Sexual Misconduct and Violence Policy

Policy Statement:
The New School is committed to creating and sustaining a university environment in which students, faculty, and staff can study and work in an atmosphere that is open, healthy, safe, and unhampered by discrimination. Consistent with this commitment and in keeping with federal and state law requirements, it is the policy of the university to establish an environment where there is zero tolerance for sexual misconduct and sexual violence. Non-consensual sexual misconduct and violence can be traumatizing and detrimental to a person's learning experience and total health and has no place in our community. The New School will take any and all action needed to prevent, correct, and discipline behavior that violates this standard of conduct. Due diligence will be used to ensure the disciplinary review and any appropriate action be taken as expeditiously as possible. The university will make every effort to provide assistance and support to the victim of sexual misconduct in a thorough, consistent, and sensitive manner. Moreover, this policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

Sexual misconduct and violence are serious problems on college campuses throughout the country. To address these concerns, the university provides educational and preventive programs, resources for individuals dealing with sexual misconduct and violence, and accessible methods of complaint resolution.

Definitions

I. Sexual Misconduct
   • Sexual Contact includes any non-consensual sexual contact that is:
     o intentional sexual touching
       ▪ Intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body part
       ▪ Any other intentional bodily contact in a sexual manner
     o however slight
     o with any object
     o by an individual or group upon an individual or group
     o that is without consent and/or by force
   
   • Sexual Assault is non-consensual sexual intercourse.
     o Any sexual intercourse
       ▪ Vaginal, anal, or oral penetration
       ▪ By a penis, object, tongue or finger, and copulation (mouth to genital contact)
       ▪ No matter how slight the penetration or contact
• **Sexual Exploitation** occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: Prostituting another student; Non-consensual video or audio-taping or photographing of nudity or sexual activity; Unauthorized posting or distribution of materials involving the sexual activity or nudity of another person(s); Going beyond the boundaries of consent (such as voyeurism or secretly watching others); Intentionally or recklessly exposing one’s genitals in non-consensual circumstances; Tampering with birth control or condoms; Knowingly transmitting a sexually transmitted infection or HIV to another student.

II. **Consent**

The university adopts the following definition of consent from Article 129-B of the New York Education Law:

Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. This definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

The presence of consent involves explicit communications and mutual approval for the act in which the parties are/were involved. A sexual encounter is considered consensual when individuals willingly and knowingly engage in sexual activity. Consent can be revoked at any time for any reason. Consent is active, not passive, and is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent must be given for every act and for every time that the act occurs, regardless of a previous history of consensual sexual activity between the parties or other past behaviors with other individual(s). Consent may be initially given but may be withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop. In order to give effective consent in New York State, one must be of legal age (17).

Consent cannot be procured by use of pressure, manipulation, compelling threats, intimidating behavior, substances and/or force. Consent cannot be given when a person is incapacitated i.e., 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 under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to give consent.
III. **Sex or Gender-based Violence**
In addition to Sexual Misconduct, this policy prohibits other forms of violent, abusive and intimidating behavior that is directed at a person based on their sex or gender-identity, including domestic and dating violence and stalking. The University adopts the following definitions pursuant to the Violence Against Women Reauthorization Act (“VAWA”) and its provisions under the SaVE Act.
- Domestic violence means asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former co-habitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
- Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by the length, type and frequency of interaction.
- Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others’ safety, or to suffer substantial emotional distress.

IV. **Dating and Domestic Violence**
Dating violence is violence committed by a person who is or has been in a social, romantic, or intimate relationship with the victim. Domestic violence is violence committed by a current or former spouse, an intimate partner, a person who shares a child with the victim, or a person who is cohabitating with or has cohabitated with the victim.

Dating and domestic violence includes but is not limited to:
- Threats
- Physical abuse
- Psychological abuse
- Sexual abuse
- Forced isolation from family and friends
- Withholding of finances
- Preventing access to resources

V. **Stalking**
Stalking is a course of unwanted conduct which causes the targeted person to fear for their personal safety and sometimes for the safety of those close to them. Stalking has a negative impact on the victim’s sense of security and emotional health.

