

**Student Policy Prohibiting  
Discriminatory Harassment,  
Relationship Violence,  
and Sexual Misconduct**

**2019-2020**



**HOFSTRA**  
UNIVERSITY®

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## INTRODUCTION

As an academic institution of higher learning, Hofstra University is dedicated to providing an environment conducive to intellectual and personal growth, with all members of the community encouraged to participate to the fullest extent of their abilities. Our primary mission is to provide a quality education to our students in an environment that encourages, nurtures, and supports learning through the free and open exchange of ideas, for the betterment of humankind. Integral to this mission is a commitment on the part of our entire community to norms of interpersonal respect ensuring that no individuals are subjected to sexual misconduct, relationship violence, or discriminatory harassment on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, national or ethnic origin, physical or mental disability, marital or veteran status, or any other characteristic protected by state or federal laws. These protected traits are referred to throughout this policy as “protected characteristics or beliefs.” The protections of this policy apply to all regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

The lawful and ethical conduct of our students plays an essential role in achieving our educational mission.

This Policy prohibits discriminatory harassment, relationship violence, and sexual misconduct and provides a complaint process when any Hofstra University student commits, aids, or attempts to commit discriminatory harassment, relationship violence, or sexual misconduct. Prohibited Conduct is defined below in the Definitions section. This Policy is required by and is intended to comply with applicable provisions of Article 129-B of the New York State Education Law (Implementation by Colleges and Universities of Sexual Assault, Dating Violence, Domestic Violence and Stalking Prevention and Response Policies and Procedures); the Campus Sexual Violence (SaVE) Act, Section 304 of the Violence Against Women Reauthorization Act (“VAWA”) of 2013; Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act Amendments Act; the Age Discrimination Act; and other applicable federal, state, and local laws and regulations relating to sexual violence and discrimination.

This Policy shall be provided to all students enrolled at Hofstra University by publishing it on Hofstra University’s website and in the student *Guide to Pride* and by sending a copy of the Policy directly to all students annually via their University-provided email account.

## DEFINITIONS

All of the conduct defined in this section is Prohibited Conduct under this Policy.

### **Discriminatory Harassment**

Harassment, a form of discrimination, consists of either sexual harassment or other unlawful harassment because of a protected characteristic or belief. Protected characteristics or beliefs under this Policy are as follows: race, color, religion, sex, sexual orientation, gender identity or expression, age, national or ethnic origin, physical or mental disability, marital or veteran status, or any other characteristic protected by state or federal laws.

This Policy does not address other types of harassment not based on protected characteristics, such as disputes with classmates or roommates. General, nontargeted uncivil, nuisance, or abusive behavior is addressed separately in the University’s Student Conduct Code.

### **Sexual Harassment**

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other nonverbal, expressive, or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual’s academic performance or creating an intimidating, hostile, or offensive environment for learning or enjoying other University opportunities, programs, and activities. Examples include:

- *Unwanted flirtation, advances, or propositions of a sexual nature*
- *Insults, humor, jokes that belittle or demean an individual’s sexuality or gender*
- *Unwelcome comments of a sexual nature about one’s clothing or body*
- *Unwarranted display of sexually suggestive objects or pictures*
- *Unwelcome touching*
- *Stereotyping; adverse action based on failure to conform to stereotypical notions of masculinity or femininity*

## **Other Unlawful Harassment**

Other Unlawful Harassment is defined as verbal, nonverbal, expressive, or physical conduct that denigrates or shows hostility or aversion to an individual on the basis of that person's protected characteristic or belief.

Examples include:

- *Verbal abuse, insults, or ridicule based on a person's disability*
- *Displaying or distributing offensive materials, pictures, or toys that denigrate or show aversion to an individual or group based on religion*
- *Threatening or intimidating an individual because of their gender identity or expression*
- *Stereotyping or using slurs or epithets because of an individual's or group's race or gender*
- *Other adverse treatment because of a protected characteristic or belief*

In order to constitute Sexual Harassment or Other Unlawful Harassment, the conduct complained of must be so severe or pervasive as to substantially interfere with and/or alter an individual's academic performance or enjoyment of other University opportunities, programs, and activities and create an abusive environment for an individual.

## **Relationship Violence**

Relationship Violence consists of Domestic Violence, Dating Violence, and Stalking, each of which is defined below.

### **Domestic Violence**

Domestic Violence is defined as violence committed by a current or former spouse of the student, by someone who is or has cohabitated with the student as a spouse, by someone with whom the student has a child, by others to whom the student is related by consanguinity (blood) or affinity (marriage), or by unrelated persons who are (or have been in the past) continually living in the same household.

### **Dating Violence**

Dating Violence is defined as 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 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.

Examples of domestic and dating violence include:

- *Slapping, kicking, pinching, biting, pulling hair, or punching an intimate partner*
- *Threatening to hit, harm, or use a weapon on an intimate partner's family*
- *Pushing, grabbing, or choking an intimate partner*
- *Physically restraining an intimate partner*
- *Burning an intimate partner*
- *Hurting or threatening to hurt the pet of an intimate partner*

### **Stalking**

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for a student's safety or the safety of others; or (2) suffer substantial emotional distress.

Stalking also includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of stalking include:

- *Constantly following a student*
- *Repeatedly appearing at the student's home, place of business, vehicle, or classroom for no legitimate purpose*
- *Leaving unwanted messages, objects, or gifts at the student's home, place of business, vehicle, or classroom.*

### **Sexual Misconduct**

This section defines sexual misconduct. Understanding consent and how it relates to sexual encounters is key to understanding conduct that is prohibited by this policy. Consent is at the core of all healthy, respectful sexual interactions. As described in detail below, engaging in sexual activity without Affirmative Consent is Prohibited Conduct under this policy.

## **Affirmative Consent**

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

- Affirmative Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute Affirmative Consent to any other sexual act.
- Affirmative Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Affirmative Consent may be initially given but withdrawn at any time.
- Affirmative 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. Students who are charged with initiating sexual activity without consent cannot use as a defense that they themselves were under the influence of drugs and/or alcohol at the time they committed the violation.
- Affirmative Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Affirmative Consent is withdrawn, or can no longer be given, sexual activity must stop. It is the responsibility of the student who initiates sexual contact to obtain this Affirmative Consent; in other words, to confirm that the person with whom the student is involved has consented to engage in a sexual activity.

Lack of Affirmative Consent exists where the accused knew, or a reasonable person in the position of the accused should have known, of the other person's inability to consent. For example, there is no Affirmative Consent where the accused knew, or a reasonable person in the position of the accused should have known, that the other individual was unable to make an informed rational judgment due to the individual's use of alcohol or other drugs.

Sexual Misconduct includes Sexual Assault and Sexual Exploitation, each of which is defined below.

## **Sexual Assault**

Sexual Assault consists of any of the following:

- Non-Consensual Sexual Contact, which is defined as any intentional touching or fondling either directly or through the clothing, of a person's genitalia, anus, groin, breast, inner thigh, or buttocks without Affirmative Consent where touching is done with an intent to abuse, humiliate, harass, degrade or arouse, or gratify the sexual desire of any person. Non-Consensual Sexual Contact also includes an individual making a person touch the individual with, or on, any of these body parts.
- Non-Consensual Sexual Intercourse, which is defined as any sexual penetration (anal, oral, or vaginal), however slight, with any object or body part, without Affirmative Consent.
- Sexual act or sexual activity. The terms "sexual act" or "sexual activity" as used within this Policy refer to the acts described in the definition of Sexual Assault.

