

**BROOKLYN LAW SCHOOL
POLICY PROHIBITING TITLE IX SEXUAL HARASSMENT
INVOLVING STUDENTS**

Issuing Authority: Office of the Dean and President

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

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I. THE PURPOSE OF THIS POLICY

Brooklyn Law School (“Law School” and “BLS”) is committed to maintaining a respectful, professional, academic and working environment for students, faculty, staff, facility residents, vendors, and visitors, free from sexual harassment which includes sexual assault, domestic violence, dating violence, or stalking. This Policy prohibits Title IX sexual harassment, encourages prompt reporting of incidents and explains the Law School’s investigation and resolution procedures and the rights of respective Parties in those procedures.¹

This Policy ensures the Law School’s compliance with Title IX of the Education Amendments Act of 1972 and Articles 129A and 129B of the New York State Education Law.

II. JURISDICTION

This Policy applies to the Brooklyn Law School community (students, faculty, senior administrators, staff, paid and unpaid interns, and third-parties²) where a complaint is made on behalf of or against a BLS student.

This Policy applies to conduct alleged to have occurred in the United States which impacts or occurs in educational settings, programs, and/or activities sponsored by the Law School. This Policy also applies to cases of sexual assault, dating violence, domestic violence, and stalking where some of the conduct occurs outside the Law School’s educational settings, programs, and activities. Likewise, the Policy applies to conduct that contributes to a hostile environment in its education programs or activities, even when some of the conduct alleged to contribute to the hostile environment occurs outside the program or activity. The Title IX Coordinator will work with all Complainants to assess their complaints and determine whether the Policy applies.

Brooklyn Law School will communicate its decision regarding the applicability of this Policy to the Complainant in writing. Dismissals of complaints based on jurisdiction will be subject to the appeal process

¹ This Policy applies only to Title IX Sexual Harassment. Other forms of sexual harassment and discrimination will be addressed under the Brooklyn Law School Policy on Non-Discrimination and Harassment.

² Third parties include vendors, visitors to the Law School premises, and non-student and non-employee residents of Law School housing such as spouses, domestic partners, and children.

outlined in this Policy. If the Law School determines that the incident outlined in the complaint falls within the jurisdiction of this Policy, it will investigate the allegations pursuant to it unless an informal resolution is pursued or the Complaint is withdrawn or dismissed on other grounds.

Violations of this Policy will not be tolerated. Any individual covered by this Policy who engages in prohibited conduct, including retaliation, will be subject to remedial and/or disciplinary action. Violations of this Policy may also result in individual liability under the applicable laws.

III. TITLE IX COORDINATOR

The Law School has designated the individual listed below as the Title IX Coordinator, who is responsible for overseeing all sexual harassment reports and complaints brought pursuant to this Policy; identifying and addressing any patterns or systemic problems that are revealed during the review of such complaints; evaluating a Complainant's request for confidentiality in the context of the Law School's responsibility to provide a safe and nondiscriminatory environment for all; and ensuring a prompt, fair, and impartial investigation and adjudication process. The Title IX Coordinator also evaluates trends on campus by using information reported to them and makes recommendations for campus-wide training and education programs.

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

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

V. NON-DISCRIMINATION IN APPLICATION AND REASONABLE ACCOMODATION

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy and related conditions, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law. All requirements and protections apply to individuals regardless of such protected status(es) or status as a Complainant, respondent, or witness.

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

This Policy does not alter any institutional obligations under federal, state, and local disability laws. Parties may request reasonable accommodation from the Title IX Coordinator³ at any point during or in advance of meetings or proceedings held pursuant to this Policy. The Title IX Coordinator will not provide accommodation absent a specific request from a party, even if a party receives accommodation from the Law School relating to other institutional programs or activities.

VI. COORDINATION WITH NON-DISCRIMINATION AND HARASSMENT POLICY

It is important to coordinate this Policy with other existing policies such as the *Brooklyn Law School Policy on Non-Discrimination and Harassment*, because Title IX sexual harassment can occur in conjunction with misconduct and harassment based on a person's race, ethnicity, national origin, religion, age, pregnancy or parenting status, disability, or other legally protected status. Further, discrimination based on gender identity, gender expression, or sexual orientation will not be covered by this Policy, but rather the Law School's *Non-Discrimination and Harassment Policy*. The Law School reserves the right to determine which institutional policy, or combination of policies, will apply to any given case consistent with the jurisdictions of the relevant policies and the law.

