

# Mahanaim | Sexual Misconduct Policy



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## **INTRODUCTION**

Mahanaim is committed to creating and maintaining an educational environment free from all forms of sexual misconduct. The broad term “sexual misconduct” includes, but is not limited to, acts of sexual harassment, sexual violence, sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking. Such behaviors are illegal, against school policy, and strictly prohibited. The school also strictly and expressly prohibits retaliation.

It is the policy of the Mahanaim to comply with Title IX of the Education Amendments of 1972, and Article 129B of the New York Educational Law, both of which prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity. There is prohibition of retaliation for asserting or otherwise participating in claims of sex discrimination.

This policy covers all members of the campus community – students, faculty and staff – as well as those who interact with members of the campus community such as vendors, guests, or visitors. This policy shall apply to conduct that occurs on the Mahanaim’s campus, on Mahanaim technological systems, activities and events, as well as off-campus when the accused is a matriculated Mahanaim student or when the conduct has a continuing adverse impact upon the Mahanaim work or school environment.

## **TITLE IX COORDINATOR**

The Title IX Coordinator has overall responsibility for the administration of this policy and has been designed to coordinate compliance activities under this policy and applicable federal, state, and local laws. The Title IX Coordinator’s primary responsibility is to coordinate Mahanaim’s compliance with Title IX including, but not limited to, overseeing Mahanaim’s response to complaints of sexual misconduct, coordinating investigations into reports of sexual misconduct, and advising about available resources for support. The Title IX Coordinator addresses all reports of sexual misconduct in an equitable and neutral manner.

## **EMPLOYEE OBLIGATIONS**

At the first report of sexual misconduct to any employee, the employee must inform the individual reporting the sexual misconduct that he or she has the right (1) to report the incident to one of the Title IX Coordinators; (2) to make a report to local law enforcement, or state police, or to choose not to report; (3) to be protected by the School from retaliation for reporting an incident; and (4) to receive assistance and resources from the School. The employee then must promptly report the incident to the Title IX Coordinator, unless the employee is recognize as a legal confidential reporting option.

## **IMMEDIATE MEDICAL ASSISTANCE**

If you or someone you know is or may be the victim of any form of sexual misconduct, it is important to to locate a place of safety and (2) to obtain any necessary medical treatment. In instances involving physical assault or injury, the Mahanaim strongly encourages the individual to obtain a medical examination immediately to determine the extent of any injuries and to

ensure the preservation of evidence. It is important to understand that time is a critical factor for evidence collection and preservation, and that preserving evidence may be necessary to prove that a form of Sexual Misconduct occurred, or to obtain a protection order.

Below is a brief list of emergency and medical assistance providers within a reasonable distance of the School. If any individual requires assistance obtaining emergency and medical assistance, the School's Title IX Coordinators can assist. In addition, the Title IX Coordinators can provide information for additional resources, as well as information regarding rights and options for moving forward.

## **RESOURCES**

There are available on-campus and off-campus resources that can help after an incident of sexual misconduct. Any student, employee, or third party who believes that they are or may have been subject to sexual misconduct and/or retaliation are strongly encouraged to report it in accordance with the procedures set forth in this Policy.

### **Mahanaim Campus Services:**

Pastoral Counseling (631) 944-4400 ext. 2930

### **Local Services:**

New York Police Department: 911

Suffolk County Police Department: (631) 854-8200

Long Island Crisis Center: (516) 826-0244

Huntington Hospital: (631) 351-2000

ProHealth Urgent Care: (631) 470-9000

Community First Aid Squad: (631) 421-1263

Huntington Fire Department: (631) 427-3030

Suffolk County Sexual Assault Nurse Examiner (SANE) (516) 562-0100

Victims Information Bureau of Suffolk [VIBS]: (631) 360-3606

Suffolk County Coalition Against Domestic Violence [SCCADV]: (631) 666-8833

The Safe Center LI - Rape/Dating, Domestic Violence Hotline: (516) 542-0404

Love is Respect: (866) 331-9474

New York State Office of Victim Services: (800) 247-8035

New York State Domestic Violence Hotline: (800) 942-6906

New York State Police Non-Emergency: (631) 756-3300

New York State Police Sexual Assault Hotline: (844) 845-7269

National Sexual Assault Telephone Hotline: (800) 656 - HOPE (4673)

Violence Intervention Program (800) 664-5880

## **REPORTING INCIDENTS**

All faculty and staff are required to report incidents of Sexual Misconduct to the Title IX Coordinator. All students are to report to the Deputy Title IX Coordinator. Complaints can be filed in person, online, or by phone. There is no time limit for reporting Sexual Misconduct under this policy; however, reports are encouraged to be made as soon as possible in order to maximize the ability to obtain evidence and to conduct a timely investigation.

