

**BROOKLYN LAW SCHOOL**  
**POLICY PROHIBITING SEX-BASED HARRASSMENT**  
**INVOLVING STUDENT COMPLAINANTS AND STUDENT RESPONDENTS<sup>1</sup>**

**Issuing Authority:** Office of the Dean and President

**Responsible Officers:** Director of Equal Opportunity and Title IX Coordinator; Dean of Students; Director of Campus Safety; Director of Human Resources; Vice Dean; General Counsel and Chief Compliance Officer

**Date issued:** April 13, 2014; *revised* July 31, 2024

**I. THE PURPOSE OF THIS POLICY**

Brooklyn Law School (“Law School” and “BLS”) is committed to maintaining a respectful, professional, academic and working environment for students, faculty, staff, facility residents, vendors, and visitors, free from sex-based harassment. This Policy prohibits sex-based harassment, encourages prompt reporting of incidents and explains the Law School’s investigation procedures and the rights of respective Parties in those procedures.

This Policy ensures the Law School’s compliance with Title IX of the Education Amendments Act of 1972, and applicable regulations,<sup>2</sup> and Articles 129A and 129B of the New York State Education Law.

This Policy applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Policy that occurred on or before July 31, 2024, will be processed through the institution’s Sexual Misconduct Policy, originally issued on April 13, 2014, and revised on February 8, 2024.<sup>3</sup> Brooklyn Law School will update this Policy as soon as practicable to reflect any court rulings or changes that invalidate parts of the Policy, if applicable.

**II. JURISDICTION**

This Policy applies to the Brooklyn Law School community (students, faculty, senior administrators, staff, paid and unpaid interns, and third-parties<sup>4</sup>) where a complaint is made on behalf of or against a BLS student.

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<sup>1</sup> This policy applies to Title IX Sex Based Harassment. Sex Based Discrimination that does not constitute Harassment under Title IX will be addressed under the Brooklyn Law School Policy on Non-Discrimination and Harassment.

<sup>2</sup> 34 C.F.R. §§ 106.45 – 106.46.

<sup>3</sup> Should any portion of the 2024 Title IX Final Rule be stayed, held invalid by a court of law, or if the Title IX 2024 Final rule is withdrawn or modified to not require elements of this Procedure or this Procedure in its entirety, the affected elements will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order. If the procedure is revoked in any manner, any conduct covered shall be investigated and adjudicated under the Sexual Misconduct Policy.

<sup>4</sup> 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.

This Policy applies to conduct alleged to have occurred on or after August 1, 2024, and it applies to all settings, programs, and activities sponsored by the Law School, whether on or off campus, or in connection with a study abroad program. This Policy also applies to cases of sexual assault, dating violence, domestic violence, and stalking where some of the conduct occurs outside the Law School's educational settings, programs, and activities. Likewise, the Policy applies to conduct that contributes to a sex-based hostile environment in its education programs or activities, even when some of the conduct alleged to contribute to the hostile environment occurs outside the program or activity or outside the United States. The Title IX Coordinator will work with all Complainants to assess their complaints and determine whether the Policy applies.

Brooklyn Law School will communicate its decision regarding the applicability of the Policy to the Complainant in writing. Dismissals of complaints based on jurisdiction will be subject to the appeal process outlined in this Policy. If the Law School determines that the incident falls within the jurisdiction of the Policy, it will investigate the allegations pursuant to the Policy unless an informal resolution is pursued or the Complaint is withdrawn or dismissed on other grounds.

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 DIRECTOR OF EQUAL OPPORTUNITY AND TITLE IX COORDINATOR**

The Law School has designated the individual listed below as the Title IX Coordinator, who is responsible for overseeing all sex-based harassment 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; and ensuring a prompt, fair, and impartial investigation. The Title IX Coordinator also evaluates trends on campus by using information reported to them and makes recommendations for campus-wide training and education programs.

*Louise Cohen, Director of Equal Opportunity and Title IX Coordinator*  
*Tel. (718) 780-0377*  
[TitleIX@brooklaw.edu](mailto:TitleIX@brooklaw.edu)

### **IV. RESPONSIBILITIES OF EMPLOYEES WHO HAVE INFORMATION THAT MAY CONSTITUTE A VIOLATION OF THIS POLICY**

All Law School employees are required to notify the Title IX Coordinator when they have information about conduct that may reasonably constitute sex-based harassment under Title IX or this Policy.

### **V. NON-DISCRIMINATION IN APPLICATION AND REASONABLE ACCOMODATION**

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy and related conditions, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local

law. All requirements and protections apply to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness.

Individuals who wish to file a complaint about the institution's Policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information at <https://ocras.ed.gov/contact-ocr>. Individuals may also file complaints with the New York State Division of Human Rights (DHR), using contact information available at <https://dhr.ny.gov/complaint>.

This Policy does not alter any institutional obligations under federal, state, and local disability laws. Parties may request reasonable accommodations for disclosed disabilities from the Title IX Coordinator at any point during an investigation conducted under this Policy. The Title IX Coordinator will not provide accommodations absent a specific request from the Parties, even if the Parties receive accommodations from the Law School relating to other institutional programs or activities.

## VI. 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.

## VII. LEGAL AND POLICY DEFINITIONS

The Law School is required to provide legal definitions of sex-based harassment crimes under New York State Penal Law and definitions of sex-based harassment under this 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 Sex-Based Harassment Policy.

- A. **Accused** - A person accused of a violation who has not yet entered the Law School's disciplinary process.
- B. **Admission** - Admission means selection for part-time, full-time, transfer, exchange, or any other type of enrollment or matriculation in or at an educational program or activity operated by BLS.
- C. **Affirmative Consent** – Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, 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.

