



Sexual Misconduct Policy

Issuing Authority: The President and Dean of the Law School

**Responsible Officers: The Director of Equal Opportunity and Title IX and Accommodations Coordinator;
and, and The Office of the General Counsel and Chief Compliance Officer**

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I. THE PURPOSE OF THIS POLICY

Brooklyn Law School (“Law School”) is committed to maintaining a respectful, professional, academic, and working environment for students, faculty, staff, facility residents, vendors, and visitors. This includes maintaining an environment free from sexual misconduct.

Sexual misconduct, as described in this Policy, is a form of sexual harassment and discrimination, which is prohibited by Title IX of the Education Amendments of 1972; the Equal Employment Opportunity Act of 1972; the New York State and New York City Human Rights Laws; and New York State Education Law, Articles 129-A and 129-B. Domestic violence, dating violence, and stalking are also prohibited conduct as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Reauthorization Act of 2013 and the New York State Education Act, Articles 129-A and 129-B.

This Policy has been created to:

- Prohibit acts of sexual misconduct, including sex discrimination, sexual harassment, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence;
- Foster a climate of respect and security on campus to prevent and respond to sexual misconduct;
- Identify behavior that constitutes sexual misconduct under this Policy and State law;
- Disseminate clear policies and procedures for reporting acts of sexual misconduct and for responding to acts of sexual misconduct reported to the Law School;
- Explain how students and employees can report sexual misconduct to the Law School confidentially;
- Identify the resources available both on and off campus to aid complainants, including local law enforcement resources;
- Investigate and promptly address complaints in a fair and equitable manner that is independent of criminal or other investigations that may occur;
- Deliver primary prevention and awareness programs and ongoing training and education campaigns to students and employees so they understand how to report sexual misconduct;
- Help students and employees understand how to reduce the risk of sexual assault and other forms of sexual misconduct;
- Identify the rights of complainants and respondents under this Policy, regardless of whether the offense occurred on or off campus;
- Identify the Title IX Coordinator and describe the Coordinator’s role in compliance with guidance from the Department of Education’s Office of Civil Rights; and
- Comply with the New York State Education Law, Articles 129-A (see §§ 6430 through 6438) 129-B (see §§ 6439 through 6449).

II. TO WHOM THIS POLICY APPLIES

This Policy applies to the Brooklyn Law School community (students, faculty, senior administrators, staff, paid and unpaid interns, and third-parties) whether the complaint is made directly or indirectly, by: (a) students against students, faculty, staff, senior administrators, and third-parties; (b) employees against students, faculty, staff, senior administrators, and third-parties; (c) by and against individuals of either sex; and (d) by and against individuals of the same sex. Third-parties include vendors, visitors to the Law School premises, and non-student and non-employee residents of Law School housing such as spouses, domestic partners, and children. Furthermore, this Policy applies to all settings and activities sponsored by the Law School, whether on or off campus, and to incidents that may have been initiated off campus outside of the Law School's education programs and activities.

Violations of the Policy will not be tolerated. Any individual covered by this Policy who engages in prohibited conduct, including retaliation, will be subject to remedial and/or disciplinary action. Violations of this Policy may also subject the Law School and individuals to liability under the applicable laws.

III. THE TITLE IX COORDINATOR

The Law School has designated the individual listed below as the Title IX Coordinator, who is responsible for overseeing all sexual misconduct reports and complaints; identifying and addressing any patterns or systemic problems that are revealed during the review of such complaints; evaluating a complainant's request for confidentiality in the context of the Law School's responsibility to provide a safe and nondiscriminatory environment for all; ensuring a prompt, fair, and impartial investigation; and coordinating the resolution process for complaints. The Title IX Coordinator also evaluates trends on campus by using information reported to her and makes recommendations for campus-wide training and education programs.

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IV. NOTICE OF COORDINATION WITH NON-DISCRIMINATION AND HARASSMENT POLICY

It is important to coordinate this Policy with other existing policies such as the *Brooklyn Law School Policy on Non-Discrimination and Harassment*, because discrimination and harassment based on an individual's sex, sexual orientation, or gender expression can occur in conjunction with misconduct and harassment based on a person's race, ethnicity, national origin, religion, age, pregnancy or parenting status, disability, or other legally protected status. Therefore, when a report is made that alleges harassment and discrimination based on sex and alleges some other

form of discrimination, the Law School will work with both policies to address the complaints and will coordinate the investigation and resolution efforts.

V. LEGAL AND POLICY DEFINITIONS

The Law School is required to provide legal definitions of sexual misconduct crimes under New York State Penal Law, and definitions of sexual misconduct under the Law School's Sexual Misconduct Policy, because complainants have the right to seek redress under this Policy *and* to file a criminal complaint. Please refer to Appendix B for a summary of the differences between the processes under New York State Penal Law and the Law School's Sexual Misconduct Policy.

1. Sexual Misconduct

The term **sexual misconduct** is used by the Law School to identify forms of discrimination based on sex. Sexual misconduct includes sexual harassment, sexual assault, and sexual exploitation. It also includes dating violence, domestic violence, and other acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex- stereotyping. It also includes stalking, which can be a form of sexual violence depending on the conduct.

2. Sexual Harassment

Sexual harassment is a form of sex discrimination involving unwelcome conduct of a sexual nature. "Unwelcome conduct" is defined as conduct that has not been invited and offensive. Such conduct includes, but is not limited to:

- unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature;
- inappropriate touching, suggestive comments, and sexually-oriented gestures, noises, remarks, or jokes;
- sexual stereotyping which occurs when conduct or personality traits do not conform to perceptions of how individuals of a particular sex should look or act;
- public display of pornographic or suggestive calendars, posters, or signs where such images are not connected to any legitimate academic or workplace purpose;
- inappropriate electronic messaging through email, texting, and other electronic methods; and
- recording, disseminating, or viewing another person's sexual activity, intimate body parts, or nakedness without consent, even if the activity documented was consensual.

Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and transgender status.

Sexual harassment will be found under this Policy when: (1) submission to such conduct is made as an express or implicit term or condition of an individual's employment, performance, appraisal, or evaluation of academic performance; or (2) such conduct has the purpose or effect of unreasonably

interfering with an individual's work or academic performance, or creating an intimidating, hostile, humiliating, or offensive academic or working environment, even if the individual is not the intended target.

Sexual harassment may be found in a single episode as well as in persistent behavior. The existence of a hostile environment will be examined from the perspective of a reasonable person in the situation of the complainant.

Sexual harassment can be found under this Policy even when the conduct may not rise to the legal definition or judicial interpretations.

3. Gender-Based Discrimination

Gender-based discrimination is the non-sexual adverse treatment of an individual based on that individual's actual or perceived gender. Discrimination includes conduct based on gender identity, gender-expression and non-conformity with gender stereotypical concepts such as "masculinity" and "femininity." Gender-based discrimination can occur in conjunction with acts of sexual misconduct.