VII. LEGAL AND POLICY DEFINITIONS

The following definitions are in part required by Title IX regulations and New York Education Law 129-B and are intended to clarify terms used throughout this Policy. Please refer to **Appendix B** for a summary of the differences between the processes under New York State Penal Law and this Law School Policy. Please refer to **Appendix E** for a summary of relevant sections of the New York State Penal Law.

- A. **Accused** - A person accused of a violation who has not yet entered the Law School's disciplinary process.
- B. **Admission** - Admission means selection for part-time, full-time, transfer, exchange, or any other type of enrollment or matriculation in or at an educational program or activity operated by BLS.
- C. **Affirmative Consent** – Affirmative consent (also referred to as "Consent") is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, if those words or actions create clear permission regarding a willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be

³ The Title IX Coordinator also serves as the Director of Accessibility and is responsible for the coordination and implementation of disability accommodations.

caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

- D. Community Standards** - Community standards are all the written policies and procedures adopted by Brooklyn Law School governing student behavior, rights, and responsibilities while the student is matriculated at the institution.
- E. Complainant** - Complainant means an individual who is alleged to be the victim of misconduct covered by this Policy or a person reporting a violation of this Policy on their behalf.
- F. Complaint** - Complaint means a formal written request for the Law School to investigate and make a determination about alleged sexual harassment.
- G. Confidential Resource** - A confidential resource is a resource provided by Brooklyn Law School that can maintain confidentiality of certain communications based on Federal or State law. Timely MD is the only confidential resource available to Brooklyn Law School students. Employees can access confidential resources through the Employee Assistance Program. Employees of Brooklyn Law School, including the Title IX Coordinator, are not confidential resources to students or anyone else covered by this Policy.
- H. Conflict of Interest** – A conflict of interest exists when an individual is biased against a particular Complainant or respondent or biased against Complainants or respondents generally. No person involved in the investigation or resolution of a complaint of sexual harassment may have a conflict of interest.
- I. Disciplinary Sanctions** - Disciplinary sanctions mean consequences imposed on a Respondent following a determination that the Respondent violated this Policy.
- J. Education Program or Activity** - Education Program or Activity means any academic, research, occupational or training program operated by Brooklyn Law School and extracurricular activities sponsored by the Law School's recognized student organizations.
- K. Party** - Party means Complainant or Respondent.
- L. Relevant** - Relevant means related to the allegations of sexual harassment under investigation as part of this Policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged sexual harassment occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sexual harassment occurred.
- M. Remedies** - Remedies means measures provided, as appropriate, to a Complainant or any other person Brooklyn Law School identifies as having had their equal access to the Law School's education program or activity limited or denied by sexual harassment. These measures are

provided to restore or preserve that person's access to Brooklyn Law School's education program or activity after Brooklyn Law School determines that sexual harassment occurred.

- N. Respondent** - Respondent means a person who is alleged to have violated this Policy.
- O. Retaliation** – Retaliation means intimidation, threats, coercion, or discrimination against any person by the Law School, a student, or an employee or other person authorized by the Law School to provide aid, benefit, or service under the Law School's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, including in an informal resolution process. Nothing in this definition or this Policy precludes the Law School from requiring an employee or other person authorized by the Law School to provide aid, benefit, or service under the Law School's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.
- P. Title IX Sexual Harassment** – means sexual harassment prohibited by this policy.⁴ This includes any of the following three types of misconduct on the basis of sex, all of which jeopardize the equal access to education: (1) Any instance of *quid pro quo* harassment⁵ by a school's employee; (2) any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; and (3) any instance of sexual assault, dating violence, domestic violence, dating violence, or stalking as defined below:

Sexual Assault, means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, and is any sexual activity or sexual contact with another person without consent and includes an offense that meets the definition of rape, fondling, incest, or statutory rape:

- Criminal Sexual Contact — The intentional touching of another person's clothed or unclothed body parts without consent, for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This definition applies with the victim is incapable of giving consent due to age, mental or physical impairment (temporary or permanent)
- Incest — Sexual contact between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape – Sexual contact with a person who is under the statutory age of consent.
- Rape — Sexual contact of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

⁴ Other forms of sexual harassment and discrimination are also prohibited by Brooklyn Law School pursuant to the Policy on Non-Discrimination and Harassment.