Consent to any sexual act or prior consensual 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

withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.

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.

- D. Community Standards** - Community standards are all the written policies and procedures adopted by Brooklyn Law School governing student behavior, rights, and responsibilities while the student is matriculated at the institution.
- E. Complainant** - Complainant means a student or employee member of the Brooklyn Law School community who is alleged to have been subjected to conduct that could constitute Sex-based Harassment under this Policy and who was participating or attempting to participate in an educational program or activity sponsored by BLS.
- F. Complaint** - Complaint means an oral or written request to Brooklyn Law School that objectively can be understood as a request for the Law School to investigate and make a determination about alleged Sex-based Harassment at the institution.
- G. Confidential Resource** - A confidential resource is a resource provided by Brooklyn Law School that can maintain confidentiality of certain communications based on Federal or State law. TimelyCare is the confidential resource available to Brooklyn Law School Students. Employees can access confidential resources through the Employee Assistance Program. Employees of Brooklyn Law School are not confidential employees and cannot serve as confidential resources under this Policy.
- H. Conflict of Interest** – A conflict of interest exists when an individual is biased against a particular complainant or respondent or biased against complainants or respondents generally. No person involved in the investigation or resolution of a complaint of sex-based harassment may have a conflict of interest.
- I. Disciplinary Sanctions** - Disciplinary sanctions mean consequences imposed through the Brooklyn Law School Student Disciplinary Procedures on a Respondent following a determination under this Policy that the Respondent violated the Law School’s prohibition against Sex-based Harassment.
- J. Education Program or Activity** - Education Program or Activity means any academic, research, or occupational training program operated by Brooklyn Law School that receives Federal financial assistance and extracurricular activities sponsored by the Law School’s recognized student organizations.

- K. Parental Status** – Parental status means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent, an adoptive parent, a foster parent, a stepparent, a legal custodian or guardian, *in loco parentis* with respect to such a person, or actively seeking legal custody, guardianship, visitation, or adoption of such a person.
- L. Party** - Party means Complainant or Respondent.
- M. Peer Retaliation** - Peer retaliation means retaliation by a student against another student.
- N. Pregnancy and Related Conditions** – Pregnancy and related conditions means: (1) pregnancy, childbirth, termination of pregnancy, or lactation; (2) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- O. Relevant** - Relevant means related to the allegations of sex-based harassment under investigation as part of this Policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sex-based harassment occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Sex-based harassment occurred.
- P. Remedies** - Remedies means measures provided, as appropriate, to a Complainant or any other person Brooklyn Law School identifies as having had their equal access to the Law School's education program or activity limited or denied by sex-based harassment. These measures are provided to restore or preserve that person's access to Brooklyn Law School's education program or activity after Brooklyn Law School determines that sex-based harassment occurred.
- Q. Respondent** - Respondent means a person who is alleged to have violated Brooklyn Law School's prohibition on sex-based harassment.
- R. Retaliation** – Retaliation means intimidation, threats, coercion, or discrimination against any person by the Law School, a student, or an employee or other person authorized by the Law School to provide aid, benefit, or service under the Law School's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, including in an informal resolution process, in an investigation, and in any other actions taken by the Law School. Nothing in this definition or this Policy precludes the Law School from requiring an employee or other person authorized by the Law School to provide aid, benefit, or service under the Law School's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.
- S. Sex-Based Harassment** - The term sex-based harassment is an umbrella term used by the Law School to refer to certain inappropriate conduct based on sex.<sup>5</sup> Sex based harassment often occurs in one of two forms: quid pro quo harassment or hostile environment harassment.

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<sup>5</sup> Sex-based harassment does not include sex-based discrimination and sexual harassment that does not involve Law School students. These forms of misconduct are prohibited by Brooklyn Law School under its Policy on Non-Discrimination and Harassment.

*Quid Pro Quo Harassment* – Quid pro quo harassment occurs when an employee, agent, or other person authorized by the Law School to provide an aid, benefit, or service under the Law School’s education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

*Hostile environment harassment* – Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the BLS education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes the consideration of the following:

- (1) The degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;
- (2) The type, frequency, and duration of the conduct;
- (3) The parties’ ages, roles within the recipient’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) The location of the conduct and the context in which the conduct occurred; and
- (5) Other sex-based harassment in the recipient’s education program or activity

Sex-based Harassment also includes (a) sexual assault, (c) sexual exploitation, (d) unlawful dissemination or publication of intimate images, (e) domestic violence, (f) dating violence, and (g) stalking.

Sexual Assault,<sup>6</sup> means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, and is any sexual activity or sexual

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<sup>6</sup> 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 contact 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

contact with another person without consent and includes an offense that meets the definition of rape, fondling, incest, or statutory rape:

- Fondling — The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest — Sexual contact between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape – Sexual contact with a person who is under the statutory age of consent.
- Rape — Sexual contact of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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 sex-based harassment offenses.

Unlawful Dissemination or Publication of Intimate Images occurs when a person: (1) disseminates or publishes images of another person who is unclothed, whose intimate parts are exposed, or who is engaged in sexual conduct, with the intent to cause harm to that person's emotional, financial, or physical welfare; (2) the person is identifiable from the image or from information displayed in connection with the image; (3) the person had a reasonable expectation that the image would remain private; and (4) the actor knew or reasonably should have known that the person intended for the image to remain private.

Domestic Violence is a felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

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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.

- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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.

Dating Violence is violence committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship will be determined based on a consideration of the following factors:
  1. the length of the relationship;
  2. the type of relationship; and
  3. 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.

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

Stalking is engaging in a course of conduct directed at a specific person or group that would cause reasonable person[s] to:

- fear for their own safety or the safety of others; or
- 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:

- 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;
- 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
- 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.

