
POLICY AGAINST
SEX-BASED
DISCRIMINATION
HARASSMENT
&
SEXUAL MISCONDUCT



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KEY RESOURCES FOR REPORTING

IMPORTANT INFORMATION

Note: This information is provided in greater detail within this handbook.

Any member of the SVA community who has a question or concern, or wishes to file a report related to discrimination, harassment, or sexual misconduct should contact the Title IX Coordinator.

SVA's Title IX Coordinator is:

Laurel Christy

Business Office:

340 East 24th Street, Ground Floor,
New York, NY 10010

Email: lchristy@sva.edu

Phone: 212.592.2153

Website: sva.edu/sexualmisconduct

REPORTING TO LAW ENFORCEMENT

If you are in immediate danger, dial 911 and/or Security Services at 212.696.4632, and attempt to get to a safe place.

Acts of violence, including sexual assault, domestic violence, dating violence and stalking, are against the law. If you are not in immediate danger and would like to report an incident to the police, you can do so by contacting the NYPD as follows. A staff member from SVA can accompany you to make a report with the police.

- The New York City Police Department sex crimes unit at 212.267.7273, or
- NYPD 13th Precinct at 230 East 21st Street, New York, NY 10010; tel: 212.477.7411.

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

STUDENTS' BILL OF RIGHTS

All students have the right to:

- make a report to local law enforcement and/or state police;
- have disclosures of domestic violence, dating violence, stalking and sexual assault treated seriously;
- make a decision about whether to disclose a crime or violation and participate in the complaint process and/or criminal justice process free from pressure by the institution;
- participate in a process that is fair and impartial, and provides adequate notice and a meaningful opportunity to be heard;
- be treated with dignity and to receive from the institution courteous, fair and respectful counseling services, where available;
- be free from any suggestion that the complainant was at fault when these crimes and violations were committed, or should have acted in a different manner to avoid such crimes or violations;
- describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- be protected from retaliation by the institution, any student, the responding party and/or their friends, family and acquaintances within the jurisdiction of the institution;
- access to at least one level of appeal of a determination;
- be accompanied by an advisor of choice who may assist and advise a complainant and/or respondent throughout the complaint, investigation, hearing and appeal process, including during all meetings and hearings related to such process; and
- exercise civil rights and practice of religion without interference by the investigative, judicial or conduct process of the institution.

The following link will direct you to SVA's website where this information is also available: sva.edu/sexualmisconduct

RIGHTS OF ALL REPORTING PARTIES

- The right to request interim measures to ensure his or her safety during the complaint process.
- The right to a prompt, thorough, fair and impartial investigation and appropriate resolution of all credible complaints of sexual misconduct.
- The right to be treated with respect by SVA staff throughout the process.
- The right to be notified of available counseling, and mental and physical health services, on and off campus.
- The right to identify witnesses and to request that the investigator contact those individuals as part of the investigation.
- The right to have an advisor present in a support or advisory role during the complaint, investigation, hearing and appeal process.
- The right to report the incident to off-campus authorities and/or law enforcement and to be assisted by SVA staff in doing so.
- The right to know what provisions of this policy the respondent is charged with violating.
- The right to be informed of the final determination and sanctions, if any, in writing to the extent permissible by law.
- The right to privacy and the assurance that information regarding the complaint will be shared only with those necessary.
- The right to receive timely notice of any meeting relating to the complaint process at which both the complainant and respondent will be present.

RIGHTS OF THE RESPONDING PARTY

- The right to a prompt, thorough, fair and impartial investigation and appropriate resolution of all credible complaints of sexual misconduct.
- The right to be treated with respect by SVA staff throughout the process.
- The right to a presumption of innocence before a determination is made.
- The right to be notified of available counseling, and mental and physical health services, on and off campus.
- The right to identify witnesses and other parties, and to request that the investigator contact those individuals as part of the investigation.
- The right to have an advisor present in a support or advisory role during the complaint, investigation, hearing and appeal process.
- The right to receive written notice of the policy provisions he or she is alleged to have violated.
- The right to be notified of possible sanctions that may result if the responding party is found responsible for violating this policy.
- The right to be informed of the final determination and sanctions, if any, in writing to the extent permissible by law.
- The right to privacy and the assurance that information regarding the complaint will be shared only with those necessary.
- The right to receive timely notice of any meeting relating to the complaint process at which both the respondent and the reporting party will be present.

INTRODUCTION

STATEMENT OF EQUAL OPPORTUNITY

The School of Visual Arts is committed to providing a working, learning and living environment free from unlawful discrimination and harassment. SVA does not discriminate on the basis of any protected characteristic in admissions, financial aid or employment, or in the administration of any SVA program or activity.

The School of Visual Arts is committed to providing equal treatment and opportunity for its students; to maintaining an environment that is free of bias, prejudice, discrimination and harassment; and to establishing fair complaint procedures. The School of Visual Arts does not discriminate on the basis of race, color, religion, creed, sex, sexual orientation, gender (including gender identity or expression), pregnancy, age, disability, national origin, military or veteran status, marital status, parental or familial status, alienage or citizenship status, domestic violence status, genetic predisposition or carrier status, partnership status or any other legally protected characteristic (“protected characteristics”) in employment, student admission or any other programs or activities. The College is firmly committed to the rights of all members of its community—students, faculty and staff—who must interact through mutual respect and trust to ensure that the campus remains a center of learning. Any student, faculty or staff member who violates College policy by subjecting another to discrimination or harassment of any kind will be subject to appropriate disciplinary action, including potential expulsion from the College or termination of employment, in accordance with the policies and procedures outlined in this policy and/or SVA’s Code of Conduct.

WHAT IS TITLE IX?

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.

SVA is committed to complying with Title IX of the Higher Education Amendments Act of 1972 and “Enough is Enough” (New York Education Law Article 129-B). Individuals with questions or concerns that pertain to Title IX are encouraged to speak with SVA’s Title IX Coordinator. Students can also seek guidance from the State Education Department and the New York State Office of Campus Safety, as well as the U.S. Department of Education’s Office of Civil Rights.

The safety and well-being of every member of the College is of primary importance. SVA is committed to providing programs, activities and an educational environment free from sex discrimination and harassment. To do that, SVA has created the enclosed policies to foster a community that promotes prompt reporting and timely and fair resolution of all complaints of gender-based discrimination and sexual harassment, which includes sexual misconduct.

WHAT THIS POLICY COVERS

This Policy applies to all incidents of gender-based discrimination and sexual harassment (defined below). Any incident of discrimination or harassment that does not fall under this policy will be addressed under SVA's Code of Conduct.

SVA's policies regarding gender-based discrimination and sexual harassment reflect its responsibility as an educational institution to foster an environment that is conducive to learning and mutual trust. SVA's policies have been crafted with concern for all members of its community—students, faculty and staff, alike. The procedures contained herein are designed to promptly address incidents of gender-based discrimination and sexual harassment with equity to all involved. In doing so, SVA is committed to maintaining privacy to the greatest extent possible and providing support resources for those involved. SVA prohibits retaliation against any person for complaining of a violation of this Policy or for participating in any investigation or proceedings related to an alleged violation.

PROHIBITED CONDUCT

All members of the School of Visual Arts community—including applicants, students, employees (both faculty and staff) and third parties doing business with SVA—are prohibited from engaging in discrimination, sex-based or otherwise, discriminatory harassment, sexual or sex-based harassment, sexual assault, dating violence, domestic violence, sexual exploitation, stalking and retaliation as those terms are defined below. Any attempt to engage in prohibited conduct may itself constitute a violation of this policy. Any actions knowingly taken to aid, facilitate or encourage another to engage in prohibited conduct and any actions taken for the purpose of interfering in the investigation of an allegation of prohibited conduct shall constitute a violation of this policy. Anyone found to have violated this policy will be subject to disciplinary action as set forth in the procedures below.

POLICY APPLICATION

When and to whom does this policy apply?

This policy applies to School of Visual Arts' applicants, students and employees, including faculty and staff, as well as third parties doing business with SVA, at the time he/she/they are applying to, a student of, employed by or doing business with the School.