Stalking behavior includes but is not necessarily limited to:
- Persistent, unwanted contact such as unwanted texts, e-mails, or phone calls
- Showing up unwanted at a person’s home, school, or job
- Sending unwanted gifts, cards, or letters
- Unwanted posting or presence on social networking sites
- Unwanted contact with victim’s friends, family, classmates, or co-workers

Sexual Misconduct and Violence include conduct that may be considered criminal under the New York State Penal Code. New York State Law contains the following legal provisions governing conduct that constitute Sexual Offenses which can be viewed at the following site:
http://ypdcrime.com/penal.law/article130.htm
Reporting Procedures Anyone who experiences sexual misconduct or violence as defined by this policy is encouraged to report such incidents and have certain rights with regard to the reporting of such incidents. Those include the right to:
1. notify or not notify campus security and/or local law enforcement of the incident(s);
2. report such incident(s) to a confidential institutional resource; and
3. consult with the university’s Title IX Coordinator and other institutional resource for assistance and information.

Persons reporting sexual misconduct or violence will be protected from retaliation and are entitled to receive assistance and information about avenues for redress, academic and non-academic accommodations as well as information on available services and resources. Reporting persons have the right and can expect to have incidents of sexual misconduct or violence taken seriously by the university when reported, and to have those incidents investigated and properly resolved through administrative procedures.

It is important for those who are reporting incidents to understand the options related to privacy and confidentiality. University officials who receive a report related to conduct covered by this policy are required to share such report with other university offices to ensure appropriate services and resources are provided and that adequate disciplinary and other safety measures are taken while ensuring, to the extent possible, the privacy of all parties involved. As such any information provided to non-confidential officials will be treated as private and relayed only as necessary to fulfill the university’s legal and policy obligations.

Those who wish to have no identifying information shared must either report incidents anonymously or through a confidential resource. A confidential resource is an individual, such as a licensed medical or mental health professional or pastoral counselor, who is not required by applicable law to report known incidents of sexual assault or other crimes to university officials. Reporting individuals who elect confidential reporting are electing to have no identifying information shared and are also declining to participate in formal disciplinary proceedings related to such reporting but are still entitled to information related to available resources and services.

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EMPLOYEE/FACULTY REPORTING OPTIONS
To file a report, a staff or faculty member should report the sexual misconduct or violence to the Senior Vice President for Human Resources. Reporting staff or faculty members are entitled to information related to resources, services and legal options as described below for students. To the extent that a staff or faculty member is accused of sexual misconduct, the University will process such complaint under the Guidelines for Dealing with Issues of Sexual and Discriminatory Harassment. Complaints against a staff or faculty member alleging Sexual Assault or any other form of Sexual Violence will be processed under the applicable disciplinary policy set forth in the IPPM, Full-time Faculty Handbook or applicable Collective Bargaining Agreement.

Staff/faculty who desire to report to a confidential resource on campus can report to:
● Ann-Lou Shapiro
  Faculty and Staff Ombuds
  66 W 12th Street, room 714

1* See Students’ Bill of Rights in Section II of the Non-Academic Disciplinary Procedures
STUDENT REPORTING OPTIONS
A student should file a report of sexual misconduct or violence to any of these university offices:

● Student Support and Crisis Management
  80 Fifth Avenue, 3rd floor
  212.229.5900 ext. x3965 or x3710
  studentsupport@newschool.edu

● Jennifer Francone, Title IX Coordinator
  72 Fifth Avenue, 4th floor
  212-229-5900 ext. 3656
  titleixcoordinator@newschool.edu

● Gene Puno-DeLeon, Director Student Conduct and Community Standards
  72 Fifth Avenue, 4th floor
  212.229.5349
  studentconduct@newschool.edu

● Campus Security
  68 Fifth Avenue, Mezzanine level (24 hours)
  212.229.7001 (24 hours)

The only university confidential resources available to students are:

● Student Health Services
  80 Fifth Avenue, 3rd floor
  New York, NY 10011
  212.229.1671
  SHS@newschool.edu


Once a report is filed the university official receiving the report or another appropriate official will provide the following information:

● Clear explanation of the university investigative and hearing procedures and, for students, a copy of the Students' Bill of Rights in Section II of the Non-Academic Disciplinary Procedures

● Where to access medical care

● Information about legal options

● Where to access support services on and off campus

The University Non-Academic Disciplinary Procedures is a document that complements this policy and provides details of how alleged violation are investigated and adjudicated when the responding party is a student. It is designed to facilitate fact-finding and is administered by Student Conduct and Community Standards.

POST REPORT ACCOMMODATIONS
There may be circumstances in which the university must take immediate action to protect the university community, prior to a formal hearing. Actions such as interim suspension and/or removal from housing may be deemed necessary by a senior university official.
After reporting sexual misconduct, the following non-disciplinary actions may be requested:

- Change of on-campus housing assignment or exploration of alternative housing
- Transfer to a different class section when available, without academic penalty
- Determine feasibility of incompletes or leave of absence
- A “No Contact Order” in accordance with university procedures and assistance from Security in obtaining an order of protection or the equivalent from local authorities.