Title IX Coordinator:  
Jennifer Zhang, Chief Financial Officer  
300 Nassau Road, Huntington, NY 11743  
[jennifer.z@mahanaim.com](mailto:jennifer.z@mahanaim.com) | 631.944.4400

Deputy Title IX Coordinator:  
Sollip Kim, Registrar  
[sollip.kim@mahanaim.com](mailto:sollip.kim@mahanaim.com) | 631.944.4400

External inquiries may be made to the Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW, Washington, DC 20202-1100  
[ocr@ed.gov](mailto:ocr@ed.gov) | [www.ed.gov/ocr](http://www.ed.gov/ocr)

## **CONFIDENTIALITY**

Mahanaim employees cannot guarantee confidentiality, but will maintain privacy to the greatest extent possible. Privacy will be maintained by not releasing names or personally identifying information. The institution may disclose only information that is necessary to provide the accommodations or protective measures in a timely manner. Information will be reported to the Title IX Coordinator for incidents to investigate and/or seek a resolution.

## **REPORTING TO LAW ENFORCEMENT**

Acts of violence, including sexual assault, domestic violence, dating violence, and stalking, are against the law. If any individual requires assistance notifying local law enforcement, the Title IX Coordinator or Chief of Student Experience Officer will assist.

Local Law Enforcement  
Suffolk County Police Department: 911 or (631) 854-8200  
1071 Park Avenue, Huntington, NY 11743

## **ANONYMOUS REPORTING**

Anonymous reports may be submitted on the school website under Campus Safety. If the school receives a report of sexual misconduct from an anonymous source, the alleged victim will be informed of the report promptly. The policy and procedures will be applied in the same manner as if the alleged victim reported the incident.

## **DRUG AND ALCOHOL USE AMNESTY POLICY**

The health and safety of every student at Mahanaim is of utmost importance. Mahanaim recognizes that students who have been drinking and/or using drugs whether such use is voluntary or involuntary, at the time that violence occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Mahanaim strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution

officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident to Mahanaim's officials or law enforcement will not be subject to Mahanaim's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault. Nothing in this section shall be construed to limit Mahanaim's ability to provide amnesty in additional circumstances.

## **PROCESSING OF COMPLAINT**

Upon receipt of a report of sexual misconduct, the Title IX Coordinator will review the complaint to determine whether the facts as alleged would constitute a violation of Mahanaim policy. If so, a formal investigation will be opened. The Title IX Coordinator or designee will contact the Complainant and carry out an initial response and assessment. The primary goals of this process are to address immediate health and safety needs, to gather critical information, and to educate the Complainant regarding resources and options for moving forward.

The Title IX Coordinator will then meet with the respondent, provide a written copy of this Policy, identify the provision the responding party has been accused of violating, and identify available support resources. The Title IX Coordinator will lead the investigation. The investigation and adjudication process, including any appeal, should be complete within 60 days of the receipt of the complaint, if not sooner. Should this process last longer than 60 days, the Coordinator will communicate the reasons and expected timeline to all parties.

## **PROTECTIVE MEASURES**

The Title IX Coordinator will take protective measures to protect the safety and well-being of the individuals involved and the Mahanaim community. The appropriate measures will be determined on a case-by-case basis. Not all of the measures listed below will be necessary to keep victims safe and ensure equal access to educational programs and activities. The School will maintain privacy to the extent that it will not impair the ability of the School to provide supportive measures. Interim protective action is preliminary and only in effect until the investigation process is complete and a decision is rendered. Available interim measures are listed below.

- counseling
- implementing contact limitations between the parties
- extensions of deadlines and other course-related adjustments
- modifications of class schedules
- increased security and monitoring of certain areas of campus
- campus escort services
- leaves of absence or interim suspension

## **THE STUDENT'S 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; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

## **INFORMAL RESOLUTION**

If a complainant elects to have the matter dealt with in an informal manner, the matter will be discussed with the Title IX Coordinator. This individual will attempt to reasonably resolve the problem to the mutual satisfaction of the parties involved. If a resolution satisfactory to both the complainant and the accused party is reached, then the case will be closed and both complainant and the accused party will be given a written statement of the outcome within 10 business days of when the agreement was reached. If the complaint is not resolved to the mutual satisfaction of the complainant and the accused party within 14 calendar days from the filing of the complaint, the complainant will be notified of that fact. The Title IX Coordinator will discuss the matter with the complainant and advise on his/her right to proceed to other options. The time limits above may be extended by mutual agreement of the complainant and accused party with the approval of the Title IX Coordinator. The complainant may elect to proceed directly to the formal resolution process.