This Policy applies to any allegation of sex-based discrimination or sexual harassment that occurs within the context of an education program or activity sponsored by SVA. This Policy applies to conduct that occurs on SVA's campus, in a building or facility controlled by SVA and over SVA's technological systems, as well as off-campus when the conduct occurs in connection with an SVA-sponsored program, event or activity. SVA's policy does not cover incidents that occur outside of SVA's programs and/or outside of the USA.

While the College will take all necessary remedial measures related to policy violations committed by third parties, the College's disciplinary authority may not extend to third parties who are not students or employees of the College. Additionally, while this policy is not limited to on-campus conduct, SVA's ability to investigate off-campus conduct may be more limited.

Each student shall be responsible for his or her conduct from the time of application for admission through the awarding of a degree, as well as during periods between terms of actual enrollment, study abroad and leaves of absence or suspension.

TITLE IX COORDINATOR

SVA's Title IX Coordinator, under the direction of the Title IX Officer, has overall responsibility for the administration of this policy and has been designated to coordinate compliance activities under this policy and applicable federal, state and local laws, including without limitation Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act.

The School of Visual Arts Title IX Coordinator is:

- Knowledgeable and trained in SVA's policies and procedures and relevant federal, state and local laws;
- Available to answer questions about this policy and the associated procedures;
- Able to advise regarding available resources for support and reporting options; and
- Available to receive complaints of violations of this policy.

SVA's Title IX Coordinator is:

Laurel Christy

Business Office:

340 East 24th Street, Ground Floor,
New York, NY 10010

Email: lchristy@sva.edu

Phone: 212.592.2153

Any member of the SVA community who has a question or concern, or wishes to file a report related to sexual harassment or gender-based discrimination, should contact Laurel Christy directly.

ACADEMIC FREEDOM

AND FREEDOM OF SPEECH

Nothing in this policy shall prohibit an individual from making genuine contributions to the marketplace of ideas nor abridge their right to academic freedom, free speech or the College's educational mission. SVA's prohibitions against discrimination and harassment do not extend to statements or written materials that are germane to the classroom subject matter and circulated in the context of legitimate classroom discourse.

SVA retains the right to change, amend or modify this policy as necessary, in its sole discretion and without warning. Should SVA's Title IX policy be revised during the pendency of a matter, the policy in effect at the time the Formal Complaint is made shall govern the investigation and hearing and any appeal.

CONSENSUAL ROMANTIC RELATIONSHIPS

Students and Faculty:

The integrity of the teacher-student relationship is the foundation of the SVA educational mission. As mentor, educator and evaluator, the teacher is entrusted with considerable and disproportionate power. This can heighten the vulnerability of the student and the potential for coercion. Whenever a teacher is responsible for directly supervising a student, a romantic and/or sexual relationship between them is inappropriate. Any such relationship jeopardizes the integrity of the education process by creating a conflict of interest, and may lead to an environment not conducive to learning. Therefore, SVA policy prohibits faculty from having a romantic and/or sexual relationship with students, particularly those for whom they have or are likely to have future supervisory responsibility. Likewise, faculty must not directly supervise any student with whom they have had a past romantic and/or sexual relationship.

For purposes of this policy, “direct supervision” includes the following activities (on or off campus): course teaching; evaluations; grading; advising for a formal project such as a thesis or research; preparing recommendations for employment, fellowship or awards. “Teacher” includes faculty members as well as graduate and professional students serving as teaching fellows or in similar institutional roles. “Student” refers to those enrolled in any academic program of the College.

Students and Staff Members:

Romantic and/or sexual relationships between students and staff are likewise prohibited. Such personal relationships can form the basis for misunderstandings, complaints of favoritism and even claims of sexual harassment.

Exceptions to the application of this policy with regard to staff will be granted only in extraordinary circumstances. It is the responsibility of any staff member seeking an exception to this policy to contact the Human Resources Department. It is also the responsibility of any staff member contemplating activities that might

be covered by this policy to consult the Human Resources Department to obtain any desired clarification of whether this policy applies to the activity under consideration.

Violations of, or failure to correct violations of, these conflict-of-interest principles by the faculty or staff member will be grounds for disciplinary action, up to and including termination of employment.

DEFINITIONS

FOR PURPOSES OF THIS POLICY AND THE PROCEDURES CONTAINED HEREIN, THE FOLLOWING DEFINITIONS APPLY:

Complainant: any individual who has reported being or is alleged to be the victim of conduct that could constitute covered gender-based discrimination or sexual harassment as defined under this policy.

Respondent: any individual who has been reported to be the perpetrator of conduct that could constitute covered gender-based discrimination or sexual harassment as defined under this policy.

Decision-Maker: an individual trained in SVA's Title IX policy and procedure and who will preside over the grievance hearing and determine whether a violation of SVA's policy has occurred based on the evidence collected. The decision-maker will have no other involvement in the matter.

Gender-based discrimination: treating individuals or groups less favorably because of their sex, sexual orientation, gender identity or expression, or having a policy or practice that has a disproportionately adverse impact on individuals based on their sex, sexual orientation, gender identity or expression.

Sexual harassment: substantially interfering with an individual's living, learning or working environment by subjecting him/her/they to severe or threatening conduct or to repeated humiliating or abusive conduct, based on his/her/their sex, sexual orientation, gender identity or expression. Under this policy, sexual harassment is verbal or physical conduct that belittles or shows hostility or aversion toward an individual because of his/her/their sex, sexual orientation, gender identity or expression, and that has the purpose or effect of creating an intimidating, hostile or offensive living, learning or working environment.

The following behaviors all qualify as sexual harassment for purposes of this policy:

1. Unwelcome sex-based verbal, visual or physical conduct that a reasonable person would find so severe, pervasive and objectively offensive that it effectively denies a person equal access to SVA's education program or activity.
2. Quid pro quo harassment by an employee of the School of Visual Arts, where submission to the conduct is explicitly or implicitly made a term or condition of an individual's education, employment or participation in activities sponsored by SVA.
3. Any instance of sexual assault, dating violence, domestic violence or stalking (as defined below).

Sexual assault (as defined in the Clery Act) includes any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Sexual assault is divided into two categories of behavior: **nonconsensual sexual contact** and **nonconsensual sexual intercourse**.

Sexual assault: nonconsensual sexual

contact includes any intentional touching of a sexual nature, however slight, whether clothed or unclothed, with any object or body part, by a person against another person that is without affirmative consent and/or by force¹. Consent is required regardless of whether the person initiating the sexual contact is under the influence of drugs and/or alcohol. When consent is withdrawn or can no longer be given due to incapacitation, sexual activity must stop.

Examples of nonconsensual sexual contact include but are not limited to:

- intentional contact with the breasts, buttocks, groin or genitals;
- intentional touching of another with breasts, buttocks, groin or genitals;
- making another person touch someone or themselves in a sexual manner;
- any intentional bodily contact in a sexual manner.

Sexual assault: nonconsensual sexual intercourse

includes any form of sexual intercourse, however slight, with any object or body part, by a person against another person that is without affirmative consent and/or by force. Consent is required regardless of whether the person initiating the sexual contact is under the influence of drugs and/or alcohol. When consent is withdrawn or can no longer be given due to incapacitation, sexual activity must stop.

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

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

Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship, and will be reevaluated as necessary. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts that meet the definition of "domestic violence."

Domestic violence (as defined in the VAWA amendments to the Clery Act) includes the use of physical violence, coercion, threats, intimidation, isolation, stalking or other forms of emotional, sexual or economic abuse directed toward (i) a current or former spouse or intimate partner; (ii) a person with whom one shares a child; (iii) a person who is cohabitating with the respondent as a spouse or intimate partner; or (iv) anyone who is protected from the respondent's acts under the domestic or family violence laws of New York. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

¹ Conduct that is prohibited by this policy may also be prohibited by New York State law. Relevant definitions and provisions of New York law are contained in the appendix section, which is provided for information purposes only. The School of Visual Arts enforces only its policy. Those interested in filing a complaint with the police are encouraged to do so, and SVA will assist any reporting party in contacting law enforcement. (See the section on reporting to law enforcement.)

Stalking (as defined in the VAWA amendments to the Clery Act) is a course of conduct directed at a specific person that would cause a reasonable person to fear for his, her or their own safety or the safety of others, or to suffer substantial emotional distress.