**Student** – Student means a person who has gained admission to the Law School.

**Student with a Disability** – Student with a disability means a student who is an individual with a disability.

**Student Employee** – Student Employee means a student who is also an employee of the Law School. When a Complainant or Respondent is a student employee, the Law School must make a fact-specific inquiry to determine whether the requirements of this Policy apply. In making this determination, the Law School will, at a minimum, consider whether the Party's primary relationship with the Law School is to receive an education and whether the alleged sex-based harassment occurred while the Party was performing employment-related work.

## **VIII. REPORTING SEX-BASED HARASSMENT TO THE LAW SCHOOL**

Individuals who believe that they have been the subject of any form of sex-based harassment or who are aware of someone who has been subjected to sex-based harassment should report the conduct to the Director of Equal Opportunity and Title IX Coordinator. Brooklyn Law School requires all employees to notify the Director of Equal Opportunity and Title IX Coordinator if they have information about conduct that may constitute sex-based harassment under this Policy. Such employees should also provide any individual who alleges or is believed to be the victim of sex-based harassment to provide that individual with information on how to make a complaint and/or seek supportive measures from the Title IX Coordinator.

At the first instance of a report of sex-based harassment, the Director of Equal Opportunity and Title IX Coordinator will provide the individual who has been subjected to sex-based harassment with the following information:

- You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution;
- You have the right to be protected by the institution from retaliation for reporting an incident;
- You have the right to receive assistance and resources from your institution.

### **A. Filing a Complaint**

Complainants should file complaints as soon as possible so that the Law School can promptly and effectively address the issue.<sup>7</sup> However, untimely complaints will be accepted, thoroughly investigated, and addressed. 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 Title IX website on BLS Connect that a complainant may use.

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<sup>7</sup> While actual notice through a written complaint is preferred, the Law School may initiate a complaint based on an oral report or other reports of sexual misconduct, including reports from news and social media.

Anonymous reports are accepted by the Director of Equal Opportunity and Title IX Coordinator, but the supplier of the anonymous report should be aware that failure to disclose identifying information about the accused party, the alleged victim of the sex-based harassment, or the facts and circumstances regarding the misconduct severely limits the Law School's ability to respond and remedy the effects of sex-based harassment. Anonymous reports that provide enough information to constitute a criminal offense will be reported to the Director of Campus 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.

In the absence of a Complaint or the withdrawal of any or all allegations in a Complaint, and in the absence or termination of an Informal Resolution Process, the Director of Equal Opportunity and Title IX Coordinator must determine whether to initiate a Complaint of sex-based harassment based on consideration of a number of factors:

- The Complainant's request not to proceed with the initiation of the Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of sex-based harassment would occur if the complaint is not initiated;
- The severity of the alleged sex-based harassment, including whether the sex-based harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sex-based harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the respondent is an employee of the Law School;
- The scope of the alleged sex-based harassment, including information suggesting a pattern, ongoing sex-based harassment, or sex-based harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist the Director of Equal Opportunity and Title IX Coordinator in determining whether sex-based harassment occurred; and
- Whether the Law School could end the alleged sex-based harassment and prevent its recurrence without initiating an investigation

If, after considering these and other relevant factors the Director of Equal Opportunity and Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of Complainant or other persons, or that the conduct as alleged prevents the Law School from ensuring equal access on the basis of sex to its educational programs and activities, the Director of Equal Opportunity and Title IX Coordinator may initiate a complaint.

If the Director of Equal Opportunity and Title IX Coordinator elects to initiate a complaint on these grounds, they must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others through supportive and interim measures.

#### **B. Multi-Party Situations and Consolidation of Complaints**

Brooklyn Law School may consolidate complaints alleging sex-based harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sex-based harassment arise out of the same facts or circumstances.

The Law School will consider the following factors when deciding whether to consolidate complaints:

- The facts and circumstances of the complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

### **C. Institutional Response**

Upon receipt of a Complaint, the Director of Equal Opportunity and Title IX Coordinator will notify the Complainant their right to:

- 1) Notify campus security, local law enforcement, and/or state police;
- 2) Have emergency access to the Title IX Coordinator who shall be available to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
- 3) Disclose the incident to individuals who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals;<sup>8</sup>
- 4) Disclose confidentially the incident and obtain services from the state or local government;<sup>9</sup>
- 5) Disclose the incident to BLS representatives who can offer privacy, and can assist in obtaining resources for reporting individuals;
- 6) File a report of sex-based harassment and the right to consult the Title IX Coordinator and other appropriate BLS representatives for information and assistance. Reports shall be investigated in accordance with BLS Policy and a reporting individual's identity shall remain private at all times if the reporting individual wishes to maintain privacy;
- 7) Disclose, if the accused is an employee of BLS, the incident to the Law School's Human Resources Department or the right to request that the Title IX Coordinator assist in reporting to Human Resources;
- 8) Receive assistance from appropriate institutional representatives in initiating legal proceedings in family court or civil court; and
- 9) Withdraw a complaint or involvement from the institution process at any time.

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<sup>8</sup> This includes information about anonymous disclosure through confidential hotlines of not-for-profit entities.

<sup>9</sup> This includes anonymous disclosures through confidential hotlines of New York State agencies.