After filing a report if a student expresses reluctance or unwillingness in proceeding, the university, in accordance with the belief that a victim of sexual misconduct should be given this right, may comply with this request after appropriate investigation, as long as doing so maintains the health and safety of the university community. The University will discuss which of the accommodations listed above are available in the event the reporting party elects not to participate in the disciplinary review process.

Removing Barriers to Reporting

Amnesty Victims/Witnesses
The health and safety of every student at The New School is of utmost importance. The university recognizes that students who have been drinking, using drugs (whether such use is voluntary or involuntary) or engaged in other minor policy violations 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. The New School strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to university officials. As stated in the Non-Academic Disciplinary Procedures, any student, whether victim or bystander, who in good faith report instances of violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault will not be subject to disciplinary sanctioning for alcohol and/or drug use policy or other minor policy violations occurring around the time of the alleged incident(s).

Past Sexual History
Past sexual history or sexual character of a party will not be admissible by the other party in hearings unless such information is determined to be highly relevant. All such information will be presumed irrelevant. While previous conduct violations by the responding party are generally not admissible as information about the present alleged violation, the Assistant Vice President for Student Equity & Access may supply previous complaint information to the hearing panel, or may consider it if s/he is hearing the complaint.

Retaliation Prohibited
Retaliation against an individual who has made a good faith complaint alleging a violation of this policy, participated in the investigation of a complaint or otherwise exercised his/her rights under this policy or the law is prohibited. Retaliation is an offense separate and apart from the underlying alleged policy violation(s) and will be considered independently. Retaliation is a serious violation of this policy and other applicable university policies, including but not limited to the policies on Sexual and Discriminatory Harassment, and upon a finding that retaliation has occurred, will subject the perpetrator to additional disciplinary action up to and including separation from the University.

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Sanctions Statement
The university conduct process is founded on educational ideals that reflect the university’s mission. The university is committed to educating students to be aware of policy, to respect others, and to be accountable for their actions.

The New School has zero tolerance for violations of the sexual misconduct policy. Mandatory minimum sanctions shall be levied against any student who is found in violation of the policy. Mandatory minimum sanctions vary depending upon the nature of the violation and include:

- Sexual exploitation – Disciplinary Probation
- Stalking – Disciplinary Probation
- Domestic/Dating Violence – Disciplinary Probation
- Non-consensual or forced sexual contact without intercourse – Disciplinary probation/Suspension
- Non-consensual or forced intercourse – Expulsion/Suspension

The New School reserves the right to exceed the minimums if it is determined that a particular case warrants a stricter sanction. In cases of a repeat offender the minimum sanction will be one-year suspension regardless of violation. The university reserves the right to take any reasonable measures to ensure the safety of our students during and prior to the panel hearing. These may include modifying housing arrangements, modifying class schedule, issuing “No Contact” orders, etc.

The outcome of a hearing panel is part of the educational record of the accused student, and is protected from release under the federal law, Family Educational Rights and Privacy Act (FERPA). However, the university observes the legal exceptions as follows:

- The reporting individual has an absolute right to be informed of the outcome and sanctions of the hearing, in writing, without condition or limitation.
- The university may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a university policy that is a “crime of violence”, including but not limited to sex offenses and assault. The university will release this information to the reporting in these offenses regardless of outcome.

The reporting individual and the respondent have the right to appeal the decision of the hearing panel. This appeal must be received in writing within ten (10) working days of the hearing outcome. Please refer to the Non-Academic Procedures for the appeal process and the grounds for appeal.

Transcript Notation Related to Sexual Assault and Sexual Violence Violations
Students found responsible for a violation of Sexual Assault as defined in this policy or another “crime of violence” as defined by the Clery Act will receive a notation on their transcript of their suspension or expulsion from the university. Students who withdraw from the university while the investigation of a complaint of Sexual Misconduct or another “crime of violence” as defined by the Clery Act will receive a notation stating that the student withdrew with disciplinary action pending. A student may file an appeal in order to remove a transcript notation of suspension or expulsion by following the steps outlined in Section VI.
Federal Law on Sexual Violence
The Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (Clery Act) is a federal law that requires colleges and universities to disclose certain timely and annual information about campus crime and security policies.