Examples of behavior that could constitute stalking include but are not limited to:

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

Retaliation includes intimidating, threatening, coercing or in any way discriminating against an individual because of the individual's informal or formal complaint of a violation of this policy, participation in a school or government investigation or proceedings related to an alleged violation of this policy or related civil rights law, or advocating for others' Title IX rights. Federal, state and local civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws.

Affirmative consent (hereinafter referred to as "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 must be freely and actively given; it cannot be obtained by coercive use of force, threats or intimidation. Use of coercion, force or threats invalidates consent. Consent to one form of sexual activity does not imply consent to other forms of sexual activity, nor does past

consent to intimacy imply consent to future intimacy. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. In order to give consent, a person must be at least 17 years old, which is the legal age of consent in New York. A person who is incapacitated for any reason, including in some instances intellectual disability, cannot give consent. Consent can be withdrawn at any time.

Incapacitation is a state where someone cannot make rational, reasoned decisions. A person may be incapacitated due to mental disability, sleep, unconsciousness or physical restraint or from the consumption (voluntary or otherwise) of incapacitating drugs or quantities of alcohol. Sexual activity with someone whom you know, or reasonably should know, is mentally or physically incapacitated (i.e., by alcohol or other drug use, unconsciousness or blackout) constitutes a violation of this policy. Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, the odor of alcohol on a person's breath or clothing, inability to maintain balance, vomiting, unusual or irrational behavior and unconsciousness. Incapacity may be indicated by the quantity of alcohol consumed. The presence of one or more of these cues does not necessarily indicate incapacity, nor does the absence of these cues necessarily indicate capacity.

COMPLAINT PROCEDURE

Regardless of whether a community member decides to file a complaint with SVA, SVA strongly encourages anyone who believes they may have been the victim of sexual violence to seek immediate assistance. Resources are available to assist victims both on and off campus. In the event of an assault or other act of sexual violence, contact Security Services at 25212.696.4632, New York City Police Department at 911 or the New York City Police Department sex crimes unit at 212.267.7273. It is extremely important that victims of physical assault receive comprehensive medical attention promptly, both to ensure their health and safety and to preserve physical evidence. In the case of sexual assault, in particular, victims should immediately go to a hospital emergency room.

MAKING A FORMAL COMPLAINT

It is in the best interest of the entire SVA community for individuals to report incidents of discrimination, harassment and sexual misconduct. The Title IX Coordinator, as well as the Assistant Title IX Coordinators and designated investigators, are trained to investigate reported incidents, address inquiries and coordinate SVA's compliance efforts.

By Who: Complaints under this policy can be made by any person. If SVA receives a complaint of discrimination or harassment, including sexual misconduct, from a third party, the complainant will be promptly informed of the complaint and their right to request supportive measures. This policy and the procedures contained herein will be applied in the same manner as if the complainant reported the incident. When someone other than the alleged victim files a complaint, SVA will take into account the alleged victim's wishes when proceeding with the investigation.

To Who: All complaints made under this policy can be reported to a responsible employee, which includes any one of the following individuals:

- Title IX Coordinator
- Assistant Title IX Coordinator

- Title IX Officer
- Senior Administrators
- Department Chairs
- Department Coordinators
- Faculty
- Program Directors
- Administrative Staff of the College
- Program Staff, including but not limited to:
 - Student Affairs Staff
 - Residential Life Staff (including RAs)
 - Admissions Staff
 - Security Services Staff
 - Human Resources Staff

Any individual who falls within one of the above-enumerated categories is considered a responsible employee who has a **mandatory obligation** to report any incident of sexual harassment involving a student and of which they become aware to the Title IX Coordinator.

Students who wish to speak to someone at SVA who does not have a mandatory reporting obligation should contact the Counseling and Health Services Office, wherein they will be directed to a resource who can maintain both privacy and confidentiality.

Privacy: SVA employees who cannot guarantee confidentiality will maintain the complainant's and/or respondent's privacy to the greatest extent possible. The information the complainant and/or respondent provides to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator and/or designated investigator to investigate and/or seek a resolution. Only people who have a need to know about the incident will be informed, and information will be shared only as necessary with investigators and witnesses and among the parties to ensure an effective and thorough investigation. While SVA will take all appropriate steps to safeguard the privacy of the parties, the information collected during the investigation process may be subpoenaed in civil or criminal proceedings.

When: Any complaint brought forth under this policy must be made while the complainant is

participating in (or attempting to participate in) an SVA education program or activity. Once a complainant is no longer associated with SVA either because he/she/they have graduated, are no longer employed with the College and/or were denied admission, SVA no longer retains jurisdiction to commence an investigation under this policy. While community members are encouraged to make complaints of discrimination and harassment at any time during the complainant's time at SVA, please note that a delay in reporting could weaken SVA's ability to gather information that will be used to determine whether a violation of this policy occurred. Furthermore, the ability of SVA to take action may be limited by the matriculation or employment status of the respondent.

How: An initial complaint may be made in person, by mail, by telephone or by email, using the contact information listed herein for the Title IX Coordinator on page 5, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during nonbusiness hours.

What Should Be Included: Complaints made under this Policy should provide as much detail as possible, ideally including a clear description of the alleged incident, when and where it occurred, who was involved, if known, and any witnesses, if known. Additionally, the initiator of a complaint should submit any supporting materials as quickly as possible.

Alcohol and/or Drug Use Amnesty: The health and safety of every student at SVA is of utmost importance. SVA strongly encourages students to report instances of sexual harassment to SVA officials. However, SVA recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that harassment or 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. Any victim or 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 SVA or law enforcement will not be subject to SVA'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.

Unknown or Unaffiliated Respondent: If the respondent is unknown or is not a member of the SVA community, SVA's ability to carryout the investigation and remediation process may be adversely affected. The Title IX Coordinator will assist the complainant in identifying appropriate resources and contacting local law enforcement if he/she/they would like to file a report. SVA will take appropriate steps as necessary to protect the complainant and the community from future policy violations or misconduct.

REPORTING TO LAW ENFORCEMENT

If you are in immediate danger, dial 911 and/or Security Services at 212.696.4632 and attempt to get to a safe place.

Acts of violence, including sexual assault, domestic violence, dating violence and stalking, are against the law. If you are not in immediate danger and would like to report an incident to the police, you can do so by contacting:

- The New York City Police Department sex crimes unit at 212.267.7273 or
- NYPD 13th Precinct at 230 East 21st Street, New York, NY 10010

If you would like someone to assist you in contacting the police or to go with you to the police department, any of the following individuals at SVA can assist you:

- Title IX Coordinator
- Director of Human Resources
- Director of Student Affairs
- Associate Director of Student Affairs
- Associate Director of Student Health and Counseling Services
- Associate Director of Residence Life

SVA will investigate alleged violations of this policy regardless of whether a criminal investigation is being conducted. SVA will not delay its investigation because of a concurrent law enforcement investigation. However, SVA may coordinate with law enforcement, as appropriate, to avoid compromising the criminal investigation.

A complainant may report an incident to law enforcement regardless of whether he/she/they chooses to report the incident to SVA. Conversely, reporting an incident to SVA does not require the complainant to report the incident to law enforcement. The School of Visual Arts reserves the right to report any crime to law enforcement—but, as a general rule, will not alert law enforcement to an incident of sexual harassment without the complainant's permission, except where there is a serious and immediate threat to the campus community, when a minor is involved or as otherwise required by law.

In addition to the interim measures that SVA has available for complainants (identified below), law enforcement may be able to provide additional protections, such as a restraining order.

DIFFERENCES BETWEEN COLLEGE PROCEDURES AND CRIMINAL PROCEDURES

While conduct prohibited by this policy may also be unlawful (sexual assault, for example), SVA's procedures, both formal and informal, are not a substitute for the protections and judicial process provided by the courts. College action does not follow the same rigid rules of formal legal proceedings (including the rules of evidence in hearings), often includes counseling for those involved and aspires to resolve the problem with a concern for the dignity of all. If disciplinary measures are deemed appropriate, they will be taken.

College fact-finding proceedings are conducted privately and are not open to the public. Every effort is made to preserve the confidentiality of both informal and formal proceedings, and the records produced by them.

The involvement of an individual on either a formal or informal basis in the proceedings described in this policy is not an invitation to institute more formal proceedings outside the institution, nor does it prevent an individual from doing so. SVA has no control over these actions and will handle internal complaints in accordance with the policies and procedures contained herein.