The Director of Equal Opportunity and Title IX Coordinator will also provide the Complainant with the following information:

- Law School employees will maintain the Complainant's privacy to the greatest extent possible, but they cannot guarantee complete confidentiality. The information the Complainant provides to Law School personnel will only be shared as necessary for the Title IX Coordinator to investigate and/or seek a resolution of the complaint.
- In cases where a Complainant does not want the institution to initiate an investigation or expresses concerns about confidentiality, the Director of Equal Opportunity and Title IX Coordinator will weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community. The institution shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices.
- Information obtained through public awareness and advocacy events may be used to inform its sex-based harassment prevention efforts, even if it does not result in a Complaint or investigation.
- Reports of sex-based harassment that constitute reportable crimes under the Clery Act will be included in the institution's annual security report in an anonymized manner. The Director of Equal Opportunity and Title IX Coordinator will further explain that the Law School is required to issue timely warnings of certain crimes that represent a serious or continuing threat to students and employees.

The Director of Equal Opportunity and Title IX Coordinator will also provide complainants with information about available mental health, counseling and medical resources and any fees associated with such resources. The Law School will provide information on sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York state office of victim services.

The Students' Bill of Rights, a summary of complainants' rights regarding sex-based harassment complaints, is included in this Policy as **Appendix A**.

The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the applicable disciplinary proceeding, and that prior to the determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.<sup>10</sup>

#### **D. Medical Attention and Evidence Gathering after Sexual Assault or Domestic Violence**

After an incident of sex-based harassment, if the complainant is injured, they should consider seeking medical attention as soon as possible at an emergency room that is a certified SAFE Center for Excellence. The Director of Equal Opportunity and 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

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<sup>10</sup> Where the respondent is a student, a hearing panel will constitute the impartial decisionmaker. Where the respondent is an employee, the Director of Human Resources will constitute the impartial decisionmaker.

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.<sup>11</sup> 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.

Survivors of sex-based harassment 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 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 Director of Equal Opportunity and 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:

<https://www.nyc.gov/site/nypd/bureaus/patrol/precincts/84th-precinct.page>.

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 Director of Equal Opportunity and Title IX Coordinator, Director of Campus Safety, or local law enforcement to preserve evidence in the event the victim chooses to proceed later.

#### **E. Amnesty for Reports Involving Drug and Alcohol Use**

The health and safety of the Brooklyn Law School Community is of utmost importance. The Law School recognizes that Complainants who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that sex-based harassment occurs may be hesitant to report incidents due to fear of potential consequences for their own conduct. Brooklyn Law School strongly encourages students and employees who experience sex-based harassment to report all incidents to institution officials. A bystander acting in good faith that discloses any incident of sex-based harassment to Brooklyn Law School's officials or law enforcement will not be subject to the Law School's disciplinary procedures for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the sex-based harassment.

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<sup>11</sup> 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."

An individual accused of committing sex-based harassment is not entitled to amnesty pursuant to this Policy.

#### **F. Supportive Measures**

Complainants who report allegations of sex-based harassment have the right to receive supportive measures from Brooklyn Law School regardless of whether they file a complaint. Respondents may also request supportive measures. Supportive measures are non-disciplinary and non-punitive. As appropriate, supportive measures may include without limitation:

- Counseling services,
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Changes in class, work, housing, or extracurricular activities
- Leaves of absence
- Increased security and monitoring of certain areas of campus
- Training and education on sex-based harassment
- Assistance by the Director of Equal Opportunity and Title IX Coordinator or the Director of Campus safety in obtaining an order of protection
- Restrictions on contact applied to one or more Parties

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties and/or the Law School's educational environment or to provide support during an investigation or disciplinary proceeding relating to an allegation of sex-based harassment. They are not determinations of guilt when imposed on an accused party. Instead, they ensure that the investigation and adjudication of a complaint proceeds as efficiently and swiftly as possible. The Law School may modify or terminate supportive measures at the conclusion of an investigation, informal resolution, or disciplinary procedure, or may continue the measures at its discretion.

Brooklyn Law School will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided by another Party, unless:

- It is necessary to provide the supportive measure to restore or preserve a Party's access to the Law School's education program or activity;
- Brooklyn Law School has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on the behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the Policy when it is necessary to address conduct that reasonably may constitute sex-based harassment in violation thereof; and
- As required by law.

## **G. Modification or Reversal of Supportive Measures**

Brooklyn Law School will provide a Complainant or Respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the Law School's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee will be someone other than the employee who made the challenged decision and must have the authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures in this Policy. The Law School will also provide a Party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

The Law School will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to the education program or activity, or when an exception listed in this Policy applies.

## **H. Interim Measures**

In addition to the measures outlined above, pending the investigation of a complaint, the Law School will take appropriate steps 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.

This may include:

- a) Issuing a "no contact order" to one or more parties whereby intentional contact shall be a violation subject to disciplinary procedures; or
- b) Removing a Respondent from all or part of the Law School's educational program or activity on an emergency basis where the school has undertaken an individualized safety and risk analysis and has determined that an imminent and serious threat to the health or safety of the Complainant or any other persons exists which justifies such removal.
- c) Placing a non-student employee Respondent on administrative leave during an investigation.

The Law School will provide the parties with written notice upon issuance of interim measures. Both the complainant and the accused party shall have an opportunity to request a prompt review of the need for and modification of interim measures that affect them. The Dean of Students shall conduct the review and make a recommendation to the Dean and President, unless the Dean of Students issued the interim measure, in which case an appropriate alternate individual will conduct the review and make the recommendation. The Dean and President will issue a final decision. The Dean and President's decision on appeal may not be used as evidence in a subsequent disciplinary hearing.

## **IX. INFORMAL RESOLUTION**

The Parties may choose to resolve the complaint informally. The purpose of an informal resolution is to allow the parties opportunity to reach a fair and workable solution. Parties who participate may agree upon a variety of resolutions including, but not limited to participation in training, workplace

modifications, a written apology, or some other form of resolution.

If the Parties wish to resolve a complaint through an informal resolution, the Law School will provide them with its informal resolution process, which is included here as **Appendix D**.