## **Sexual Exploitation**

Sexual Exploitation is defined as taking abusive or non-consensual sexual advantage of another for one's own benefit or for the benefit of someone other than the individual being exploited. Examples of Sexual Exploitation include:

- *Taking or transmitting sexually explicit photographs, videos, or audiotapes without consent, or causing or permitting others to take or transmit such photographs, videos, or audiotapes without consent. This includes, but is not limited to, transmitting sexually explicit photographs or videos via the internet or text message ("sexting") without consent.*
- *Watching another person(s) engage in sexual activity or contact without consent; viewing another person(s) nude without consent (e.g. watching someone in the shower without consent); allowing a third party to observe sexual acts or sexual contact without a partner's consent*
- *Prostituting another student (i.e., personally gaining money, privilege, or power from the sexual activities of another person(s))*

## GENERAL PROVISIONS

### Applicability and Scope

Any student who commits, aids, or attempts to commit any form of Discriminatory Harassment, Relationship Violence, or Sexual Misconduct, as defined above, on University property, or during the course of a University program or activity, including all academic, athletic, and other University-sponsored activities, including Hofstra-sponsored study abroad, at any time or place in such a way as to impact on-campus activity or a University-sponsored off-campus program or activity or in another manner that has a reasonable connection with the University, is subject to disciplinary action under this Policy. When incidents of Relationship Violence or Sexual Assault involve students from another educational institution, Hofstra may work collaboratively with the other institution(s) to address the conduct, consistent with FERPA. Hofstra students, however, remain responsible for compliance with this Policy regardless of any collaboration with another institution.

The University reserves the right to adjudicate alleged violations of the Student Conduct Code arising from the same incident as an alleged violation of this Policy in one proceeding according to the procedures set forth in this Policy.

As used in this policy, the “reporting individual” is the University student or employee who is alleged to have been harmed by a reported violation of this Policy, while the term “complainant” refers to the same student or employee after a report of a violation is referred to the Office of Community Standards for disciplinary proceedings. The terms “accused” and “respondent” both refer to the student accused of violating this Policy. Hofstra University remains the official charging party in proceedings under this Policy, but the complainant and respondent have certain rights in these proceedings as stated in this Policy.

This Policy is intended to provide a process to address, respond to, and adjudicate reports of Prohibited Conduct under this policy, where such conduct is alleged to have been committed by a Hofstra student. For reports of discriminatory harassment, relationship violence, or sexual misconduct, against a faculty member, other University employee, or other non-student, consult the procedures set forth in the Harassment Policy, available at [hofstra.edu/harassment](http://hofstra.edu/harassment). Students should report these matters to the Chief Human Resources Officer, who is the Title IX Officer for Employee Matters, and who can be reached at **516-463-6859**. Students have the opportunity to discuss their rights under the Harassment Policy and available resources, such as counseling or academic support services as necessary and appropriate, with the Title IX Officer for Employee Matters.

The University may pursue disciplinary action against a student for violation of this Policy at the same time the student is facing criminal charges for the same offense, even if the criminal prosecution is pending or has been dismissed, or the charges have been reduced. The University may delay any proceeding or investigation for up to ten (10) days when requested by external municipal entities for law enforcement purposes, and for a longer period of time when specifically requested and justified by law enforcement.

### Interim Protections

Upon receipt of a report of a violation, the University will take steps to protect reporting individuals and the larger University community as necessary pending the outcome of the conduct process. When taking interim measures, the University will minimize the burden on the reporting individual to the extent practicable. Reporting individuals will be provided with reasonable and available interim measures and accommodations that may include a change in academic, housing, employment, transportation, or other applicable arrangements in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment, consistent with the University’s policies and procedures.

An accused may be subject to summary suspension when the University determines that the accused presents a continuing threat to the health and safety of the community. In the case of a summary suspension, the student may request an expedited hearing.

Interim measures may also include no contact orders and interim suspension. All no contact orders will be mutual – i.e., neither student involved will be permitted to contact the other — unless the University determines, in its discretion, that a non-mutual order is appropriate.

Failure of students to adhere to the parameters of any interim measure(s) is a violation of this Policy and may lead to additional disciplinary action.

When the accused is not a student but is a member of the University community and presents a continuing threat to the health and safety of the community, the University will subject the accused to interim measures in accordance with University rules and policies. For procedures applicable where the accused is an employee, see the *Harassment Policy* at [hofstra.edu/harassment](http://hofstra.edu/harassment).

All interim no-contact orders, including those described in the section below, will expire at the earlier of:

- (1) a final resolution of a Complaint made to Public Safety in accordance with the Conduct Procedures below;
- (2) a final resolution in an Alternative Resolution process; or
- (3) where students have not taken the steps necessary to make a Complaint as described in How to Make a Complaint and Begin the Disciplinary Process, fourteen (14) days following the issuance of the no-contact orders, unless otherwise directed by the University. The time period for all other interim protections and accommodations will be determined by the University in its discretion.
- (4) Once a no contact order is issued and has been sent to a party, it is considered to be in effect regardless of whether the party signs the no contact order.

### **Protections and Accommodations: Relationship Violence and Sexual Assault**

In addition to the interim measures discussed above, Hofstra will ensure that the following protections and accommodations are available to students in cases of Relationship Violence or Sexual Assault.

*No-Contact Orders.* No-contact orders may be issued when the accused is a student. Any such no-contact order shall provide that if the accused and the reporting individual observe each other in a public place, it shall be the responsibility of the accused to leave the area immediately and without directly contacting the reporting individual. Continued intentional contact by the accused with the reporting individual when a no-contact order is issued under this section is a further violation of this Policy that would be subject to additional charges.

The University may establish an appropriate schedule for the accused to access applicable University buildings and property at a time when such buildings and property are not being accessed by the reporting individual. Once a no-contact order is issued and has been sent to a party, it is considered to be in effect regardless of whether the party signs the no-contact order.

*Review Process:* No-contact orders issued under this section and/or other interim protections and accommodations provided in cases involving reports of Relationship Violence or Sexual Assault are subject to the following review process. Either student shall, upon written request to the Associate Vice President for Student Affairs or designee, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any no-contact order, interim protection, or accommodation that directly affects the student, including potential modification of such protection or accommodation, and shall be allowed to submit evidence in support of the student's request. The other student will be notified of and entitled to review any such request and evidence submitted and will have the opportunity to oppose any such request in writing to the Associate Vice President for Student Affairs or designee. The other student's opposition must be sent within two (2) business days of being sent a copy of the request.

*Assistance with Orders of Protection:* Orders of protection are issued by New York state courts. The University does not issue orders of protection, but will ensure that students are referred to the appropriate officials to assist in obtaining a New York state court order of protection or an out-of-state equivalent. If the University receives a copy of an order of protection, the reporting individual will also have the right to receive a copy. In all instances where students obtain orders of protection, they will have an opportunity to be referred by the Title IX Officer for Student Issues to an appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons, and an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension. Public Safety will also provide assistance to complainants in calling on and assisting local law enforcement in effecting an arrest for violation of an order of protection.

## **No Retaliation**

No individual shall be penalized or retaliated against by a member of the University community for their participation in the investigation or disciplinary process related to a report made under this Policy.

Retaliation is defined by applicable federal laws, including Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972. Any such retaliation constitutes Prohibited Conduct and a further violation of this Policy, to be adjudicated under these procedures.

## **Title IX Officer for Student Issues**

The Title IX Officer for Student Issues has oversight responsibility for the University's student-related efforts to comply with and carry out responsibilities under Title IX, a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. In this regard, the Title IX Officer for Student Issues is responsible for overseeing the University's response to reports and Complaints by students against students under this policy of sexual harassment, relationship violence, and sexual misconduct; and for addressing any patterns or systemic problems revealed by such reports and Complaints against students. The Title IX Officer for Student Issues is responsible for maintaining data about reports of Sexual Harassment, Domestic Violence, Dating Violence, Stalking, and Sexual Misconduct against students. The Title IX Officer for Student Issues is also responsible for referring any reports of Sexual Harassment, Domestic Violence, Dating Violence, Stalking, and Sexual Misconduct against employees or other nonstudents to the Chief Human Resources Officer, who serves as the Title IX Officer for Employee Matters. The Title IX Officer for Student Issues, Allison Vernace, is available to meet with students as needed. She can be reached at **StudentTitleIX@hofstra.edu, 516-463-5841**, Room 127 Wellness and Campus Living Center, Hempstead, NY 11549.