4. Gender-Based Harassment

Gender-based harassment is non-sexual conduct based on an individual's actual or perceived gender that has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, humiliating, or offensive academic or working environment. The existence of a hostile environment will be examined from the perspective of a reasonable person in the situation of the complainant.

5. Sexual Assault

Under the New York State Penal Law, any of the following acts, if perpetrated against a victim *without the victim's consent* is a **sexual assault crime**. Any such crime is also a violation of this Policy.

- **Rape and Attempted Rape:** engaging or attempting to engage in sexual intercourse with another person either: (1) without the person's consent; (2) where a person is incapable of consent due to a mental disability, mental incapacitation, or physically helpless; or (3) the person is less than seventeen (17) years old. **Sexual intercourse** is any penetration of the penis into the vagina, however slight. There is no requirement of physical injury, ejaculation or orgasm.
- **Criminal sexual acts (oral or anal sexual conduct)** occur upon contact between penis and mouth, penis and anus (rectum), mouth and anus, or mouth and vaginal area. No penetration is required.

- **Sexual contact** is any touching of the sexual or intimate parts of the body, whether over or under clothing, done for the purpose of gratifying the sexual desire of the perpetrator. Sexual contact includes both: (i) the touching of the victim's sexual or intimate parts by the perpetrator; and (ii) the touching of the perpetrator's sexual or intimate parts by the victim.
- **Sexual abuse** is subjecting a person to sexual contact without that person's consent.
- **Forcible touching** is the intentional and forcible touching of another, done for the purpose of: (i) degrading or abusing another person; or (ii) gratifying the defendant's sexual desire. Forcible touching includes squeezing, grabbing, or pinching.
- **Aggravated sexual contact** is the insertion of a foreign object (e.g. bottle, broom handle, etc.) into the vagina, urethra, penis or rectum.

6. Affirmative Consent/Incapacity

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, if those words or actions create clear permission regarding a 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. The person initiating each specific act, regardless of whether the person is under the influence of alcohol or drugs, is responsible for seeking consent and having consent accepted. Past sexual activity does not constitute consent for future acts. In addition:

- Consent may be initially given, but withdrawn at any time;
- When it is withdrawn, or can no longer be given, or at any time consent is uncertain, *sexual activity is to stop*;
- Consent is not given when it is under the threat of harm, intimidation, coercion, or force. Under New York State Penal Law, **forcible compulsion** means to compel by actual physical force; by the threat of expressed or implied physical force, that puts the victim in fear of being physically harmed or of another person being physically harmed (e.g. one's child); or by the threat to kidnap the victim or a third person;
- Consent cannot be given when a person is incapacitated, which occurs when a person lacks the ability to knowingly choose to participate in sexual activity; and
- Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and, therefore, unable to consent.

Under New York State Penal Law, **incapacity** exists when a person is:

- **physically helpless** — unconscious or otherwise physically unable to indicate unwillingness to engage in an act;
- **under 17 years of age** — New York law states that a person less than 17 years of age is legally incapable of consenting to sexual intercourse or other sexual contact (these laws are typically known as statutory rape laws);

- **mentally incapacitated** — the person is temporarily incapable of understanding or controlling his or her conduct because a drug or other intoxicating substance (e.g. alcohol) was given to him or her. A person is mentally or physically incapacitated when he or she has consumed alcohol and/or drugs, legal or illegal, ***voluntarily or involuntarily***, and is in a state where a reasonable person would believe that he or she is unable to make reasonable judgments or render self-care; or
- **mentally disabled** — the person suffers from a mental illness or condition that renders the person incapable of understanding the nature of his or her conduct.

Under this Policy, **incapacitation** includes, but is not limited to, lack of consciousness, being asleep, being involuntarily restrained, or otherwise being unable to consent.

Indicators of incapacitation may include:

- Slurred speech
- Bloodshot or unfocused eyes
- Unsteady gait; needing assistance to walk/stand
- Vomiting
- Outrageous or unusual behavior
- Concern expressed by others about the individual
- Expressed memory loss or disorientation

7. **Sexual Exploitation**

Sexual exploitation under New York State Penal Law and this Policy occurs when: (1) a person takes advantage of another sexually without the individual’s consent for the initiator’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited; and (2) that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples of behaviors constituting **sexual exploitation** include:

- Prostituting another;
- Allowing a third-party to watch consensual sexual contact without the permission of both parties involved in the sex act or showing voluntarily recorded sexual activity to others without permission;
- Knowingly giving another a sexually transmitted infection (STI) or HIV; and
- Allowing others to have sex with an incapacitated person.

8. **Domestic Violence**

In New York State, the crime of domestic violence includes the following acts by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim: (1) actual physical abuse; (2) an attempt to harm another; (3) placing another in fear of imminent, serious, physical harm, like violating a protective order; or (4) causing another to engage

in sexual relations by force, threat of force, or duress. Any such crime is also a violation of this policy.

The term “**intimate partner**” includes persons legally married to one another; persons formerly married to one another; persons who have a child in common (regardless of whether such persons are married or have lived together at any time); couples who are in an “intimate relationship” including but not limited to couples who live together or have lived together; and persons who are dating or who have dated in the past, including same-sex couples.

Examples of behaviors that may constitute **domestic violence** include:

- Hitting, punching, pinching, slapping, or choking;
- Violating a protective order; and
- Harming a person’s children or animals.

Acts of domestic violence include the following behaviors in addition to the behaviors described above:

- Emotional abuse;
- Psychological abuse; and
- Economic abuse.

9. **Dating Violence**

Dating violence under this Policy is violence committed by a person:

- (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (b) where the existence of such a relationship will be determined based on a consideration of the following factors:
 - (i) the length of the relationship;
 - (ii) the type of relationship;
 - (iii) the frequency of interaction between the persons involved in the relationship.

Dating violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another within a dating relationship.

Behaviors that may constitute **dating violence** include:

- The threat of physical or/and sexual assault;
- Taking away a person’s cell phone during an argument so the person cannot call a friend or the police for help; and
- Threatening to self-harm if another does not do what is said.

In New York State, dating violence is prosecuted under domestic violence laws.

10. Stalking

Under this Policy, **stalking** is conduct directed at a specific person or group that would cause reasonable person[s] to:

- (a) fear for their own safety or the safety of others; or
- (b) suffer substantial emotional distress.

In New York State, a person is guilty of stalking when intentionally, and for no legitimate purpose, the person engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

- (a) 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;
- (b) 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 perpetrator was previously clearly informed to cease that conduct; or
- (c) is likely to cause such person to reasonably fear a threat to employment, business or career, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the perpetrator was previously clearly informed to cease that conduct.

In some circumstances, two instances of such behavior(s) may be sufficient to constitute stalking.

