to the parties, the Title IX Coordinator, or an investigator selected by the Title IX Coordinator, will undertake an investigation to gather evidence relevant to the alleged Sex Discrimination, including inculpatory and exculpatory evidence. The

burden of gathering evidence sufficient to reach a determination in the adjudication lies with the School and not with the parties. Although the length of each investigation may vary depending on the totality of the circumstances, the School strives to complete each investigation within thirty (30) to forty-five (45) business days of the transmittal of the written notice of the Complaint.

B. Fair Notice and Equal Opportunity

During the investigation, the investigator will provide advance written notice to a party of the date, time, location, participants, and purpose of all meetings and investigative interviews pertaining to that party, with sufficient time for the party to prepare to participate. The investigator will provide an equal opportunity for the parties to be interviewed, to identify witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence.

The investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to individual follow-up meetings. The investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence that is not relevant will not be considered.

Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible under “Inadmissible Evidence and Impermissible Questioning

The investigation is a party’s opportunity to present testimonial and other evidence that the party believes is Relevant to the allegations in the Complaint. A party who is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

C. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator’s notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator’s sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation, to the extent possible.

XV. Adjudication Process

A. Preparation of the Investigation Report, Appointment of the Adjudicator, and Notification to the Parties

After the evidence gathering phase of the investigation is completed, the investigator will prepare a written investigation report that summarizes the investigation and append to it all the permissible evidence that is relevant to the allegations in the Complaint, including both inculpatory and exculpatory evidence. The investigator will then notify the Title IX Coordinator that the investigation is complete and transmit the investigation report and its appended evidence to the Title IX Coordinator and to the parties.

The Title IX Coordinator will then appoint an adjudicator whose responsibility it will be to adjudicate the Complaint. Within three (3) business days of being notified about the adjudicator's identity, either party may raise concerns, if any, about bias or conflict of interest to the Dean of Students. The adjudicator may be the investigator or the Title IX Coordinator themselves. The investigation report and its appended evidence will be transmitted to the adjudicator.

The adjudicator will promptly send written notice to the parties notifying the parties of the adjudicator's appointment; setting a deadline for the parties to submit a written response to the investigation report and its appended evidence which shall not be sooner than seven (7) business days from the date the investigator transmitted the investigation report; and setting a date and time for each party to meet with the adjudicator separately. The adjudicator's meetings with the parties will not be held any earlier than ten (10) business days from the date the investigator transmitted the investigation report to the parties.

B. Response to the Investigation Report

A party may choose to submit a response to the investigation report. Such a response must be written, and may include:

- To the extent the party wishes to respond to any aspect of the investigation report or evidence, any such response.
- A statement as to whether the party contends the credibility of the other party or any witness is in dispute; if so, how such credibility dispute is relevant in evaluating any of the allegations in the Complaint; and what questions the party contends should be asked to the party or witness to test credibility.
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration based on any one or more of the standards specified in "Inadmissible Evidence and Impermissible Questioning."
- Argument regarding whether any of the allegations in the Complaint are supported by a preponderance of the evidence.
- Argument regarding whether any of the allegations in the Complaint constitute Sex Discrimination.

While the party may receive assistance in preparing the written response, the written response must be submitted and signed by the party themselves or someone with legal authority to act on their behalf.

C. Meetings with Parties and Witnesses

After reviewing the parties' written responses to the investigation report, the adjudicator may meet separately with each party to ask questions concerning the party's written response, the investigation report, and/or the evidence collected during the investigation, including questions that may bear on credibility. The adjudicator may also meet with specific witnesses whose credibility is in dispute, and whose testimony is potentially relevant in evaluating any allegations in the Complaint, to pose questions that may bear on credibility.

D. Deliberation and Determination

After meeting with each party and any witnesses whose credibility is in dispute, the adjudicator will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant,

Respondent, or witness. The adjudicator will take care to exclude from consideration any evidence that the adjudicator determines is inadmissible on the grounds explained in “Inadmissible Evidence and Impermissible Questioning.” The adjudicator will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the Policy as alleged in the Complaint.

In the event the adjudicator determines that the Respondent is responsible for violating this Policy, the adjudicator will, prior to issuing a written decision, consult with an appropriate School official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The adjudicator will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant and other persons, as appropriate. The adjudicator may seek legal advice from the School’s in-house or outside counsel.