PROCESSING A COMPLAINT, SUPPORTIVE MEASURES, INVESTIGATION

Title IX requires that SVA investigate acts of gender-based discrimination and sexual harassment, as defined in this policy, about which it knows or has reason to know in order to protect the safety of the SVA community. Upon receipt of a complaint, the Title IX Coordinator will review the allegations to make an initial assessment of whether the facts as alleged would constitute a violation of this policy, which includes collecting information that shows:

- the conduct is alleged to have occurred while the complainant was a student, employee or applicant of SVA;
- the complainant is still associated with SVA as a current student, employee or applicant;
- the conduct is alleged to have occurred in the United States;
- the conduct is alleged to have occurred in SVA's education program or activity; and
- the alleged conduct, if true, would constitute covered gender-based discrimination and/or sexual harassment as defined in this policy.

If additional information is necessary to make this determination, the Title IX Coordinator will meet with the complainant to gather additional, preliminary information.

If any one of these elements are not met, the Title IX Coordinator will notify the parties that the complaint is being dismissed for failure to assert conduct covered by SVA's Title IX policy. Each party may appeal this dismissal using the procedure outlined in the "Appeals" section below.

Formal Complaint: Once the Title IX Coordinator determines that allegations presented by either a complainant or reporting party may constitute a violation of SVA policy, the allegations must then be memorialized in a document—including an electronic submission—filed by the complainant with a signature or other indication that the complainant is the person filing the formal complaint, or it must be signed by the Title IX Coordinator. The formal complaint must include a clear description of the alleged incident, when and where it occurred, who was involved, if known, and any witnesses, if known,

and specific allegations of sexual harassment or gender-based discrimination that occurred within SVA's education program or activity. The formal complaint must include a statement that the complainant is requesting initiation of an investigation consistent with these procedures, or, alternatively, a statement by SVA's Title IX Coordinator noting that an investigation is necessary in the best interests of the community.

Without a signed formal complaint, no further action will be taken under this policy.

Discretionary Dismissal:

The Title IX Coordinator may dismiss a formal complaint brought under this policy, or any specific allegations raised within the formal complaint, at any time during the investigation or hearing if:

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

If the Title IX Coordinator determines that a formal complaint will be dismissed for one of the enumerated reasons, written notice of the dismissal will promptly and simultaneously be sent to all parties. The notice will identify the reason for the dismissal. Any party may appeal a discretionary dismissal using the process set forth in the "Appeals" section below.

NOTICE OF FORMAL COMPLAINT

Once a formal complaint has been filed, the Title IX Coordinator will simultaneously provide the complainant and the respondent with written notice that includes the following:

- A description of SVA's investigatory and grievance process, including a hyperlink to a copy of this policy;
- Identification of the allegations that serve the basis for the formal complaint, including details such as the identity of the complainant and the date/location of the alleged acts (if known);
- Availability of each party to have an advisor of his/her/their choice, including an attorney;
- Available supportive measures;
- 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;
- Identification of any interim measures put in place during the investigation and hearing process;
- The range of available remedies and sanctions;
- 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;
- The standard of review that will be applied by the decision-maker; and
- Notice of the appeal procedure.

As soon as possible but no later than three business days after issuing written notice of a formal complaint, the Title IX Coordinator or the investigator will personally reachout to the respondent to explain the investigation and adjudication process, discuss mediated resolution if appropriate, identify and explain any interim measures imposed that impact the respondent, identify the provision of this policy the respondent has been accused of violating and possible sanctions, and identify available support resources.

Supportive Measures:

Complainants who report allegations that could constitute covered gender-based discrimination and/or sexual harassment under this policy have the right to receive supportive measures from SVA, regardless of whether they desire to file a formal complaint, which may include but are not limited to:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules
- Campus escort services;
- Restrictions on contact between the parties (no -contact orders);
- Changes in work or housing locations;
- Leaves of absence; and
- Increased security and monitoring of certain areas of the campus.

Emergency Removal

School of Visual Arts retains the authority to remove a respondent from SVA's program, campus or activity on an emergency basis after SVA has undertaken an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of a student or other individual exists in connection with the allegations of covered sexual harassment.

If SVA determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal by submitting a letter to the Title IX Officer detailing the basis upon which the respondent believes the removal is not warranted, and alternate proposals the respondent would like SVA to consider.

Administrative Leave

The School of Visual Arts retains the authority to place a nonstudent employee respondent on administrative leave during the Title IX grievance process. The terms of the administrative leave will be determined by the Executive Director of Human Resources.

INTERIM MEASURES

After reviewing the formal complaint, the Title IX Coordinator may institute interim measures to protect the safety and well-being of the individuals involved and the SVA community. Interim measures are preliminary and, unless otherwise stated, are in effect only until the grievance process is complete and a decision is rendered.

Example interim measures are listed below. The Title IX Coordinator will determine which measures are appropriate on a case-by-case basis. Not all of the measures listed below will be necessary in every case to keep students, faculty, employees and community members safe and ensure their equal access to educational programs and activities. If either the complainant or respondent identifies additional interim measures beyond those offered, the Title IX Coordinator will consider whether the request can be accommodated. In those instances where interim measures affect both the complainant and the respondent, SVA will minimize the burden on the complainant when appropriate.

Possible interim measures include:

- An order directing the parties not to contact one another intentionally;
- Changes in SVA housing accommodations;
- Housing suspensions;
- Changes in academic schedules or other academic accommodations;
- Changes in SVA work schedules, locations or reporting lines;
- Changes in SVA -provided transportation arrangements;
- Restrictions on a party's participation in SVA programs or activities;
- Supplying an escort on campus to ensure the student feels safe; and
- Interim suspension.

These actions may be instituted at any point during the investigation and grievance process. Complainants and respondents are encouraged to request interim measures when needed.

Interim measures will be kept confidential to the extent possible. Only those individuals who need to be informed in order to effectuate the measures will be informed. For instance, if a party requests a change in work schedule, the individual's supervisor(s) will need to be informed in order to effectuate the change.

Complainants and respondents may request review and modification of any interim measure(s) directly impacting them, including review of the need for and terms of the interim measure(s), by submitting a letter to the Title IX Coordinator along with any evidence they wish to present. In the event the interim measure impacts the other party, the other party will be given an opportunity to state his/her/their position and present evidence as appropriate. The Title IX Coordinator will review the submissions and make a determination.

At the conclusion of the investigative and grievance process, the decision-maker retains the power to determine whether some or all of the interim measures will be lifted, modified or continued to assist the student, irrespective of whether the allegations identified in the formal complaint were substantiated.

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

In addition to the measures that the School of Visual Arts may take, law enforcement may be able to provide additional protections, such as a restraining order. SVA can assist complainants in contacting law enforcement and legal services organizations to learn about additional remedies that may be available in criminal matters.

ADVISORS

The School of Visual Arts will provide the parties equal access to advisors and support persons. Complainants and respondents have the right to be accompanied by an advisor of their choice at all meetings, interviews and hearings. While the advisor is generally not permitted to advocate on a party's behalf, the advisor may be an attorney.

SVA has a long-standing practice of requiring parties to participate in the process directly. With the exception of cross-examination during a hearing (addressed below), advisors are not permitted to answer questions or otherwise speak on behalf of a party during interviews or the hearing process. Parties may confer with their advisor, and the advisor may pass notes to the party during meetings or hearings. If an advisor is disruptive or otherwise fails to comply with these parameters, they may be asked to leave the room.

SVA has an obligation to investigate and adjudicate all Title IX matters in a prompt timeframe. Accordingly, SVA cannot agree to extensive delays to accommodate the schedule of an advisor. SVA will not intentionally schedule meetings or hearings on dates where the advisors of choice for all parties are not available, provided that the advisors act reasonably in providing timely, available dates and work collegially to find dates and times that meet all schedules. The determination of what is reasonable shall be made by the Title IX Coordinator. The School of Visual Arts will not delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an advisor, and may offer the party the opportunity to obtain a different advisor or utilize one provided by the School.

NOTICE OF MEETINGS AND INTERVIEWS

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

In cases of sexual harassment, each party will be given prompt notice of any meeting relating to the investigation and/or adjudication process at which either the complainant or respondent will be present, except that the respondent will not be notified of meetings with the complainant relating solely to supportive measures and other interim accommodations, and vice versa.