Either party may withdraw from the informal resolution process at any time before agreeing to a proposed resolution. If the parties agree to a resolution at the end of the Informal resolution process, they cannot compel further investigation of the Complaint. Parties may negotiate an informal resolution before or after an investigation has commenced.

Informal resolutions are subject to the approval of the Dean of Students who, in consultation with the Office of General Counsel and Compliance, will consider the nature of the complaint in determining whether the proposed resolution is appropriate. Informal resolutions require the consent of all parties and negotiation of such resolutions suspends the complaint process. Informal resolutions must be memorialized in writing and signed by the parties. If the Parties are unable to reach an informal resolution, the Complainant may request that the Law School commence or continue investigation of the complaint.

## **X. THE INVESTIGATION AND DISPOSITION OF A COMPLAINT**

### **1. Investigator**

Investigations are generally conducted by the Director of Equal Opportunity and Title IX Coordinator (“investigator”), unless there is a conflict of interest, in which case other arrangements will be made.

### **2. Consent to Investigate**

The investigator will seek consent from a complainant 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:

- (a) The complainant’s request not to proceeding with the initiation of a complaint
- (b) The complainant’s reasonable safety concerns regarding the initiation of a complaint;
- (c) The risk that additional acts of sex-based harassment would occur if a complaint is not initiated;
- (d) The severity of the alleged sex-based harassment, including whether the sex-based harassment, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (e) The age and relationship of the Parties, including whether the respondent is an employee of the Law School;
- (f) The scope of the alleged sex-based harassment, including information suggesting a pattern, ongoing sex-based harassment, or sex-based harassment alleged to have impacted multiple individuals;
- (g) The availability of evidence to assist a decisionmaker in determining whether sex-based harassment occurred; and
- (h) Whether the Law School could end the alleged sex discrimination and prevent its



recurrence without initiating an investigation

### **3. 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 as soon as practicable. Simultaneous notification shall be made by email to the complainant and respondent's Law School email accounts. The notice shall contain:

- (a) A copy of this Policy which outlines the investigation and informal resolution processes;
- (b) The date, approximate time, location of the alleged Policy violation, and the participants and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate;
- (c) Notification that retaliation is prohibited;
- (d) The following additional information:
  - The parties may be accompanied to any meeting or proceeding by an advisor of their choice who may be, but is not required to be, an attorney; however, advisors are not permitted to speak on behalf of the parties. Instead, parties may seek guidance from their advisors during a meeting or interview, and will be afforded reasonable opportunities to confer with their advisors;
  - The parties will have an equal opportunity to access the investigation report and other relevant and not otherwise impermissible evidence upon request;
  - The Law School will provide the parties with a reasonable opportunity to review and respond to the investigative report prior to any disciplinary hearing held to determine whether sex-based harassment has occurred;
  - The Law School will take reasonable steps to prevent and address the Parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment investigation process. However, disclosure of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment are authorized; and
  - If the Law School decides to investigate additional allegations of sex-based harassment by the Respondent towards the Complainant that are not included in the notice, the Law School will provide written notice of any additional allegations to the Parties whose identities are known.

If the Law School has reasonable concerns about the safety of any person based its issuance of the written notice of allegations, the investigator may delay the issuance of the notice in order to appropriately address the safety concerns. Reasonable concerns must be based the individualized safety and risk assessment and not mere speculation and stereotypes.

#### **4. Advisors**

Each party may have an advisor of their choice accompany them to any meeting with the investigator. An advisor may, but is not required to be, an attorney. Advisors may attend investigatory meetings and interviews but they are not permitted to speak on behalf the Complainant or Respondent. Parties who seek guidance from their advisors during a meeting or interview will be afforded reasonable opportunities to confer with their advisors.

#### **5. Evidence Gathering**

The investigator will initiate the investigation promptly after issuing the Notice of Allegations. The investigator, and not the Parties, is responsible for conducting the investigation and determining whether sex-based harassment has occurred. The investigator will interview the Parties, and any other witnesses 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.

The investigator will question the parties and witnesses to adequately assess each party or witness' credibility to the extent that credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. The investigator will ask relevant (and not otherwise impermissible) questions to challenge credibility in individual investigatory meetings.

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. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the investigation process. The Parties cannot engage in retaliation, including against witnesses.

#### **6. Impermissible Evidence**

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by the Law School to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- a) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- b) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the Law School obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and

- c) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## **7. 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 occurred. The investigator will evaluate relevant and not otherwise impermissible evidence for its persuasiveness in making this determination.

## **8. The Outcome of the Investigation**

The Title IX Coordinator will notify the Parties simultaneously in writing of the outcome of the investigation. The notification will include:

- A description of the alleged sex-based harassment;
- Information about the policies and procedures the investigator used to evaluate the allegations,
- The investigator's evaluation of the relevant and not otherwise impermissible evidence, and
- The investigator's determination of whether sex-based harassment occurred, and
- The Law School's procedures and permissible basis for appeal of the investigation's findings.

### Finding of a Policy Violation

If the investigator finds that, based on a preponderance of the evidence, a violation of this Policy has occurred, the Law School will refer the matter to the appropriate disciplinary process.<sup>12</sup>

### Dismissal of the Complaint

The Law School may dismiss a Complaint for any of the following reasons:

- a. It is unable to identify the Respondent after taking reasonable steps to do so;
- b. The Respondent is not a student, faculty member, senior administrator, staff member, paid and unpaid intern, or covered third party, or is not participating in an Educational Program or Activity;
- c. The Complainant voluntarily withdraws any or all of the allegations in the Complaint and the Law School determines that without the withdrawn allegations the conduct would not constitute a violation of the Policy;
- d. The Law School determines that the conduct alleged in the Complaint, even if proven, would not constitute a violation of the Policy.

