

# RELAY / GSE

## GENDER-BASED MISCONDUCT POLICY AND PROCEDURES

*Developed in accordance with Title IX Higher Education Amendments, the Violence Against Women Act, the Clery Act, New York's Enough is Enough, and the Illinois Preventing Sexual Violence in Higher Education Act*

Updated September 2018

### **Gender-Based Misconduct Policy**

Relay does not tolerate gender-based discrimination and harassment, including sexual assault and all other forms of gender-based misconduct. Title IX, the Violence Against Women Act (VAWA), and state laws such as the New York Education Law Article 129-B (Enough is Enough) and the Illinois Preventing Sexual Violence in Higher Education Act further require that Relay take specific steps to stop gender-based misconduct, remedy its effects, and prevent its recurrence. Sexual harassment, sexual assault, sexual exploitation, gender-based harassment, stalking, domestic violence, and dating violence are all forms of gender-based misconduct and will not be tolerated at Relay. These behaviors do not have to be sexual in nature to be considered gender-based misconduct. Similarly, Relay will not tolerate harassing, violent, intimidating, or discriminatory conduct by any member of the Relay community.

The goal of this policy is to create a community not impaired by gender-based misconduct of any kind by providing definitions of gender-based misconduct, avenues for those affected by gender-based misconduct to obtain assistance, and a prompt and equitable complaint-and-investigation procedure for all members of the Relay community.<sup>1</sup> For the purposes of this policy, the Relay community includes, but is not limited to, students, faculty members, staff, applicants, vendors, visitors, and guests.

### **Jurisdiction**

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This policy applies to conduct occurring on campus, during any Relay class, program or activity on or off campus or abroad, including academic programs, admissions, recruitment, financial aid, employment, as well as certain off-campus conduct perpetrated or suffered by Relay students, faculty members, employees, or third-party member of the Relay community.

### **Title IX Coordinator**

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The Title IX coordinator is responsible for ensuring compliance with Title IX, overseeing training and education, and gathering and reporting information to the campus community. The Title IX coordinator is available to

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<sup>1</sup> For other discriminatory conduct not covered by this policy, please refer to the Nondiscrimination Policy and Harassment Policy as appropriate in the Student Handbook. If students have any questions about which policy and procedure may apply, please contact their Dean's Office.

answer any questions related to this policy, definitions, procedures, resources, reporting options, and remedial and safety measures.

Relay's Title IX coordinator is: Shemanne Davis, 40 W. 20th St., 7th Floor, New York, NY 10011, [sdavis@relay.edu](mailto:sdavis@relay.edu).

Relay encourages individuals to report all gender-based misconduct immediately to the Title IX coordinator, an appropriate designee(s), or any other Relay staff member. Relay will fully and promptly investigate all allegations of misconduct and will take appropriate action.

Inquiries concerning the application of Title IX may also be directed to: US Department of Education Office for Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue, SW, Washington, DC 20202-1100, (800) 421-3481, [ocr@ed.gov](mailto:ocr@ed.gov).

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## Retaliation

Relay will not tolerate retaliation. Retaliation is prohibited by Title IX and Relay policy. Any attempt by a member of, or visitor to, the Relay community to intimidate, penalize, or threaten a person who reports or who is otherwise involved in a report of discrimination, misconduct, or harassment is strictly prohibited. Any person found to have participated in an act of retaliation will be disciplined in accordance with Relay's Code of Conduct. In some cases, knowingly making a false report of discrimination or harassment can amount to retaliation.

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## Definitions

### Prohibited Behavior

Gender-based misconduct encompasses a broad range of behaviors including sex and/or gender discrimination, which may or may not be sexual in nature. Sexual harassment, sexual assault, and intimate partner violence such as domestic violence, dating violence, and stalking are other types of gender-based misconduct prohibited by law and this policy. Gender-based misconduct can be perpetrated by anyone regardless of gender identity and can occur between people of the same or different sex or gender.

Examples of gender-based misconduct include pressure to date or engage in a romantic or intimate relationship; unwelcome touching, kissing, or hugging; inappropriate remarks about a person's gender, gender expression, or sexual orientation; inappropriate sexual innuendo or humor; unnecessary or unwelcome references to parts of the body; and forced sexual activities.

