Manhattan School of Music
130 CLAREMONT AVENUE, NEW YORK, NY 10027-4698 | MSMNYC.EDU

Equal Employment and Educational Opportunity Sexual Harassment Policy

(for claims not subject to the Title IX Sexual Misconduct Policy)

Manhattan School of Music is committed to maintaining an environment that is free from discrimination, harassment, and retaliation. It is the policy of Manhattan School of Music ("MSM" or "the School") not to tolerate discrimination, harassment, or retaliation based on age, actual or perceived race (including traits historically associated with race), color, creed, ethnic origin, national origin, alienage or citizenship status, disability, religion, sex (including sexual harassment), gender (including actual or perceived sex, gender identity and gender expression including a person's actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth), actual or perceived height or weight, sexual orientation, marital or partnership status, military or veteran status, predisposing genetic characteristics, unemployment status, pregnancy, familial status, caregiver status, sexual and reproductive health decision, prior criminal convictions, or status as a victim or witness of domestic violence, sex offenses, or stalking, or on any other legally protected basis. Such behavior is unlawful and inconsistent with the commitment of MSM. This commitment is central to MSM's Mission as well as to its legal compliance obligations.

MSM does not permit retaliation against individuals who oppose such alleged misconduct or who participate in an investigation of such allegations.

This policy applies to Sexual Harassment, which is one kind of discrimination. Sexual harassment is further defined in Section I below. This policy prohibits harassment relating to all terms and conditions of employment within MSM -- including recruitment, hiring, admission, financial aid, compensation, benefits, evaluation, promotion, and termination. It also requires non-discriminatory, non-harassing, and non-retaliatory treatment of students and prospective students in all aspects of student life and studies, including during student application, admission, and financial aid processes.

As noted in Section I below, MSM maintains a comprehensive set of policies, including this Sexual Harassment Policy, that are intended to operate together to prohibit discrimination, harassment, and retaliation within our workplace and learning environment. These include two other policies that address, respectively, (i) Non-Discrimination (other than in circumstances of sexual harassment or misconduct); and (ii) Sexual Misconduct that falls within the legal parameters of Title IX. Depending upon the allegations of a particular complaint, modifications to different procedures or timelines may be required in order to harmonize policy requirements, sequence investigations, and ensure a full and fair resolution of concerns. See Section IV *Reservation of Rights* below, which details the circumstances in which the School may modify policies and timelines under this policy and the School's other policies.

I. Sexual Harassment

Manhattan School of Music ("MSM" or "the School") is committed to a workplace and learning environment free from harassment and discrimination. Sexual harassment is a form of workplace discrimination that subjects an employee or student to inferior conditions of employment or learning/living environments, due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but MSM recognizes that sex discrimination can be related to or affected by other identities beyond gender. Different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact their experience with gender discrimination in the workplace.

This Policy focuses upon Sexual Harassment that does not fall within the School's *Title IX Sexual Misconduct Policy*. The *Non-Discrimination and Anti-Harassment Policy* addresses allegations of gender discrimination and other forms of discrimination (e.g., race, ethnicity) that do not involve sexually harassing conduct, but there can be overlap between issues covered by this policy and the *Non-Discrimination Policy*. The methods for reporting and investigating discrimination and harassment under this Policy and the *Non-Discrimination Policy* are essentially the same. Moreover, where complaints raise one than more ground for discrimination (as where, for instance, a complaint alleges both sexual harassment and some other form of discrimination), the School may modify procedures or timelines involved in an investigation. The School is committed to ensuring a full and fair investigation of complaints. See Section IV *Reservation of Rights* below.

Other relevant MSM policies:

1. The *Title IX Sexual Misconduct Policy* pertains to students or other employees who experience alleged sexual harassment that falls within the legal and regulatory parameters of the School's Title IX policy. That policy can be found here: www.msmnyc.edu/msm-title-ix-sexual-misconduct-policy
2. The *Manhattan School of Music Non-Discrimination and Anti-Harassment Policy* sets forth policies and procedures prohibiting alleged discrimination, harassment, or retaliation in circumstances other than of sexual harassment or sexual misconduct falling within this Sexual Harassment policy or the Title IX policy. That policy can be found here:

   www.msmnyc.edu/equal-employment-and-educational-opportunity-non-discrimination-and-anti-harassment-policy

One purpose of this Sexual Harassment policy is to teach employees and students to recognize sexual harassment, including harassment due to an individual's intersecting identities, and to provide the tools to take action when it occurs. All employees, managers, and supervisors are required to work in a manner designed to prevent sexual harassment (as well as other forms of discrimination) in the workplace and learning environment. This policy is one of several policies reflecting MSM's commitment to a discrimination-free work and learning environment.