11. Child Abuse

In New York State and under this Policy, the **sexual abuse of a child** occurs when a person commits a sexual act with a child, defined as a person under the age of seventeen (17). **Physical abuse** of a child, a person under the age of eighteen (18) occurs when a person inflicts or allows to be inflicted a serious injury causing death, disfigurement, loss of an organ or bodily function, or impairment of physical or emotional health. **Neglect** occurs when a person legally responsible for a person under the age of eighteen (18) fails to provide a minimum level of care (e.g., food, water, clothing, shelter, school) or engages in activities that pose a risk to the health and safety of the child (e.g., leaving a child home unattended, misusing drugs or alcohol).

Anyone who has reason to suspect the sexual abuse, physical abuse, or neglect of a child should report the suspected abuse to the **New York State Maltreatment Hotline** at 1-800-342-3720 as soon as possible.

12. New York State Criminal Penalties

The New York State Penal Law provides the following possible penalties for the various classifications of sexual and domestic assault offenses, including stalking, depending on the offense:

| | |
|---------------------|------------------------------------|
| Class B Felony | Imprisonment for 5 to 25 years |
| Class C Felony | Imprisonment for 3 1/2 to 15 years |
| Class D Felony | Imprisonment for 2 to 7 years |
| Class E Felony | Imprisonment for 1 1/2 to 4 years |
| Class A Misdemeanor | Imprisonment for up to 1 year |
| Class B Misdemeanor | Imprisonment for up to 3 months |

For more information about how sex offenses are classified in the State of New York, visit <http://nyscasa.org/understanding/penalcodes>. For more information about how domestic offenses are classified in the State of New York, visit <http://www.opdv.ny.gov/index.html>.

13. Local Ordinances and Penalties

Local ordinances in the City of New York are administrative law, not criminal, and allow for the protection of a person's civil rights. Local ordinances, including Title 8, may be accessed here: <http://72.0.151.116/nycnew>.

VI. REPORTING SEXUAL MISCONDUCT TO THE LAW SCHOOL

1. Reporting an Incident of Sexual Misconduct

Individuals who believe that they have been the subject of any form of sexual misconduct, including sexual harassment, gender-based discrimination or harassment, domestic violence, dating violence, sexual assault, or stalking, or is aware of someone who has been subjected to such conduct, including child abuse, must report the conduct to the **Title IX Coordinator** to file a complaint, or to a "**Responsible Employee**" who will report the conduct to the Title IX Coordinator.

Brooklyn Law School has designated the following individuals as "**Responsible Employees**":

- The President and Dean and all other individuals holding Dean, Vice, Associate, and Assistant Dean titles;
- The Title IX Coordinator;

- The Director of Public Safety Director and the Public Safety Staff;
- All Senior Staff;
- All Student Affairs Staff;
- All Residence Staff;
- All Human Resources Staff;
- The General Counsel and Chief Compliance Officer;
- Supervisors/Managers/Department Heads; and
- Faculty.

All faculty and staff information can be found in the directory located on the Brooklyn Law School website at www.brooklaw.edu or BLS Connect www.blsconnect@brooklaw.edu.

Responsible Employees are *required* to:

- (1) Inform the person reporting acts of sexual misconduct of the following rights: “You have the right to: (1) make a report to the Office of Public Safety, local law enforcement, and/or the State Police or choose not to report to these entities; (2) report the incident to the Law School; (3) be protected by the Law School from retaliation for reporting an incident; and (4) receive assistance and resources from the Law School. The Responsible Employee must report the incident to the Title IX Coordinator. Please be aware that if you choose to report an incident to the Law School, confidentiality cannot be maintained and the incident will have to be reported to the Title IX Coordinator.”
- (2) The Responsible Employee will collect the name of the complainant and respondent, date, time, location, and names of other witnesses and report the matter to the Title IX Coordinator.
- (3) The Responsible Employee should assure the complainant that the Title IX Coordinator will share information only on a need to know basis and respect privacy as much as possible. If the complainant decides not to go forward, the complainant will be directed to legally confidential resources such as clergy, mental health professionals, and sexual assault services. Such resources are listed at the end of this Policy.

A Responsible Employee will be held responsible for actions or inactions that obstruct the application of this policy and may be subject to disciplinary sanctions.

2. Form of Complaint

A complaint does not have to be in writing, but if a complainant wants to file a written complaint, there is a complaint form on the Policy Page that a complainant may use. Notice to the Law School is made when the Law School knows or reasonably should know, based on the statements of a complainant or other reports, that sexual misconduct is alleged. Actual notice from the complainant, which consists of direct statements alleging misconduct covered by this policy, is preferable,

although the Law School accepts verbal or written statements from *any party* who has knowledge of an incident of sexual misconduct occurring either on or off campus. A complaint may also be initiated when a possible Title IX violation comes to the attention of the Law School through social media sites (e.g., Facebook, You Tube) and news media.

Complaints should be filed as soon as possible so that the Law School can promptly and effectively address the issue. However, untimely complaints will be accepted, thoroughly investigated, and addressed.

Anonymous reports are accepted by the Title IX Coordinator, Louise Cohen, via email at louise.cohen@brooklaw.edu and by phone at 718-780-0377, but the supplier of the anonymous report should be aware that failure to disclose identifying information about the accused party, the victim of the sexual misconduct, or the facts and circumstances regarding the misconduct severely limits the Law School's ability to respond and remedy the effects of sexual misconduct. Anonymous reports that provide enough information to constitute a criminal offense will be reported to the Director of Public Safety, less any identifying information regarding the complainant for purposes of inclusion in the Annual Security Report and to assess for purposes of sending out a Timely Warning under the Clery Act.

3. Notice of Rights Regarding Sexual Misconduct Complaints

A summary of complainants' rights regarding sexual misconduct complaints is available as a separate document on the Brooklyn Law School Policy Page at www.brooklaw.edu/policies and the BLS Connect Policy Page at <https://blsconnect.brooklaw.edu/administrative/policies/Pages>. It is also available at the end of this Policy as Appendix A.

4. Amnesty for Reports Involving Drug and Alcohol Use

The health and safety of our students, staff, and faculty are of the utmost importance to Brooklyn Law School. The Law School recognizes that students and employees who may have engaged in use of alcohol or drugs (whether voluntary or involuntary) at the time sexual misconduct/violence occurs, including but not limited to domestic violence, dating violence, stalking, or sexual assault, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Brooklyn Law School strongly encourages students and employees to report domestic violence, dating violence, stalking, sexual assault, and sexual harassment to the Title IX Coordinator, Public Safety, or other Brooklyn Law School officials. Therefore, any student or employee who, acting in good faith, reports or experiences acts of domestic violence, dating violence, stalking, or sexual assault, will not be disciplined for violations of the *Brooklyn Law Policy on Drugs and Alcohol* occurring at or near the commission of the domestic violence, dating violence, stalking, or sexual assault.