E. Written Decision

After reaching a determination and consulting with the appropriate School official and Title IX Coordinator, as necessary, the adjudicator will prepare a written decision that will include:

- A description of the alleged Sex Discrimination.
- Information about the policies and procedures the School used to evaluate the allegations.
- The adjudicator’s evaluation of all relevant evidence and determination of whether Sex Discrimination occurred.
- When the adjudicator finds that Sex Discrimination occurred, discipline determined by the appropriate School official.
- Whether the Complainant, Respondent, and, to the extent appropriate, other persons, will receive any ongoing Supportive Measures or other remedies as determined by the Title IX Coordinator.
- A description of the School’s process and grounds for appeal, as specified in “Appeal.”

The adjudicator will transmit the written decision to the Title IX Coordinator and the parties. Content in the written decision regarding ongoing Supportive Measures and other remedies for the Complainant, if applicable, may be redacted from the version of the written report shared with the Respondent, to the extent necessary to comply with this Policy and FERPA. Transmittal of the written decision to the parties concludes the adjudication process, subject to any right of appeal as specified in “Appeal.” Any discipline imposed will be stayed pending the completion of any appeal.

Although the length of time needed to issue the written decision will vary depending on the totality of the circumstances, the School strives to issue the adjudicator’s written decision within thirty (30) business days of the adjudicator’s appointment.

XVI. Appeal

Either party may appeal the written decision of an adjudication, or a dismissal of a Complaint, on one or more of the following grounds:

- A procedural irregularity that would change the determination of whether a Policy violation occurred.

- There is new evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether the Policy was violated occurred or dismissal was made.
- The Title IX Coordinator, investigator, or adjudicator, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that would change the outcome.
- Disproportionate or inappropriate sanctions.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) business days of the date they receive notice the written decision or dismissal appealed from or, if the other party appeals, within three (3) business days of receiving notice that the other party has appealed, whichever is later.

Appeals will be decided by an appellate panel. The appeal must be submitted in writing to the Provost (provost@msmny.edu). The appeal must specifically identify the written decision and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appellate panel will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appellate panel determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, it will dismiss the appeal and provide written notice of the same to the parties.

If the appellate panel confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appellate panel will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) business days. The appellate panel shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

All members of the appellate panel will be free of conflict of interest and will not have served as investigator, Title IX Coordinator, or adjudicator in the same matter. Upon receipt of any opposition, or after the time for submission of an opposition has passed without one being filed, the appellate panel will promptly convene to decide the appeal and simultaneously transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appellate panel has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the School strives to issue the appellate panel's written decision within twenty-one (21) business days of an appeal being filed.

XVII. Inadmissible Evidence and Impermissible Questioning

During the investigation and adjudication processes, questioning and evidence of the following subject matters are inadmissible and impermissible:

- Evidence that is protected under a privilege as recognized by federal, state, or local law, or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- A party's records that are maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party, unless the School obtains that party's voluntary, written consent for use in the School's investigation and adjudication process.
- The Complainant's sexual interests or prior sexual conduct unless such questions and/or evidence is offered to prove that someone other than the Respondent committed the alleged conduct or is offered to prove consent with evidence concerning specific incidents of the Complainant's prior sexual conduct with the Respondent. The fact of prior consensual sexual conduct between the Complainant and Respondent does not demonstrate or imply the Complainant's consent to the alleged Sex Discrimination or preclude a determination that Sex Discrimination occurred.

XVIII. Informal or Facilitated Resolution

At any time after the parties are provided written notice of the Complaint as specified in "Notice of 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 Complaint by agreement of the parties. The Title IX Coordinator may reject the use of informal resolution in a specific case despite one or more of the parties' wishes. Informal resolution will not be permitted in any case where informal resolution would otherwise conflict with federal, state, or local law.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the allegations if such notice has not already been provided in writing.
- Describes the parameters and requirements of the informal resolution process to be utilized.
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another School official, or a suitable third-party, provided such person is not the investigator or adjudicator).
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Complaint.
- Explains that either party has the right to withdraw from informal resolution and initiate or resume the investigation and adjudication process.
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.
- Explains potential terms that may be requested or offered in the informal resolution, including restrictions on contact and restrictions on the Respondent's participation in one or more of the School's Education Programs or Activities.
- Explains that an informal resolution agreement is binding only on the parties.
- Describes which records will be maintained and shared.