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<sup>12</sup> Where the respondent is a student, the matter will be referred to the Student Disciplinary Procedures. Where the respondent is an employee, the matter will be addressed under the terms of the Employee Handbook. Where the respondent is member of the faculty, the matter will be addressed under the terms of the Faculty Handbook and Faculty Regulations.

Upon dismissal, the Law School will notify both Parties in writing simultaneously of the dismissal, the basis for the dismissal, and the opportunity to appeal, except if the dismissal occurs before the respondent has been notified of the allegations, in which case the Law School must provide such written notice only to the complainant. The Law School must obtain the complainant's withdrawal in writing. The Law School will notify the Complainant of the basis for the dismissal and the opportunity to appeal.

Dismissals may be appealed on the following grounds:

- a. New evidence that would change the outcome and was not reasonably available with the dismissal was made;
- b. Procedural irregularity that would change the outcome;
- c. The investigator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent at issue that would change the outcome of the matter.

A panel of three faculty members, as appointed by the Dean and President with the assistance of the Vice Dean, will decide the appeal. The decision of this panel will be final and cannot be appealed.

#### False Accusations

If the results of an investigation show that the complainant knowingly filed false accusations under this Policy, or that a witness knowingly gave false statements, such individuals will be referred to the appropriate disciplinary process for prompt action. However, the Law School will not discipline a Party, witness, or others participating in an investigation for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex-based harassment occurred.

### **9. Transcript Notations**

For sex-based harassment that is defined as a crime meeting the reporting requirements of the federal Clery Act, 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 to the Dean and President. 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 and President'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, by email to the students' Law School email accounts, unless additional deliberation time is warranted.

Transcript notations for expulsions shall not be removed.

## 10. Time Frame

Typically, the Law School will:

- Evaluate a complaint filed pursuant to the Policy within **five (5) days** of its receipt;
- Investigate the complaint beginning **five (5) days** after it has been determined that the complaint addresses a possible violation of this part; and
- will complete its investigation within **sixty (60) days**.

If either or both Parties appeal the dismissal of a complaint by the investigator, the Law School will decide the outcome of the appeal within **thirty (30) days** of the notice of appeal.

If the Respondent is a student and the matter proceeds to a disciplinary hearing, the time frame to complete such a hearing will not exceed **sixty (60) days**. However, the Law School reserves the right to exceed this time frame, with good cause and written notice to the parties.

## 11. Appeals

Appeals of a finding of a policy violation shall be pursued through the appeal process set forth in the relevant policies' appropriate disciplinary procedures used to pursue sanctions. Appeals of a dismissal of a complaint shall be pursued under Section X.8 of this Policy.

## XI. CONFIDENTIALITY

Confidentiality refers to the ability of a resource not to report crimes and violations to law enforcement or to college officials without permission, except in extreme circumstances such as health or safety emergencies or child abuse. Licensed counselors, health care providers, and clergy serving in pastoral counseling roles are confidential resources. At Brooklyn Law School, TimelyCare is the confidential resource available to Brooklyn Law School students by the Law School. Employees can access confidential resources through the Employee Assistance Program. In addition, students and employees who do not wish to disclose to the Law School a complaint of sex-based harassment may utilize health, religious, and counseling services in the community where their confidentiality may be protected. For a list of off-campus resources, see **Appendix C** of this Policy.

If a complainant asks that the Law School decline to investigate a complaint, the Law School will evaluate the request 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.

Privacy means that information will only be relayed as necessary to investigate and/or seek a resolution of a Complaint or to notify the Director of Equal Opportunity and Title IX Coordinator, who is responsible for tracking patterns and spotting systemic issues. Although the Law School cannot guarantee confidentiality apart from the provision of confidential resources, it will limit disclosure of information relating to a Complaint as much as practicable in all cases.

If a complainant insists that identifiable information not be disclosed to the accused individual, the Law School's ability to respond effectively to a Complaint may be limited. 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 sex-based harassment and protecting others from sex-based harassment. 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 Director of Equal Opportunity and Title IX Coordinator to investigate and seek a resolution.

## **XII. NOTIFICATION OF PARENTS**

The Family Educational Rights and Privacy Act of 1974 ("FERPA") only allows the Law School to share information with parents when there is a health or safety emergency; or the student is a dependent on either parent's prior year federal income tax return. In all other circumstances, the Law School shall not share information about a report of sexual based harassment without the student's written permission.

## **XIII. RETALIATION**

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. Retaliation should be reported to the Director of Equal Opportunity and Title IX Coordinator immediately so that it may be addressed through the appropriate disciplinary procedures.

## **XIV. CONSENSUAL RELATIONSHIPS**

The Law School prohibits 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. It is an employee's professional responsibility to disclose such relationships to the Director of Equal Opportunity and Title IX Coordinator so that appropriate academic or employment adjustments can be made. Failure to disclose such a relationship will constitute a violation of this Policy and may result in disciplinary action.

In the event that an employee is the subject of a legal complaint of sex-based harassment, and the facts show that the employee was engaged in a consensual relationship in violation of this Policy, the Law School may decline to assist the employee in legal defense against the allegation(s), and the employee, not the Law School, will bear all financial responsibility the employee's legal defense. Furthermore, if the employee is found liable for damages, the Law School may decline to cover the employee's loss.

## **XV. TRAINING**

In accordance with New York State and New York City law, all Law School employees (faculty, administrators, and staff), student leaders, and incoming first year and transfer students must complete sex-based harassment training. Student training is delivered live, and employee training is offered online. Employees must complete their training annually.