There are also designated Deputy Title IX Officers, who are available to students to receive reports of violations and to discuss issues related to this Policy and its procedures:

Jennifer Boscarino-Green, Senior Associate Dean for Strategic Outreach and Retention Initiatives, Center for University Advising, **JBG@hofstra.edu, 516-463-4961**, Room 101F Memorial Hall

Amanda DelGaudio, Assistant Director of LGBTQ+ Advocacy and Awareness, **Amanda.DelGaudio@hofstra.edu, 516-463-6957**, Room 260 Mack Student Center

Jodi Langsfeld, Associate Dean for Student Affairs (Medical School), **Jodi.Langsfeld@hofstra.edu, 516-463-7145**, Room 227A Zucker School of Medicine

Cindy Lewis, Senior Associate Director of Athletics, **Cindy.Lewis@hofstra.edu, 516-463-6748**, Room 207 Mack Sports Complex

Lisa Monticciolo, Dean of Students and Diversity and Inclusion Officer (Law School), **Lisa.Monticciolo@hofstra.edu, 516-463-4809**, Room 204A Maurice A. Deane School of Law

Zaibis Muñoz, Assistant Dean and Director of Student Advocacy and Prevention Awareness, **Zaibis.Munoz@hofstra.edu, 516-463-6558**, Room 260J Mack Student Center

Margaret Abraham, Senior Vice Provost for Academic Affairs, **Margaret.Abraham@hofstra.edu, 516-463-5641**, Room 225 West Library Wing

Russ Smith, Associate Director for Residence Life, **Russ.D.Smith@hofstra.edu, 516-463-6931**, Room 126 Wellness and Campus Living Center

## Reporting Options

The University encourages students who have experienced sexual misconduct, relationship violence, or discriminatory harassment to talk to someone at the University about what happened – so students can get the support they need, and so the University can respond appropriately. This section describes reporting options for students.

When a student first reports Relationship Violence or Sexual Assault to the Title IX Officer for Student Issues, a Deputy Title IX Officer, a Resident Director, any Student Affairs administrator at the Director level or higher, or a Public Safety officer, the following information will be presented to the student: “You have the right to make a report to Hofstra Public Safety, local law enforcement, and/or state police or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University.” Any of the above individuals who learn of a report of Relationship Violence or Sexual Assault from another employee or from a Resident Assistant must ensure that the above information is presented to the reporting individual.

*Reporting a Violation.* Students who wish to report Prohibited Conduct should contact the Title IX Officer for Student Issues, a Deputy Title IX Officer, a Resident Director, or the Department of Public Safety. Students making a report may ask to remain anonymous or that a Complaint not be pursued, and the University will weigh that request against its obligation to provide a safe, nondiscriminatory environment for the community. This process is described in detail in the section Remaining Anonymous or Declining to Pursue a Complaint.

*Pursuing a Formal Complaint.* Students who wish to make a formal Complaint to begin the disciplinary process should file a Complaint with Public Safety, as described in the section How to Make a Complaint and Begin the Disciplinary Process.

*Confidentiality.* Students who want to keep information strictly confidential may speak to Confidential Resources. These are University employees, such as counselors in the Student Health and Counseling Center, who are required to maintain confidentiality and will not share information with school administration or other parties. *See Confidential Resources section.* All other University employees who receive information about Prohibited Conduct are encouraged to report all relevant information (including the identities of both the student complaining and the accused) to the Title IX Officer for Student Issues. This allows the University to investigate the incident and take appropriate steps to protect the University community and to promote a safe, nondiscriminatory environment.

Even Hofstra offices and employees who cannot guarantee confidentiality will maintain a student’s privacy to the greatest extent possible. The information students provide to a non-confidential resource will be relayed only as necessary for the University to respond.

### *Confidential Resources*

Where a violation is reported to individuals at the University who serve in a professional role in which communication is protected under applicable federal, state, or local law or regulation or licensing authority – including counselors and medical professionals in the Student Health and Counseling Center, and clergy in the Interfaith Center – such reports will not be further disclosed to the extent the communication is protected by law.

*In other words, when a student talks to a counselor at the Student Health and Counseling Center about an incident of harassment or abuse, that counselor will not share the information with school administration or any other parties without the student’s permission except in rare, extreme circumstances required by law.*

A student who speaks to one of these counselors must understand that, if the student wants to maintain confidentiality, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Where a student notifies any such counselor of conduct prohibited by this policy – i.e., where the communication is protected by law – the University will not be on notice of such prohibited conduct.

### *Responsible Persons: Reporting Incidents of Sexual Violence*

Certain individuals at the University are considered “Responsible Persons,” and are **required** to report all relevant information about an incident of sexual violence that a student has shared with them to the Title IX Officer for

Student Issues or other University official responsible for oversight of this Policy. The following University officials constitute Responsible Persons required to report incidents of sexual violence:

- President
- All Vice Presidents, Senior Vice Presidents, Associate Vice Presidents, and Assistant Vice Presidents
- All Deans and Vice Deans of Schools or Colleges of the University
- All administrators in the Division of Student Affairs
  - This includes but is not limited to Advising Deans in the Center for University Advising, Assistant Directors, and Associate Deans/Directors, Residence Life administrators, and Community Standards administrators
  - This does not include administrators covered under *Confidential Communications*, above
- All Resident Assistants (RAs)
- All Public Safety Officers and administrators
- Title IX Officer for Student Issues
- Deputy Title IX Officers
- Chief Human Resources Officer/Title IX Officer for Employee Matters
- Administrators in the Office of Human Resources
- Equal Rights and Opportunity Officer

*Note:* Those students who are not sure whether the person to whom they are reporting will keep their report confidential should ask the person before disclosing the information.

#### *Remaining Anonymous or Declining to Pursue a Complaint*

Students may report Prohibited Conduct to an employee but ask to remain anonymous, ask that no Complaint be pursued, and/or request that no investigation into a particular incident be conducted or disciplinary action taken. In any of these instances, the University will weigh that request against the University's obligation to provide a safe, nondiscriminatory environment for all.

If the University honors the request, a reporting individual must understand that the University will have only a limited ability to investigate the incident meaningfully or to take disciplinary action against the alleged accused.

The University may take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking, or sexual assault in a general way that does not specifically identify those who disclose or the information disclosed.

#### *Consent Prior to Commencement of Investigation: Relationship Violence and Sexual Assault Reports*

For reports of Relationship Violence or Sexual Assault, the University will seek consent from the reporting individual prior to conducting an investigation. If the reporting individual declines to consent, the University will respect that request unless otherwise required by law or it determines in good faith that failure to investigate may create a risk of harm to the complainant or other members of the community.

For reports of Relationship Violence or Sexual Assault, if a reporting individual discloses an incident to a Responsible Person but the reporting individual wishes to maintain confidentiality or does not consent to the University's request to initiate an investigation, the University shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of the student's reporting choice.

#### *Disclosure During Public Awareness and Advocacy Events*

If a student discloses information through public awareness events such as candlelight vigils, protests, or other public events, the University will not take action based on this information. The University may use the information provided at such an event to inform its efforts for additional education and prevention.

#### *University Disclosure – Clery Act and FERPA*

Statistics generated from student reports of certain crimes occurring in certain geographic locations are included in the University's Clery Act *Annual Security and Fire Safety Report* in an anonymous manner that does not identify the specifics of the crime or the identity of the reporting student.

The University is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual). A reporting individual will not be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, (2) when the student is a dependent on either parents' prior year federal income tax return, or (3) when the student has filed a waiver of FERPA protections. Generally, the University will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting student.