POSTPONEMENT REQUESTS

Investigatory Process:

While the Title IX Coordinator will work with each party's schedule and the schedules of any identified advisors to timely collect evidence and complete the investigatory process, lengthy or repeated requests for delays are not permitted. The Title IX Coordinator shall have sole judgment to determine whether to grant or deny a postponement or adjournment request during the investigatory process.

Grievance Hearing:

Each party may request a one-time delay in the grievance hearing of up to five (5) days for good cause (as to be determined in the sole judgment of the Title IX Coordinator), provided that the requestor gives reasonable notice (at least 24 hours) and the delay does not overly inconvenience other parties.

CONFLICT OF INTEREST

Both the complainant and the respondent have the right to have a fair and impartial investigation, determination and appeal process. If either party has any reason to believe that the Title IX Coordinator, the Title IX investigator, the decision-maker or the appeal panelists have a conflict of interest or would otherwise be unable to be fair and impartial in the investigatory, grievance or appeal process, the concerned party should submit a letter explaining the basis for his/her/their concern. Concerns should be submitted to the Title IX Officer. The other party will be provided with a copy of the letter and will have three (3) business days to respond. If, based upon the submissions and any independent inquiry the Title IX Officer may choose to make, it is determined that a conflict of interest exists, another trained SVA employee will be appointed to take on the role of the conflicted individual. If it is found that there is no such conflict, the individual will continue to fulfill their appointed role. Concerns regarding conflicts of interest should be raised as soon as they are identified and prior to completion of that stage of the grievance process (e.g., prior to the submission of the investigation report, the notice of determination or the appeal decision).

MEDIATED RESOLUTION

Where appropriate and upon the complainant's election, the Title IX Coordinator will attempt to mediate a resolution of a claim brought under this policy. The investigatory and/or grievance process is suspended during the pendency of the mediation process. If it becomes clear that a mediated resolution will not be possible, the matter will resume under the formal process. If a satisfactory resolution is reached, the matter will be considered closed and no appeals or further investigatory or grievance procedures will follow. The mediated resolution process must be consented to by all parties and is typically initiated with a meeting between both parties (and their advisors), followed by one or more separate meetings with each party (and advisor) and the mediator. All parties must actively participate in the mediated resolution process, which can be ended at any time and proceed

under the formal resolution process. Depending on the schedules of each party and the mediator, mediated resolutions are usually completed within two to four weeks of initiation of the process.

INVESTIGATORY PROCESS

Absent a conflict of interest, all investigations will be conducted by SVA's Title IX Coordinator or a trained Title IX investigator. Within five (5) business days of receiving a formal complaint that has been determined to allege a potential violation of SVA policy, the Title IX Coordinator or a designated Title IX investigator will commence a prompt, fair, impartial and thorough investigation. During the investigation, the investigator will:

- Interview the complainant, the respondent and any witnesses identified by the parties;
- Gather all relevant documentary and/or physical evidence (this may include, but is not limited to, texts, emails, photos, social media posts, voicemail messages, etc.)
- Maintain communication with the complainant and respondent on the status of the investigation and overall process; and
- Complete the investigation in a timely manner, without unnecessary deviation from the intended timeline.

It is the investigator's responsibility to collect all relevant, available evidence. However, parties are encouraged to bring forth any evidence they want considered, which includes the identification of witnesses. SVA 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.

The investigator will present each party with a written recitation of the facts and evidence the investigator collected during their interview. Upon receipt of the investigator's written summary, each party has four (4) business days to correct any inaccuracies or misstatements in the written summary.

While SVA encourages all parties to participate in the investigatory process, if a party decides not to share their account of what occurred or decides not to participate in the investigation, an inference of guilt or responsibility will not be made against the nonparticipating party. A party's failure to participate in the investigatory process does not shift the burden of proof away from the School of Visual Arts.

INSPECTION AND REVIEW OF EVIDENCE

Prior to the completion of the investigation, both the complainant and the respondent will have an equal opportunity to inspect and review the evidence obtained during 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. The evidence that will be available for inspection and review by the parties includes any evidence that is directly related to the allegations raised in the formal complaint, specifically:

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; and
2. Inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties **must** submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. Parties will be given at least three days' advance notice of the inspection and review period.

SVA is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion to determine the format for dissemination and any restrictions or limitations on access to ensure confidentiality is maintained.

The parties and their advisors are not permitted to photograph or otherwise make a digital copy of the evidence. The parties and their advisors may be asked to sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to SVA's Title IX grievance process.

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. For good cause, parties may request a reasonable extension, which is within the sole discretion of the Title IX Coordinator.

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the formal complaint will be included in the appendices to the investigative report.

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

Information Regarding—Romantic and Sexual History

Neither the investigator, decision-maker, nor any appeal panel member will consider information concerning the romantic or sexual history of either the complainant or the respondent, except: (i) specific incidents of the complainant's prior sexual behavior with the respondent and which is offered to prove consent; and/or (ii) information offered to prove that someone other than the respondent committed the conduct alleged by the complainant. If the respondent offers such information, the complainant will have the right to respond.

Information Regarding—Medical History

The School of Visual Arts cannot access, consider or disclose a party's medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include medical information.

Each party has the right to object to the investigator, decision-maker and/or appeal panel's consideration of their own mental health history or treatment. In the event such an objection is raised, neither the investigator, decision-maker nor appeal panel will consider any information offered regarding mental health diagnosis or treatment.

Prior Conduct Violations

The decision-maker will not consider prior conduct violations in assessing whether a policy violation occurred. However, once a liability determination has been made, such information may be considered to determine appropriate sanctions.

INVESTIGATIVE REPORT

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an investigative report that fairly summarizes the relevant evidence. Only relevant evidence (including both inculpatory and exculpatory— i.e., tending to prove and disprove the allegations) will be referenced in the investigative report. The investigative report is not intended to catalog all evidence obtained by the investigator but rather to provide a fair summary of the relevant evidence.

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

WITHDRAWAL OF A COMPLAINT

Complainants have the right to withdraw a complaint at any time. If the complainant chooses to withdraw the complaint prior to the completion of the investigation, the Title IX Coordinator will determine whether SVA will continue to pursue the complaint.

When weighing a complainant's request that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the respondent will commit additional acts of sexual or other violence, such as:
 - Whether there have been other sexual violence complaints alleged against the same respondent;
 - Whether the respondent has a history of violence;
 - Whether the allegation indicates an escalation of unlawful conduct;
 - Whether the respondent threatened further sexual violence or other violence against the complainant or others; and
 - Whether the sexual violence was committed by multiple respondents;
- The seriousness of the alleged conduct;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the complainant is a minor;
- Whether SVA possesses other means to obtain relevant evidence of the harassment (e.g., security cameras or personnel, physical evidence); and
- Whether the complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead SVA to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, SVA will likely respect the complainant's request to abstain from further pursuit of an investigation.

THE HEARING

The School of Visual Arts will not issue a disciplinary sanction arising from an allegation of sexual harassment covered by this policy without holding a live hearing, or unless otherwise resolve through an informal resolution process. In other words, the parties cannot waive the right to a live hearing and, unless the complaint has been withdrawn, SVA will proceed with a live hearing and reach a determination in the absence of a party.

Notice and Format:

Each party will be notified in writing of the date, time and location of the Title IX hearing with as much advance notice as possible. The scheduling and timing of hearing sessions shall be undertaken with due regard to the importance of completing the hearing in an expeditious manner and with consideration of the schedules and commitments of all participants. The hearing is a closed proceeding and nobody other than the parties and their respective advisors, the decision-maker, the investigator, witnesses (when called to appear) and necessary SVA personnel may be present during the hearing. The live hearing may be conducted with all parties physically present in the same geographic location or, at SVA's discretion, any or all parties, witnesses and other participants may appear at the live hearing virtually through Zoom or similar remote conference technology. Through this technology all participants will simultaneously be able to see and hear each other.

In the event that either party cannot be physically present during the hearing, arrangements will be made to allow the individual to participate in the proceeding remotely whenever possible. Upon request, arrangements will also be made to allow the parties to participate in the hearing without being in the same room at the same time. If a party chooses not to participate in a hearing, it may still be held at the decision-maker's discretion. At its discretion, SVA may delay or adjourn a hearing based on technological issues or errors.