After a formal complaint of sexual harassment is filed, and at any time prior to reaching a determination regarding responsibility, a party may request that the matter be resolved through

informal resolution. Informal resolution is a completely voluntary process and requires the written consent of the complainant and respondent and the approval of the Title IX Coordinator or designee to proceed. Mediation is not available to resolve allegations that an employee committed sexual misconduct against a student or in cases of sexual violence. At any time prior to reaching a resolution, any party has the right to withdraw from the informal resolution process and to resume the formal complaint process.

## **FORMAL COMPLAINT**

If someone wishes to pursue the formal complaint process, the Title IX Coordinator will be appointed as the investigator. A student may submit a formal written complaint online to the Title IX Coordinator. All formal complaints will be treated confidentially consistent with applicable legal requirements. A written complaint should include the name, address, telephone number, and class year of the reporting student; a detailed description of the conduct that the reporting party alleges to be discriminatory; name(s) and contact information of the person against whom the complaint is made; and the name(s) and contact information of witnesses (if any). The reporting party should make every effort to submit the written complaint within fifteen (15) business days of the alleged conduct.

The School will provide an initial, written notice to the parties who are known that includes at least the following: (1) a discussion of the applicable process, including any option for Informal Resolution; (2) a sufficiently detailed statement of allegations, which includes the identities of the parties, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known; (3) a statement that the respondent is presumed innocent and that a determination of responsibility is made at the conclusion of the process; (4) a statement regarding each party's right to an advisor and to review and inspect evidence; and (5) a statement regarding any provision that prohibits the parties from knowingly making false statements or knowingly submitting false information.

## **INVESTIGATION**

The Title IX Coordinator will conduct a prompt, thorough, and impartial investigation of the reported sexual misconduct. Depending on the nature of the allegations, the investigation could include interviews with the reporting party, the accused individual, and/or witnesses; a review of written documentation and relevant policies; and any other steps necessary to thoroughly investigate the allegations. The Title IX Coordinator and other parties involved will make every effort to conclude the investigation and hold a judiciary hearing within twenty (20) business days.

### Training

The Title IX Coordinator, investigators, decision-makers, and any official who facilitates the formal complaint proceeding will not have a conflict of interest or bias for or against the accuser or the accused. The officials involved will receive annual training on

- issues related to dating violence, domestic violence, sexual assault, and stalking



- how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability
- relevant evidence and how it should be used during a proceeding
- proper techniques for questioning witnesses
- basic procedural rules for conducting a proceeding
- avoiding actual and perceived conflicts of interest

Selection of Adjudicator: The Title IX Coordinator will designate an adjudicator, who will conduct a hearing on the matter. Neither the Title IX Coordinator, nor Investigator, may serve as the Adjudicator.

#### Timely Notice of Meetings

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

At least 7 calendar days before the hearing, the Adjudicator will provide an initial, written notice to the parties that includes the following: (1) the date, time, and location of the hearing; (2) the charges to be reviewed by the Adjudicator; (3) the factual allegations concerning the violation; (4) the provisions of the Mahanaim's Sexual Misconduct policy alleged to have been violated; (4) the sanctions that may be imposed; and (5) the specific rules and procedures for the hearing, including any rules of order or decorum.

The date, time, or location of a hearing may be changed for good cause, at the discretion of the Title IX Coordinator. Good cause may include, but is not limited to: the availability of the parties; the availability of witnesses; the timing of the school breaks; efforts to utilize Informal Resolution; to comply with a request by external law enforcement; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; or, to address other legitimate reasons. Any change to the date, time, or location of a hearing will be shared with the parties in writing and will include the reason for the extension. Delays should not last more than 10 calendar days except when law enforcement specifically requests and justifies a longer delay.

#### Standard of Evidence

Victims has the right to pursue adjudication of crimes that occur on the campus through criminal courts and/or through Mahanaim's formal complaint process. The burden of proof in all cases adjudicated by the institution is "preponderance of the evidence" – whether it is "more likely than not" that sex discrimination, dating violence, domestic violence, sexual assault, or stalking occurred.