### **Alternative Resolution**

At any time after a report of Prohibited Conduct, but before any hearing is held, an alternative resolution may be pursued where any reporting individual/complainant and the respondent involved so desire and the University deems it to be appropriate. Alternative resolution, which is optional, is designed to obtain an expedient, mutually acceptable solution without the necessity for conducting further formal proceedings. The purpose is to attempt through discussion and inquiry to make an effort to resolve or work out the issue in a non-adversarial manner. The Title IX Officer for Student Issues, the Director of Community Standards, or designee is authorized and encouraged to explore alternative resolution any time after the report of an incident is received. If the report is resolved to both students' satisfaction, the Title IX Officer for Student Issues, the Director of Community Standards, or designee will provide the students with a written statement reflecting the terms of the resolution and stating that the agreed-upon resolution will be undertaken. This written statement should be signed by the reporting individual/complainant and the accused/respondent. Upon the signing of the written statement of alternative resolution, the matter will be deemed closed, and no party will be permitted to appeal, contest, re-open, or otherwise attempt to set aside the terms of the alternative resolution as long as the terms are adhered to unless agreed to by both parties and the University in writing.

### **How to Make a Complaint and Begin the Disciplinary Process**

Each reporting individual will have the right to request that charges be filed against the accused in disciplinary proceedings under this Policy. Students who wish to pursue a complaint of a violation of this Policy through the disciplinary process (referred to in this Policy as "Complaint") should make a Complaint regarding the Prohibited Conduct through the Department of Public Safety by calling 516-463-6606 or by visiting the Mack Public Safety and Information Center located on the corner of Hempstead Turnpike and California Avenue. To pursue a Complaint of Sexual Assault and Relationship Violence, students must consent to an investigation as described in Consent Prior to Commencement of Investigation: Relationship Violence and Sexual Assault Reports.

Public Safety is available 24 hours a day. Public Safety can assist in connecting students with counseling, medical, and academic support services, and will explain the options that are available regarding reporting through the Hofstra disciplinary process, and to local law enforcement and/or state police. Assistance will be provided in notifying these authorities, if such assistance is requested. Students may choose to proceed through both criminal and University disciplinary processes simultaneously, or may choose to decline to notify outside authorities. For additional information, please refer to the "Safety and Security Policies" section of the *Guide to Pride* or call 516-463-6606.

Students with questions or concerns about disability-related issues, including discriminatory harassment based on disability, may contact the Director of Student Access Services by calling 516-463-7075 or by visiting Suite 107 Mack Student Center. Students in need of assistance with filing a disability-related Complaint may contact the Director of Student Access Services, as indicated above.

## **Amnesty**

The health and safety of every student at Hofstra University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that domestic violence, dating violence, stalking, sexual assault, or other violence occurs, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Hofstra University strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to University officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to University officials or law enforcement will not be subject to the University'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.

## **Advisors**

Both the complainant and the respondent will have the right to be accompanied by an advisor of choice who may assist and advise the student throughout the conduct process under this Policy, including during all meetings and hearings relating to the process. It is the student's responsibility to retain an advisor and notify the advisor of meetings and hearings; meetings and hearings will not be rescheduled to accommodate an advisor's schedule. All guidelines stated in "Advisor's Role in University Proceedings" in the Code of Community Standards apply to the Advisor's role under this Policy. Students must identify their Advisor and complete an Advisor Form from the Office of Community Standards, which must be signed by their Advisor. Advisors will not be permitted to speak or ask questions on behalf of students during meetings or hearings. A witness to the matter may not serve as an advisor.

## **Annual Training**

All investigators and members of an Administrative Board or appeal panel that is adjudicating cases under this Policy will receive annual training in the following: conducting investigations of sexual violence and conducting a hearing process that protects the safety of victims, ensures due process protections for all parties, and promotes accountability; the effects of trauma; impartiality; the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to this Policy; and other issues relating to discriminatory harassment, domestic violence, dating violence, sexual assault, and stalking.

## **False Reports**

Reports of sexual and other discriminatory harassment, sexual misconduct, and relationship violence cannot always be substantiated due to the nature of the offenses. Lack of corroborating evidence should not discourage any person from seeking relief through the procedures in this policy. However, reports found to have been intentionally dishonest or made maliciously or without regard for the truth will constitute a violation of this Policy.

## **CONDUCT PROCEDURES**

These procedures are provided for the prompt and equitable resolution of Complaints brought by University employees and students alleging Discriminatory Harassment, Sexual Misconduct, or Relationship Violence by a student. The process set forth below will be conducted in a reasonable, prompt, and efficient manner, with the timing depending on a variety of factors, including the severity, extent, and complexity of the allegations, and timing of report in connection with the academic calendar.

## **Complaint**

Complaints against students should be initiated as soon as possible after the incident takes place by filing a Complaint with the Department of Public Safety. In order to facilitate investigation of a Complaint, prompt reporting is encouraged; initial Complaints of violation of this Policy must be made within twelve (12) months of the most recent occurrence of an alleged violation. This timeliness requirement may be waived in extenuating circumstances. Even if the time to file a formal Complaint has elapsed, students are encouraged to report violations so that they may access appropriate resources and accommodations. Students may contact the Dean of Students Office or the Title IX Officer for Student Issues for any assistance they need with filing a Complaint. *See also* How to Make a Complaint and Begin the Disciplinary Process.

## **Investigation**

Investigations of Complaints will be prompt, thorough, and impartial. For Complaints of Relationship Violence and Sexual Assault, prior consent will be sought as discussed above under Consent Prior to Commencement of Investigation: Relationship Violence and Sexual Assault Reports.

Both the complainant and the respondent will have the opportunity to offer evidence during the investigation. The complainant and respondent should present all proposed evidence, including pictures, documents, or other written or electronic materials, and all potential witnesses, to the investigator during the initial investigation. Students will be precluded from introducing evidence or witnesses that are not submitted to the Department of Public Safety investigator at least 5 business days prior to the scheduled Hearing, unless the University, in its sole discretion, finds that extenuating circumstances exist.

Where grounds for further proceedings have been found, the respondent will receive notice from the Office of Community Standards, and an informational meeting will be scheduled as described in the following section.

## **Informational Meeting**

Both the respondent and complainant will schedule separate informational meetings, and will receive reasonable written or electronic notice, provided in advance, of this meeting and any other meeting under this policy that they are required or eligible to attend.

Both students will receive notice of the charge, which serves as formal notification that a charge of violation of this Policy has been brought forward against the respondent. The University may hold students accountable and subject to sanctions for violations that are not referenced in the initial notice of the charge but arise from the same incident and are learned about from evidence, testimony, or admission at a hearing or during the investigatory process, consistent with the procedures set forth in this Policy.

Both the respondent and the complainant will be given the opportunity during their individual informational meeting to discuss and review the charges as well as any evidence in the Case File, which is maintained by the Office of Community Standards, to the extent permitted under confidentiality laws, including FERPA. The University reserves the right to have a University representative present during the review of any evidence in the Case File. Students are not entitled to keep copies or take photographs of party or witness statements or other documentary evidence. During the informational meeting, students will have the opportunity to ask and answer questions regarding the allegation(s) and the disciplinary process under this policy and will be provided with educational or other resources applicable to the allegations as appropriate.

For documented emergencies and other documented extenuating circumstances, a student may request one (1) postponement of the student's informational meeting, provided that the Office of Community Standards is notified at least one business day in advance of the scheduled meeting. Failing or refusing to sign any forms does not absolve the student of the responsibility for following all directives outlined.

## **Options for Resolution**

Following the informational meeting, there are three possible options for resolution:

1. **Acceptance of responsibility.** The respondent may elect to accept responsibility for the Charge. In such cases, the University will determine the appropriate sanction in accordance with Sanctions and Remedies, including the submission of written impact statements, and the respondent will automatically waive their rights associated with a hearing. The complainant will receive written notice of: (i) the election to accept responsibility; (ii) the sanction as it relates to the complainant, to the extent consistent with FERPA; and (iii) any individual remedies offered or provided to the complainant. In cases of Relationship Violence or Sexual Assault, both students will be sent concurrent notification by the Office of Community Standards of the rationale for the sanction consistent with FERPA. The sanction will be appealable as set forth below.