All hearing proceedings will be recorded through an audio recording and transcript. The transcript will be made available to the parties for inspection and review within ten (10) business days of the conclusion of the hearing. Prior to obtaining access to the hearing transcripts or any evidence presented at the hearing, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX grievance process. Once signed, this agreement may not be withdrawn.

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

1. Complainant and respondent (the parties)
2. Decision-maker
3. Each party's advisor of choice
4. Witnesses

The School of Visual Arts will not threaten, coerce, intimidate or discriminate against a party in an attempt to secure the party's participation. Similarly, witnesses cannot be compelled to participate in the live hearing.

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.

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 the rules and expectations;
- The parties will each be given the opportunity to provide opening statements;
- The decision-maker will ask questions of the parties and witnesses;
- The parties will be given the opportunity for live cross-examination; and
- The parties will each be given the opportunity to provide closing or impact statements.

Live Cross-Examination Procedure:

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. The parties are not permitted to conduct cross-examination themselves. 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. The questions shall be asked of the witness or party directly, orally, and in real time.

Cross-examination for each party/witness will occur after the decision-maker conducts an initial round of questioning. During cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking the decision-maker's own follow-up questions.

Before any cross-examination question is answered, the decision-maker will have the opportunity to determine if the question is relevant. Cross-examination questions that are irrelevant and/or duplicative of questions already asked, including by the decision-maker, may be deemed irrelevant and stricken from the record, and do not need to be answered.

If a party does not select an advisor, SVA will select an advisor to serve in this role for the limited purpose of conducting cross-examination during the hearing at no fee or charge to the party. 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, SVA will provide an advisor to appear on behalf of the nonappearing party.

Should a party or the party's advisor choose not to cross-examine a party or witness, the party must affirmatively waive cross-examination through an oral statement on the record to the decision-maker. A party's waiver of cross-examination does not eliminate the ability of the decision-maker to use other statements made by the party or witness for whom cross-examination is waived.

Evidentiary Issues:

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 may reach a determination regarding responsibility based on evidence 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. Similarly, a prior statement would not include documents, audio recordings, audiovisual readings 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. Similarly, if a witness does not submit to cross-examination, 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.

Expert Witnesses:

Parties are permitted to call "expert witnesses." While expert witnesses will be allowed to testify and be subject to cross-examination, the decision-maker will afford lower weight to nonfactual 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 will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross-examination and regardless of whether all parties present experts as witnesses. Testimony regarding polygraph tests ("lie detector tests") and other similar procedures outside of standard use in academic conduct processes is permitted, however such testimony will be afforded lower weight relative to the testimony of fact witnesses.

Character Witnesses:

Parties are permitted to call character witnesses for direct and cross-examination. The decision-maker will afford low weight to any nonfactual character testimony from a witness.

REVIEW OF HEARING TRANSCRIPT

A transcript of the hearing will be made available for review by the parties within ten (10) business days, unless there are any extenuating circumstances. The audio recording of the hearing will not be provided to parties or advisors unless necessitated as a disability accommodation.

DETERMINATION REGARDING RESPONSIBILITY

Absent extenuating circumstances, within ten (10) business days of the conclusion of the hearing, the decision-maker will simultaneously issue to both parties a written notice of determination. The notice of determination will include:

1. Identification of the allegations that were identified by the complainant and part of the investigation;
2. A description of the procedural history of the investigation;
3. A determination of the respondent's guilt or innocence, including which section of SVA's Title IX policy was violated and the standard of proof relied upon by the decision-maker;
4. Findings of fact and rationale supporting the determination;
5. A statement of, and rationale for, any disciplinary sanctions imposed on the corespondent;
6. A statement of, and rationale for, any remedies that will be provided to the complainant; and
7. Notice of SVA's appeals process and procedure, including the permitted basis upon which a party may appeal the notice of determination (see "Appeals" section below).

Standard of Proof:

SVA uses the preponderance of the evidence standard, also referred to as the 51% standard, for investigations and determinations regarding responsibility of formal complaints covered under this policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the policy occurred.

General Considerations for Reaching a Determination: As warranted in the reasoned judgement of the decision-maker, determinations regarding responsibility may be based in part or entirely on any one of the following: live testimony (including cross-examination testimony), documentary, audiovisual and digital evidence.

A decision-maker shall not draw inferences regarding a party or witness' credibility based on their status as a complainant, respondent or witness, nor shall the decision-maker base his/her/their judgment 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. The decision-maker will afford higher weight to firsthand testimony.² Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Finality:

The determination regarding responsibility becomes final on: (i) if an appeal is filed consistent with the procedures and timeline outlined in the "Appeals" section below, the date the result of the appeal is provided to the parties in the "appeal determination; or (ii) if an appeal is not filed, the date on which the opportunity to appeal expires.

DISCIPLINE

If the decision-maker finds the respondent responsible for violating this policy, the decision-maker will propose an appropriate disciplinary sanction after considering the relevant factors, which include the severity of the violation, the circumstances surrounding the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.), the respondent's state of mind (intentional, knowing, reckless, negligent, etc.), the respondent's history of misconduct (including prior findings of sexual misconduct), the ongoing impact on the complainant, the ongoing impact on the campus environment and any ongoing threat to the campus community. In determining the appropriate sanction, the decision-maker may consult with the Executive Director of Human Resources if the respondent is a faculty member or staff member.

Sanctions may include but are not limited to the following:

- Probation;
- Revocation of degree;
- Suspension;
- Expulsion;
- Demotion;
- Termination of employment;
- Revocation of honors or awards;
- Warning or reprimand;
- Disciplinary probation;
- Loss of housing privilege;
- Loss of other privileges (including but not limited to use of facilities and participation in campus organizations and activities);
- Community service; and
- Mandated training

In cases of sexual assault, dating violence, domestic violence and/or stalking, the complainant and the respondent will be informed simultaneously and in writing of any sanctions imposed. In other cases of sexual harassment and in cases of gender-based discrimination, the complainant will be informed of discipline only to the extent such sanctions relate to the complainant. For instance, if the respondent has been restricted from being present in the complainant's residence hall, the complainant would be informed of that restriction.

APPEALS

After receiving the written notice of determination following a Title IX hearing, both the complainant and the respondent have five (5) business days to appeal the determination. During that time, both parties will have an opportunity to thoroughly review the hearing record (redacted to remove the names and personally identifying information of other students consistent with FERPA), but copies of the record will not be provided to them. In order to initiate an appeal, the appealing party must submit a formal letter of appeal specifying the grounds upon which the appeal is based, and must include the reasons or circumstances why they believe that the decision should be reevaluated, explaining how those grounds materially affected the outcome. The appeal must be made in writing to the Title IX Coordinator and sent either via email to Ichristy@sva.edu or addressed to the Title IX Coordinator, School of Visual Arts, 209 East 23rd Street, New York, NY 10010.

²Except where specifically barred under this policy, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

There are only four limited grounds for appeal, which include:

- New evidence, which was not reasonably available at the time the decision-maker made the determination, has come to light;
- An error in the process, as outlined by this policy, materially impacted the outcome;
- 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; and/or
- The sanction(s) imposed was/were not appropriate in light of the evidence presented.

A party's disagreement with the decision-maker's determination is not grounds for appeal. If the appeal letter does not identify one of the stated grounds for appeal and provide sufficient detail, the appeal will be denied and the matter will be closed.

If the appeal letter identifies arguable grounds for appeal, within two (2) business days of receipt of the appeal letter, the Title IX Coordinator will (i) appoint a Title IX appeal panel of three trained SVA employees and (ii) provide the other party with an opportunity to review the appeal. The party who is not appealing the decision will have five (5) calendar days from receipt of the appeal to submit materials in response.

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

A party's decision not to participate in the investigatory process does not preclude them from appealing the decision-maker's determination— however, except in extraordinary circumstances, a party who does not respond to the investigator's inquiries during the investigatory process will be precluded from appealing on the ground that new evidence has come to light.

The appeal panel will hold a closed review session, during which time it will review the investigator's report, the decision-maker's notice of determination (including the hearing record) and any subsequent materials submitted by the parties in anticipation of the appeal. After a review of all of the information and evidence presented, the appeal panel may:

- Affirm the decision of the decision-maker. In this case, the decision is final and no further action will be taken.
- Remand the matter back to the decision-maker or investigator to:
 - Reevaluate the decision in light of the appeal panel's findings; or
 - Reopen the investigation
- Modify the sanctions imposed by the decision-maker.