### Access to Information

The accuser, the accused, and appropriate officials will be provided timely and equal access to any information that will be used during informal and formal investigating meetings and hearings. They will be given the opportunity to inspect and review the same information and evidence. This includes any information, evidence, or allegation learned as a result of the Title IX Coordinator's investigation into the formal complaint.

### Witnesses

The Adjudicator will identify any witnesses that he or she wishes to hear from at the hearing based on a review of the investigation report. Also, the Complainant and Respondent each have the right to request the presence of any additional witnesses at the hearing, provided such witnesses were identified and interviewed as part of the investigation. The Adjudicator may permit the participation of a witness who was not interviewed during the investigation only if the Adjudicator determines that the new witness' participation at the hearing is relevant and appropriate under the circumstances. In such cases, the Adjudicator will refer the matter to the Investigator for additional investigation, and direct the Investigator to prepare a supplemental report, which may delay the timing of the hearing. The School cannot compel the attendance of any witness.

### Advisor

Mahanaim will provide the parties equal access to advisors of choice and any restrictions on advisor participation will be applied equally. The parties have a right to be accompanied by an advisor who may assist and advise a reporting individual, accused, or respondent throughout the judiciary or conduct process including during all meetings and hearings related. The role of an advisor is limited to observing and consulting with, and providing support to, the complainant or respondent. Advisors may not speak on behalf of the complainant or respondent. While the advisor may provide guidance and support, an advisor may not direct questions to the Judiciary Committee or author written submissions.

## **HEARING PROCEDURES**

The following hearing format will apply in all adjudications involving a Formal Complaint of Sexual Misconduct:

- The Adjudicator will explain the hearing process, provide an opportunity to all parties to ask questions about procedures, and read the charges.
- The Parties will each be given the opportunity to provide opening statements;
- The Adjudicator will ask questions of the Parties and Witnesses; Parties will be given the opportunity for live cross-examination after the Adjudicator conducts its initial round of questioning; During the Parties' cross-examination, the Adjudicator will have the authority to pause cross-examination at any time for the purposes of asking the Adjudicator's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Adjudicator. A Party's

waiver of cross-examination does not eliminate the ability of the Adjudicator to use statements made by the Party.

### The Decision-Maker

The hearing body will consist of a panel of at least three faculty and/or staff. No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor of or against the parties to the particular case.

The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing. The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

### Impact Statement

Within three business days of the conclusion of the hearing, both the complainant and respondent may provide an impact statement to the Title IX Coordinator. The impact statement may be no longer than five doubled-spaced types pages, using size 12 Times New Roman font and 1-inch margins. The impact statement is the individual's opportunity to discuss his or her experience and the incident in question, as well as respond to how the investigation and hearing was conducted and any areas of agreement or disagreement with the investigation or hearing or determination of the Committee. The impact statement may not seek to introduce new evidence.

## **DETERMINATION**

Within seven (7) business days from the determination, the Chief Student Experience Officer will issue a determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this determination letter, which will contain the following information:

- An identification of the allegations
- Findings of fact supporting the determination.
- Conclusions regarding the application of this policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent;
- Procedures and permissible bases for appeal.

## **DISCIPLINARY SANCTIONS**

Following a final determination, listed below are possible disciplinary sanctions applied. Factors pertinent to the determination of sanctions include but are not limited to, the nature of the conduct at issue.

1. Reprimand or warning;
2. Change to academic or work schedule
3. Educational reflection assignment
4. Restriction of access to the school's facilities or activities

5. Insurance of a No Contact Order
6. Referral to counseling
7. Disciplinary probation
8. Community service
9. Suspension
10. Expulsion
11. Termination of employment

## **APPEALS**

If the complainant or accused party is not satisfied with the outcome of the decision, an appeal may be processed within four (4) business days of receipt of the decision by submitting a formal appeal and any additional information to the President ([president@mahanaim.com](mailto:president@mahanaim.com)). If a request is not made in that time, then the decision is rendered final. An appeal of the decision is only permissible on the following grounds:

- i. A procedural error has occurred that significantly impacted the outcome. This error must be described in the letter requesting an appeal. Minor or harmless deviations from the process will not invalidate the proceedings;
- ii. The discovery of significant and relevant new information that was unavailable during the original process, which has become available and could impact the outcome. A summary of this new evidence, why it was previously unavailable, and its potential impact must be included in the request for an appeal.

The non-requesting party will receive notice of the appeal and may submit either their own appeal or a statement in support of the outcome of the hearing within four business days of notification. During that time, the appealing party may submit additional information or revise the appeal. The President will consider the appeals and/or statement of support together. The office of the President will issue a written decision within four (4) business days of receipt of the appeal(s) and/or statement of support. In reviewing the matter, the President shall have access to any information necessary to reach a decision regarding the appeal. The decision of the appeal is final.