### Definitions Pertaining to Gender-Based Misconduct

**Sexual Harassment** is a type of sex or gender-based discrimination and is prohibited by Title IX and by Relay. Sexual harassment may include unwelcome sexual advances, requests to engage in sexual conduct or for sexual favors, and other behavior of a sexual nature where:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment;
- Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual; and/or

- Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or demeaning educational or employment environment.

Sexual harassment can be verbal, visual, or physical, and it can occur regardless of the relationship, position, gender, or sexual orientation of the parties involved. It can be overt (e.g., in a suggestion that a person can get a higher grade by submitting to sexual advances), or implied from conduct or circumstances. Sexual harassment can also consist of unwelcome attempts to transform an educational or professional relationship into a personal one. It may include severe, persistent and pervasive unwelcome sexual flirtation or inappropriate or derogatory language, including jokes involving individuals or classes of people, or persistent requests for dates. A single incident or few incidents may not necessarily amount to harassment, but a single extreme incident could constitute prohibited discrimination or harassment. Sexual harassment can also include the display of offensive materials, unwelcome physical contact, or serious physical abuse such as sexual assault or rape.

**Sexual Assault** is any nonconsensual, intentional physical contact of a sexual nature. Sexual assault includes:

- **Nonconsensual Sexual Contact:** Any intentional sexual touching, however slight and with any object or body part, that is without consent (as defined in this policy) and/or by threat, intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. This includes intentional contact with breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner.
- **Rape:** the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without affirmative consent or where the victim is incapable of affirmative consent due to mental or physical incapacity. Statutory rape is non-forcible sexual intercourse with a person who is under the statutory age of consent. The age of consent varies by state. In New York and Illinois, the age of consent is 17.

**Domestic Violence** may include violent acts by a current or former spouse; by a person with whom the victim shares a child in common; by a person who is or has cohabitated with the victim as a spouse; by a person similarly situated to a spouse; between a parent and child; between members of the same household in an intimate relationship; or by any other person similarly situated. Domestic violence can be physical, sexual, emotional, or economic in nature.

**Dating Violence** can be violence or abusive behavior used by one partner to gain or maintain control over another partner. It can be violence committed by a person who is or has been in a social, romantic or intimate relationship with the victim. The existence of such a relationship will be determined by factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

**Intimidation** is implied threats or acts that reasonably cause another to fear for his/her safety or well-being.

**Stalking** is unwanted or obsessive attention by an individual or group toward a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress. Stalking may include the monitoring of an individual online via social media, email, or other technology. It may also include unwanted observation or surveillance.

**Affirmative Consent (“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. This definition does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act;
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol;
- Consent may be initially given but withdrawn at any time;
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent;
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm;
- Consent cannot be inferred by an individual’s manner of dress;
- When consent is withdrawn or can no longer be given, sexual activity must stop; and
- The age of consent varies by state. According to New York and Illinois law, children under 17 years of age cannot legally consent to sex or sexual contact with an adult (i.e., someone who is 17 years of age or older). Any sexual contact in New York and Illinois between a child under 17 and an adult is a crime, and any such illegal behavior between Relay students under 17 and a Relay employee or employee of a contracted service provider to Relay will be reported to an appropriate law enforcement agency. Other jurisdictions may have different standards, and any illegal behavior in such jurisdiction also will be reported to the appropriate law enforcement agency.

**Incapacitation** occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Evaluating incapacitation requires an assessment of an individual’s:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and
- Level of consciousness.

An individual is in violation of this policy if they engage in sexual activity with a person the individual knows or reasonably should know is incapable of making a knowing, reasonable decision about whether to engage in sexual activity.

**Confidentiality** may be offered by an individual who is not required by state or federal law to report known incidents of sexual assault or other crimes to institution officials. For a list of confidential resources at Relay, please see [Appendix A](#). Members of Relay faculty and staff are mandatory reporters and cannot offer confidentiality, although they can offer privacy to the extent appropriate.

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law. Privacy means that a person will not disclose information unless necessary to comply with this policy and applicable laws.

## **Alcohol and/or Drug Use Amnesty**

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The health and safety of all students at Relay is of utmost importance. Relay recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including, but not limited, to domestic violence, dating violence, stalking, or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Relay strongly encourages students to report all incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Relay or law enforcement will not be subject to action for violations of Relay's 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. Relay also reserves the right to grant amnesty for violations of Relay policies or procedures in additional circumstances.