- Explains if the School resumes its investigation and adjudication process, the School will not access, consider, disclose, or otherwise use information, including records, obtained solely through the informal resolution process as part of the investigation or determination of the Complaint.
- Explains that, if the School resumes its investigation and adjudication process, the person facilitating informal resolution could serve as a witness for purposes other than providing information obtained solely through the informal resolution process.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the School, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the School.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) business days. If an informal resolution process does not result in a resolution within twenty-one (21) business days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Nothing in this section diminishes the Title IX Coordinator's obligation to take prompt and effective steps when necessary to ensure that Sex Discrimination does not continue or recur within the School's Education Programs or Activities.

XIX. Presumption of Non-Responsibility

From the time a Report or Complaint is made, a Respondent is presumed not responsible for the alleged Sex Discrimination until an adjudication of responsibility is made final.

XX. Resources

Any individual affected by or accused of Sex Discrimination will have equal access to support and counseling services offered through the School. The School encourages any individual who has questions or concerns to seek support of School identified resources. A list of School identified resources for students is located online at:

<https://www.msmnyc.edu/campus/student-affairs/health-wellness/>.

XXI. Conflicts of Interest, Bias, and Procedural Complaints

The Title IX Coordinator, investigator, adjudicator, appellate panel, informal resolution facilitator, and other officials implementing this Policy will be free of any material conflicts of interest or material bias. Any party who believes one or more of these School officials has a material conflict of interest or material bias must raise the concern promptly so that the School may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in “Appeal,” or otherwise.

XXII. Objections Generally

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the School may evaluate the matter and address it, if appropriate.

XXIII. Constitutional Rights and Academic Freedom

The School will construe and apply this Policy consistent with the U.S. Constitution and the School’s principles of academic freedom. In no case will a Respondent be found to have violated this Policy based on conduct that is protected by the U.S. Constitution and/or principles of academic freedom.

XXIV. Relationship With Criminal Process

This Policy sets forth the School’s processes for responding to Reports and Complaints of Sex Discrimination. The School’s processes are separate, distinct, and independent of any criminal processes. While the School may temporarily delay its processes under this Policy to avoid interfering with law enforcement efforts if requested by law enforcement, the School will otherwise apply this Policy and its processes without regard to the status or outcome of any criminal process.

XXV. Relationship With Other Legal Process

In some cases, allegations of Sex Discrimination under this Policy may be the subject of parallel civil lawsuits, administrative complaints, or regulatory processes under federal, state, or local law. The pendency of such parallel litigation may necessitate a delay or modification of the processes set forth in this Policy, especially where the processes in this Policy might interfere with the authority of a court or regulatory body with jurisdiction over such parallel litigation, violate rules or orders governing such parallel litigation, violate the rights of a party in such parallel litigation, or create a conflict of interest for the School itself. In such instances, the School retains discretion to pause, modify, or terminate proceedings under this Policy.

XXVI. Recordings

Wherever this Policy specifies that an audio or video recording will be made, the recording will be made only by the School and is considered property of the School, subject to any right of access that a party may have under this Policy, FERPA, and other applicable federal, state, or local laws. Only the School is permitted to make audio or video recordings under this Policy. The surreptitious recording of any meeting, interview, or other interaction contemplated under this Policy is strictly prohibited.

XXVII. Volunteers, Vendors, Contractors and Third Parties

The School does business with various volunteers, vendors, contractors, and other third-parties who are not Students or Employees of the School. Notwithstanding any rights that a given volunteer, vendor, contractor, or third-party Respondent may have under this Policy, the School retains its right to limit any volunteer, vendor, contractor, or third-party's access to campus for any reason. And the School retains all rights it enjoys by contract or law to terminate its relationship with any volunteer, vendor, contractor, or third-party irrespective of any process or outcome under this Policy.