2. **Alternative Resolution.** *See the Alternative Resolution section, above.*
3. **Hearing.** Where the respondent denies responsibility or one or both parties request a formal hearing, the Charge will proceed to a formal hearing where it will be determined whether it is more likely than not that the respondent violated this Policy. The hearing will be conducted according to the procedures set forth below. As set forth in the previous section under Informational Meeting, where the respondent fails to respond, a decision will be made based upon the information in the Case File.

### **Administrative Board and Hearing Preparation**

Only an Administrative Board will adjudicate proceedings under this Policy; student board hearings are not available for these proceedings. The Administrative Board shall consist of three administrators/faculty assigned by the Vice President for Student Affairs or designee. In cases where Sexual Misconduct, Relationship Violence, or Sexual Harassment has been alleged, the Administrative Board shall include at least one male and one female member. The Hearing Officer will serve as the Chairperson of the hearing and shall conduct the hearing in accordance with this Policy.

### **Rights/Obligations of the Parties**

When an administrative hearing is conducted under this policy, the parties have the rights and obligations listed below. The University, in its sole discretion, may extend the time frames listed below as necessary and appropriate.

1. **Notice of Hearing.** The parties shall be informed by the Office of Community Standards, in writing, of the date, time, and place of the hearing. The hearing will be scheduled reasonably promptly following the initiation of the Complaint. The complainant and respondent shall be allowed a reasonable amount of time to prepare for the hearing.
2. **Witnesses and Other Evidence.** The complainant and respondent shall each have the right to speak for themselves, to present witnesses and other evidence in the Case File, and to challenge the evidence.

#### *Witnesses*

- i. The parties may propose witnesses with knowledge of the facts to speak on their behalf. Each party must submit a final written list of all their proposed witnesses or any signed witness statements to the Office of Community Standards for approval at least five (5) business days prior to the hearing. All witness names proposed on this list must have been previously submitted to the Department of Public Safety during the initial investigation as set forth under Investigation.
- ii. Approval of all witnesses is at the sole discretion of the University. All witnesses must be deemed relevant by the University in its sole discretion.
- iii. The Office of Community Standards will send each party a written list of all approved witnesses prior to the hearing date and will notify all University employee or student witnesses of the hearing time, date and place to appear via their University email address. The University reserves the right to call additional witnesses up to and during the hearing at its sole discretion.
- iv. It is the responsibility of each party to notify their approved witnesses of the hearing time, date, and place to appear, unless their approved witnesses are Hofstra students or Hofstra employees, in which case the Office of Community Standards will notify as set forth in (iii) above.

#### *Other Evidence*

- i. Parties may present and challenge all evidence that has been placed in the Case File, as described in the *Informational Meeting* section, above. Parties may request an appointment to view the Case File (subject to FERPA) during regular business hours at any time before the hearing, so long as the request is made prior to the hearing. Copying of any evidence in the Case File by any means by students or their Advisors is strictly prohibited. The University reserves the right to supplement the Case File at any time.
3. **Removal of Board Member or Hearing Officer.** Upon being notified of the members of the board and the Hearing Officer, the parties have the right to request the removal of a member of the board or the Hearing Officer if a conflict of interest exists. The request must be made to the Dean of Students or designee, and the party must be prepared to substantiate this contention. Removal of a member of the board or the Hearing Officer may be granted or denied based on the Dean of Students or designee's determination as to whether or not there is just cause.

- 4. Postponing the Hearing.** The University reserves the right to postpone or adjourn a hearing in its discretion. Each party shall be entitled to postpone the hearing one (1) time with just cause, as long as the request is made at least one (1) business day prior to the hearing. The Office of Community Standards will determine if a postponement is warranted. Postponements cannot be made to accommodate the schedule of an advisor or other student witnesses. Any additional postponements may be granted or denied at the University's discretion.
- 5. Failure to Appear.** If a party fails to appear, the hearing may proceed in that party's absence, and a decision may be rendered. The sole fact of a party's absence from the hearing shall not, in and of itself, be deemed to create any adverse inference against that party.

### **Hearing Process**

The usual format of a hearing is set forth below. The Hearing Officer has the discretion to change the order, as he or she deems appropriate. The University reserves the right to call appropriate University members to serve as witnesses and/or to offer testimony at the hearing. Any evidence introduced at the hearing shall be part of the hearing record ("Hearing Record").

The Hearing Officer will conduct the hearing in an orderly manner, state the charges, rule on the relevancy of matters discussed and evidence presented, call witnesses, and coordinate and lead the questioning process. The Hearing Officer shall obtain affirmations from parties and witnesses of their obligation to testify truthfully.

1. Cases will be introduced and charge(s) read by the Hearing Officer.
2. Opening statement by complainant and/or charging party.
3. Opening statement by respondent.
4. Where applicable as determined by the University, statement/report from the investigator regarding the investigation.
5. Where the investigator provides a statement/report, questions for the investigator from members of the board, the complainant, and the respondent.
6. Statement(s)/report(s) from witness(es) on behalf of the complainant and/or charging party.
7. Questions for the witness(es) in No. 6 from members of the board, the complainant, and the respondent.
8. Statement(s)/report(s) from witness(es) on behalf of the respondent.
9. Questions for witness(es) in No. 8 from members of the board, the respondent, and the complainant.
10. Questions for the respondent from members of the board and the complainant. Each student may question the other, but alternative arrangements may be made for complainants who do not wish to be in the same room as the accused.
11. Questions for the complainant from members of the board and the respondent.
12. Closing statement from respondent.
13. Closing statement from complainant and/or University

*Note: The Hearing Officer may determine, in their discretion, that the parties should not personally question each other or witnesses. In such situations, the parties will be permitted to propose questions to the Hearing Officer to be read. The Hearing Officer, in their discretion, may accept or reject any question so submitted.*

*Note: During the hearing, statement reports are provided verbally. If a witness or party is absent, the Hearing Officer will enter written statements pre-approved by the Office of Community Standards into the record. The University reserves the right to redact absentee witness statements to ensure that statements read into the record comply with the Policy. The parties will have the opportunity to challenge these written statements at the hearing in lieu of questioning.*

*Note: Neither party may ask questions or present evidence about prior sexual history with persons other than the other party or about the mental health diagnosis and/or treatment of the other party during the stage of determining responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the stage of determining sanction. Either party may ask questions or present evidence about their own prior sexual history or mental health diagnosis and/or treatment at any time, so long as the information is*

*relevant and otherwise in compliance with this policy. However, that party must be prepared to answer questions regarding this information from the Board and the other party if they choose to introduce this information into the hearing.*

### **Deliberation and Decision**

Following the close of the hearing, the Administrative Board shall deliberate, and the Hearing Officer shall serve as a non-voting facilitator for the deliberations.

The Board may not take into account as evidence of culpability the mere fact that a criminal investigation or prosecution is pending in relation to the events complained of.

The Administrative Board shall determine responsibility by choosing one of the following options:

- (1) Responsible. The Administrative Board finds that it is more likely than not that the respondent violated the Policy Prohibiting Discriminatory Harassment, Relationship Violence, and Sexual Misconduct.
- (2) Not Responsible.

### **Sanctions and Remedies**

If the respondent is found Responsible, the Hearing Officer or designee determines the sanctions. Each party shall have the opportunity to make a written impact statement before the sanction determination is made. Potential sanctions are set forth in detail in the Code of Community Standards section on “Sanctions,” and include probation, residence hall removal and/or ban, suspension, and expulsion.

In determining an appropriate sanction, the Hearing Officer or designee shall consider aggravating factors, including (a) any record of past violations, (b) the nature and severity of such past violations, and (c) premeditation/intent to commit a violation.

The following should also be considered in determining the sanction: whether the sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation on the complainant and the University community.

In accordance with the University’s policy on “Minimum Sanctions,” as set forth in the Code of Community Standards, for certain serious breaches of University policy that constitute a serious threat to other individuals or the community, a minimum penalty of suspension from the University (including removal from the residence halls) for at least one full semester to permanent expulsion may be imposed. This includes but is not limited to conduct in violation of New York state criminal law or federal law, which poses a serious threat to the University community, a serious physical attack upon another person, and sexual violence.