5. Medical Attention and Evidence Gathering

After an incident of sexual assault or domestic violence, the complainant should consider seeking medical attention as soon as possible at an emergency room that is a certified SAFE Center for Excellence (see Section XV.A of this Policy). The Title IX Coordinator will help the complainant seek proper medical care and psychological support. If the complainant chooses to seek such assistance without the Title IX Coordinator's involvement, the complainant can locate hospitals with such emergency rooms listed in this Policy or by calling the New York Police Department at 911.

In New York State, evidence may be collected even if a complainant chooses not to make a report to law enforcement.¹ It is important that victims of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where they were assaulted if the offense occurred within the past ninety-six (96) hours so that evidence which may be necessary to prove criminal activity may be preserved. If sexual assault victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease. Victims of sexual assault, domestic violence, stalking, and dating violence are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, that may be useful to Law School investigators, hearing boards, or the police. Although the Law School strongly encourages all members of its community to report violations of this Policy to law enforcement, it is the victim's choice whether or not to make such a report, and victims have the right to decline involvement with the police. If a complainant chooses to file a criminal complaint, the Title IX Coordinator will assist any victim with notifying local police and obtaining a sexual assault forensic examination. The 84th Precinct, which serves Brooklyn Law School, may also be reached directly by calling (718) 875-6811 or appearing in person at 301 Gold Street, Brooklyn, New York. Additional information about the 84th Precinct Police department may be found online at: http://www.nyc.gov/html/nypd/html/precincts/precinct_084.shtml.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining an order of protection related to the incident more difficult. If a victim chooses not to make a complaint regarding an incident, the victim nevertheless should consider speaking with the Title IX Coordinator, Director of Public Safety or local law enforcement to preserve evidence in the event the victim chooses to proceed later.

6. Interim Measures

¹ Under the Violence Against Women and Department of Justice Reauthorization Act of 2005, starting in 2009, states must certify that they do not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both."

The Law School may take interim measures pending the investigation of a report or complaint to prevent contact between a complainant, an accused party, and anyone involved in the investigation to ensure safety, prevent retaliation, and address an ongoing hostile environment. Such measures may include: (i) issuing a “no contact order” whereby intentional contact shall be a violation subject to disciplinary procedures; (2) interim suspension after it is determined that the accused presents a continuing threat to the health and safety of the community; and (3) making housing, academic, and work-related adjustment.

Both the complainant and the accused party shall have an opportunity to request a prompt review of the need for and possible modification of interim measures that affect them. Such review shall be conducted by the Vice Dean for Academic Affairs and Dean for Student Affairs, both of whom shall make their recommendations to the President and Dean of the Law School, who shall issue a decision.

Interim measures imposed on the accused party are not determinations of guilt. Such measures are implemented to ensure that the investigation and adjudication of a complaint proceeds as efficiently and swiftly as possible.

7. Notifying Parents

The Family Educational Rights and Privacy Act of 1974 (“FERPA”) (20 U.S.C. § 1232g; 34 CFR Part 99) allows the Law School to share information with parents when there is: (1) a health or safety emergency; or (2) the student is a dependent on either parent’s prior year federal income tax return. Otherwise, the Law School shall not share information about a report of sexual assault without the student’s written permission.

VII. OFF-CAMPUS JURISDICTION

The Law School assumes jurisdiction to adjudicate off-campus complaints (including complaints that originate while studying abroad) involving members of the Law School community, and does not limit the timeframe for reporting. If the accused person is no longer affiliated with the Law School at the time the report is made, then the Law School will still conduct an inquiry, take steps to prevent the recurrence of such conduct to the Law School community, and remedy the effects, if appropriate.

VIII. CONFIDENTIALITY

Only licensed counselors, health care providers, and clergy serving in pastoral counseling roles are designated **confidential resources**. The Law School does not have a health or counseling center or a chapel or ministry, therefore, confidential havens do not exist on campus. Students and employees who do not wish to disclose to the Law School a complaint of sexual misconduct should utilize health, religious, and counseling services in the community where their confidentiality may be protected. For a list of off-campus resources, see Section XV.C of this Policy.

If a complainant requests confidentiality or asks that the complaint not be pursued, the Law School will evaluate confidentiality requests in the context of its responsibility to provide a safe and nondiscriminatory environment for all persons. There may be instances where an investigation may have to be pursued against the complainant's wishes if doing so fulfills the Law School's responsibility to protect the Law School community. In those cases, the Law School will undertake all efforts to safeguard the privacy of the complainant that is consistent with law. If a complainant insists that identifiable information not be disclosed to the accused individual, the Law School's ability to respond may be limited. If the complainant continues to ask to have identifying information withheld, the Law School will take all reasonable steps to investigate and respond to the complaint consistent with the request, as long as doing so does not prevent the Law School from responding effectively to the sexual misconduct and protecting others from sexual misconduct. In such situations where confidentiality cannot be guaranteed, privacy will be maintained to the greatest extent possible and information will be relayed only to the extent necessary for the Title IX Coordinator to investigate and seek a resolution.

IX. THE INVESTIGATION AND DISPOSITION OF A COMPLAINT

A. Investigator

Investigations are generally conducted by the Title IX Coordinator and Director of Special Programs.

B. Consent to Investigate

The Title IX Coordinator will seek consent from a reporting individual prior to commencing an investigation. Declining to consent will be honored unless the Law School determines in good faith that the failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the Law School community. Factors that the Law School may consider in determining whether to proceed include, but are not limited to whether:

1. the accused has a history of violent or similar behavior or is a repeat offender;
2. the incident is an escalation of previous behavior;
3. there is a risk that the accused will commit additional acts of violent or similar misconduct;
4. a weapon or force was involved in the reported incident;
5. a minor is involved;
6. evidence is obtained by other means; and
7. available information reveals a pattern of perpetration at a given location by an individual or group.

C. Notification of an Investigation

The investigator will notify the complainant and respondent that a prompt, thorough, and impartial investigation of an alleged violation of this Policy has

commenced. Simultaneous notification shall be made: (1) either by personal delivery, overnight mail with signature, or by certified mail with return receipt to the address in the Law School's records; *and* (2) by email to the complainant and respondent's Law School email accounts.

The Notice shall contain: (1) the date, approximate time, and location of the alleged policy violation; (2) a description of the factual allegations; and (3) a summary of potential sanctions associated with the alleged violation.

The Notice shall also inform the complainant and the respondent of the right to bring an advisor to meetings and explain that the role of the advisor is to support and advise, not to speak on behalf of the complainant or respondent or take any action that may interfere with the integrity and the process of the investigation.

C. Evidence Gathering

The investigator will interview the parties to the complaint, as well as any witnesses who have been identified. The investigator will ask the parties and witnesses for any documentary, electronic, or other evidence related to the complaint that they may want to offer. The investigator may also independently gather available evidence as part of the investigation. Prior sexual history with persons other than the charged party in a disciplinary proceeding is not considered evidence and will be excluded. Also, the mental health diagnosis and/or treatment of the parties will be excluded from the decision stage of the disciplinary process that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual abuse may be admissible when during the sanctioning phase.