## **Safe Bystander Interventions**

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Observers of a sexual assault or other types of gender-based misconduct such as domestic violence, dating violence, or stalking, may be able to help the victim. However, it is important that students do so in a positive manner and in a way that keeps students and the victim safe. Appropriate interventions will depend on the situation. Safe and appropriate options for bystanders may include calling the public-safety office in violent or potentially violent situations, intervening if students believe someone is in a potentially uncomfortable or unsafe situation, and/or encouraging the target of such conduct to report the incident and seek support.

It is imperative that bystanders report sexual assault, harassment, and other forms of gender-based misconduct, even if those involved in reporting the alleged misconduct may be violating other Relay policies. Relay expects that members of the community will look out for one another and immediately report troubling behavior so that Relay can put a stop to it, address the effects of the behavior, and prevent its recurrence.

## **Confidentiality**

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Any Relay official (e.g., faculty member, dean) informed of possible discrimination, harassment, or gender-based misconduct must report it to the Title IX coordinator.

However, should students prefer to report an incident confidentially, resources outside of Relay are available. Confidential resources are only those listed in [Appendix A](#) and in [Confidential Advisors](#).

Relay officers and employees who cannot guarantee confidentiality will maintain students' privacy to the greatest extent possible. The information students provide to a non-confidential resource will be shared only as necessary for the Title IX coordinator to investigate and/or seek a resolution.

If a reporting individual discloses an incident to a Relay employee who is responsible for responding to or reporting gender-based misconduct and does not wish to share their identity with certain parties or does not

consent to Relay’s initiation of an investigation, the Title IX coordinator will weigh that request against Relay’s obligation to provide a safe, nondiscriminatory environment for all members of its community.

All members of the Relay community should understand that, even if the complainant asks Relay not to pursue an investigation, or decides to attempt to resolve the situation informally, Relay may still need to investigate the allegations and address the conduct.

## Confidential Resources

Should students want to report or discuss an incident confidentially, resources outside of Relay are available. Confidential resources are only those listed in [Appendix A](#) and in [Confidential Advisors](#).

## Non-Confidential Resources

Should students want to report or discuss an incident without confidentiality, they should contact Relay’s Title IX coordinator, an appropriate designee(s), or any Relay faculty or staff member.

## Gender-Based Misconduct Procedures

The goal of this section is to describe Relay’s disciplinary process for addressing alleged violations of the Gender-Based Misconduct Policy. This describes how to report an incident of gender-based misconduct, individuals’ rights and responsibilities in the internal disciplinary process, and other important information about privacy, advisors, and interim measures. It then details the various resolutions available.

## Reporting Misconduct

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### Reporting Misconduct Internally

All members of the Relay community, including students, staff, faculty, vendors, and visitors who experience, witness, or hear about gender-based misconduct, including sexual harassment and sexual assault, are encouraged to immediately contact Relay’s Title IX coordinator, Shemanne Davis by email at [sdavis@relay.edu](mailto:sdavis@relay.edu). In an emergency, please call 911. There is no time limit on how long after an incident individuals can make a report of misconduct. However, Relay’s ability to respond to a report may be hindered by the length of time between the alleged misconduct and the report itself.

Once Relay is informed of alleged misconduct, the Title IX coordinator or a designee will notify the reporting individual and the respondent (hereby known as “parties”) of their rights. See [Appendix B](#) for Relay’s Students’ Bill of Rights<sup>2</sup>. The Title IX coordinator will help the parties navigate the formal complaint process, access appropriate medical, emotional, or academic services, discuss possible interim arrangements during the investigation and resolution phases, and answer individuals’ questions along the way. Relay will endeavor to promptly, thoroughly, and impartially investigate and resolve all complaints. Relay reserves the right to determine that there is a more appropriate Relay process for handling a matter and will advise the reporting party of the alternative process.

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<sup>2</sup> Many of the items outlined in the Students’ Bill of Rights will be applicable to any complainant of sexual misconduct and any respondent, even if not a Relay student.

Relay will attempt to resolve complaints within sixty days of receiving a report; however, that time frame may be adjusted depending on the allegations, parties involved, and time of year.