⁵ Quid pro quo harassment occurs when an employee, agent, or other person authorized by the Law School to provide an aid, benefit, or service under the Law School's education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct

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

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Dating Violence is violence committed by a person:

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

Dating violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another within a dating relationship.

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

- fear for their own safety or the safety of others; or
- suffer substantial emotional distress.

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

VIII. REPORTING SEXUAL HARASSMENT TO THE LAW SCHOOL

Individuals who believe that they have been the subject of any form of sexual harassment or who are aware of someone who has been subjected to sexual harassment should report the conduct to the Title IX Coordinator. Brooklyn Law School requires all employees to notify the Title IX Coordinator if they have information about conduct that may constitute sexual harassment under this Policy. Such employees should also provide complainants or potential complainants with information on how to make a complaint and/or seek supportive measures from the Title IX Coordinator.

At the first instance of a report of sexual harassment, the Title IX Coordinator will contact the individual who has been subjected to sexual harassment to:

- discuss the availability of Supportive Measures,
- consider the Complainant's wishes with respect to Supportive Measures,
- inform the Complainant of the availability of Supportive Measures with or without the filing of a Complaint,
- explain to the Complainant the process for filing a complaint.

The Title IX Coordinator will also discuss:

- the right to make a report to Campus Safety, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; and
- The right to be protected by the Law School from retaliation for reporting an incident.

At this initial stage the Title IX Coordinator will make a determination as to whether the conduct at issue is appropriately addressed under this Policy or a different Law School policy. If the alleged conduct is not conduct covered by this Policy, the Title IX Coordinator will refer the individual to the appropriate policy and/or office.

A. Filing a Complaint

Complainants should file complaints as soon as possible so that the Law School can promptly and effectively address the issue.⁷ Complaints must be in writing. An individual can ask for the Title IX Coordinator's assistance in writing a Complaint. Complaints may be submitted by email or in hard copy to the Title IX Coordinator.

Title IX Coordinator may dismiss a Complaint, at any stage of the process, in any of the following three circumstances:

- (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- (2) the Respondent is no longer enrolled or employed by the Law School;
- (3) or specific circumstances, including a Complainant's decision not to respond to outreach from the Law School, prevents the Law School from gathering evidence sufficient to reach a determination. Complaints may be dismissed in whole or in part.

Dismissals may be appealed within **10 days**. Appeals may only be advanced on the following grounds:

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

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

Anonymous reports are accepted by the Title IX Coordinator, but the supplier of the anonymous report should be aware that failure to disclose identifying information about the accused party, the alleged victim of the sexual harassment, or the facts and circumstances regarding the misconduct severely limits the Law School's ability to respond and remedy the effects of sexual harassment.

All reports that provide enough information to constitute a criminal offense, including anonymous reports, will be reported to the Director of Campus Safety for inclusion in the Annual Security Report and for consideration in issuing Timely Warnings as required by the Clery Act. Referrals of anonymous reports will not identify the Complainant.

In the absence of a Complaint or in the event any or all allegations in a Complaint are withdrawn, and/or in the absence or termination of an Informal Resolution, the Title IX Coordinator must determine whether to initiate a Complaint of sexual harassment based on consideration of a number of factors:

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

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

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

B. Multi-Party Situations and Consolidation of Complaints

Brooklyn Law School may consolidate complaints alleging sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment arise out of the same facts or circumstances. The Law School will consider the following factors when deciding whether to consolidate complaints:

- Whether the allegations arise out of the same facts and circumstances;
- the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

C. Institutional Response

Upon receipt of a report of sexual harassment, the Title IX Coordinator will notify the Complainant of their right to:

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

The Title IX Coordinator will also provide the Complainant with the following information:

- Law School employees will maintain the Complainant's privacy to the greatest extent possible, but they cannot guarantee complete confidentiality. The information the Complainant provides

⁶ This includes information about anonymous disclosure through confidential hotlines of not-for-profit entities.