All individuals who are interviewed shall be advised to maintain the confidentiality of the investigation process and not to disclose any information related to the complaint unless necessary during the complaint process. Maintaining confidentiality is important to preserve the integrity of the investigation, protect student and witness privacy, and deter retaliation.

D. The Standard Applied to Investigations

The investigator shall determine whether a violation of this policy occurred under the *preponderance of the evidence* standard. Under this standard, it must be more likely than not that a violation of the policy occurred.

E. Interim Measures

The Law School may take appropriate interim measures during the pendency of the investigation as necessary. Such measures may include separation or "no contact" orders, housing and work reassignments, academic or work schedule modifications, and counseling for emotional support. (See Section VI (5) above.)

F. The Disposition of the Complaint

If it is determined that a violation of this policy has occurred, prompt remedial action shall be taken. If such action involves the imposition of sanctions, the matter shall

be referred to the appropriate disciplinary process.² Whether or not it is determined that a violation has occurred, the disposition of the complaint shall be communicated to the complainant and respondent simultaneously: (1) either by personal delivery, overnight mail with signature, or by certified mail with return receipt to the address maintained in the Law School's records; *and* (2) by email to the complainant's and respondent's Law School email account.

If the results of an investigation show that the complainant knowingly filed false accusations under this policy, or that a witness gave false statements, such individuals will be referred to the appropriate disciplinary process for prompt action.

G. Transcript Notation for Conduct that Meets Clery Act Reporting Requirements

For conduct including, but not limited to sexual violence, that is defined as a crime meeting the reporting requirements of the federal Clery Act (20 U.S.C. § 1092 (F) (1) (F) (I)(I) – (VIII)), *and* that has resulted in a sanction of suspension or expulsion, the Law School shall make a notation on the transcript of the charged student that the student was “Suspended after a finding of responsibility for a code of conduct violation,” or “Expelled after a finding of responsibility for a code of conduct violation.” For a charged student who withdraws from the Law School while charges are pending and declines to complete the disciplinary process, the Law School shall make a notation on the student's transcript that the student “Withdrew with conduct charges pending.” If a finding of responsibility is vacated for any reason, the transcript notation shall be removed.

A charged student may seek to remove a transcript notation for a suspension by submitting a written appeal either as part of the appeal process below, or as a separate request, provided that such notation shall not be removed prior to one year after the conclusion of the suspension. If the appeal is initiated as a separate request, such requests must be made in writing to the Dean. A copy of the request shall be provided to the complainant, who shall have an opportunity to respond within ten (10) business days of receipt. The Dean's decision, which is final, shall be issued simultaneously to the charged student and the complainant, in writing, within thirty (30) business days of the date of the request, either by personal delivery, overnight mail with signature, or by certified mail with return receipt to the address in the Law School's record, *and* by email to the students' Law School email accounts, unless additional deliberation time is warranted. Transcript notations for expulsions shall not be removed.

H. Time Frame

In general, the investigation and disciplinary process, if any, will not exceed sixty (60) days, although the Law School reserves the right to exceed this time frame, with notice to the parties, in order to conduct a thorough investigation.

² For students, consult Student Disciplinary Procedures located in the Student Handbook. For faculty, consult the Faculty Regulations, and for staff, the progressive discipline process is applied.

I. Appeals

Appeals shall be pursued through the appeal process set forth in the appropriate disciplinary procedures used to pursue sanctions.

X. **RETALIATION**

Retaliation is any action that could discourage an individual from reporting, filing, or supporting a complaint. Retaliation is unlawful and prohibited by this Policy. Therefore, the Law School will take every step necessary to protect the parties and any witnesses against retaliation for filing a complaint under this Policy or for participating in the investigation of a complaint.

If you believe that you are the subject of retaliation in violation of this Policy because of making a report or a complaint or assisting in an investigation, you must contact the Title IX Coordinator promptly for action.

Disciplinary action will be pursued against any employee, faculty member, or student who retaliates against any individual who complains of, witnesses, or participates in the investigation of sexual misconduct.

XI. **CONSENSUAL RELATIONSHIPS**

The Law School strongly discourages romantic or sexual relationships between employees and supervisors, between junior and senior faculty members, between faculty members and students, between administrators/staff and students, and between students who supervise other students such as on Moot Court and Journals. Even when both parties have consented, the relationship can give rise to problems that compromise the professional integrity of faculty, staff, and students, and may generate charges of unfair treatment or sexual harassment. Even when the parties believe that the relationship is consensual, such consent is unclear especially in situations where one individual has greater power or authority over the other or within the Law School.

If you are engaged in a romantic or sexual relationship with someone whom you instruct, supervise, evaluate, or advise, it is your professional responsibility to disclose the relationship to the President and Dean of the Law School and discontinue the relationship of authority. The discontinuation may require changing work or class schedules. Information disclosed in these discussions shall be treated as confidential unless such information violates this Policy or another School policy. In such cases, disclosure to others shall be made only on a need-to-know basis. Failure to disclose will be considered a violation of this Policy and may result in disciplinary action.

In the event you are the subject of a legal complaint of sexual misconduct, and the facts show that you were engaged in a romantic or sexual relationship with someone whom you instructed, supervised, evaluate, or advised, the Law School, under its indemnification policy, may decline to

assist you in your legal defense against the allegation(s), and you, not the Law School, will bear all litigation costs or fees associated with your legal defense.

XII. RECORD KEEPING

For complaints/reports involving students: All documentation, whether in paper, electronic, or in other forms of media, related to a complaint, investigation, and resolution involving a student is protected by Family Educational Rights and Privacy Act of 1974 (“FERPA”) (20 U.S.C. § 1232g; 34 CFR Part 99) and is not available to the public. Such information may only be disclosed upon the student’s written consent; as compelled by a court or law enforcement or other government agency; or under Section 99.31 (a) (13) of FERPA, which permits disclosure to the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. Such disclosure may only include the final results of the disciplinary proceeding conducted by the Law School with respect to the alleged crime or offense. The final results may be disclosed regardless of whether the Law School concluded that a violation was committed. For more information on the Law School’s FERPA Policy, please refer to the Brooklyn Law School Policy Page at www.brooklaw.edu/policies; or the BLS Connect Policy Page at <https://blsconnect.brooklaw.edu/administrative/policies/Pages>.

Non-identifying information may be shared with the Director of Public Safety in order to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. A complainant’s name will never be published, nor does the Law School house identifiable information regarding victims in the Daily Crime Log or online.

For complaints/reports involving employees/third-party: All documentation, whether in paper, electronic, or in other forms of media, related to an employee or third-party’s complaint, investigation, and resolution will not be made available to the public unless compelled by a court or a law enforcement or other government agency, or otherwise permissible under applicable privacy laws.