## **Reporting Misconduct to Law Enforcement**

If individuals have been the victim or target of a sexual assault or other type of gender-based misconduct, they may also contact the police in addition to Relay. Individuals do not have to file a report with the police. If requested, an advisor or representative from Relay will accompany individuals to the local police department to support individuals through the reporting process. Relay can also provide individuals with information about the process of obtaining a judicial order of protection.

In the event the reporting individual makes a report to the police, Relay will continue its own investigation into the alleged conduct, regardless of whether or not the police decide to pursue their own investigation. Relay will cooperate with police investigations and will honor and enforce any judicial no-contact, restraining, or protective orders the parties may obtain outside the Relay process.

To determine whether an act may meet certain criminal definitions in New York State, please see [Appendix C](#).

Gender-based misconduct may constitute a violation of both law and Relay policy. However, the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Conduct may constitute gender-based misconduct under Relay policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

The filing of a complaint of gender-based misconduct under this policy is independent of any criminal investigation or proceeding. Relay will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or take any necessary interim measures to protect the reporting individual and the Relay community. However, Relay may temporarily delay its investigation to enable law enforcement to gather evidence. Such delay should not last longer than 10 days except when law enforcement requests and justifies a longer delay.

## **Requesting Confidential Participation, That No Investigation Be Conducted, or Withdrawal from Process**

If a reporting individual wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, Relay must weigh that request against the institution's obligation to provide a safe, nondiscriminatory environment for all members of the Relay community, including the reporting individual.

If Relay honors the request for confidentiality, the reporting individual must understand that Relay's ability to meaningfully investigate the incident and pursue disciplinary action against the respondent may be limited. In some rare instances, it may be possible for Relay to maintain the reporting individual's confidentiality and still take responsive action, including disciplinary action if appropriate. For example, if any one of a number of individuals experienced or witnessed the conduct, it may be possible for Relay to proceed without revealing the name of the individual who made the report.

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 risk that the respondent will commit additional acts of gender-based misconduct or other violence, which may be assessed by evaluating:
  - Whether there have been other complaints about the same respondent;
  - Whether the respondent has a history of arrests or records from a prior school indicating a history of violence; and/or
  - Whether the respondent threatened further sexual violence or other violence against the reporting party or others.
- Whether the violence was committed by multiple individuals;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the reporting party is a minor;
- Whether Relay possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence); and
- Whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

If Relay determines that it cannot maintain a victim’s confidentiality, the Title IX coordinator will inform the reporting party prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling Relay’s response and as necessary to conduct a thorough investigation.

## Formal Resolution Process

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### Advisors

Both the complainant and respondent have the right to be accompanied by an advisor of choice throughout the formal resolution process. The advisor shall be a silent and nonparticipating observer. The advisor may communicate only with the advisee during proceedings in a non-disruptive manner. Relay’s investigator and hearing officer have the right at all times to determine what constitutes appropriate behavior on the part of an advisor and whether the person may remain at the proceedings. The Title IX coordinator and the hearing officer are to be notified at least 24 hours in advance if either party will be accompanied by an advisor.

### Confidential Advisors

Relay contracts with Guardian WorkLifeMatters to provide students with a variety of support services, including emergency and ongoing confidential support for issues related to gender-based misconduct.

To access these services, students can contact Guardian directly:

(800) 386-7055

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

Username: matters

Password: wlm70101

### Investigation

The complainant and respondent will have an equal opportunity to participate in the investigation and subsequent hearing with advisors of their choice, provide statements, submit additional information, and/or identify witnesses who may have relevant information. The respondent will be notified that an investigation is underway, including the date, time, location and factual allegations regarding the complaint, and will be

afforded the opportunity to independently meet with the Title IX coordinator or a designee to review this procedure and to have his/her rights explained. The Title IX coordinator or a designee will counsel both parties on the academic and emotional support services available. Relay will notify the parties in writing prior to any meeting that they are required or eligible to attend.

During an investigation, the Title IX coordinator or an appropriate designee may ask for written statements and other documents or evidence that may aid in the investigation. Therefore, it is important to preserve all evidence associated with the conduct or that individuals think might help others understand what happened. Such evidence can include text messages, social-media posts, photos, voicemails, emails, or items of clothing.