XXVIII. Bad Faith Complaints and False Information

It is a violation of this Policy for any person to submit, or to aid or abet another to submit, a Report or Complaint that the person knows, at the time the Report or Complaint is submitted, to be false or frivolous. It is also a violation of this Policy for any person to knowingly make, or to aid or abet another to make, a materially false statement during the course of an investigation, adjudication, or appeal under this Policy, although a party, witness, or other person who knowingly makes a materially false statement will not be punished based solely on the School's determination of whether Sex Discrimination occurred. 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 and other School policies and standards, as applicable, for other persons.

XXIX. Retaliation

It is a violation of this policy to engage in Retaliation. Reports and Complaints of Retaliation may be made in the manner specified in "Reporting Sex Discrimination," and "Making a Complaint." Any Report or Complaint of Retaliation will be processed under this Policy in the same manner as a Report or Complaint of Sex Discrimination, as the case may be. The School retains discretion to consolidate a Complaint of Retaliation with a Complaint of Sex Discrimination for investigation and/or adjudication purposes if the two Complaints share a common nexus.

XXX. Confidentiality

The School will keep confidential the identity of any individual who has made a Report or Complaint of Sex Discrimination or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sex Discrimination or Retaliation including any Respondent, and the identity of any witness or other participant in the School's investigation and adjudication processes except:

- When the individual has provided prior written consent to disclose their identity.
- When disclosure is permitted by FERPA or its implementing regulations.
- As otherwise required by applicable federal, state, or local law.
- As required by Federal regulations or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- As necessary to carry out the purposes of Title IX and its implementing regulations, including the requirement to take action to address potential Sex Discrimination under the School's Education Programs or Activities.

The School will also maintain the confidentiality of its various records generated in response to Reports and Complaints, including, but not limited to, information concerning Supportive Measures,

notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the School may disclose any record if permitted by FERPA or its implementing regulations, as otherwise required by applicable federal, state, or local law, or as necessary to carry out the purposes of Title IX and its implementing regulations, including the requirement to address potential Sex Discrimination under the School's Education Programs or Activities.

Further, notwithstanding the School's general obligation to maintain confidentiality as specified herein, the parties to a Complaint will be given access to investigation and adjudication materials in the circumstances specified in this Policy. Such investigation and adjudication materials, including the investigation report and appended evidence, and the written decision, are for the sole use of the party (and, if the party is entitled to one, an advisor) in the proceedings contemplated by this Policy; such materials may not be disseminated to third parties or otherwise published. If a party violates the confidentiality rules governing investigation and adjudication materials, the party is subject to disciplinary action under the Student Code of Conduct in the case of a student, and other School policies and standards, as applicable, for other persons.

While the School will maintain confidentiality specified in this section, the School will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sex Discrimination or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this Policy.

Certain types of Sex Discrimination are considered crimes for which the School must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

XXXI. Other Violations of This Policy

Alleged violations of this Policy will be subject to review and resolution under the Student Code of Conduct for Students, and other School policies and standards, as applicable, for other persons.

XXXII. Amnesty

The health and safety of every student at the 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 institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to MSM's officials or law enforcement will not be subject to MSM 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.

The School reserves the right to require counseling, education, or other preventative measures to help prevent alcohol or drug use or possession violations in the future. The School's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual. Amnesty does not extend to violations of alcohol or drug policies that pertain to distribution of such substances to other persons.

XXXIII. Signatures and Form of Consent

For purposes of this Policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this Policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

XXXIV. Deadlines, Time, Notices, and Method of Transmittal

Where this Policy specifies a period of days by which some act must be performed, the following method of calculation applies:

- Exclude the day of the event that triggers the period.
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government.
- Include the last day of the period until 5:00 p.m. eastern time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. eastern time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this Policy are subject to modification by the School where, in the School's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with the School's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, adjudicator, appellate panel, or Title IX Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. The School officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of the School.

The parties will be provided written notice of the modification of any deadline or time period specified in this Policy, along with the reasons for the modification.

Where this Policy refers to notice being given to parties "simultaneously," notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this Policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this Policy will be email using School email addresses. If a party does not have a School email address, the party will be required to provide an email address to the Title IX Coordinator at the inception of a matter. A party may not insist or demand that the School communicate only through a party's representative, including an attorney.