Student and employee complainants may request that directory information be removed from the Law School’s public sources by contacting the following individuals:

For Students - Christian Bester, Registrar and FERPA Officer at Brooklyn Law School, 111 Livingston Street, 21st Floor, Brooklyn, New York 11201
chris.bester@brooklaw.edu.

For Employees - Matthew Burns, Director of Human Resources at Brooklyn Law School 111 Livingston Street, 21st Floor, Brooklyn, New York 11201
matthew.burns@brooklaw.edu.

Directory information for students includes, but is not limited to: name; address; email address; photograph; major field and enrollment status. Directory information for an employee may include name; department; office telephone number; and photograph.

All documentation related to a sexual misconduct report or complaint shall be retained in a secure and confidential manner for six (6) years plus the current year after the employee or student separates from the Law School, unless the documents must be preserved beyond the retention period for litigation purposes. All documentation related to a disciplinary action resulting in the imposition of disciplinary sanctions shall become part of the respondent student's permanent education record and the respondent employee's personnel record. For students, disciplinary charges and the disposition of those charges shall be reported on bar admission applications that request such information. For employees, disciplinary dispositions may be reported to potential employers who request such information during background checks, such as in law enforcement.

XIII. REPORTING SEXUAL MISCONDUCT AS A CRIME

A. Law School's Assistance

If requested, the Title IX Coordinator will assist complainants in:

1. Filing a criminal complaint against the accused;
2. Ensuring access to a sexual assault forensic examination;
3. Obtaining an Order of Protection from Family Court or Criminal Court, or if the accused resides outside of New York State, the equivalent of a protective or restraining order; and
4. Contacting and assisting local law enforcement when an Order of Protection is violated.

The Law School must report all violent felonies or missing person situations involving students who reside in Law School-owned or operated housing to local law enforcement within twenty-four (24) hours of the incident. Sexual assaults involving a complainant who resides in Law School-owned or operated housing must be reported to local law enforcement unless the complainant objects. All other students who do not reside in Law School-owned or operated housing and staff who are subjected to sexual misconduct are encouraged to report potential crimes of sexual misconduct (either by a person known to you or a stranger) to the New York City Police Department and/or the New York State Police, and/or the Law School's Director of Public Safety, and/or the Title IX Coordinator.

Criminal and Law School investigations are separate and may be conducted simultaneously. (Please refer to Appendix B on the distinctions between the criminal and Law School processes). The Law School will not wait for the completion of a criminal investigation in order to respond, although short delays may be allowed for law enforcement agencies to conduct their investigation.

B. A Victim's Rights Under New York State Penal Law

In New York, victims of sexual assault, domestic violence, dating violence, or stalking have the following rights under the **McKinney's Executive Law; Article 23, Fair Treatment Standards for Crime Victims § 640 – Fair Treatment Standards for Crime Victims** to:

1. Ensure that crime victims routinely receive emergency social and medical services as soon as possible and are given information pursuant to section six hundred twenty-five-a of this chapter on the following:
 - (a) availability of crime victim compensation;
 - (b) availability of appropriate public or private programs that provide counseling, treatment or support for crime victims, including but not limited to the following: rape crisis centers, victim/witness assistance programs, elderly victim services, victim assistance hotlines and domestic violence shelters;
 - (c) the role of the victims in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and
 - (d) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.;
2. Ensure routine notification of a victim or witness as to steps that law enforcement officers or district attorneys can take to protect victims and witnesses from intimidation; and
3. Ensure notification of victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims, if such persons provide the appropriate official with a current address and telephone number, either by phone or by mail, if possible, of judicial proceedings relating to their case, including:
 - (a) the arrest of an accused;
 - (b) the initial appearance of an accused before a judicial officer;
 - (c) the release of an accused pending judicial proceedings; and
 - (d) proceedings in the prosecution of the accused including entry of a plea of guilty, trial, sentencing, pre-sentencing specific information regarding the right to seek restitution and reparation, and where a term of imprisonment is imposed, specific information shall be provided regarding maximum and minimum terms of such imprisonment.

C. Orders of Protection and the New York State Family Protection Registry

1. Orders of Protection

In New York State, legal orders of protection can be issued by Criminal Court, Family Court and Supreme Court. Provisions that might be contained in an order of protection include: (1) directing the abuser to stop the abusive behavior toward the victim, the victim's children, and others; (2) directing the abuser to cease contact (phone calls, e-mail, letters, etc.) with the victim; and (3) limiting where an abuser can go (such as near a school).

Family Court can issue orders of protection that can be in effect for a maximum of two (2) years or, with aggravating circumstances, for a maximum of five (5) years. Violation of a valid order of protection constitutes an aggravating circumstance. Criminal Court orders of protection vary according to the severity and type of the offense: two (2) years for violations; five (5) years for misdemeanors; eight (8) years for felonies; and six (6) years for misdemeanor sex crimes; and ten (10) years for felony sex crimes. Orders of protection are valid in every county in New York State and are honored in every State throughout the country through the Full Faith and Credit Clause of the U.S. Constitution.

The Title IX Coordinator will assist complainants in obtaining an Order of Protection.

2. New York State Family Protection Registry

The New York State Family Protection Registry was created as part of the Family Protection and Domestic Violence Intervention Act of 1994. The Registry, which became operational in October 1995, is the repository for orders of protection issued pursuant to articles four, five, six and eight of the Family Court Act; Section 530.12 of the Criminal Procedure Law, Sections 240 and 252 of the Domestic Relations Law; and all arrest warrants issued pursuant to Section 827 of the Family Court Act and Article 120 of the Criminal Procedure Law. The Registry was developed by the NYS Unified Court System in collaboration with the New York State Police, and links to the New York Statewide Police Information Network (NYSPIN). The Registry is a historical record; orders of protection remain in the database even after they expire. The Registry is helpful in locating outstanding or expired orders of protection against a person who may pose a threat of sexual misconduct, domestic violence, dating violence, and/or stalking.

XIV. RISK REDUCTION

The following strategies can be used to reduce one's risk of being subjected to sexual misconduct. Information is also available at the website of the Rape, Abuse, & Incest National Network, www.rainn.org:

1. **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
2. **Avoid isolated areas.** It is more difficult to get help if no one is around.
3. **Walk with purpose.** Even if you don't know where you are going, act like you do.
4. **Trust your instincts.** If a situation or location feels unsafe or uncomfortable, leave.
5. **Try not to load yourself down** with packages or bags as this can make you appear more vulnerable.
6. **Make sure your cell phone is with you** and charged and that you have cab money.
7. **Don't allow yourself to be isolated** with someone you do not trust, or you do not know.
8. **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.