Both parties will be updated throughout the investigation process. At the close of an investigation, the Title IX coordinator or a designee will prepare an investigation report for the designated hearing officer's review and use in determining responsibility. Both parties will be provided access to the investigation report prior to its delivery to the hearing officer and be given an opportunity to correct inaccuracies that they believe exist. Every reasonable effort will be made to conduct the hearing within 10 business days of the Title IX coordinator's delivery of the investigation report to the hearing officer.

Relay may also, upon the conclusion of an investigation, determine that there is insufficient evidence to move forward with an adjudication process. In this case, the Title IX coordinator will notify both parties in writing.

## **Interim Measures**

During the investigation process, interim measures and/or accommodations will be discussed with the parties and implemented as may be appropriate. Possible interim measures available to individuals participating in this process may include, but are not limited to, academic and/or emotional support, a change in class schedule and/or work arrangements, providing an escort to campus activities, a voluntary leave of absence, or an interim suspension.

The parties may request that Relay issue a "no contact" order, which prohibits the parties from interacting and restricts one or both party's access to certain areas of campus. "No contact" orders are usually not indefinite and either party may request that the Title IX coordinator or a designee amend or revoke a "no contact" order. Intentional and/or repeated violations of a "no contact" order are a violation of this policy and may result in additional disciplinary charges and sanctions.

If a party is determined to pose a continuing threat to the health and safety of the community, the party may be subject to an interim suspension from Relay. The Title IX coordinator, in consultation with others as appropriate, will make the determination of whether or not to issue the interim suspension.

Either party may request review of the need for and/or modification of the terms of any interim measure, accommodation, or directive and can submit evidence in support of any such request. Requests for review/modification should be made to the Title IX coordinator. Requests will be handled within five business days, unless circumstances warrant extending that timeframe.

## **Mediation**

In some cases, the Title IX coordinator may determine that mediation could be an appropriate option after conducting an investigation. However, in cases that involve a potential sexual assault or other forms of sexual

violence or intimidation, domestic violence, dating violence, or stalking, mediation is not an appropriate option. Mediation will only be pursued with the consent of both parties. Any informal resolution would require the written agreement of the parties. Either party may stop the mediation process at any time.

## **Adjudication**

Once the investigation is complete, the matter will proceed to the decision-making phase before a hearing officer designated by Relay. The hearing officer will decide whether the accused is responsible, in whole or in part, for the alleged misconduct. Relay will choose the hearing officer based on the parties involved and the nature of the allegations. Relay may designate as a hearing officer an appropriate member of the Relay community or may designate an external adjudicator.

The parties have the right to challenge the choice of hearing officer if the appointment of a specific hearing officer creates a real or perceived conflict of interest. In the event either party challenges the choice of the hearing officer, they must notify the Title IX coordinator in writing within three days of receiving notification of the hearing. The Title IX coordinator shall make a final determination about the selection of the hearing officer.

The parties will be notified in writing of the date, time, and location of the hearing and the possible sanctions upon a finding that the respondent is responsible for all or part of the conduct. Both parties are encouraged to attend the hearing. Should either party decide not to attend the hearing, it will continue in his or her absence. Arrangements can be made for a party to appear at the hearing by video or audio conference should they feel uncomfortable appearing in person.

## **Witnesses**

At the hearing, both parties will have the opportunity to present witnesses and testimony. If either party desires to present witnesses, that party must submit a list of potential witnesses to the Title IX coordinator at least two days prior to the hearing. The relevance of the witnesses to the event(s) under investigation will be determined by the hearing officer. Individuals whose identity and knowledge of the events were ascertained as part of the investigation may also be called, at the discretion of the hearing officer. Any written statement or other information provided by a witness will be available for review by both parties at the hearing. The hearing officer and both parties may pose questions to the witnesses during the proceeding if the witnesses are present, but unless all parties and the hearing officer agree otherwise all questions will be asked by the hearing officer. Advisors may not pose questions to witnesses.

## **Impact Statements**

After the hearing, but before the hearing officer delivers his/her written determination of responsibility and sanction, if any, the parties will have the opportunity to submit an impact statement for the hearing officer's consideration with regard to sanction.

## **Determination**

The hearing officer will make a determination whether there has been a violation of Relay policy based on the preponderance of the evidence, which means they will determine whether it is more likely than not that the

alleged conduct occurred. The burden of proof will not be solely on any one party. The hearing officer will make a recommendation to the campus dean about an appropriate sanction.