⁷ This includes anonymous disclosures through confidential hotlines of New York State agencies.

to Law School personnel will only be shared as necessary for the Title IX Coordinator to investigate and/or seek a resolution of the complaint.

- In cases where a Complainant reports an incident but does not wish to file a complaint, does not want the institution to initiate an investigation, or expresses concerns about confidentiality, the Title IX Coordinator will weigh the request against the institution's obligation to provide a safe, nondiscriminatory environment for all members of its community. The institution shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices.
- Information obtained through public awareness and advocacy events may be used to inform the Law School's sexual harassment prevention efforts, even if it does not result in a complaint or investigation.
- Reports of sexual harassment that constitute reportable crimes under the Clery Act will be included in the institution's annual security report in an anonymized manner. The Title IX Coordinator will further explain that the Law School is required to issue timely warnings of certain crimes that represent a serious or continuing threat to students and employees.

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

The Students' Bill of Rights, a summary of Complainants' rights regarding sexual harassment complaints, is included in this Policy as **Appendix A**.

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

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

After an incident of sexual harassment, if the Complainant is injured, they should consider seeking medical attention as soon as possible at an emergency room that is a certified SAFE Center for Excellence. The Title IX Coordinator will help the Complainant seek proper medical care and psychological support. If the Complainant chooses to seek such assistance without the Title IX Coordinator's involvement, the Complainant can locate hospitals with such emergency rooms listed in this Policy or by calling the New York City Police Department at 911.

In New York State, evidence may be collected even if a Complainant chooses not to make a report to law enforcement.⁸ It is important that victims of sexual assault not bathe, douche, smoke, change clothing or

⁸ Under the Violence Against Women and Department of Justice Reauthorization Act of 2005, states must certify that they do not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both."

clean the bed/linen/area where they were assaulted if the offense occurred within the past ninety-six (96) hours so that evidence which may be necessary to prove criminal activity may be preserved. If sexual assault victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease.

Survivors of sexual harassment are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, that may be useful to Law School investigators, hearing boards, or the police.

It is the victim's choice to make a report to law enforcement, and victims have the right to decline involving the police. If a Complainant chooses to file a criminal complaint, the Title IX Coordinator will assist the victim with notifying local police and obtaining a sexual assault forensic examination.

The 84th Precinct, which serves Brooklyn Law School, may also be reached directly by calling (718) 875-6811 or appearing in person at 301 Gold Street, Brooklyn, New York. Additional information about the 84th Precinct Police department may be found online at:

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

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining an order of protection related to the incident more difficult. If a victim chooses not to make a complaint regarding an incident, the victim nevertheless should consider speaking with the Title IX Coordinator, Director of Campus Safety, or local law enforcement to preserve evidence in the event the victim chooses to proceed later.

E. Amnesty for Reports Involving Drug and Alcohol Use

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

F. Supportive Measures

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

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Changes in class, work, housing, or extracurricular activities

- Leaves of absence
- Increased security and monitoring of certain areas of campus
- Training and education on sexual harassment
- Assistance by the Title IX Coordinator or the Director of Campus safety in obtaining an order of protection
- Restrictions on contact applied to one or more Parties

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

Brooklyn Law School will not disclose information about any supportive measures to persons other than the person to whom they apply, unless:

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

G. Modification or Reversal of Supportive Measures

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

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

H. Interim Measures

In addition to the measures outlined above, pending the investigation of a complaint, the Law School will take appropriate steps to prevent contact between a Complainant, an accused party, and anyone involved in the investigation to ensure safety, prevent retaliation, and address an ongoing hostile environment.

This may include:

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

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

IX. INFORMAL RESOLUTION

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

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

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

Informal resolutions are subject to the approval of the Dean of Students who, in consultation with the Office of General Counsel, will consider the nature of the complaint in determining whether the proposed resolution is appropriate. Informal resolutions require the consent of all parties and negotiation of such resolutions suspends the complaint process. Informal resolutions must be memorialized in writing and signed by the parties. Informal resolution is not appropriate where an employee is alleged to have engaged in misconduct prohibited by this Policy against a student. If the Parties are unable to reach an informal resolution, the Complainant may request that the Law School commence or continue investigation of the Complaint.