The School is further committed to a work and learning environment in which all individuals, including students and employees, are treated with respect and dignity. The School has a zero-tolerance policy for

any form of harassment or discrimination, and employees have a special responsibility not to engage in it and not to allow it to occur. It bears repeating that sexual harassment is a form of workplace discrimination and employee misconduct; among other things, sexual harassment can subject the School

and its employees to significant legal liability. Employees who engage in such conduct may be individually liable for their own conduct, as well as being subject to disciplinary action up to and including dismissal from employment.

In addition to serving an educational purpose, this Sexual Harassment policy sets forth below the School's procedures for investigating and resolving sexual harassment (other than harassment that falls within the provisions of the School's Title IX policy). Employees are encouraged to report sexual harassment, should they experience or observe it, by filing a complaint or raising a concern internally with MSM under this policy.

Please note the broad scope of this Sexual Harassment policy. MSM's Sexual Harassment policy applies to all employees, applicants for employment, students, and interns, whether paid or unpaid. The policy also applies to additional covered individuals. It applies to anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in our workplace, including competition judges and guest artists. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with MSM. (Throughout this policy, we will use the term "covered individual" to refer to these individuals who are not direct employees of MSM). This policy not only broadly protects the individuals identified in this paragraph but also prohibits all such individuals from engaging in any of the conduct prohibited by this Policy.

All sexual harassment is unacceptable. In Section I-A below, MSM specifically discusses what constitutes sexual harassment or retaliation under this policy and applicable law. Any employee or covered individual who engages in sexual harassment or retaliation will be subject to action, including potential dismissal for employees or students. In New York, sexual harassment does not need to be severe or pervasive to be illegal. Employees and covered individuals should not feel dissuaded from reporting sexual harassment because they do not believe the conduct is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as sexual harassment can happen in different degrees, potential discipline for engaging in sexual harassment will vary depending on the degree of sexual harassment and other factors that the School will consider in determining an appropriate intervention. Responses might include education and counseling (but conduct may result in suspension or dismissal when appropriate).

Retaliation is prohibited. As noted in Section I-E below, retaliation occurs when an employee, student, or covered individual experiences adverse consequences from the School because they made a complaint or report, provided information, or otherwise assisted in an investigation under this policy. Any employee, student, or covered individual who reports an incident of sexual harassment, provides information, or otherwise assists in any investigation is protected from retaliation. This means that no one should fear reporting sexual harassment if they believe it has occurred. So long as an individual reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee, student, or covered individual who retaliates against anyone involved in a sexual harassment investigation will face disciplinary action under this policy, up to and including termination.

All employees, students, or covered individuals working or learning at MSM who believe they have been subject to retaliation should inform a supervisor, manager, Dean, of Students or the Vice President of Administration and Human Relations. All employees and covered individuals who believe they have been

a target of such retaliation may also seek relief from government agencies, as explained below in Section III, addressing *Legal Protections and External Remedies*.

Discrimination of any kind, including sexual harassment, is a violation of our policies, is unlawful, and may subject MSM to liability for the harm experienced by targets of discrimination. *MSM's Non-Discrimination and Anti-Harassment Policy* for how MSM will address reports of discrimination and harassment other than sexual harassment. This includes sex discrimination (or discrimination on the basis of any gender characteristic) that involves disparate treatment in the terms and conditions of employment, or in the programs and services provided to students, but does not involve sexual harassment. All such conduct violates these policies and applicable law. Note that sexual harassers may also be individually subject to liability and employers or supervisors who fail to report or act on sexual harassment may be liable for facilitating such behavior. Students who engage in sexual harassment may be subject to discipline, up to and including expulsion.