The scope of the training will include the following:

Student and Student-Leader Training – educates students about domestic violence, dating violence, stalking and sexual assault in compliance with state and federal law.

Employee training covers the obligation to address sex-based harassment and other forms of sex-based discrimination in the Law School’s education program and activities, the scope of conduct that constitutes sex-based discrimination under Title IX (including sex-based harassment as defined by this Policy) and applicable notification requirements.

Investigator and Hearing Panel training includes all training required for employees as well as training on the obligations under this policy and student disciplinary procedures; information on how to serve impartially, avoiding prejudice, conflicts of interest, and bias; and the meaning an application of “relevant” in relation to questions and evidence, including impermissible types of evidence.

Training for Facilitators of the Informal Resolution Process includes all training required for employees; training on the rules of the informal resolution process; and information on how to serve impartially, avoiding conflicts of interest and bias.

Title IX Coordinator Training includes training required for employees, investigators, and facilitators of the informal resolution process, and includes training on the recordkeeping system requirements.

Failure to complete mandatory training will result in consequences as noted in the annual training notifications. For employees, such consequences may include the loss of indemnification and ineligibility for hybrid work opportunities. For students, consequences may include withholding of exam numbers.

## **XVI. RECORD KEEPING**

### Crime Reporting

Non-identifying information may be shared with the Director of Campus Safety to comply with statutory crime reporting requirements.

### Record Retention

All records related to reports of sex-based harassment 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. Disciplinary records 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.

#### Disclosure of Records

- *Student Records* - All records arising from the administration of this Policy and relating to students are protected from disclosure by the Family Educational Rights and Privacy Act of 1974 ("FERPA") and will not be disclosed absent the student's written consent or an order from a court, law enforcement, or other government agency. Permitted disclosures may will only include the final disposition of the disciplinary proceeding conducted by the Law School with respect to the alleged crime or offense, regardless of whether there was a finding of responsibility.
- *Employee Records* - All records arising from the administration of this Policy and relating to employees will not be disclosed unless compelled by a court or a law enforcement or other government agency, or where such disclosure is otherwise permissible under applicable privacy laws.

### **XVII. REPORTING SEX-BASED HARASSMENT TO LAW ENFORCEMENT**

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 sex-based harassment, are encouraged to report potential crimes of sex-based harassment (either by a known person 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 Campus Safety and/or the Director of Equal Opportunity and Title IX Coordinator.

The Law School will help complainants who wish to report incidents of sex-based harassment to law enforcement. Upon request, the Director of Equal Opportunity and Title IX Coordinator will assist complainants in:

- Filing a complaint against the accused,
- Ensuring access to a sexual assault forensic examination,
- 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
- Contacting and assisting local law enforcement when an order of Protection is violated.

#### **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; (3) limiting where an abuser can go (such as near a school).; and (4) directing the abuser to stop disseminating or publishing intimate images.

The Director of Equal Opportunity and Title IX Coordinator will assist complainants in obtaining an Order of Protection. If the Law School receives an order of protection, it will provide a copy to the Complainant



and answer questions the Complainant may have about the order, including questions about the accused’s responsibility to stay away from the Complainant and potential consequences of non-compliance. The Director of Campus Safety will coordinate with local law enforcement to effect an arrest if an individual is found to violate an order of protection.

## **2) Mandatory Reporting and Investigation**

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.

## **3) Concurrent Criminal and Administrative Investigations**

Brooklyn Law School has an obligation to evaluate all Complaints of sex-based harassment, regardless of whether a concurrent criminal complaint is pending. (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 to respond to allegations of sex-based harassment; however, it will cooperate with law enforcement agencies and may temporarily delay proceedings to allow law enforcement time to gather evidence. Temporary delays shall not last longer than ten (10) days, except when law enforcement specifically requests and justifies a longer delay.

## **4) State and Local Criminal Penalties**

The New York State Penal Law provides the following maximum penalties for the various classifications of sexual and domestic assault offenses, including stalking and the unlawful dissemination and publication of intimate images, 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 <https://ag.ny.gov/rape-and-sexual-offenses-state-statutes>. For more information about how domestic offenses are classified in the State of New York, visit <https://ag.ny.gov/victims-domestic-violence-state-statutes>.

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: <https://www.nyc.gov/site/law/public-resources/laws-of-the-city-of-new-york.page>.

## **XVIII. REPORTING OF SEX-BASED HARASSMENT TO ADMINISTRATIVE AGENCIES**

Sex-based harassment is not only prohibited by Brooklyn Law School, is prohibited by state, federal, and, New York City law. Aside from the internal process set forth herein, individuals may also choose to pursue

legal remedies with the following governmental entities:

**U.S. Department of Education Office for Civil Rights**

*The US Department of Education Office for Civil Rights enforces Federal laws that protect the civil rights of students.*

Lyndon B. Johnson Department of Education  
Building 400  
Maryland Ave, SW  
Washington, DC 2020 – 1100  
Tel: 1-800-421-3481  
ocr@ed.gov

New York Enforcement Office  
32 Old Slip, 26th Floor  
New York, NY 10005-250  
Tel: (646) 428-3800  
OCR.NewYork@ed.gov

**New York State Division of Human Rights (DHR)**

*The New York State Division of Human Rights enforces the New York State Human Rights Law which protects the civil rights of employees and students.*

NYS Division of Human Rights  
One Fordham Plaza, Fourth Floor  
Bronx, New York 10458  
Tel. (718) 741-8400  
[www.dhr.ny.gov](http://www.dhr.ny.gov).