The University will offer counseling and academic support services, as necessary and appropriate, to any student involved in proceedings under this policy. The University will also take additional steps, as appropriate, which could include training sessions and other measures, to prevent recurrence of violations, and remedy their effects.

Sanctions will be held in abeyance until a decision is rendered in a final appeal under the process described below, or the time to appeal has expired without an appeal being submitted, unless the University determines that sanctions should go into effect sooner in order to protect the health or safety of the University community. Where sanctions are held in abeyance, interim protections may continue in effect.

After the conclusion of the final appeal, or where the time for appeal has expired, the University may issue a mutual no-contact order, where a respondent is found not responsible, if it determines such a no-contact order is in the best interest of the parties and/or the University. Such a no-contact order is not considered a sanction, shall not be part of the disciplinary record of either party, and shall not burden one party more than the other.

## **Decisions and Appeals**

Both parties shall be sent concurrent notification in writing by the Office of Community Standards of the decision of the Administrative Board.

The respondent shall be notified of any sanctions, and, to the extent consistent with FERPA or other applicable law, the complainant will be notified of the sanction as well. Complainants may be notified of sanctions that directly relate to the complainant, including: that the respondent have no contact with the complainant; or that the respondent is prohibited from attending school for a period of time, has been transferred out of classes shared with the complainant, or has been relocated away from a residence hall shared with complainant.

For Complaints of Relationship Violence or Sexual Assault, both students will be sent concurrent notification by the Office of Community Standards of the decision of the Administrative Board, the findings of fact supporting the decision, and the rationale for the decision. Where sanctions are imposed, the students will be notified of the rationale for the sanction.

The complainant shall also be notified as to any individual remedies offered or provided to the complainant, and other steps the school has taken to eliminate any hostile environment and prevent recurrence, if applicable. The respondent will not be notified of any individual remedies offered or provided to the complainant.

Either party may request an appeal of the decision (responsible or not responsible) and/or sanction(s) by submitting a written petition for an appeal to the Dean of Students within seven (7) calendar days after receiving the decision letter, on any of the following grounds:

- 1) There is new evidence to warrant a new hearing in a way that affected the decision or sanctions; or
- 2) The student's procedural rights have been violated; or
- 3) The severity of the sanction is inappropriate given the details of the case.

Dissatisfaction with the outcome of the hearing alone is not sufficient grounds for appeal.

The student(s) must submit the written petition for appeal to the Dean of Students specifying one or more of the above grounds. A request on any of these grounds must clearly explain, in detail, the basis for the appeal, and should include any available documentation. The appeal is limited to an inquiry of the issue or issues raised in the Charge. The appeal is not intended to be a rehearing of the original hearing.

The Office of Community Standards will notify the party who did not request the appeal in writing and that party will have five (5) calendar days from the date of notification to submit a response to the appeal. The appeal will be decided by the Dean of Students or designee. (All references in this section to the "Dean of Students" include the Dean of Students or designee). The party who did not submit the response will receive a copy of the response.

For decisions relating to Relationship Violence or Sexual Assault Complaints, the appeal will be conducted by a three-person panel that includes the Dean of Students, and two other individuals designated by the Vice President for Student Affairs. Each party will receive notice of the names of the members of the panel and the right to request the removal of a member of the panel if a conflict of interest exists. The request must be made to the Dean of Students, and the party must be prepared to substantiate this contention. Removal of a member of the appeals panel may be granted or denied based on the Dean of Students' determination as to whether or not there is a conflict of interest.

In addition to filing a written appeal or response, either party may request a hearing before the Dean of Students or appellate panel, as applicable, which request may be granted or denied in the discretion of the panel/Dean of Students. If such a hearing request is granted, both parties will be notified and each party will be permitted to present their position orally (limited to thirty (30) minutes or an appropriate length of time as determined in the discretion of the Dean of Students/panel) and may be questioned by the panel or Dean of Students, as applicable.

All appeals will be conducted in a fair and impartial manner. The panel or Dean of Students, as applicable, will decide whether to modify or uphold the original sanction or decision. Modification of the sanction may include either raising or lowering of the sanction. Appellate decisions will be based solely on the three grounds for appeal;

appellate decision maker(s) will not substitute their judgment for the judgment of the Administrative Board. Deference will be given to the judgment of the Administrative Board absent an abuse of discretion or clearly erroneous determination that cannot be reasonably supported by the information considered. Both parties will be sent concurrent notification in writing of the result of the appeal.

In situations where new evidence is introduced, the appeals panel or Dean of Students, as applicable, may decide, based on its discretion, to re-open the case with the original hearing board. Based on the new evidence heard, the original hearing board may uphold or modify its decision, and the sanction may be upheld or modified. Modification of the sanction may include either raising or lowering of the sanction.

#### *Final Appeal to Vice President for Student Affairs*

Within five (5) calendar days after the date of the written appellate decision, either party may submit written objections to the decision to the Vice President for Student Affairs. Such written objections should set forth, in detail, the reasons why the objecting party believes the appellate decision should not be affirmed, or why the recommended penalty should not be adopted, by the Vice President for Student Affairs. A copy of the written objections will be provided to the other party in interest, who may file a written response within five (5) calendar days after the date the objections were sent. The party who did not submit a response will receive a copy of the response.

Either party may request a hearing before the Vice President for Student Affairs, which may be granted or denied in the Vice President's discretion. If such hearing is granted, both parties will be notified and each party will be permitted to present their position orally (limited to thirty (30) minutes or an appropriate length of time as determined in the discretion of the Vice President) and may be questioned. The decision of the Vice President for Student Affairs shall be final.

#### **Records**

To ensure the integrity of the hearing process and maintain an accurate record of the proceedings, Hofstra University records the administrative hearings conducted under this policy. Originals or copies of these recordings will not be released, unless pursuant to a lawfully issued subpoena or court order. Students may request to listen to recordings or view transcripts, as applicable, and may take notes on their prior proceedings to the extent permitted by FERPA. The University reserves the right to have a University representative present during any review of recordings or transcripts. As with other hearing materials, only those individuals directly involved in an appeal (the Dean of Students, Associate Dean of Students or designee, Assistant Dean for Community Standards or designee, Title IX Officer for Student Issues or designee, the respondent and the respondent's advisor, the complainant and the complainant's advisor, and hearing board and appellate hearing board members) may request to listen to any part of the recording. The complainant and accused student will have the right to access the recording or transcript for five years from the date of the hearing at a time and place determined by the University. Copying of the hearing materials or transcript by students or their Advisors by any means is strictly prohibited.

*Note:* Only the chairperson of the hearing is allowed to record the hearing on a University recording device or through a court reporter. All other recording and/or cell phone devices are not permitted during the hearing.

The Office of Community Standards is responsible for maintaining the Hearing Record together with the audio recording of the hearing pursuant to the University's Record Retention Policy.

Any publicly available recordkeeping, such as crime statistics reported as part of the University's Annual Security Report, will be accomplished without the inclusion of identifying information about any reporting individual, to the extent permissible by law.

For Complaints of Relationship Violence or Sexual Assault, students will have the right to choose whether to discuss or disclose the outcome of the processes under this policy, and will have the right to have all information obtained during the course of the process under this policy protected from public release until the appeals panel makes a final determination unless otherwise required by law. Even after the appeals panel makes a final determination, FERPA protections will still apply to the information as applicable.