A party is deemed to have received notice upon transmittal of an email to their School email address or, if they do not have a School email address, the email address they supply to the Title IX Coordinator at the inception of a matter.

If unforeseen circumstances necessitate notice be provided by U.S. mail, a party will be deemed to have received notice three (3) business days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting or interview will be provided with sufficient time for the party to prepare for the meeting or interview, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this Policy, the sufficient time to be provided will be determined in the sole discretion of the School, considering all the facts and circumstances, including, but not limited to, the nature of the meeting or interview; the nature and complexity of the allegations at issue; the schedules of relevant School officials; approaching holidays or closures; and the number and length of extensions already granted.

XXXV. Other Forms of Discrimination

This policy applies only to Sex Discrimination. Complaints of other forms of protected-status discrimination, such as discrimination based on race, national origin, ethnicity, age, and disability, are governed by the Equal Employment and Educational Opportunity Non-Discrimination and Anti-Harassment Policy.

XXXVI. Facts and Determinations Binding

If a Complaint is dismissed or proceeds to a written decision of adjudication, and after any such dismissal or written decision is final, the facts and determinations made by the School are binding on the parties and may not be relitigated, challenged, or otherwise collaterally attacked by the parties in any other School process or procedure. Additionally, a Complainant may not file successive Complaints under this Policy about the same incident or course of conduct, even if the Complainant alleges a new theory of Sex Discrimination arising from the same incident or course of conduct that was the subject of a prior written decision. Further, to the extent a complaint of Policy and Practice Discrimination has proceeded to a written decision, such written decision is binding on different Complainants with respect to the same Policy and Practice Discrimination, unless such different Complainant alleges materially different facts that could result in a different outcome.

XXXVII. Outside Appointments, Dual Appointments, and Delegations

The School retains discretion to retain and appoint suitably qualified persons who are not School employees to fulfill any function of the School under this Policy, including, but not limited to, the Title IX Coordinator, investigator, adjudicator, informal resolution facilitator, and/or appellate panel.

The School also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, adjudicator, informal resolution facilitator, and appellate panel.

The functions assigned to a given School official under this Policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, adjudicator, informal resolution facilitator, and appellate panel, may, in the School's discretion, be delegated by such School official to any suitably qualified individual and such delegation may be recalled by the School at any time.

XXXVIII. Dual Status Persons

Where an individual is both a Student and an Employee of the School, and to the extent the distinction between Student or Employee status is material for any standard, obligation, right, or process set forth in this Policy, the Title IX Coordinator will determine the individual's status for purposes of this Policy. Such determination shall be made after a fact-specific inquiry that includes consideration of relevant circumstances, including whether the individual's primary relationship to the

School is to receive an education or to work, and in what capacity the person was acting (or failing to act) with regard to the events in question.

XXXIX. Exercise of Rights

The rights afforded to Complainants and Respondents throughout this Policy are personal to Complainants and Respondents and may not be exercised by a third-party unless the third-party has the legal right to act on the party's behalf. As a general rule, parents do not have the right to act on behalf of adult students and are not entitled to participate in the investigation and adjudication processes in this Policy unless they are acting in the role of an advisor as described in "Advisor of Choice and Other Accompanying Persons." If a Complaint alleges Policy and Practice Discrimination against the School itself, such that no individual person is a Respondent, the relevant department or unit whose policy or practice is at issue may appoint an individual to represent the department or unit's interest and to act as a nominal Respondent in such individual's official capacity on behalf of the department or unit at issue.

XL. Training

The School will ensure that all Employees, and School officials acting under this Policy, including but not limited to the Title IX Coordinator, investigators, adjudicators, informal resolution facilitators, School-provided advisors, and appellate panel receive training in compliance with Title IX and its implementing regulations and any other applicable federal, state, or local laws.

XLI. Recordkeeping

The School will retain those records specified in 34 C.F.R. § 106.8(f) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the School's sole discretion. Such materials will be made available for inspection and review only to the extent required by Title IX and its implementing regulations and/or other applicable federal, state, and/or local laws.

XLII. Changes in the Law

In the event a change in controlling law conflicts with some provision of this Policy, necessitates the modification of some provision of this Policy, or mandates the inclusion of new provisions not included, the School may immediately apply the Policy in a manner consistent with such controlling law, after providing written notice to the parties of the change in controlling law, even if the Policy has yet to be formally amended to address the change in controlling law.