## **TRANSCRIPT NOTATIONS**

New York State Education Law Article 129-B requires that certain notations be made on the transcripts of students who have been found responsible for crimes of violence, including sexual assault, as set forth in 20 U.S.C.1092(F)(1)(F)(i)(I)-(VIII) of the Clery Act. Accordingly, in such cases, the following notations will be made in a Respondent's transcript:

1. Respondent found responsible, transcript notation: "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"
2. Respondent withdraws from the School while a sexual misconduct investigation or conduct proceeding is pending, transcript notation: "Withdrew with conduct charges pending."

## **RECORD-KEEPING**

The School will maintain the following records for a period of seven years:

- Records of each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of the hearing.
- Records of any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the School's education program or activity.
- Records of any appeal and the result therefrom.
- Records of any informal resolution and the result therefrom.
- Records of all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. The School will document the basis for its conclusion, and document that it has taken measures designed to restore equal access to the School's education program or activity.

## **GLOSSARY**

*Accused:* A person accused of a violation who has not yet entered Mahanaim's judicial or conduct process.

*Affirmative consent:* 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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following six principles, along with the above definition, will be used to evaluate whether affirmative consent was given:

1. Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. 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 by 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.
5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
6. When consent is withdrawn or can no longer be given, sexual activity must stop

*Aggravated Assault:* An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by a means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used that could and probably would result in serious personal injury if the crime were successfully completed.)

*Bystander:* Person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

*Code of Conduct:* The written policies adopted by a school governing student behavior, rights, and responsibilities while such student is matriculated at Mahanaim.

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

*Confidentiality:* May be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a). Licensed mental health counselors, medical providers, and pastoral counselors are examples of institution employees who may offer confidentiality.

*Dating Violence:* Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the student. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

*Domestic Violence:* 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 receiving grant monies, 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.

*Drug Abuse Violation:* The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of state and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and the making of narcotic drugs.

*Education Program or Activity:* All operations of the School, including:

- Any locations, events, or circumstances, whether on- or off-campus, over which the School exercised substantial control over both the respondent and the context in which the sexual harassment occurred. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the School's programs and activities over which the School has substantial control.

*Formal Complaint:* A document, including an electronic submission, filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within the School education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

*Incapacitation:* occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a 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.

In New York State, a person under the age of seventeen cannot consent to sexual activity. Sexual activity or sexual contact between an adult and someone under the age of seventeen is a violation of this Policy in accordance with the Penal Law of New York State.

*No Contact Order* is a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party

*Pastoral Counselors:* A pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling and is functioning within the scope of that recognition. A pastoral counselor is not required to report an incident of sexual misconduct and/or retaliation to the Title IX Coordinator without the individual's permission. However, a pastoral counselor acting in some other manner, such as a faculty member, is not exempt from the reporting obligations.

*Privacy:* May be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with these other applicable laws, including informing appropriate institution officials.

*Reporting Individual:* shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

*Respondent:* Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy

*Retaliation* means taking any adverse action or attempting to take adverse action against a person for making a good faith report of sexual misconduct or participating in any proceeding under this Policy. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

*Sexual activity:* shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C.2246 (3).

Sexual act means

a. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;



- b. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- c. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- d. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Sexual contact means:

- a. the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

*Sexual Assault:* Sexual penetration, no matter how slight, is without consent and is further sub-defined by rape and statutory rape. According to the Federal Regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.

*Sexual Coercion* is the application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity

*Sexual Misconduct* is a broad term that encompasses a wide range of prohibited behaviors of a sexual nature committed without consent or by intimidation, coercion, threat or force. Sexual misconduct includes, but is not limited to, sexual assault, sexual coercion, sexual exploitation, sexual harassment, dating violence, domestic violence, and stalking.

*Sexual Violence* refers to a sexual act perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by Webb 9 employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

*Stalking:* Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

Examples of stalking include but are not limited to:

- Constantly following or surveillance the victim;
- Repeatedly appearing at places the victim is known to frequent;

- Persistent unwanted communication, objects, or gifts to the victim

*Title IX Coordinator:* The Title IX Coordinator and/or his or her designee or designees.

*Title IX Sexual Harassment*

Under Title IX, specifically 34 C.F.R. § 106.30, “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes 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 New York’s domestic or family violence laws or 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 New York.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.