- Institutions must publish an annual report disclosing campus security policies and three years' worth of selected crime statistics
- Institutions must make timely warnings to the campus community about crimes that pose an ongoing threat to students and employees
- Each institution with a police or security department must have a public crime log
- The United States Department of Education centrally collects and disseminates the crime statistics
- Campus community sexual misconduct victims are assured of certain basic rights.
- Institutions must notify victims of their option to report their assault to the proper law enforcement authorities

The Campus SaVE Provisions of the Violence Against Women Reauthorization Act (“VAWA”) further enhanced the Clery Act with additional obligations for colleges and universities.

- Institutions must include domestic violence, dating violence and stalking as additional crime categories in campus crime statistics
- Institutions must modify student disciplinary procedures to include information on: (1) victim’s rights to notify or not notify and seek assistance from law enforcement and campus authorities and (2) victim’s rights and institutional responsibilities regarding judicial no-contact, restraining and protective orders
- Institutions must adhere to certain additional standards in conducting disciplinary proceedings related to dating violence, domestic violence, sexual assault and stalking cases
- Institutions must offer primary prevention and awareness training programs to new students and employees

Options for the Survivor of Sexual Misconduct and Violence
The university strongly encourages anyone who believes that they have been criminally violated to report these incidents, and to be aware of the following options regarding medical, legal and psychological care.

The Importance of Medical Care
The survivor of sexual violence has the option of going to a hospital Emergency Room for medical care. This is especially important if the survivor presents within 96 hours of the assault. To preserve the evidence, it is best not to shower, wash, douche, eat or drink, if possible. Carry evidence in a clean paper bag. If the survivor presents post 96 hours of the assault, it is still recommended that they receive medical care, but they will not have available all the options discussed below. The survivor has the right to refuse all or any parts of the treatment/evidence collection. The medical care following a sexual assault includes:

- a physical exam to examine any internal or external injuries
- evidence collection (as soon as possible and up to 96 hours after the assault)
- preventive treatment for Sexually Transmitted Infections
- preventive treatment for HIV also known as Post-exposure Prophylaxis (as soon as possible and up to 36 hours after the exposure)
● emergency contraception (as soon as possible and up to 120 hours)
● medical follow-up referrals and information

It is recommended that you refer the survivor to one of the hospitals listed below. These hospitals have Rape Crisis Programs and have trained Advocates available 24 hours. The Advocates will provide emotional support and information and help with the police reporting process.

- Lenox Hill Healthplex
  30 Seventh Avenue (between 12th and 13th Streets) – phone: 646.665.6000
- Mount Sinai-Beth Israel Hospital Emergency Department
  16th Street (between 1st and 2nd Avenues) – phone: 212.420.2000
- Mount Sinai-Roosevelt Hospital Emergency Department
  1000 Tenth Avenue (at 59th Street) – phone: 212.523.4000

Please note: Going to a hospital emergency room does not mean that the survivor has to report the crime to the police. The survivor can go to the emergency room and get medical attention/evidence collection and then take some time to think about reporting the crime to the police. The hospital emergency room is required to store the evidence for 30 days. If the student refuses medical care from a hospital ER, it is still encouraged that they seek medical attention. You can refer the student to their private medical provider or New School Medical Services, where they might feel more comfortable. Just note that the student will not have available all the options of the hospital stated above, especially evidence collection.

To learn more about the evidence collection procedure, please visit www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/docs/protocol_appendix_q.pdf

Legal Options
In addition to the university’s student disciplinary process and those disciplinary procedures applicable to faculty and staff, the survivor has the right to pursue criminal prosecution and/or civil litigation. They can go to the precinct corresponding to the area where the crime occurred or call the New York Police Department Special Victims Report Line at 646.610.7272. The hotline provides the option of getting some information without having to disclose their name. With that information the survivor can then decide whether to go forward with the reporting process. The survivor should never be pressured to file a report.

It is their decision to report unless:

● There is suspicion or evidence of child abuse when a report to Administration for Children’s Services 800.635.1522 is mandated;
● There is an injury by a deadly weapon, when medical staff only is mandated to report the crime to the police.

Reporting a sexual assault to the police does not obligate the survivor to file criminal charges or pursue other legal action. In the case of sexual assault, however, prompt reporting and a comprehensive medical examination completed at a hospital emergency department within 96 hours of the assault will aid the legal process.