XLIII. Definitions

Words used in this Policy will have those meanings defined herein and/or in Appendix 1 and if not defined herein or in Appendix 1 will be construed according to their plain and ordinary meaning.

XLIV. Discretion in Application

The School retains discretion to interpret and apply this Policy in a manner that is not clearly unreasonable, even if the School's interpretation or application differs from the interpretation of the parties.

Despite the School's reasonable efforts to anticipate all eventualities in drafting this Policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed

by the express language, in which case the School retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this Policy are **not contractual in nature**, whether in their own right, or as part of any other express or implied contract. Accordingly, the School retains discretion to revise this Policy and Policy revisions to an active case provided that doing so is not clearly unreasonable.

Appendix 1: Definitions

“**Adverse Treatment Sex Discrimination**” means material, adverse action taken against a person where the motivating factor for the action is Sex-Based except where such action is permitted by law. The adverse action need not be sexual in nature to constitute Adverse Treatment Sex Discrimination.

“**Coercion**” means the use of force, physical restraint, threats of harm, intimidation, misuse of authority, blackmail, or other unreasonable pressure.

“**Complainant**” means:

- A Student or Employee who is alleged to have been subjected to conduct that could be prohibited by this Policy; or
- A person other than a Student or Employee who is alleged to have been subjected to conduct that could be prohibited by this Policy and who was participating or attempting to participate in the School’s Education Programs or Activities when the alleged conduct occurred.

“**Complaint**” means an oral or written request to the School to initiate an investigation and adjudication of alleged Sex Discrimination pursuant to the procedures in this Policy.

“**Confidential Employee**” means an Employee of the School who is not required to report potential Sex Discrimination to the Title IX Coordinator because:

- The Employee’s communications are privileged or confidential under federal or state law (e.g., attorneys, doctors and certain other medical providers, psychologists, and counselors). The Employee’s status as confidential is limited to information received about Sex Discrimination while the Employee is functioning within the scope of their duties to which the privilege or confidentiality applies.
- The School has designated the Employee as a confidential resource for the purpose of providing services to persons in connection with Sex Discrimination—but if the Employee also has a role or duty not associated with providing these services, the Employee’s status as confidential is limited to information received about Sex Discrimination in connection with providing these services.
- The Employee is conducting a School approved human subjects research study designed to gather information about Sex Discrimination—but the Employee’s confidential status is limited to information received while conducting the study.

The following School officials are Confidential Employees¹:

- The Campus Health Nurse.
 - Office Address: Room 105 in the Main Building
 - Email Address: campushealth@msmny.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](#)

¹The 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.

- In case of emergency please call (917) 493-4000

“**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.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

“**Dating Violence**” is violence committed by a person –

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship will be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

“**Domestic Violence**” is felony or misdemeanor crimes of violence committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the State of New York, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the State of New York.

“**Employee**” means a person who is paid wages to perform services for the School. Volunteers and independent contractors are not Employees.

“**Education Programs or Activities**” refers to:

- Activity occurring under any of the operations of the School in the United States, including, but not limited to, in-person and online educational instruction, admissions, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs.
- Activity that occurs on campus or on other property owned or occupied by the School.

- Activity that occurs in a building owned or controlled by a student organization that is officially recognized by the School.
- Activity that is subject to the School’s disciplinary authority.

“**FERPA**” refers to the Family Educational Rights and Privacy Act, which is a federal law governing the confidentiality of a Student’s education records and a Student’s right to access, review, and seek amendment of education records.

“**Hostile Environment Harassment**” is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the School’s Education Programs or Activities. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of:

- The degree to which the conduct affected the person’s ability to access the School’s Education Programs or Activities.
- The type, frequency, and duration of the conduct.
- The parties’ ages, roles within the School’s Education Programs or Activities, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct.
- The location of the conduct and the context in which the conduct occurred.
- Other Sex-Based harassment in the School’s Education Programs or Activities.

“**Incapacitated**” or “**Incapacity**” refers to the state where an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. 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 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.

“**Policy**” refers to this Sex Discrimination Policy.