9. **When you go to a social gathering, go with a group of friends.** Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
10. **Trust your instincts.** If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
11. **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, get a new one.
12. **Don't accept drinks from people you don't know or trust.** If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
13. **Watch out for your friends, and vice versa.** If a friend seems out of it, too intoxicated for the amount of alcohol they've had, or is acting out of character, get your friend to a safe place immediately.
14. **If you suspect you, or a friend, have been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).** Be explicit with doctors so they can give you the correct tests (you will need a urine and possibly other tests).
15. **If you need to get out of an uncomfortable or scary situation here are some tips:**
 - a. **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
 - b. **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
 - c. **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
 - d. **Lie.** If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use include: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
16. **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
17. **If you and/or the other person have been drinking,** you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

XV. RESOURCES

A. SAFE Centers of Excellence

Sexual Assault Forensic Examiner (SAFE) services are considered the best and most victim-centered approach to acute health care for sexual assault patients. The New York State Department of Health certifies Emergency Departments as SAFE Centers of Excellence.

SAFE Centers provide sexual assault patients with:

- 1) Sensitive, victim-centered, medical and forensic health care performed by a specially trained Sexual Assault Forensic Examiner (SAFE) — a SAFE is a healthcare provider such as a doctor, nurse, physician’s assistant or nurse practitioner;
- 2) Care that is timely, compassionate, and patient-centered, in a designated and appropriately equipped private room;
- 3) Assurance about the quality of collection, documentation, preservation and custody of physical evidence by utilizing a trained and New York State Department of Health-certified sexual assault forensic examiner to perform exams. These examiners are available to provide expert testimony if patients choose to report crimes to law enforcement;
- 4) Psycho-social and legal support by a specially trained Rape Crisis Advocate or Counselor; and
- 5) Reliable referrals to mental and physical health care and follow-up services.

Hospitals and Organizations in New York City with SAFE Centers:

Manhattan

- St. Luke’s Hospital (CHP)
Amsterdam Ave & W 113th St
- Mount Sinai West Hospital
1000 10th Ave
- Mount Sinai Beth Israel
First Ave at 16th Street
- Lenox Health Greenwich Village
30 7th Ave
- Metropolitan Hospital Center
1901 1st Ave
- Safe Horizon—Manhattan Community Office
100 East 122nd St, 1st Fl.
- Manhattan Family Justice Center
80 Centre St, 5th Fl.

Brooklyn

- SUNY Downstate Medical Center
450 Clarkson Ave
- Woodhull Medical and Mental Health Center (HHC)
760 Broadway
- Safe Horizon Counseling Center
50 Court St, 9th Fl.

Bronx

- North Central Bronx (HHC)
E 210th St & Kossuth Ave
- Safe Horizon—Bronx Community Program Office
80 East 181st St, Basement Level
- Bronx Family Justice Center
198 East 161st St, 2nd Fl.

Queens

- Queens Hospital Center (HHC)
82-68 164th St
- Safe Horizon—Queens Community Program Office
63-49 Alderton Street, 2nd Fl.
- Queens Family Justice Center
- 126-02 82nd Ave

Staten Island

- Safe Horizon—Staten Island Community Program Office
30 Bay Street, 5th Fl.
- Staten Island Family Justice Center
126 Stuyvesant Place

For free, confidential help 24/7, contact the National Sexual Assault Hotlines (800.656.HOPE or online.rainn.org).

B. On-Campus Resources

| RESOURCE | ADDRESS | PHONE NUMBER |
|---------------------------|--|---|
| Title IX Coordinator | 250 Joralemon Street, Room 610B | 718-780-0377; 929-253-7510 (after business hours) |
| Director of Public Safety | 250 Joralemon Street, Room 901 | 718-780-7942 |
| Office of Student Affairs | 250 Joralemon Street, Deans' Suite, 9 th Floor | 718-780-0679 |
| Human Resources | 111 Livingston Street, 21 st Fl. | 718-780-0305 |

In addition, Brooklyn Law School offers students a free, confidential consultation with mental health therapists in our area. You can view the full list of therapists here:

<https://blsconnect.brooklaw.edu/studentlife/health/Pages/default.aspx#tabs2>

C. Off-Campus Resources

I. Rape Crisis and Domestic/Intimate Partner Violence Services:

| | |
|---|--|
| NYC Police Emergency Number | 911 |
| NYPD Sex Crimes Hotline | 212-267-RAPE (7273) |
| Brooklyn DA's Special Victims Bureau | 718-250-3820 |
| Local Precinct (84th) 301 Gold Street | 718-875-6811 |
| NYC Family Justice Center, Brooklyn | 718-250-5111 |
| New York City Gay and Lesbian Anti-Violence Project, http://www.avp.org/ 24 -hour English/Spanish Crime Victims Hotline | 212-714-1141 1-866-604-5350 (TDD) |
| NYU Langone Cobble Hill, 83 Amity Street | 646-754-7900 |
| Safe Horizon, www.safehorizon.org | 1-800-621-4673 |
| 24 Hour Crime Victims Hotline | 1-866-689-4357 |
| 24 Hour Domestic Violence Hotline | 1-800-621-4673 |
| Rape Crisis and Sexual Assault Hotline | 212-227-3000 |
| Counseling Centers Services by Appointment | 347-328-8110 |
| Safe Horizon Alternatives to Violence Program | 718-834-7471 |
| STEPS: Alternatives to Incarceration Programs for Adolescent Male Batterers | 212-662-7914 |
| St. Luke's Roosevelt Crime Victims Treatment Center | 212-523-4728 |
| National Domestic Violence Hotline | 1-800-799-7233 1-800-787-3224 (TDD) |

SurvJustice: <http://www.survjustice.org/legal.html>.

Legal Momentum: <http://www.legalmomentum.org>.

NYSCASA: <http://nyscasa.org>; or **NYSCADV:** <http://www.nyscadv.org>.

Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>.

GLBTQ Domestic Violence Project: <http://www.glbtqdv.org>.

RAINN: <https://www.rainn.org/get-help>.

Please note that these Hotlines are for crisis intervention, resources, and referrals. They are not reporting mechanisms; therefore, these Hotlines do not provide information to the Law

School regarding an incident. The Law School's Title IX Coordinator should be contacted to report an incident.

II. Programs for Abusers

| | |
|---|--------------|
| Safe Horizon Alternatives to Violence Program | 718-834-7471 |
| STEPS: Alternatives to Incarceration Programs for Adolescent Male Batterers | 646-315-7652 |

III. Legal Assistance

| | |
|--|----------------|
| National Crime Victims Bar Association | 202-467-8716 |
| NYS Crime Victims Board | 1-800-247-8035 |
| LawHelp.org | |
| Connect, Inc. (provides legal information for domestic violence survivors) | 212-683-0605 |

D. External Remedies

Sexual misconduct is not only prohibited by Brooklyn Law School, is prohibited by state, federal, and, where applicable, local law. Aside from the internal process set forth herein, individuals may also choose to pursue legal remedies with the following governmental entities at any time:

U.S. Department of Education

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov.