The Office of Student Support and Crisis Management working with Campus Security and Student Health Services are available to provide support and advocacy with local police. The university is committed to providing full and prompt cooperation and assistance in notifying the proper law enforcement personnel if the survivor so chooses.
**Emotions and Concerns**
As a survivor of sexual violence you may experience a wide range of emotional reactions, and the decision to report the assault and/or seek help is a very personal and complex one. It is encouraged that you seek support as soon as you are ready. Reactions can vary and may include shock, denial, anxiety, guilt, anger, and self-blame, as well as nightmares, changes in sleeping and eating patterns, flashbacks, and depression. You may want to seek professional, confidential assistance either on campus at Counseling Services located at 80 Fifth Avenue, 3rd Floor, or off campus at a local Rape Crisis Center. For a list of local Rape Crisis Centers visit [www.svfreenyc.org/resource_list_Hospital.html](http://www.svfreenyc.org/resource_list_Hospital.html).

**Resources:**

**The New School Resources**
Campus Security: 212.229.7001 (24 hours)
Student Health Services: 212.229.1671
Student Support and Crisis Management: 212.229.5900 x3189
Student Conduct and Community Standards: 212.229.5900 x3656
VISIT THE ANTI-VIOLENCE WEBSITE: WWW.NEWSCCHOOL.EDU/YESMEANSYES

**Hotlines – 24 Hours**
Safe Horizon Emergency Hotline: 800.621.4673
RAINN Online Hotline: ohr.rainn.org/online
NYC LGBTQ Anti-Violence Project (AVP): 212.714.1141
Suicide Prevention (LifeNet): 800.543.3638
New York Asian Women's Center: 888.888.7702
New York State Domestic Violence Hotline: 800.942.6906, English and Español/Multi-language Accessibility, Deaf or Hard of Hearing: 711
In NYC: 1.800.621.HOPE (4673) or dial 311 TTY: 1.866.604.5350
National Domestic Violence Hotline: 1.800.799.7233 or TTY 1.800.787.3224.

**Advocacy and Counseling Services for Sexual Assault, Intimate Partner Violence and Stalking**
St. Luke’s-Roosevelt Crime Victims Treatment Center
411 West 114th Street
212.523.4728 [www.cvtc-slr.org](http://www.cvtc-slr.org)

Mount Sinai- Beth Israel Rape Crisis and Domestic Violence Intervention Program
317 East 17th Street
212.420.4054

New York City Alliance Against Sexual Assault – 212.523.4344

**New York City – 24 Hours**
Police and Emergency Medical Services: Dial 911
NYPD Special Victims Liaison Unit Report Line: 646.610.7272

**Visa and Immigration Assistance**
International Student and Scholar Services at The New School
72 Fifth Avenue, 3rd floor
212.229.5592

**District Attorney’s Offices**
Manhattan District Attorney’s Office – 212.335.9373
Brooklyn District Attorney’s Office – 718.250.3170
Bronx District Attorney’s Office – 718.590.2114
Queens District Attorney’s Office – 718.286.6505
Staten Island District Attorney’s Office – 718.876.6300

LGBTQIAGNC Resources
NYC LGBTQ Anti-Violence Project (AVP)
212.714.1184 www.avp.org

HIV/AIDS Testing
Student Health Services
80 Fifth Avenue, 3rd floor
212.229.1671, option 2

Lower East Side Harm Reduction Center at The New School
Student Health Services
80 Fifth Avenue, 3rd floor
212.229.1671
Hours: Mondays, 3:00–5:00 p.m. (except university holidays)

NYC Department of Health
Call 311

Local Pharmacy
CVS (Open 24 hours; accepts Student Health Insurance Plan)
Fifth Avenue and 14th Street
212.255.0293

Crime Victim Compensation
New York State Office of Victim Services: 800.247.8035

Advocacy and Counseling for Intimate Partner Violence/Domestic Violence, Stalking
St. Luke’s-Roosevelt Crime Victims Treatment Center
411 West 114th Street
212.523.4728

The New York City Gay & Lesbian Anti-Violence Project (AVP)
240 West 35th Street, suite 200
212.714.1184

Other Legal Resources
American Civil Liberties Union (ACLU)
The ACLU works to protect rights guaranteed by the law and the U.S. Constitution and to extend
these rights to segments of the population to whom they have traditionally been denied, including
people of color, women, lesbians, gay men, bisexuals, transgendered people, prisoners, and people
with disabilities.

Southern Poverty Law Center
The Southern Poverty Law Center is a nonprofit civil rights organization dedicated to fighting hate
and bigotry and seeking justice for the most vulnerable members of society.
Sylvia Rivera Law Project
NYC-based Sylvia Rivera Law Project offers free legal services to transgender, intersex, and gender-nonconforming low-income people and people of color.