X. THE INVESTIGATION AND DISPOSITION OF A COMPLAINT

1. Investigator

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

2. Consent to Investigate

The investigator will seek consent from a Complainant prior to commencing an investigation. Declining to consent will be honored unless the Law School determines in good faith that the failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the Law School community.

Factors that the Law School may consider in determining whether to proceed include, but are not limited to:

- a) The Complainant’s request not to proceeding with the initiation of a complaint;
- b) The Complainant’s reasonable safety concerns regarding the initiation of a complaint;
- c) The risk that additional acts of sexual harassment would occur if a complaint is not initiated;
- d) The severity of the alleged sexual harassment, including whether the sexual harassment, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- e) The age and relationship of the Parties, including whether the respondent is an employee of the Law School;
- f) The scope of the alleged sexual harassment, including information suggesting a pattern, ongoing sexual harassment, or sexual harassment alleged to have impacted multiple individuals;
- g) The availability of evidence to assist a decisionmaker in determining whether sexual harassment occurred; and
- h) Whether the Law School could end the alleged sex discrimination and prevent its recurrence without initiating an investigation

3. Notification of an Investigation

The investigator will notify the Complainant and Respondent that a prompt, thorough, and impartial investigation of an alleged violation of this Policy has commenced as soon as practicable. Simultaneous notification shall be made by email to the Complainant and respondent’s Law School email accounts. The notice shall contain:

- a) a copy of this Policy and references to the process for formal and informal resolution;
- b) a meaningful summary of all allegations with sufficient details regarding: (a) the identity of the Complainant and the Respondent, if known; and (b) the date/time (if known), location, and precise nature of the reported conduct;
- c) specific potential Policy violation(s);
- d) the name and contact information of the Investigator(s);
- e) how to challenge participation by the Investigator(s) on the basis of a conflict of interest or bias;

- f) information about the parties' respective expectations and responsibilities;
- g) the Law School's prohibition against retaliation;
- h) the importance of preserving any potentially relevant evidence in any format;
- i) information about the privacy of the investigation process;
- j) information about how a party may request reasonable accommodations for a disability or language diversity during the process;
- k) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the formal resolution process based on a preponderance of the evidence standard;
- l) that the parties are entitled to an advisor of their choice, including an attorney advisor, and the advisor is permitted to review the evidence gathered in the investigation that is relevant or directly related to the investigation, and also that if parties at a hearing do not have an advisor, the Law School will provide one to them at no cost or charge;
- m) that the Law School prohibits providing false or misleading information;
- n) if the Law School decides to investigate additional allegations of sexual harassment by the Respondent towards the Complainant that are not included in the notice, the Law School will provide written notice of any additional allegations to the Parties whose identities are known.

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

4. Advisors

Each party may have an advisor of their choice accompany them to any meeting with the investigator. An advisor may, but is not required to be, an attorney. Advisors may attend investigatory meetings and interviews but they are not permitted to speak on behalf the Complainant or Respondent.⁹ Parties who seek guidance from their advisors during a meeting or interview will be afforded reasonable opportunities to confer with their advisors.

5. Evidence Gathering

The investigator will initiate the investigation promptly after issuing the Notification of Investigation as described above. The investigator, and not the Parties, is responsible for conducting the investigation and determining whether sexual harassment has occurred. The investigator will interview the Parties, and any other witnesses identified. The investigator will ask the parties and witnesses for any documentary, electronic, or other evidence related to the complaint that they may want to offer. The investigator may also independently gather available evidence as part of the investigation.

The investigator will question the parties and witnesses to adequately assess each party or witness' credibility to the extent that credibility is both in dispute and relevant to evaluating one or more

⁹ If the matter proceeds to a hearing, the advisor will engage in the direct and cross-examination of witnesses on behalf of the party.

allegations of sexual harassment. The investigator will ask relevant (and not otherwise impermissible) questions to challenge credibility in individual investigatory meetings.