The Title IX coordinator will simultaneously notify the parties of the hearing officer's determination, including a brief summary of the facts and rationale. Relay will also simultaneously notify the parties of the final decision regarding sanction(s), if applicable and the rationale for the sanction(s).<sup>3</sup>

## Sanctions

Possible sanctions include exclusion from certain Relay buildings, classes, and events; suspension, expulsions, and/or discharge from employment or enrollment. Individuals doing business with Relay or third-party vendors found to be in violation of this policy may be banned from Relay, and Relay will notify their respective employers of all charges and disciplinary outcomes. Visitors may be banned from Relay. Relay may impose other conditions, such as counseling, assessment, or participation in training.

## Transcript Notations

Individuals suspended or expelled for committing an act of sexual assault, domestic violence, dating violence, stalking, or a "violent crime," as defined by the Clery Act, will have a notation placed on their transcript as follows: "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." A transcript notation will not be removed prior to one year after conclusion of the suspension. Expulsion notations will not be removed in any case. If a finding of responsibility is vacated for any reason, a corresponding transcript notation will be removed.

If individuals who have been charged with a violation withdraw from Relay while charges are pending and decline to complete the disciplinary process the following notation will be placed on their transcript: "Withdrew with conduct charges pending."

## Appeal

Both parties have the right to appeal the outcome of the hearing officer's determination of responsibility and/or sanction. An appeal is appropriate only in certain circumstances, as follows:

1. A party believes a procedural error substantially impacted the original finding or sanction;
2. A party has substantial new evidence that was not available during the investigation or hearing and which would substantially impact the original finding or sanction; or
3. A party feels that the sanction is substantially outside the scope or guidelines set by Relay policy.

Requests for an appeal must be made in writing, include the grounds for appeal, and be received by the Title IX coordinator within five business days of receipt of notification of the hearing officer's decision.

Appeals of the hearing officer's decision will be heard by an appeal panel consisting of at least three members of the Relay staff and/or faculty. All appellate decisions are final. The appeal panel may affirm, modify or overrule the determination and/or the sanction in whole or in part, and may refer the matter back to the investigator or hearing officer for further action. Both parties will be informed of the outcome of any appeal.

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<sup>3</sup> In the case of an employee respondent found to have violated this policy, Relay reserves the right to withhold certain information on sanctions if the sanctions do not directly impact the complainant.

# APPENDIX A

## CONFIDENTIAL OFF-CAMPUS RESOURCES

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### NEW YORK STATE RESOURCES

#### NYC Family Justice Centers

<http://www.nyc.gov/html/ocdv/html/help/fjc.shtml>

The New York City Family Justice Centers are a program of the Mayor’s Office to Combat Domestic Violence.

The New York City Family Justice Centers provide criminal justice, civil legal, and social services all in one location for victims of domestic violence, elder abuse, and sex trafficking.

Victims can meet with a prosecutor, speak with a trained counselor, and apply for housing and financial assistance in just one place. Children age three and up can play in a children’s room while their parents receive services.

Services are free and available to all victims. Victims can get help at the centers no matter their immigration status or the language they speak. Staff can speak more than 30 languages and interpretation services are also available in many more languages.

#### **Manhattan**

Address: 80 Centre Street, Manhattan  
Phone: (212) 602-2800

#### **Brooklyn**

Address: 350 Jay Street, downtown Brooklyn  
Phone: (718) 250-5111 and select 6

#### **Bronx**

Address: 198 East 161st Street, Bronx  
Phone: (718) 508-1222

#### **Queens**

Address: 126-02 82nd Avenue, Kew Gardens  
Phone: (718) 575-4500

#### NYC Resource Directories

<http://www.nyc.gov/html/ocdv/html/help/directory.shtml>

<http://www.nyc.gov/html/ocdv/html/help/snapshot.shtml>

#### SAFE Centers for Excellence

[http://www.svfreenyc.org/survivors\\_emergency.html](http://www.svfreenyc.org/survivors_emergency.html)

Sexual Assault Forensic Examiner (SAFE) services are considered the best and most victim-centered approach to acute health care for sexual-assault patients. SAFE Centers provide sexual-assault patients with:

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.

Care that is timely, compassionate, and patient centered, in a designated and appropriately equipped private room.