**New York City Commission on Human Rights**

*The New York City Commission on Human Rights enforces the New York City Human Rights Law which prohibits discrimination in employment, housing, and public accommodations.*

New York City Commission on Human Rights  
22 Reade Street  
New York, NY 10007  
212-306-7450  
<https://www.nyc.gov/site/cchr/about/report-discrimination.page>

**United States Equal Employment Opportunity Commission (EEOC)**

*The EEOC enforces federal laws which prohibit employment 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](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

**XIX. 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

### STUDENTS' BILL OF RIGHTS

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault, treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and Participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

## APPENDIX B

### An Explanation of Distinctions Between the Processes Under New York State Penal Law and the Brooklyn Law School Sex-based harassment Policy

	<b>Criminal Justice System</b>	<b>Brooklyn Law School Sex-based harassment Policy</b>
<b>Goals</b>	Public safety; deterrence; and punishment.	Education; safety; prevention, redress, supportive campus environment.
<b>Governing Law,</b>	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 Sex-based harassment and Anti-Harassment and Discrimination Policies which trigger an investigation.
<b>How to report and whether there must be action once a report is made.</b>	Crimes involving sex-based harassment 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 sex-based harassment 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.
<b>Who investigates?</b>	Police or other law enforcement officials.	The Title IX Coordinator.
<b>Procedures</b>	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	The procedures are established by the Brooklyn Law School Sex-based harassment Policy.
<b>Standard of Evidence</b>	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)
<b>Confidentiality</b>	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.

<b>Privacy</b>	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.
<b>Who are the Parties?</b>	The prosecution and defendant. The victim/survivor is not 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.
<b>Participation in the process</b>	In limited circumstances, a criminal prosecution can proceed without the 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.	Reporting students cannot be required to Participate in the investigative and disciplinary process. However, the Law School will be limited in its ability to respond if a reporting individual does not Participate.
<b>Who initiates the proceedings?</b>	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The Law School initiates proceedings.
<b>Testimony</b>	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.
<b>Role of attorneys</b>	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.
<b>Mental Health and Sexual History</b>	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 to exclude evidence of their own mental health history in the fact-finding phase of the disciplinary process.
<b>Possible Results</b>	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> <li>• plead guilty or "no contest"</li> <li>• have the case dismissed by the judge (on legal grounds)</li> <li>• be found "guilty" or "not guilty" by a judge or jury</li> </ul>	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.
<b>Sanctions</b>	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.

**APPENDIX C – RESOURCES**

**SAFE Centers of Excellence**

Sexual Assault Forensic Examiner (SAFE) services are considered the 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:

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

**Hospitals and Organizations in Brooklyn with SAFE Centers:**

- Kings County Hospital Center  
451 Clarkson Ave, Brooklyn, NY 11203
- Woodhull Medical and Mental Health Center (HHC) 760 Broadway, Brooklyn, NY 11203
- Wyckoff Heights Medical Center  
374 Stockholm Street, Brooklyn, NY 11237
- Safe Horizon Counseling Center  
50 Court Street, Brooklyn, NY 11201  
Need to call 347-328-8110 to make appointments, no walk-in’s

**A. On-Campus Resources**

<b>RESOURCE</b>	<b>EMAIL ADDRESS</b>	<b>PHONE NUMBER</b>
Director of Equal Opportunity and Title IX Coordinator	TitleIX@brooklaw.edu	718-780-0377; 347-821-8904 (after business hours)
Director of Campus Safety	Campussafety@brooklaw.edu	718-780-7506
Dean of Students	DeanofStudents@brooklaw.edu	718-780-0679
Human Resources	HumanResources@brooklaw.edu	718-780-0656

In addition, all Brooklyn Law School students have access to Timely Care. Timely Care provides unlimited, 24/7 on-demand urgent care for both physical and mental health issues. Students also have access to 12 free scheduled counseling appointments each year. These services are confidential. Students can download the app [here](https://app.timelycare.com/auth/login): <https://app.timelycare.com/auth/login>.

**B. Off-Campus Resources**

For a comprehensive list of off-campus resources, please refer to the New York City Alliance Against Sexual Assault’s Resource Guide: <https://svfreenyc.org/resource-guide/>.

**C. Legal Assistance**

National Crime Victims Bar Association	202-467-8716
NYS Office of Victim Services	800-247-8035
LawHelp.org	

**D. Confidential Resources**

- The New York State Office from the Prevention of Domestic Violence Hotlines: [www.opdv.ny.gov/help/dvhotlines.html](http://www.opdv.ny.gov/help/dvhotlines.html)
- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>
- Legal Momentum: <https://www.legalmomentum.org/>
- NYSCASA: <https://nyscasa.org/responding>
- NYSCADV: <http://www.nyscadv.org>
- Pandora’s Project: <http://www.pandys.org/lgbtsurvivors/html>
- GLBTQ Domestic Violence Project: <http://glbtqdv.org>
- RAINN: <https://www.rainn.org/get-help>
- Safe Horizons: <http://www.safehorizon.org>



## **Appendix D – INFORMAL RESOLUTION PROCESS**

An informal resolution conference shall be conducted according to the following procedures:

1. The informal resolution shall be facilitated by a qualified staff or faculty member selected by the Dean of Students.
2. If an agreement can be reached, the proposed agreement shall be reported to the Dean of Students for approval.
3. If, upon consultation with the General Counsel and Chief Compliance Officer, the Dean of Students approves the informal resolution, it shall be memorialized in writing, outlining each term of the agreement and the consequences for non-compliance.
4. Both Parties shall execute the agreement, and both Parties shall receive copies.

These procedures may be used to resolve allegations before, after, or during an investigation and prior to referral for disciplinary action (if any).

The terms of an informal resolution reached in mediation may only bind the parties to the agreement

The discussions held at the informal resolution conference shall remain confidential and shall not be used as evidence at any subsequent hearing.