All individuals who are interviewed shall be advised to maintain the confidentiality of the investigation process and not to disclose any information related to the complaint unless necessary during the complaint process. Maintaining confidentiality is important to preserve the integrity of the investigation, protect student and witness privacy, and deter retaliation. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the investigation process. The Parties cannot engage in retaliation, including against witnesses.

6. Impermissible Evidence

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

- a) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- b) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the Law School obtains that Party's or witness's voluntary, written consent for use in its disciplinary procedures; and
- c) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sexual harassment. The fact of prior consensual sexual conduct between the Complainant and respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sexual harassment or preclude determination that sexual harassment occurred.

7. The Standard Applied to Investigations

The investigator shall determine whether a violation of this Policy occurred under the *preponderance of the evidence* standard. Under this standard, it must be more likely than not that a violation occurred. The investigator will evaluate relevant and not otherwise impermissible evidence for its persuasiveness in making this determination.

8. The Outcome of the Investigation

Prior to the completion of the investigation, the investigator will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint so that each party can meaningfully respond to the evidence prior to

conclusion of the investigation. The parties must have at least **10 days** to submit a written response to the evidence, which the investigator will consider prior to completion of the investigative report.

Investigation Report

Once the investigation is complete, the Title IX Coordinator will notify the Parties simultaneously in writing of the outcome of the investigation through a written report. The notification will include:

- A description of the alleged sexual harassment;
- Information about the policies and procedures the investigator used to evaluate the allegations,
- The investigator's evaluation of the relevant and not otherwise impermissible evidence.

Dismissal of the Complaint

The Law School may dismiss a Complaint after an Investigation¹⁰ for any of the following reasons:

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

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

Dismissals may be appealed within **10 days** of the dismissal, and only on the following grounds:

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

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

¹⁰ Dismissal of the complaint does not alleviate the Law School's responsibility to implement appropriate remedial measures to address harm and prevent further violations.

False Accusations

If the results of an investigation show that the Complainant knowingly filed false accusations under this Policy, or that a witness knowingly gave false statements, such individuals will be referred to the appropriate disciplinary process for prompt action.

9. Hearing

If through the investigation the Title IX Coordinator determines that a violation has occurred, the matter shall proceed to a hearing. The hearing must occur at least **10 days** after the issuance of an Investigation Report.

Faculty Hearing Process

Where the respondent is member of the faculty, the matter will be addressed under Article III of the Faculty Regulations. Members of the Hearing Committee shall receive training outlined in Section XIII of this Policy. The Hearing Committee must permit each party's counsel to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by counsel and never by a party personally.¹¹

Employee Hearing Process

Where the respondent is an employee, the question of whether charges should be sustained will be addressed by a hearing panel through the process outlined in the Student Code of Conduct and Disciplinary Procedures, amended as follows:

- Each party must have an advisor.
- The Hearing Committee must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination must be conducted directly, orally, and in real time by counsel and never by a party personally.¹²

Members of the Hearing Committee shall receive training outlined in Section XIII of this Policy.

Where charges are sustained, sanctions will be determined by the Law School in accordance with the terms of the Employee Handbook. The employee will receive one written notification outlining both the outcome of the hearing and, where sanctions are issued, the terms of such sanctions.

Student Hearing Process

Where the respondent is a student, the matter of responsibility will be addressed through the hearing process outlined in the Student Code of Conduct and Disciplinary Procedures, amended as follows:

- Each party must have an advisor.
- The Hearing Committee must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination must be conducted directly, orally, and in real time by counsel and never by a party personally.¹³

Members of the Hearing Committee shall receive training outlined in Section XIII of this Policy.

¹¹ If a party or witness does not submit to cross-examination at the live hearing, the Hearing Committee must not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the Committee cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

¹² *Id.*

¹³ *Id.*

10. Transcript Notations

For sexual harassment that is defined as a Clery crime of violence, and that has resulted in a sanction of suspension or expulsion, the Law School shall make a notation on the transcript of the charged student that the student was “Suspended after a finding of responsibility for a code of conduct violation,” or “Expelled after a finding of responsibility for a code of conduct violation.” For a charged student who withdraws from the Law School while charges are pending and declines to complete the disciplinary process, the Law School shall make a notation on the student’s transcript that the student “withdrew with conduct charges pending.” If a finding of responsibility is vacated for any reason, the transcript notation shall be removed.