When a complaint is filed or a concern is lodged under this policy, MSM will conduct a prompt and thorough investigation that is appropriate to the nature of the concern and fair to all parties. MSM will keep the investigation confidential to the extent possible. If an investigation ends with the finding that sexual harassment occurred, MSM will act as appropriate to address the findings. In addition to any required discipline, MSM will also take steps to ensure a safe work environment for the employee(s) who experienced sexual harassment. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

As noted, all employees and covered individuals are required or encouraged to report sexual harassment or behaviors that violate this policy to the Office of Administration and Human Relations. All employees will have access to a complaint form to report sexual harassment and file complaints. Use of this form is not required; and, for anyone who prefers to make a complaint verbally or by email, these complaints will be treated with equal priority.

This policy will be provided to all employees in person or through email upon hiring and will be posted prominently in all work locations and on the MSM website. Students will also be notified of the School's sexual harassment policies. For those offices operating remotely, in addition to sending the policy through email, the School will make it available on the organization's shared network.

A. What Is Sexual Harassment?

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. It also violates MSM policy and is contrary to MSM's institutional mission. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender or non-binary. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression, and perceived identity may be forms of sexual harassment (or may constitute sex discrimination). The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than

the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Under New York law and this policy, sexual harassment does not need to be severe or pervasive to be illegal -- it can be any sexually harassing behavior that rises above the level of petty slights or trivial inconveniences. Every instance of sexual harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior. However, the Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated less favorably because of their gender (perceived or actual), sexual orientation, or gender expression is considered a violation of MSM's policies against Sexual Harassment and/or Non-Discrimination. The intent of the behavior, for example, making a joke, does not necessarily neutralize a sexual harassment claim. Not intending to harass is not an excuse; the reasonable impact of the behavior on a recipient is what counts.

Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature when:

1. The purpose or effect of this behavior unreasonably interferes with an individual's work performance or learning environment -- or creates an intimidating, hostile or offensive work or learning environment. The impacted person does not need to be the intended target of the sexual harassment;
2. Employment or student status (or student grading) depends implicitly or explicitly upon accepting such unwelcome behavior; or
3. Decisions regarding an individual's employment or a student's access to programs or services are based on the individual's acceptance of or rejection of such unwelcome behavior. Such decisions can include what shifts and how many hours an employee might work, employee or student project assignments, as well as salary, promotion, grade, or casting decisions.

There are two primary types of sexual harassment:

1. Behaviors that contribute to a **hostile work environment**. These may include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee or student finds offensive or objectionable, causes an employee or student discomfort or humiliation, or interferes with the employee's job performance or the student's learning or living environment.

2. Sexual harassment also occurs when a person in authority tries to trade job or student benefits for sexual favors. In the employment context, this can include offering (or withholding) benefits relating to hiring, promotion, continued employment or any other terms, conditions, or privileges of employment; in the student context, this can include offering (or withholding) grades, performance opportunities, or other benefits arising from student status. This is called **quid pro quo** harassment.

Any employee, student, or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, may be covered by this policy.

B. Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited. These are just examples of offending behaviors and should not be considered exhaustive:

1. Physical acts of a sexual nature, such as:
    a. Touching, pinching, patting, kissing, hugging, grabbing, brushing against an individual's body, or poking another individual's body; or
    b. Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
2. Unwanted sexual comments, advances, or propositions, such as:
    a. Requests for sexual favors accompanied by implied or overt threats concerning the victim's job or classroom performance evaluations, a promotion, a performance opportunity, or other job or student benefits;
    b. Subtle or obvious pressure for unwelcome sexual activities; or
    c. Repeated requests for dates or romantic gestures, including gift-giving.
3. Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality, sexual experience, or romantic history may create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms, such as Zoom and Microsoft Teams and in messaging apps such as Slack and WhatsApp, when employees or students are working remotely can similarly create a hostile work or learning environment.
4. Written conduct such as authoring sexually threatening, derogatory, or offensive letters, emails, or text messages.
5. Sex stereotyping, which occurs when an individual's conduct or personality traits are judged simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look:
    a. Remarks regarding an employee's or student's gender expression, such as wearing a garment typically associated with a different gender identity; or
    b. Asking employees or students to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
6. Sexual or discriminatory displays or publications anywhere in the workplace or learning environment, such as:
    a. Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace or while in areas of the learning environment that are publicly accessible; or

b. This also extends to the virtual or remote workspace or learning environment -- and can include having such materials visible in the background of one's home during a virtual meeting.

7. Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, and the status of being transgender, such as:
   a. Interfering with, destroying, or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
   b. Sabotaging an individual's work;
   c. Bullying, yelling, name-calling;
   d. Intentional misuse of an individual's preferred pronouns; or
   e. Creating different expectations for individuals based on their perceived identities:
      i. Dress codes that place more emphasis on women's attire, or gender specific dress codes.
      ii. Leaving employees who are parents/caregivers out of meetings on the assumption that they are too busy with personal responsibilities.

Depending upon the circumstances, certain of these practices (such as sex stereotyping or preferencing individuals who are not parents or caregivers over those who are) can also constitute sex discrimination (that is, disparate treatment based upon a person's gender characteristics) and may be addressed under MSM's *Non-Discrimination Policy* as well as this one. Issues relating to gender and sexuality may fall within more than one category of potential misconduct (and implicate more than one policy), which is another reason employees and students are strongly encouraged to bring any potential harassing or discriminatory conduct to the attention of MSM. MSM will conduct a threshold review of complaints and advise the complainant and respondent as to which policy or policies apply and which procedures will be used. All concerns will be reviewed.

C. Who Can be a Target of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Sexual harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in the policy. **Harassers can be anyone in the workplace or learning environment**. A supervisor, a supervisee, a coworker, or a student can all be harassers. Anyone else operating in the workplace or learning environment can also be harassers, including an independent contractor, contract worker, vendor, constituent, or visitor. These individuals can also be the targets of harassment; they are not just harassers but also be harassed.

Sexual harassment does not happen in a vacuum, and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

1. Placing different demands or expectations on black women employees than white women employees or students can be both racial and gender discrimination, as well as sexual harassment when it includes a sexualized component to the conduct;
2. An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
3. Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace or learning environment.

Individuals bring personal history with them to the workplace and learning environment, which may impact how they interact with certain behavior. It is especially important for all employees and students to be aware of how words or actions might impact someone with a different experience than their own. Everyone is responsible for being sensitive to these considerations, in the interest of creating a safe and equitable working and learning environment.

D. Where Can Sexual Harassment Occur?

Prohibited sexual harassment under this policy is not limited to the physical workplace itself. It can occur while employees or students are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees, students, or covered individuals can constitute unlawful harassment, even if they occur away from School premises, on personal devices, or during non-work hours.

Sexual harassment can occur when employees or students are working remotely from home as well. Any behaviors outlined above that leave an employee or student feeling uncomfortable, humiliated, or unable to meet their job or educational requirements constitute harassment, even if the employee, student, or covered individual is at home when the harassment occurs.

E. Retaliation

Retaliation for purposes of this policy is any action by an employer or supervisor that punishes or threatens to punish an individual who makes a sexual harassment claim, participates in an investigation of a claim, or supports someone who is making such a claim. Conduct that seeks to discourage a worker, student, or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim is retaliation, as is punishment of complainants and witnesses who have come forward or opposed harassment. These actions need not be job-related or occur in the workplace or learning environment to constitute unlawful retaliation. For example, threats of physical violence outside of work or class hours -- or disparaging someone on social media – may constitute retaliation under this policy.

Examples of retaliation may include, but are not limited to:

1. Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
2. Publicly releasing personnel files;
3. Refusing to provide a reference or providing an unwarranted negative reference;
4. Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
5. Undermining an individual's immigration status;
6. Reducing work responsibilities, passing them over for a promotion, or moving an individual's desk to a less desirable office location; or
7. Grading a current or prospective student less favorably, declining to provide a recommendation or reference, adversely evaluating a student during auditions or juries, depriving students of contacts or networking opportunities, limiting or reducing student financial aid or support, or otherwise adversely affecting a student's learning and living environment while a student is an applicant to or enrolled at MSM.

Retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

1. Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
2. Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
3. Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
4. Reported that another employee has been sexually harassed or discriminated against; or
5. Encouraged a fellow employee to report sexual harassment.

Even if the alleged sexual harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Further, retaliation against an individual for a good faith report of any form of harassment or discrimination or for participating in any investigation of such a report, or any other protected activity, is unlawful and a serious violation of this policy and, like discrimination and harassment, will result in disciplinary action by the School.