## APPENDIX I: RESOURCES

### A. If You Experience Sexual Misconduct, Relationship Violence, or Discriminatory Harassment

Your safety and well-being are of paramount importance. What you choose to do after an incident is up to you, but you are encouraged to take the following actions immediately:

1. Go to a place where you feel safe.
2. Contact or have a friend contact Public Safety at **516-463-6606**. In an emergency, call Public Safety at **516-463-6789**, or, if you're off-campus, call **911**. You have the option to notify Public Safety and local police, and to be assisted by Public Safety in notifying local police if you so choose. You also have the option to decline to notify these authorities.
3. To speak to a **Confidential Resource** who will not report your information further, you can contact the Student Health and Counseling Center at **516-463-6745** (Public Safety will contact the Student Health and Counseling Center during non-business hours), or one of the following chaplains in the Interfaith Center: Catholic Chaplain, **516-463-7210**; Jewish Chaplain, **516-463-6922**; Muslim Chaplain, **516-463-6920**; Protestant Chaplain, **516-463-5227**.
4. Go to a hospital emergency room. Public Safety or the police will provide transportation, if necessary.
5. It is important to preserve evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order. Medical evidence for use in the prosecution of a criminal offense is collected at the hospital. For this reason, you should not shower, bathe, douche, or change clothes. You may need to bring a change of clothes to the hospital in case what you are wearing is collected as evidence.
6. Do not touch any evidence or straighten up the area where the assault occurred.
7. Do not blame yourself. The person who assaulted you is responsible.

Students have access to mental health counseling through the Student Health and Counseling Center. Crisis intervention, initial intake, consultations, workshops and psychoeducational groups. Any enrolled student is eligible to receive short-term individual counseling and participate in all programs including workshops and psychoeducational groups at no cost.

Students have access to medical services, including testing for sexually transmitted infections, through the Student Health and Counseling Center. There may be a fee for testing for sexually transmitted infections, as tests are sent to an outside laboratory.

Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital (Find a designated SAFE Center near you here:

<https://www.health.ny.gov/professionals/safe/>). While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: <https://ovs.ny.gov/sites/default/files/brochure/ovsrightsofcvbooklet.pdf>, or by calling 1-800-247-8035. Options are explained here: <https://ovs.ny.gov/help-crime-victims>

The University will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community.

### B. Students' Bill of Rights

Pursuant to Article 129-B of the New York State Education Law, 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 University.
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 University courteous, fair, and respectful health care and counseling services, as available through the Student Health and Counseling Center.
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 University, any student, the accused and/or the respondent, and/or their friends, family, and acquaintances within the University's jurisdiction.
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 University

### **C. Rights of Reporting Individuals**

Any student reported to have been subject to a violation of this Policy has the right to the following:

1. Notify Hofstra Public Safety, local law enforcement, and/or state police.
2. Have emergency access to a University official trained in interviewing victims of sexual assault, who shall be available upon the first instance of disclosure by a reporting individual 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. The official will explain 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. The official shall also explain the level of confidentiality they are authorized to offer, and shall inform the reporting individual of other reporting options.
3. Disclose confidentially the incident to counselors or medical professionals in the Student Health and Counseling Center, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals.
4. Disclose confidentially the incident and obtain services from the state or local government.
5. Disclose the incident to Hofstra representatives who can offer varying levels of confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals.
6. Disclose the incident anonymously by calling the New York State Hotline for Sexual Assault and Domestic Violence at 1-800-942-6906. The Hotline is for crisis intervention, resources, and referrals and is not a reporting mechanism, nor is it affiliated with Hofstra University.
7. File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Officer for Student Issues and other appropriate Hofstra representatives for information and assistance. Reports shall be investigated in accordance with this policy, and a reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy.
8. Disclose, if the accused is an employee of the institution, the incident to the Title IX Officer for Employee Matters or the right to request that a confidential or private employee assist in reporting to the Title IX Officer for Employee Matters, for investigation and adjudication under the Harassment Policy.

9. Receive informational assistance from Hofstra representatives, and assistance from The Safe Center of LI in accordance with Hofstra's Memorandum of Understanding with the Safe Center of LI. Receive informational assistance from Hofstra representatives in connection with legal proceedings in family court or civil court.
10. Withdraw a complaint or involvement from the process under this Policy at any time.

#### **D. Educational Programs**

You are the key to your personal safety on campus and in the community. We encourage you to educate yourself by attending educational programs that promote the awareness and prevention of relationship violence and sexual assault. Such programs are conducted for first-year students during New Student Orientation and Welcome Week.

Incoming students are also required to complete the Campus Clarity program, which includes important information about relationship violence and sexual assault, such as:

- Definitions of the relevant offenses in New York state
- Definition of consent, in reference to sexual activity, in New York state
- Safe and positive options for bystander intervention
- Information on how to recognize warning signs of abusive behavior and how to avoid potential attacks

Other programs on these and related topics are offered throughout the year and are open to the entire Hofstra community. These programs include Domestic Violence Awareness Week as well as numerous sexual assault awareness and prevention programs, including Take Back the Night, the Clothesline Project, and It's On Us campaign, as described at [hofstra.edu/itsonus](http://hofstra.edu/itsonus). In addition, the University has launched the Step Up program, a bystander intervention program that meets with student groups throughout the year.

All Hofstra students are notified each year about the *Guide to Pride*, available online at [hofstra.edu/guidetopride](http://hofstra.edu/guidetopride), which is updated annually and includes the Student Policy Prohibiting Discriminatory Harassment, Relationship Violence, and Sexual Misconduct, also available online at [hofstra.edu/sexualmisconduct](http://hofstra.edu/sexualmisconduct). This policy states that sexual assault and relationship violence are prohibited at Hofstra, and contains detailed information about Hofstra's guidelines and procedures in responding to reports of sexual assault or relationship violence, including information about confidentiality and a detailed description of the disciplinary process for complaints.

For additional information, please contact the Office of Student Affairs at [studentaffairs@hofstra.edu](mailto:studentaffairs@hofstra.edu).

#### **E. Disability Resources**

The Office of Student Access Services (SAS) provides disability-related education, services, and resources to the Hofstra community. SAS ensures equal access to education for all Hofstra students, regardless of disability, in compliance with federal law and in keeping with Hofstra's longstanding commitment to equality and access in its programs and services. SAS respectfully serves Hofstra students by facilitating barrier-free educational opportunities and assisting them in becoming self-advocating, independent learners.

The Director of SAS is available to assist students with questions or concerns about disability-related issues, including discriminatory harassment, and to provide assistance with filing a disability-related Complaint. You can reach SAS at 516-463-7075 or [SAS@hofstra.edu](mailto:SAS@hofstra.edu) or by visiting Suite 107 Mack Student Center.

**F. Phone Numbers**

- **Emergency – On Campus: 516-463-6789 Off Campus: 911**

- Hofstra University Public Safety 516-463-6606
- Title IX Officer for Student Issues 516-463-5841
- Title IX Officer for Employee Matters 516-463-6859
- Hofstra University Office of Residence Life 516-463-6930
- Dean of Students/Office of Community Standards 516-463-6913
- Hofstra University Student Access Services 516-463-7075

*Confidential Resources*

- Hofstra University Student Health and Counseling Center 516-463-6745
- Catholic Chaplain 516-463-7210
- Jewish Chaplain 516-463-6922
- Muslim Chaplain 516-463-6920
- Protestant Chaplain 516-463-5227

*Off-Campus Resources*

- The Safe Center LI 516-465-4700
- The Safe Center LI Rape/Dating/Domestic Violence Hotline 516-542-0404

**APPENDIX II**

**New York State Penal Law and Hofstra’s Disciplinary Processes for Sexual Assault, Domestic Violence, Dating Violence, and Stalking: A Side-By-Side Comparison**

*Students reporting sexual assault, dating or domestic violence, or stalking have the right to make a report to Hofstra Public Safety, and/or through the criminal justice system, or choose not to report. This chart summarizes the differences between Hofstra’s disciplinary system and the criminal justice system.*