The appeal Panel's decision will be transmitted in writing to the complainant and the respondent simultaneously within fifteen (15) business days of the non-appealing party's submission. The finding of the appeal panel is final.

TRANSCRIPT NOTATIONS

Any student who is found responsible for sexual assault, domestic violence, dating violence, stalking or any other crime of violence and suspended will have a notation on their transcript indicating, "suspended after a finding of responsibility for a code of conduct violation."

Any student who is found responsible for sexual assault, domestic violence, dating violence, sexual assault or stalking (or any other crime of violence) and expelled will have a notation on their transcript indicating, "expelled after a finding of responsibility for a code of conduct violation." Students who have been expelled are ineligible to attend SVA in the future.

Any student who withdraws from SVA while a complaint of sexual assault, domestic violence, dating violence or stalking is pending against him or her and declines to complete the investigatory and disciplinary process will have a notation on their transcript indicating, "withdrew with conduct charges pending."

The notation will be added at the time the determination becomes final. Students shall have the right to seek the removal of a notation of suspension after one year has elapsed since the end of the suspension. Students wishing to request removal should submit a letter to the Title IX Coordinator setting forth the justification for removal. Notations of expulsion cannot be removed.

OVERVIEW OF THE PROCESS AND TIMELINE

A flowchart outlining the major steps of the grievance process is included below and will be provided to both parties so that they are informed and there is transparency as to what can be expected. The Title IX Office will endeavor to complete the grievance process (excluding any appeal) within 90 days. If circumstances arise that require the extension of certain deadlines (including but not limited to the unavailability of witnesses due to winter or summer break or a simultaneous police investigation), the parties will be updated accordingly.

COMPLIANCE WITH SANCTIONS AND ACCOMMODATIONS

At the conclusion of the grievance hearing and any appeals, the Title IX Coordinator will be responsible for ensuring compliance with all imposed sanctions and providing accommodations with the goal of preventing the recurrence of future incidents and assisting the complainant. The respondent's failure to comply may result in further disciplinary action.

ONGOING ACCOMMODATIONS

Regardless of the determination, both the complainant and the respondent may request ongoing or additional accommodations. Such requests should be directed to the Title IX Coordinator. Determinations as to whether such accommodations are appropriate or feasible will be made by the Title IX Coordinator in consultation, where appropriate, with the Director of Student Affairs. Ongoing accommodations may include: moving one party's residence, changes to academic schedules, allowing the complainant to withdraw from or retake a class without penalty and providing access to additional academic support.

RESOURCES AND SUPPORT FOR VICTIMS OF SEXUAL MISCONDUCT

MEDICAL ATTENTION AND EVIDENCE PRESERVATION

Victims of sexual violence—including sexual assault, dating violence, domestic violence and stalking—are encouraged to seek prompt medical attention and to report the incident to the police. To gain assistance in getting to an emergency room, a victim can call 911 or notify SVA's Security Services at 212.696.4632. The nearest emergency rooms to SVA are at:

Beth Israel Medical Center

281 First Avenue
212.420.2840

Bellevue Hospital

462 First Avenue
212.562.4347

NYU Langone Medical Center

570 First Avenue
212.263.5550

The hospital staff will do a detailed examination of the entire body (including an internal exam, where appropriate), collect evidence, check for injuries and address pregnancy concerns and the possibility of exposure to sexually transmitted infections.

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

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

is best not to apply makeup or any other substance that can change your appearance.

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

SVA Security Services can assist you in securing the scene to preserve evidence as well. It is important to note that failure to take the steps described above does not preclude you from reporting an incident to SVA or to the police.

FREQUENTLY ASKED QUESTIONS

WHO CAN I TALK TO? WILL IT BE CONFIDENTIAL?

Support services are in place to help any member of the SVA community who feels they are a victim of sexual misconduct.

The School of Visual Arts encourages any person who has experienced sexual violence to talk to someone about what happened, so victims can get the support that they need, and so SVA can respond appropriately. Different employees on campus have different abilities to maintain confidentiality.

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.”
- Some employees are required to report all details of an incident involving a student (including the identities of both the victim and the alleged perpetrator) to the Title IX Coordinator. A report to these employees (called “responsible employees”) constitutes a report to SVA and generally obligates the Title IX Coordinator or his or her designee to investigate the incident and take appropriate steps to address the situation.

This policy is intended to make community members aware of the various reporting and confidential disclosure options available to them.

PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS

When reporting a violation of SVA policy, there are resources that can provide confidentiality, sharing options and advice without any obligation to inform other College staff members unless requested. Such on-campus confidential resources include the counselors within Student Health and Counseling Services, located in the 24th Street Residence, 340 East 24th Street, Ground Floor, and by telephone at 212.592.2246.

Additionally, community members can seek assistance from an off-campus crisis center, which can maintain confidentiality.

WHO IS OBLIGATED TO REPORT WHAT I TELL THEM TO THE SCHOOL OF VISUAL ARTS?

A “responsible employee” is an SVA employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty.

A responsible employee must report to the Title IX Coordinator all relevant details about any incident of sexual misconduct involving a student—including the names of the victim and alleged perpetrator(s), any witnesses and any other relevant facts, including the date, time and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling SVA’s response to the report. A responsible employee should not share information with law enforcement without the victim’s consent unless the victim has also reported the incident to law enforcement.

The following categories of employees are SVA’s responsible employees:

- Student Affairs Staff
- Residential Life Staff (including RAs)
- Admissions Staff
- Security Services Staff
- Administrative Staff
- Human Resources Staff
- Faculty

Before a reporting party reveals any information to a responsible employee, the employee should ensure that the person understands the employee’s reporting obligations—and, if the reporting party wants to maintain confidentiality, direct them to confidential resources.

If the reporting party wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell them that the School of Visual Arts will consider the request but cannot guarantee that SVA will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the reporting party's request for confidentiality.

Responsible employees will not pressure a reporting party to request confidentiality but will honor and support the reporting party's wishes, including for SVA to fully investigate an incident. By the same token, responsible employees will not pressure a reporting party to make a full report if they are not ready to do so.

Even SVA officers and employees who cannot guarantee confidentiality will maintain a reporting party's privacy to the greatest extent possible. Any information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Only people who have a need to know about the incident will be informed, and information will be shared only as necessary with investigators, the reporting party, witnesses and the responding party to ensure an effective and thorough investigation. Although SVA will take all appropriate steps to safeguard the privacy of the parties, the information collected during the investigation process may be subpoenaed in civil or criminal proceedings.

PUBLIC AWARENESS EVENTS

Sharing information regarding an incident of sexual misconduct at a public awareness event, such as Take Back the Night, The Clothesline Project, survivor speak-outs and other forums, does not constitute notice to SVA and will not trigger an investigation under this policy. However, because SVA is under a continuing obligation to address issues of sexual violence campus-wide, information shared at public awareness events may prompt the College to initiate broader remedial action — such as

increased monitoring, supervision or security, increased education and prevention efforts, climate surveys and/or revisions to policies and practices — to ensure the safety of the SVA community.

CAN I REQUEST THAT THE SCHOOL OF VISUAL ARTS NOT TAKE ACTION REGARDING AN INCIDENT?

If a victim of sexual assault, dating violence, domestic violence or stalking discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action be taken, SVA must weigh that request against its Title IX obligations, including the obligation to provide a safe, nondiscriminatory environment for all members of the SVA community, including the victim. If in making a formal complaint, the reporting party requests confidentiality or asks that the complaint not be pursued, the College still must take all reasonable steps to investigate and implement any remedial measures while being mindful of the request.

If SVA honors the request for confidentiality, a victim must understand that SVA's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when SVA may not be able to honor a reporting party's request in order to provide a safe, nondiscriminatory environment for the entire SVA community.

The Title IX Coordinator will evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual violence. When weighing a reporting party's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
 - Whether there have been other sexual violence complaints about the same alleged perpetrator;
 - Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - Whether the allegation indicates an escalation of unlawful conduct by the alleged perpetrator;
 - Whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
 - Whether the sexual violence was committed by multiple perpetrators;
- The seriousness of the alleged conduct;
- The alleged perpetrator's rights to receive information under FERPA;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the victim is a minor;
- Whether SVA possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence); and
- Whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead SVA to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, SVA will likely respect the victim's request for confidentiality.