II. Complaint Procedure

Manhattan School of Music strongly urges the reporting of all incidents of sex discrimination, sexual harassment, and retaliation. Such issues may be investigated under this policy or the School's *Non-Discrimination Policy*, which incorporates procedures similar to those applicable to this policy. Any person who believes they have experienced conduct that is contrary to the School's policy, or who has concerns about such matters, should file a complaint or raise a concern as soon as possible.

A. Reporting Sexual Harassment

Everyone in the workplace or learning environment must work toward preventing sexual harassment, but leadership matters. Supervisors, managers, and student affairs professionals have a special responsibility to make sure employees and students feel safe and that workplaces, learning environments, and living environments are free from sexual harassment and sex discrimination. Any employee, student, or covered individual is encouraged to report harassing or discriminatory behavior, whether experienced or observed by the reporting party, to a supervisor, manager, the Dean of Students, or the Office of Administration and Human Relations. See below regarding special obligations of managers and supervisors.

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached at the end of this policy, but use of this complaint form is not required. Employees, students, or covered individuals who are reporting sexual harassment on behalf of others may use the complaint form and should note that it is on another community member's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another community member is also acceptable.

Employees, students, and covered individuals who believe they have been a target of sexual harassment may at any time seek assistance in additional available forums, as explained below in Section III *Legal Protections and External Remedies*.

This procedure, including its investigation and disciplinary processes, supersedes all employee grievance procedures otherwise applicable.

B. How to Make a Complaint

Individuals are encouraged to use the School's *Sexual Harassment Complaint Form* to report suspected or alleged instances of sexual harassment or any other type of concerning conduct that might fall under this category. A copy of the *Sexual Harassment Complaint Form* is attached to the last page of this Policy or can be submitted online here: *Sexual Harassment Complaint Form*.

Faculty may address their complaints to their immediate supervisor, the Vice President for Administration and Human Relations and Title IX Coordinator, or the Executive Vice President and Provost.

Staff may address their complaints to their immediate supervisor, the Vice President for Administration and Human Relations and Title IX Coordinator, or the Senior Vice President and Chief Financial Officer.

Students may address their complaints to their Academic Dean, the Dean of Students, or the Vice President for Administration and Human Relations and Title IX Coordinator.

Covered individuals who do not fall within any of the above categories may address their complaints to the Vice President for Administration and Human Relations or the Senior Vice President and Chief Financial Officer.

Complaints do not have to be filed with a complainant's department chair or supervisor before bringing the matter to the attention of the Vice President for Administration and Human Relations and Title IX Coordinator, the Senior Vice President and Chief Financial Officer, the Dean of Students, or the Executive Vice President and Provost. These administrators are available to accept any expressions of concern or complaints from employees, students, or covered individuals.

C. Complaints and Investigations of Sexual Harassment

All complaints or concerns about sexual harassment will be reviewed as appropriate to the nature of the allegation, regardless of whether the concerns were reported in verbal or written form or otherwise came to the attention of the School. An investigation of any complaint, information, or knowledge of suspected sexual harassment will be prompt, full, and fair. An investigation will be kept confidential to the extent possible. All individuals involved, including those making a harassment claim, those responding to a claim, and witnesses, will be treated respectfully and impartially.

Employees are required to cooperate as needed in any investigation of suspected sexual harassment covered by this policy. MSM will take disciplinary action against anyone engaging in retaliation against any employee, student, or covered individual who makes a complaint, support another's complaint, or participates in harassment investigations under this policy.

MSM recognizes that participating in a sexual harassment investigation can be uncomfortable. Those receiving claims and leading investigations will handle complaints and questions with sensitivity toward participants.

While the process may vary from case to case, investigations will be performed fully and fairly, typically in accordance with the following steps. Upon receipt of a complaint, the Office of Administration and Human Relations or its designated investigators will typical proceed as follows:

1. **HR or designate will conduct a threshold review of the allegations to determine the applicable policy and other parameters for investigation (as further described in Section IV below).**

   HR or designate will assess the appropriate scope of the investigation, communicate with the parties about the parameters, and take any appropriate interim actions (for example, instructing the respondent and complainant to refrain from communications with each other pending investigation). Modifications to procedures or timelines will also be communicated to the parties. If a complaint is verbal, HR or designate will request that the individual completes a complaint form in writing. If the person reporting prefers not to fill out a form, the Office of Administration and Human Relations may prepare a complaint form or equivalent documentation based on the verbal report.