	<b>Criminal Justice System</b>	<b>Hofstra’s Disciplinary System</b>
<b>Goals</b>	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
<b>Governing Laws</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 Article 129-A and 129-B.
<b>How to report and whether there must be action once a report is made</b>	Crimes involving sexual violence may be reported to the local police 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.	To make a report, contact the Title IX Officer for Student Issues, a Deputy Title IX Officer, the Dean of Students, a Resident Director, or the Department of Public Safety.  To pursue a complaint of sexual violence through the Hofstra disciplinary process, contact the Department of Public Safety by calling 516-463-6606 or by visiting the Mack Public Safety and Information Center located on the corner of Hempstead Turnpike and California Avenue. Hofstra will seek consent from the student making the complaint before investigating.  Hofstra will respect requests for anonymity or that a complaint/investigation not be pursued, unless Hofstra determines in good faith that failure to investigate may create a risk of harm to the student making the complaint or other members of the community, in accordance with the factors listed in the Student Policy, or otherwise required by law.
<b>Who investigates?</b>	Police or other law enforcement officials.	Hofstra Public Safety personnel or other departments at Hofstra, as appropriate.
<b>Procedures</b>	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	Hofstra University’s <i>Student Policy Prohibiting Discriminatory Harassment, Relationship Violence, and Sexual Misconduct</i> within the <i>Guide to Pride</i> .
<b>Standard of Evidence</b>	Crimes must be proven “Beyond a Reasonable Doubt.”	A violation of Hofstra’s Student Policy 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.	Student may confidentially disclose sexual violence to clergy in the Interfaith Center, and medical professionals and counselors in the Student Health and Counseling Center. Disclosures made to a confidential resource will not trigger an investigation, and information generally will not be shared with school administrators or other parties.
<b>Privacy</b>	Criminal trials must be public.	Reports and disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the University.
<b>Who are the parties?</b>	The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	Hofstra is the charging party, but the individual who initiated the complaint (“complainant”) and the student accused of violating the policy (“respondent”) both have the right to participate in the investigation and disciplinary process.
<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 are not required to participate in Hofstra’s process. However, Hofstra 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).	Hofstra University is the charging party, but the complainant has the right to participate in the proceedings.
<b>Testimony</b>	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	Both the complainant and the respondent may make opening and closing statements. Each student may question the other, but alternative arrangements may be made for complainants who do not wish to be in the same room as the accused.  The hearing board, complainant, and respondent may ask questions of all witnesses, including the complainant and respondent. The Hearing Officer may determine, in their discretion, that parties should not personally question each other or witnesses. In such situations, the parties will be permitted to propose questions to the Hearing Officer to be read.
<b>Role of attorneys</b>	Both the state and the defendant are represented by counsel; counsel may question witnesses.	The complainant and respondent are permitted an advisor of their choosing, but the advisor may not speak on behalf of the student during meetings or a disciplinary hearing.

<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.	Neither the complainant nor respondent may ask questions or present evidence about prior sexual history with persons other than the other party, or about the mental health diagnosis and/or treatment of the other party during the stage of the proceeding determining responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible during sanctioning.
<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>	If there is a formal disciplinary proceeding, the respondent may be found “responsible” or “not responsible” for violations of the Student Policy. Respondents may also accept responsibility for a violation without a hearing.  If both parties agree and the University finds it appropriate, students may enter into an alternative resolution without a hearing.
<b>Sanctions</b>	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	A student found responsible for violating Hofstra’s 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 Hofstra.

For complete information about the *Student Policy Prohibiting Discriminatory Harassment, Relationship Violence, and Sexual Misconduct*, please see the full policy, available online at [hofstra.edu/sexualmisconduct](http://hofstra.edu/sexualmisconduct).

Please contact the Title IX Officer for Student Issues by e-mail at [StudentTitleIX@hofstra.edu](mailto:StudentTitleIX@hofstra.edu) or telephone at 516-463-5841, with any questions.

### APPENDIX III: NEW YORK STATE LAW

Many of the acts covered by this Policy are also considered crimes under New York State law. The following are definitions related to crimes under New York State law:

#### Sexual Assault and Relationship Violence Consent

Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor’s conduct. Where the offense charged is rape in the third degree, criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor’s situation would have understood such person’s words and acts as an expression of lack of consent to such act under all the circumstances. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the Office of Children and Family Services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the Office of Mental Health, the Office for People with Development Disabilities, or the Office of Alcoholism and Substance Abuse Services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

### **Dating Violence**

New York state does not specifically define “dating violence.” However, under New York law, intimate relationships are covered by the definition of domestic violence when the act constitutes a crime listed elsewhere in this document and is committed by a person in an “intimate relationship” with the victim. See “Family or Household Member” for definition of “intimate relationship.”

### **Domestic Violence**

Any act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breathing or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person’s child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person’s child is a victim of the act.

### **Family or Household Member**

Persons related by consanguinity or affinity; Persons legally married to one another; Persons formerly married to one another regardless of whether they still reside in the same household; Persons who have a child in common regardless of whether such persons are married or have lived together at any time; Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; Any other category of individuals deemed to be a victim of domestic violence as defined by the Office of Children and Family Services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

### **Parent**

Means natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.

### **Sex Offenses; Lack of Consent**

Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

### **Sexual Misconduct**

When a person (1) engages in sexual intercourse with another person without such person’s consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person’s consent; or (3) engages in sexual conduct with an animal or a dead human body.

### **Rape in the Third Degree**

When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person’s consent where such lack of consent is by reason of some factor other than incapacity to consent.

### **Rape in the Second Degree**

When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree the defendant was less than four years older than the victim at the time of the act.

**Rape in the First Degree**

When a person engages in sexual intercourse with another person (1) by forcible compulsion; or (2) who is incapable of consent by reason of being physically helpless; or (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**Criminal Sexual Act in the Third Degree**

When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without such persons consent where such lack of consent is by reason of some factor other than incapacity to consent.

**Criminal Sexual Act in the Second Degree**

When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.

**Criminal Sexual Act in the First Degree**

When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**Forcible Touching**

Forcible touching includes: (1) When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire, or (2) when a person subjects another person to sexual contact for the purpose of gratifying the actor's sexual desire and with intent to degrade or abuse such other person while such other person is a passenger on a bus, train, or subway car. Forcible touching includes squeezing, grabbing, or pinching.

**Persistent Sexual Abuse**

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

**Sexual Abuse in the Third Degree**

When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old; and (3) the defendant was less than five years older than such other person.

**Sexual Abuse in the Second Degree**

When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old

**Sexual Abuse in the First Degree**

When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

**Aggravated Sexual Abuse**

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

**Aggravated Sexual Abuse in the Fourth Degree**

When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra,

penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.

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

When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1) (a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

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

When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

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

When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

#### **Course of Sexual Conduct against a Child in the Second Degree**

When over a period of time, not less than three months, a person: (1) Engages in two or more acts of sexual conduct with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct with a child less than 13 years old. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charges offense occurred outside of the time period charged under this section.

#### **Course of Sexual Conduct against a Child in the First Degree**

When a person over a period of time, not less than three months in duration, a person: (1) Engages in two or more acts of sexual conduct, or aggravated sexual contact with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual contact with a child less than 13 years old.

#### **Facilitating a Sex Offense with a Controlled Substance**

A person is guilty of facilitating a sex offense with a controlled substance when he or she: (1) knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and (2) commits or attempts to commit such conduct constituting a felony defined in this article.

#### **Incest in the Third Degree**

A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

#### **Incest in the Second Degree**

A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, or criminal sexual act in the second degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

#### **Incest in the First Degree**

A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, or criminal sexual act in the first degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew or niece.

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

When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

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

When a person (1) Commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or (4) commits the crime or stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

### **Stalking in the Second Degree**

When a person: (1) Commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, sligshot, slungshot, shirken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or (2) commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

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

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

### **Bias Crimes**

Also called hate crimes, Bias Crimes are criminal acts, including acts of violence, intimidation, or destruction of property, based upon bias and prejudice. Under the New York State Penal Code, a person commits a hate crime when he or she commits a specified offense and either (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or (b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct. The New York State Penal Code, including the Hate Crimes Act of 2000, subjects Bias Crimes to criminal prosecution and severe punishment. Bias Crimes are prohibited under this Policy as a form of discriminatory harassment, and should be reported as described in the Policy. Resources for victims of discriminatory harassment are described in Appendix I of this Policy.