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.

Psycho-social and legal support by a specially trained rape crisis advocate or counselor.

Reliable referrals to mental and physical health care and follow-up services.

### **Manhattan**

St. Luke’s Hospital (CHP)  
Amsterdam Ave. & W 113th St.

Roosevelt Hospital (CHP)  
1000 10th Ave.

Beth Israel-Petrie Campus (CHP)  
1st Ave & E 16th St.

Bellevue Hospital (HHC)  
1st Ave & E 27th St.

Harlem Hospital (HHC)  
506 Lenox Ave.

Metropolitan Hospital Center (HHC)  
1901 1st Ave.

Mount Sinai Medical Center (Mount Sinai)  
1 Gustave L Levy Pl.

New York Presbyterian Hospital-Columbia (NYP)  
622 W 168th St.

New York Presbyterian Hospital-The Allen Pavilion (NYP)  
5141 Broadway

New York Presbyterian Hospital-Weill Cornell (NYP)  
525 East 68th St

### **Brooklyn**

Woodhull Medical and Mental Health Center (HHC)  
760 Broadway

Coney Island (HHC)  
2601 Ocean Pkwy.

Kings County Hospital Center (HHC)  
451 Clarkson Ave.

### **Bronx**

North Central Bronx (HHC)  
E 210th St & Kossuth Ave.

Lincoln Medical and Mental Health Center (HHC)  
234 E 149th St.

Jacobi Hospital (HHC)  
Eastchester Rd. & Pelham Pkwy S.

### **Queens**

Queens Hospital Center (HHC)  
82-68 164th St.

Elmhurst Hospital (HHC)  
79-01 Broadway

### **Staten Island**

Richmond University Medical Center (IN)  
355 Bard Ave.

### **Other Resources**

NYC Gay and Lesbian Anti-Violence Project: (212) 714-1141

Safe Horizon: Rape and Sexual Assault Hotline: (212) 227-3000

Safe Horizon: NYC Domestic Violence Hotline: (800) 621-4673

NYS Domestic and Sexual Violence Hotline: (800) 942-6906

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## NATIONAL RESOURCES

### National Sexual Assault Hotline

(800) 656-HOPE (4673)

<https://www.rainn.org/about-national-sexual-assault-telephone-hotline>

### The National Domestic Violence Hotline

(800) 799-SAFE (7233)

<http://www.thehotline.org>

### National Center for Victims of Crime

Victim Service Helpline

(800) FYI-CALL (211-7996)

### Relay's Student Assistance Program

Guardian WorkLifeMatters

(800) 386-7055

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

Username: matters

Password: wlm70101

# APPENDIX B

## STUDENTS' BILL OF RIGHTS

Also known as Survivor's Bill of Rights

All students have the right to:

- Have support from Relay's Title IX coordinator (Shemanne Davis, [sdavis@relay.edu](mailto:sdavis@relay.edu)) in understanding their rights and options.
- Make a report to local law enforcement and/or state police with support from a Relay representative if requested.
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.
- Make a decision about whether or not to disclose a crime or violation, and participate in the judicial or conduct process and/or criminal justice process free from pressure from Relay.
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available.
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations.
- Describe the incident to as few Relay representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- Be free from retaliation by Relay, the accused and/or the respondent, 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 reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process.
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of Relay.
- Request interim protective measures and accommodations, including making changes to academic situations, obtaining and enforcing a campus-issued order of protection or no contact order, and obtaining an order of protection or no contact order in state court.

# APPENDIX C

## NEW YORK STATE CRIMINAL DEFINITIONS

The Violence Against Women Act (VAWA) requires Relay to include certain New York State (home of Relay's flagship campus) criminal definitions in its annual security report and also requires that these definitions be provided in other materials disseminated by Relay. Relevant New York definitions are set forth below.<sup>4</sup> Ultimately, the state district attorney will determine whether an act meets the criminal standard.

### Consent<sup>5</sup>

Lack of consent results from: forcible compulsion; or incapacity to consent; or 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. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in 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. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with developmental disabilities, or the office of alcoholism and substance abuse services, 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 department or hospital.

### Consent, Abbreviated

Clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity.

### Dating Violence

New York State does not specifically define "dating violence." However, under New York law, intimate relationships are covered by the definition of domestic violence when the crime is committed by a person in an "intimate relationship" with the victim. See [Family or Household Member](#) for definition of "intimate relationship."