2. **HR or designate will take steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails or phone records that may be relevant to the investigation.**

   The Office of Administration and Human Relations will consider and implement appropriate document request, review, and preservation measures, including for electronic communications.

3. **HR or designate will seek to interview all parties involved, including witnesses with direct or relevant information.**

   The investigator will determine in their discretion whether particular witnesses should be interviewed.

4. **HR or designate will communicate on a regular basis with both the complainant and also the respondent individual who is the focus of the complaint.**

   Communications will focus upon the progress of the investigation and memorialize any additional requests for documents, information, or interviews or any decisions to modify procedures or timelines.

5. **HR or designate will keep the written documentation of an investigation and any associated documents in a secure and confidential location**.

6. **HR or designate will promptly notify the complainant, as well as the respondent individual(s) about whom the complaint was made, with regard to the resolution of the complaint.**

   HR or designate will also implement any corrective actions substantiated by the investigative results.

As noted above and in Section IV *Reservation of Rights* below, the School reserves the right, in appropriate situations, to sequence procedures; modify procedures to the specific situation; and designate appropriate, alternative investigators.

D. Responsibilities of Managers and Supervisors within the Workplace

Supervisors and managers have a special responsibility to prevent sexual harassment. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or sex discrimination is occurring, **are required to report** such suspected sexual harassment to the Office of Administration and Human Relations. Managers and supervisors should not be passive. If they observe such behavior, they must act.

Supervisors and managers can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. Supervisors and managers can also be disciplined for failing to report suspected sexual harassment or for allowing sexual harassment to continue after they know about it.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

While supervisors and managers have a responsibility to report sexual harassment and sex discrimination, supervisors and managers must be mindful of the impact that sexual harassment and a subsequent investigation has on complainants. Being identified as a possible victim of sexual harassment and questioned about sexual harassment can be intimidating, uncomfortable and re-traumatizing for individuals.

E. Bystander Intervention

Any employee witnessing sexual harassment as a bystander is encouraged to report it. A supervisor or manager who is a bystander to harassment is **required** to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses sexual harassment and wants to help.

1. A bystander can interrupt the sexual harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the sexual harassment;
3. A bystander can record or take notes on the sexual harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been sexually harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting sexual harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing sexual harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to sexual harassment is required to report it.

III. Legal Protections and External Remedies

Sexual harassment is not only prohibited by MSM, but it is also prohibited by state, federal, and, where applicable, local law.

The internal process outlined in the policy above is one way for employees, students, and covered individuals to report sexual harassment. Employees, students, and covered individuals may also choose to

pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may also seek the legal advice of an attorney.

The availability of this policy's complaint procedure does not preclude individuals who believe they are being subjected to discriminatory, harassing, or retaliatory conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that it stop.

Moreover, nothing in this policy requires individuals to use this complaint procedure in lieu or prior to filing a complaint with an external agency that has jurisdiction over Equal Opportunity complaints under federal, state, or local law. Nothing in this policy limits individual rights to pursue external agency remedies, and community members will not experience retaliation for pursuing external agency remedies. These include the following:

A. New York State Division of Human Rights

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State and protects employees and covered individuals, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in the New York State Supreme Court.

Complaints may be filed with the DHR any time within three (3) years of sexual harassment, or one (1) year of harassment based on any other protected characteristic. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to MSM does not extend your time to file with DHR or in court. The one or three years are counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring your employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Go to dhr.ny.gov/complaint for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on your computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State.

Call the DHR sexual harassment hotline at **1-800-HARASS-3** for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney

experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

B. The United States Equal Employment Opportunity Commission

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act, 42 U.S.C. § 2000e *et seq.* An individual can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with the employer. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Notice of Right to Sue permitting workers to file a lawsuit in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated or believes that unlawful discrimination occurred by does not file a lawsuit.

Individuals may obtain relief in mediation, settlement, or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least fifteen employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual files an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

C. The Office for Civil Rights

The United States Department of Education enforces federal laws protecting students from discrimination, harassment, and retaliation, including from discrimination on the basis of sex, gender, and other legally-protected categories. The Office for Civil Rights within the Department of Education reviews and investigates complaints. The New York City office of OCR may be contacted at (646) 428-3800 or "OCR.NewYork@ed.gov."