If SVA cannot ensure confidentiality, the reporting party will be so informed prior to the start of an investigation. To the extent possible, SVA will share information only with people responsible for handling SVA's response. Even if SVA chooses not to take disciplinary action against the alleged perpetrator because the reporting party insists on confidentiality, it may pursue

other steps to limit the effects of the alleged conduct and prevent its recurrence. SVA will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or SVA employees, will not be tolerated. SVA will also:

- Assist the victim in accessing other available victim advocacy, academic support, counseling, disability, and health or mental health services;
- Provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- Inform the victim of the right to report a crime to campus or local law enforcement — and provide the victim with assistance if the victim wishes to do so.

SVA will not require a victim to participate in any investigation or disciplinary proceeding.

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

If SVA determines that it can respect a victim's request for confidentiality, it will also take immediate action as necessary to protect and assist the victim.

WILL INFORMATION ABOUT AN INCIDENT BE SHARED WITH MY PARENTS?

The Family Educational Rights and Privacy Act (FERPA) allows the School of Visual Arts to share information with parents (i) when there is a health or safety emergency or (ii) where the student is a dependent on the parents' prior year federal tax return. Generally speaking, SVA will not disclose a report of domestic violence, dating violence, sexual assault or stalking to a student's parents without the student's permission.

Duty to Report Statistics and Timely Warning:

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

The Clery Act also requires SVA to issue a "timely warning" when it receives a report of a crime that poses a serious and continuing threat to the campus community, except in circumstances where the issuance of the warning may compromise pending law enforcement efforts or when the warning itself could potentially identify the reporting individual. No personally identifying information about the victim will be disclosed in a timely warning.

ADDITIONAL GOVERNMENT RESOURCES

The government resources listed here may provide additional assistance for students wishing to file an external complaint of sexual misconduct or for students with inquiries regarding the application of Title IX and its implementing regulations:

- U.S. Department of Education, Office for Civil Rights
 - ed.gov/ocr
- U.S. Department of Justice, Office on Violence Against Women
 - justice.gov/ovw
 - U.S. Department of Justice, Office on Violence Against Women, 145 N Street, NE, Suite 10W.121, Washington, D.C. 20530
 - 202.307.6026
- U.S. Department of Education, Office for Civil Rights, New York Office
 - Office for Civil Rights, New York Office, U.S. Department of Education, 32 Old Slip, 26th Floor, New York, NY 10005
 - 646.428.3800
 - ocr.newyork@ed.gov

APPENDIX—NEW YORK STATE PENAL LAW

Although the College enforces only its own policies, community members should be aware that some of the conduct prohibited by the Policy Against Sex-Based Discrimination, Harassment & Sexual Misconduct may also be a violation of the New York State Penal law.

The Penal Law and Social Services Law definitions in this document are provided for information purposes only. Those interested in filing a complaint with the police are encouraged to do so, and SVA will assist any reporting party in contacting law enforcement.

**NEW YORK PENAL CODE SECTION:
130.05 Sex offenses; lack of consent.**

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.
2. Lack of consent results from:
 - (a) Forcible compulsion; or
 - (b) Incapacity to consent; or
 - (c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or
 - (d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.
3. A person is deemed incapable of consent when he or she is:
 - (a) Less than seventeen years old; or
 - (b) Mentally disabled; or
 - (c) Mentally incapacitated; or
 - (d) Physically helpless; or

(e) Committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital. For purposes of this paragraph, "employee" means:

- (i) An employee of the state department of corrections and community supervision who, as part of his or her employment, performs duties: (A) in a state correctional facility in which the victim is confined at the time of the offense consisting of providing custody, medical or mental health services, counseling services, educational programs, vocational training, institutional parole services or direct supervision to inmates; or (B) of supervising persons released on community supervision and supervises the victim at the time of the offense or has supervised the victim and the victim is still under community supervision at the time of the offense; or
- (ii) An employee of the office of mental health who, as part of his or her employment, performs duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law in which the inmate is confined at the time of the offense, consisting of providing custody, medical or mental health services, or direct supervision to such inmates; or
- (iii) A person, including a volunteer, providing direct services to inmates in a state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of corrections and community supervision or, in the case of a volunteer, a written agreement with such department, provided that the person received written

notice concerning the provisions of this paragraph; or

(f) Committed to the care and custody of a local correctional facility, as such term is defined in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, “employee” means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for inmates. For purposes of this paragraph, “employee” shall also mean a person, including a volunteer or a government employee of the state department of corrections and community supervision or a local health, education or probation agency, providing direct services to inmates in the local correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; or

(g) Committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. For purposes of this paragraph, “employee” means an employee of the office of children and family services or of a residential facility in which such person is committed to or placed at the time of the offense who, as part of his or

her employment, performs duties consisting of providing custody, medical or mental health services, counseling services, educational services, vocational training, or direct supervision to persons committed to or placed in a residential facility operated by the office of children and family services; or

(i) A resident or inpatient of a residential facility operated, licensed or certified by **(i)** the office of mental health; **(ii)** the office for people with developmental disabilities; or **(iii)** the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, “employee” means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, rehabilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, “employee” shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient

who is a consenting adult who has consented to such contact.

§ 130.20 Sexual misconduct.

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or
3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

§ 130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

§ 130.30 Rape in the second degree.

A person is guilty of rape in the second degree when:

1. Being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. He or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

§ 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

§ 130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

§ 130.45 Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when:

1. Being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Criminal sexual act in the second degree is a class D felony.

130.50 Criminal sexual act in the first degree.

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.

§ 130.52 Forcible touching.

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

§ 130.53 Persistent sexual abuse.

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten-year period, excluding any time during which such person was incarcerated for any reason, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony.

§ 130.55 Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

§ 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

§ 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony.

§ 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:
 - (a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or
 - (b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person, causing physical injury to such person, and such person is incapable of consent by reason of some factor other than being less than seventeen years old.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

§ 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:
 - (a) By forcible compulsion; or
 - (b) When the other person is incapable of consent by reason of being physically helpless; or
 - (c) When the other person is less than eleven years old.
2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person, causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.
3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

§ 130.67 Aggravated sexual abuse in the second degree.

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person, causing physical injury to such person:
 - (a) By forcible compulsion; or
 - (b) When the other person is incapable of consent by reason of being physically helpless; or
 - (c) When the other person is less than eleven years old.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

§ 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony.

§ 130.90 Facilitating a sex offense with a controlled substance.

A person is guilty of facilitating a sex offense with a controlled substance when he or she:

1. Knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and
2. Commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance is a class D felony.

§ 130.95 Predatory sexual assault.

A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and when:

1. In the course of the commission of the crime or the immediate flight therefrom, he or she:
 - (a) Causes serious physical injury to the victim of such crime; or
 - (b) Uses or threatens the immediate use of a dangerous instrument; or
2. He or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons; or
3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in section 263.05 of this chapter.

Predatory sexual assault is a class A-II felony.

§ 130.96 Predatory sexual assault against a child.

A person is guilty of predatory sexual assault against a child when, being eighteen years old or more, he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and the victim is less than thirteen years old.

Predatory sexual assault against a child is a class A-II felony.

§ 120.45 Stalking in the fourth degree.

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. Is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. Causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. Is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

For the purposes of subdivision two of this section, "following" shall include the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device.

Stalking in the fourth degree is a class B misdemeanor.

120.50 Stalking in the third degree.

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this

article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or

3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

§ 120.55 Stalking in the second degree.

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against

any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or

3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or
5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

§ 120.60 Stalking in the first degree.

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. Intentionally or recklessly causes physical injury to the victim of such crime; or
2. Commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

Social Services Law section 459-a

1. "Victim of domestic violence" means any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member.
2. "Family or household members" mean the following individuals:
 - (a) Persons related by consanguinity or affinity;
 - (b) Persons legally married to one another;
 - (c) Persons formerly married to one another regardless of whether they still reside in the same household;
 - (d) Persons who have a child in common regardless of whether such persons are married or have lived together at any time;
 - (e) Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household;
 - (f) Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of

relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; or

(g) Any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

3. “Parent” means a natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.



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