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<sup>4</sup> For purposes of enforcing the expectations and requirements of this policy, sexual and gender-based misconduct is defined in the body of this policy.

<sup>5</sup> Relay defines consent as *affirmative consent* consistent with N.Y. Educ. Law § 6441.

## **Domestic Violence**

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 murder, criminal obstruction or breaching of blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of 16, 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 the act.

## **Family or Household Member**

Persons related by consanguinity or affinity; persons legally married to each other; persons formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether such persons are married or have lived together at any time; 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; 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;" 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. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

## **Parent**

Natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

## **Sexual Assault**

New York State does not specifically define sexual assault. However, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape.

## **Sex Offenses, Lack of Consent**

Whether or not specifically stated, it is an element of every sexual act committed without consent of the victim.

## **Sexual Misconduct**

When a person:

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

## **Rape in the Third Degree**

When a person:

- engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old;
- being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or
- 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 Second Degree**

When a person:

- being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or
- engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree the defendant was less than four years older than the victim at the time of the act.

## **Rape in the First Degree**

When a person engages in sexual intercourse with another person:

- by forcible compulsion; or
- who is incapable of consent by reason of being physically helpless; or
- who is less than 11 years old; or
- who is less than 13 years old and the actor is 18 years old or more.

## **Criminal Sexual Act in the Third Degree**

When a person engages in oral or anal sexual conduct:

- with a person who is incapable of consent by reason of some factor other than being less than 17 years old;
- being 21 years old or more, with a person less than 17 years old;
- 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 Second Degree**

When a person engages in oral or anal sexual conduct with another person:

- and is 18 years or more and the other person is less than 15 years old; or
- who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.

## **Criminal Sexual Act in the First Degree**

When a person engages in oral or anal sexual conduct with another person:

- by forcible compulsion;
- who is incapable of consent by reason of being physically helpless;
- who is less than 11 years old; or
- who is less than 13 years old and the actor is 18 years old or more.

## **Forcible Touching**

When a 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. It includes squeezing, grabbing, or pinching.

## **Persistent Sexual Abuse**

When a person commits a crime of forcible touching, or second- or third-degree sexual abuse within the previous 10-year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

## **Sexual Abuse in the Third Degree**

When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that:

- such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and
- such other person was more than 14 years old and the defendant was less than five years older than such other person.

## **Sexual Abuse in the Second Degree**

When a person subjects another person to sexual contact and when such other person is:

- incapable of consent by reason of some factor other than being less than 17 years old; or
- less than 14 years old.

## **Sexual Abuse in the First Degree**

When a person subjects another person to sexual contact:

- by forcible compulsion;
- when the other person is incapable of consent by reason of being physically helpless; or
- when the other person is less than 11 years old; or
- when the other person is less than 13 years old.

## **Aggravated Sexual Abuse**

For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.

## **Aggravated Sexual Abuse in the Fourth Degree**

When a person inserts a:

- foreign object in the vagina, urethra, penis, or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or
- 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 17 years old.

## **Aggravated Sexual Abuse in the Third Degree**

When a person inserts a foreign object in the vagina, urethra, penis, rectum, or anus of another person:

- (a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or
- causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

## **Aggravated Sexual Abuse in the Second Degree**

When a person inserts a finger in the vagina, urethra, penis, rectum, or anus of another person causing physical injury to such person by:

- forcible compulsion; or
- when the other person is incapable of consent by reason of being physically helpless; or
- when the other person is less than 11 years old.

## **Aggravated Sexual Abuse in the First Degree**

When a person subjects another person to sexual contact:

- by forcible compulsion; or
- when the other person is incapable of consent by reason of being physically helpless; or
- when the other person is less than 11 years old; or

- when the other person is less than 13 years old and the actor is 21 years old or older.

### **Stalking in the Fourth Degree**

When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

- 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
- 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
- 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.

### **Stalking in the Third Degree**

When a person:

- commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or
- commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
- with an 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
- 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 Second Degree**

When a person:

- commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, 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 weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

- commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
- commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or
- being 21 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
- commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

### **Stalking in the First Degree**

When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, they intentionally or recklessly cause physical injury to the victim of such crime.