D. Local Protections

The New York City Commission on Human Rights (NYCCHR) enforces anti-discrimination laws in New York City. An individual can file a complaint with the NYCCHR anytime within one (1) year of the last alleged act of discrimination or harassment or within three (3) years for gender-based discrimination and/or harassment. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/site/cchr/index.page.

E. Contact the Local Police Department

If the sexual harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

Remember, MSM cannot remedy claimed sexual harassment or retaliation unless individuals bring these claims to its attention. Please report any conduct which violates this policy.

IV. Reservation of Rights

As noted above, MSM maintains a comprehensive set of Equal Opportunity policies, including this Sexual Harassment Policy, that work together to prohibit discrimination, harassment, and retaliation and use similar, but not identical, procedures and timelines. These include MSM's separate policies addressing Non-Discrimination and Title IX violations (two policies further described above). Sometimes it is not clear which policy applies to a particular complaint or concern – or whether more than one policy applies. In addition, some complaints involve complicated situations or multiple complainants or respondents.

To ensure a full and fair review even of complex complaints, the School will conduct a threshold review as soon as it receives a complaint or concern. Among the threshold matters reviewed by MSM may be: (i) which MSM policy is applicable; (ii) whether more than one policy is applicable; (iii) whether the procedures of different policies should be applied in sequence; (iv) whether investigators outside HR should be designated; (v) whether timelines should be extended; and (vi) whether multiple policies may need to be applied in sequence.

The School reserves the right to make such determinations, in the interest of obtaining full and fair resolutions of all complaints, and the School may modify the procedures and timelines set forth in its Equal Opportunity policies accordingly. The School will communicate to the complainant and to any individual who is the subject of the complaint about the results of this threshold review, including which policy or policies apply, how the investigation will be conducted and sequenced, and whether procedures or timelines will be modified. The School may also, at any time during an investigation, modify timelines or procedures if changed circumstances or new evidence may require modifications to achieve a full and fair resolution of the complaint and MSM will notify the parties accordingly.

Sexual Harassment Complaint Form

Submit this form to the Office of Administration and Human Relations or online here:

Sexual Harassment Complaint Form

New York State requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment or gender discrimination, you are encouraged, but not required, to complete this form and submit it to the Office of Administration and Human Relations. No employee will be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy, and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

REPORTING PERSON INFORMATION:

Name: _____

Job Title/Student Status: _____

Email: _____

Work/MSM Address: _____

Work/Personal Phone: _____

Select Preferred Communication Method: ☐Email ☐Phone ☐In person

**You may submit a report anonymously. However, please understand that the School's ability to investigate and to respond to anonymous information may be limited.*

SUPERVISORY INFORMATION (IF APPLICABLE AND TO THE EXTENT KNOWN)

Immediate Supervisor's Name: _____

Job Title: _____

Work Address: _____

Work Phone: _____

COMPLAINT INFORMATION

1. Your complaint of sexual harassment is made about:

   Name: _____

   Job Title/Student Status: _____

   Work/MSM Address: _____

   Work/Personal Phone: _____

   Relationship to you: ☐Supervisor ☐Supervisee ☐Co-Worker

   ☐Fellow Student ☐Other (please specify)_____

2. Please describe what happened and include as many details as possible. You may use additional sheets of paper if necessary. If you have any relevant documents, please include them.

3. Please list the date(s) that the incidents occurred (provide approximate dates, if you do not have exact dates):

4. Is the sexual harassment continuing? ☐Yes ☐No

5. If possible, please list the name(s) of any witnesses or individuals that may have information related to your complaint:

6. Have you previously provided information (verbal or written) about related incidents? If yes, when and to whom did you provide information?

7. What action would you like the School to take in response to this situation?**

8. This Question is optional: if you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____ *Date:* _____

***The School will consider your preference and additional information gathered through an investigation. The School may not necessarily respond in the way most preferred by the reporting individual. However, a reporting individual's wishes will be considered when deciding what responsive action is appropriate.*

Thank you for reporting this information. We will be in touch with you promptly. If any additional incidents occur, including if you experience any act of retaliation, please inform the Office of Administration and Human Relations immediately.