U.S. Department of Education
Office for Civil Rights
32 Old Slip, 26th Floor
New York, NY 10005-2500
Telephone: (646) 428-3800
Facsimile: (646) 428-3843
Email: OCR.NewYork@ed.gov

New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State regarding sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.

Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination. An individual may not file with DHR if they have already filed an HRL complaint in state court.

Complaining internally to the Law School does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 [appropriate other contact info], www.dhr.ny.gov

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

United States Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.) with regard to employees. An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at www.eeoc.gov or via email at info@eeoc.gov

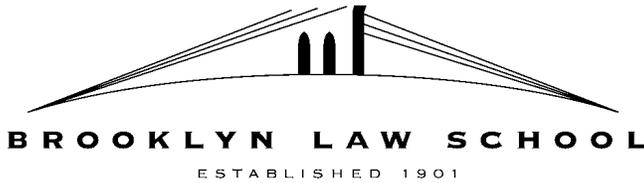
If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees/students who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

XVI. DISCLAIMER

This Policy does not form an agreement of any kind. It was created to provide information to the Brooklyn Law School community and may be altered, modified, or rescinded at the discretion of Brooklyn Law within the applicable law.



APPENDIX A

NOTICE OF RIGHTS REGARDING SEXUAL MISCONDUCT COMPLAINTS

Members of the Brooklyn Law School community who experience sexual assault, sexual harassment, domestic violence, dating violence, stalking, or any other form of sexual misconduct have the following rights:

1. To make a report to the local law enforcement and/or the state police;
2. To pursue an Order of Protection with the Law School's assistance;
3. To have disclosures of sexual assault, dating violence, domestic violence and stalking treated seriously;
4. To make a decision about whether or not to disclose a crime or violation and participate in the Law School disciplinary processes and/or criminal justice process free from pressure from the Law School;
5. To be informed of the protocols for confidential reporting;
6. To report experiences of sexual misconduct to which they were subjected while under the influence of alcohol or drugs, without being subject to discipline;
7. To participate in a process that is fair, impartial and provides adequate notice and meaningful opportunity to be heard;
8. To be treated with dignity and to be provided with information regarding counseling, healthcare, advocacy, and other relevant support;
9. To be free from any suggestion that the reporting individual is at fault when these crimes and violations were committed, or should have acted in a different manner to avoid such crimes or violations;
10. To obtain interim measures pending investigation and disciplinary proceedings such as no-contact orders and academic or living adjustments;
11. To describe the incident to as few Law School representatives as practicable and not be required to unnecessarily repeat a description of the incident;
12. To be protected from retaliation by the Law School, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the Law School;
13. To have access to at least one level of appeal of a determination;

14. To be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the Law School's disciplinary proceedings including all meetings and hearings related to such proceedings;³ and
15. To be free from discrimination and the right to practice of religion without interference by the investigative, criminal justice or disciplinary proceedings of the Law School.

The *Brooklyn Law School Sexual Misconduct Policy* is available on the Brooklyn Law School Policy Page at www.brooklaw.edu/policies; and the BLS Connect Policy Page at <https://blsconnect.brooklaw.edu/administrative/policies/Pages>.

Questions regarding the Sexual Misconduct Policy and this Notice of Rights should be directed to:

Louise Cohen, *Director of Equal Opportunity and Title IX Coordinator*
250 Joralemon Street, Room 930
Brooklyn, New York 11201
Office: (718) 780-0377 After Business Hours: (929) 253-7510
louise.cohen@brooklaw.edu

³ The advisor's role is not to act as a representative of or speak on behalf of the complainant or respondent, or take action that interferes with the integrity of the investigation and the disciplinary process.

An Explanation of Distinctions Between the Processes Under New York State Penal Law and the Brooklyn Law School Sexual Misconduct Policy

| | Criminal Justice System | Brooklyn Law School Sexual Misconduct Policy |
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| Goals. | Public safety; deterrence; and punishment. | Education; safety; prevention, redress, supportive campus environment. |
| Governing Law. | New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence. | Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law Sections 129-A and 129-B and BLS policies, including the Sexual Misconduct and Anti-Harassment and Discrimination Policies which trigger an investigation. |
| How to report and whether there must be action once a report is made. | Crimes involving sexual misconduct may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury. | Victims may disclose sexual misconduct to “responsible employees” which will trigger an investigation. Every effort will be made to ensure privacy to the extent consistent with the institution’s obligation to provide a safe educational environment. Disclosures made to confidential resources, such as clergy or a mental health professional, will not trigger an investigation. When a report is made to the Title IX Coordinator, the Coordinator will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community. |
| Who investigates? | Police or other law enforcement officials. | The Title IX Coordinator. |
| Procedures | <u>See</u> Governing Law. Procedures established by police departments, prosecutors’ offices, etc. | The procedures are established by the Brooklyn Law School Sexual Misconduct Policy. |
| Standard of Evidence. | Crimes must be proven “Beyond a Reasonable Doubt” | A violation of disciplinary rules must be found by a “Preponderance of the Evidence” (more likely than not) |
| Confidentiality. | Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public. | Confidential resources are available off-campus, such as clergy and mental health professionals, but a disciplinary proceeding requires that relevant information be shared with those involved. |
| Privacy. | Criminal trials must be public. | Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the Law School, the parties, and pursuant to law. |
| Who are the parties? | The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution. | The institution and the respondent can be the parties. Otherwise, the reporting individual and accused/respondent are the parties. |
| Participation in the process. | In limited circumstances, a criminal prosecution can proceed without the | Reporting students cannot be required to participate in the investigative and disciplinary process. However, the Law School |

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| | participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt. | will be limited in its ability to respond if a reporting individual does not participate. |
| Who initiates the proceedings? | A prosecutor, acting on behalf of the state (or the United States in federal cases). | The Law School initiates proceedings. |
| Testimony. | In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses. | The rules are established by the Law School. The Law School may provide alternative approaches that permit complainants to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel or investigator. |
| Role of attorneys. | Both the state and the defendant are represented by counsel; counsel may question witnesses. | The attorney's role is limited to quietly speaking with their clients, passing notes, or conferring privately. |
| Mental Health and Sexual History. | In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted. | Generally, not admissible, but Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact-finding phase of the disciplinary process. |
| Possible Results. | If a prosecution takes place, the defendant may <ul style="list-style-type: none"> • plead guilty or "no contest" • have the case dismissed by the judge (on legal grounds) • be found "guilty" or "not guilty" by a judge or jury | In cases that do not involve sexual assault, the Law School permits mediation or similar procedures if parties agree. If there is a formal proceeding, the respondent may be found to have violated the Law School's rules or policies. Respondents may also accept responsibility for violating a rule or policy before a finding by an adjudicator. |
| Sanctions. | An individual found guilty may be fined, given probation, and/or imprisoned. In some courts, alternative sanctions are sometimes used. | An individual found to have violated Law School policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the Law School. |