“**Policy or Practice Discrimination**” means a School policy, practice, or condition that has the effect of excluding or limiting a person from participating in the School’s Education Programs or

Activities on a Sex-Based category or that results in inequitable access to the School's Education Programs or Activities on a Sex-Based category except where such action is permitted by law.

“Pregnancy or Related Conditions” means:

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy or lactation;
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

“Privacy” vs. **“Confidentiality”**: references to 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.

“Quid Pro Quo Harassment” is an Employee, agent, or other person authorized to provide an aid, benefit, or service of the School explicitly or implicitly conditioning the provision of an aid, benefit, or service of the School on a person's participation in unwelcome sexual conduct.

“Relevant” means related to the allegations of Sex Discrimination that are subject to investigation and adjudication as set forth in this Policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sex Discrimination occurred, and evidence is Relevant when it may aid an adjudicator in determining whether the alleged Sex Discrimination occurred.

“Report” means an oral or written notification of alleged Sex Discrimination.

“Respondent” means a person who is alleged to have engaged in conduct that could be prohibited by this Policy.

“Retaliation” is intimidation, threats, Coercion, or discrimination against any person by a Student, Employee, person authorized by the School to provide aid, benefit or service under the School's Education Programs or Activities, or the School itself, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in any investigation or proceeding under this Policy, or any other appropriate steps taken by the School in response to conduct prohibited by this Policy. Notwithstanding the foregoing, Retaliation does not include requiring an Employee or person authorized by the School to provide aid, benefit, or service under the School's Education Programs or Activities to participate as a witness in, or otherwise assist with, an investigation or proceeding under this Policy. Retaliation includes initiating disciplinary process against a person for a violation of another School conduct standard that does not involve Sex Discrimination but arises out of the same facts and circumstances of a Complaint or information about potential Sex Discrimination, if initiating such other disciplinary process is done for the purpose of interfering with the exercise of any right or privilege of Title IX. Retaliation can be committed by a peer. Retaliation does not include any conduct that a party has a right to engage in under the U.S. Constitution.

“**School Community**” means all persons who participate in the School’s Education Programs or Activities, including board members, administrators, faculty, staff, other Employees, Students, volunteers, guests, and contractors.

“**Sex-Based**” means on the basis of:

- sex
- sex stereotypes
- sex characteristics
- pregnancy or related conditions
- sexual orientation
- gender identity.

“**Sex Discrimination**” is an omnibus term that includes Adverse Treatment Sex Discrimination, Policy or Practice Discrimination, and Sex-Based Harassment.

“**Sexual Assault**” consists of one or more of the following:

- Rape: 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, or by a sex-related object. This definition also includes instance in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (include due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is unable to give consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New York law.
- Sexual intercourse with a person who is under the statutory age of Consent as defined by New York law.

“**Sex-Based Harassment**” is a form of Sex Discrimination and consists of sexual and other Sex-Based harassment that constitutes Quid Pro Quo Harassment, Hostile Environment Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

“**Stalking**” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

“**Student**” means a person who has gained admission to the School, whether or not they have matriculated.

“**Supportive Measures**” are non-disciplinary, non-punitive individualized measures offered, as appropriate, as reasonably available, without unreasonably burdening a party, and without fee or charge to the Complainant or Respondent to (i) restore or preserve that party’s access to the School’s Education Programs or Activities, including measures that are designed to protect the safety of the parties or the School’s educational environment, or (ii) provide support during the School’s

investigation and adjudication process under this Policy, including any informal resolution process. Examples of Supportive Measures that may be available depending on the facts of a particular matter include: counseling; extensions of deadlines and other course-related adjustments; increased security and monitoring for certain areas of campus; restrictions on contact between parties; leaves of absence; voluntary and involuntary changes to class, work, housing, or extracurricular or any other activity; and training and education.

Appendix 2:

New York State Students' 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 participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution.
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available. (Note: MSM has a Counseling Center and Campus Health Nurse Office, both of which are committed to handling student needs with respect; MSM students also have access to the Crime Victims Treatment Center, which provides an advocate to accompany crime victims while they receive medical care at Mt. Sinai St. Luke's Hospital.)
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 institution 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 to at least one level of appeal of a determination. (At Manhattan School of Music, appeals may be made to a panel chaired by the President.)
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; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.