A charged student may seek to remove a transcript notation for a suspension by submitting a written appeal to the Dean and President. A copy of the request shall be provided to the Complainant, who shall have an opportunity to respond within ten (10) business days of receipt. The Dean and President’s decision, which is final, shall be issued simultaneously to the charged student and the Complainant, in writing, within thirty (30) business days of the date of the request, by email to the students’ Law School email accounts, unless additional deliberation time is warranted.

Transcript notations for expulsions shall not be removed.

11. Time Frame

Typically, the Law School will:

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

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

If the Respondent is a student and the matter proceeds to a disciplinary hearing, the time frame to complete such a hearing will generally not exceed **sixty (60) days**.

The Law School reserves the right to exceed the time frames noted above in light of the facts and circumstances of the case and upon written notice to the parties.

12. Appeals

Appeals of a finding of a violation shall be pursued through the appeal process set forth in the faculty regulations (where a faculty member is the respondent) or the student disciplinary procedures (where a student or employee is the respondent).

XI. CONFIDENTIALITY

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

If a Complainant asks that the Law School decline to investigate a complaint, the Law School will evaluate the request in the context of its responsibility to provide a safe and nondiscriminatory environment for all persons. There may be instances where an investigation may have to be pursued against the Complainant's wishes if doing so fulfills the Law School's responsibility to protect the Law School community. In those cases, the Law School will undertake all efforts to safeguard the privacy of the Complainant that is consistent with law.

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

If a Complainant insists that identifiable information not be disclosed to the accused individual, the Law School's ability to respond effectively to a Complaint may be limited. The Law School will take all reasonable steps to investigate and respond to the complaint consistent with the request, as long as doing so does not prevent the Law School from responding effectively to the sexual harassment and protecting others from sexual harassment. In such situations where confidentiality cannot be guaranteed, privacy will be maintained to the greatest extent possible, and information will be relayed only to the extent necessary for the Title IX Coordinator to investigate and seek a resolution.

XII. RETALIATION

Retaliation is unlawful and prohibited by this Policy. Therefore, the Law School will take every step necessary to protect the parties and any witnesses against retaliation for filing a complaint under this Policy or for participating in the investigation of a complaint. Retaliation should be reported to the Title IX Coordinator immediately so that it may be addressed through the appropriate disciplinary procedures.

XIII. TRAINING

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

The scope of the training will include the following:

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

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

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

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

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

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

XIV. RECORD KEEPING

Crime Reporting

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

Record Retention

All records related to reports of sexual harassment shall be retained in a secure and confidential manner for six (6) years plus the current year after the employee or student separates from the Law School, unless the documents must be preserved beyond the retention period for litigation purposes. Disciplinary records shall become part of the respondent student’s permanent education record and the respondent employee’s personnel record. For students, disciplinary charges and the disposition of those charges shall be reported on bar admission applications that request such information. For employees, disciplinary dispositions may be reported to potential employers who request such information during background checks, such as in law enforcement.

Disclosure of Records

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

Employee Records - All records arising from the administration of this Policy and relating to employees will not be disclosed unless compelled by a court or a law enforcement or other government agency, or where such disclosure is otherwise permissible under applicable privacy laws.

XVII. REPORTING SEXUAL HARASSMENT TO LAW ENFORCEMENT

Individuals who are subjected to sexual harassment in violation of this Policy, are encouraged to report potential crimes of sexual harassment to law enforcement. Upon request, the Title IX Coordinator will assist Complainants in:

- Filing a complaint against the accused,
- Ensuring access to a sexual assault forensic examination,
- Obtaining an Order of Protection from Family Court or Criminal Court, or if the accused resides outside of New York State, the equivalent of a protective or restraining order, and
- Contacting and assisting local law enforcement when an order of Protection is violated.

A. Orders of Protection

In New York State, legal orders of protection can be issued by Criminal Court, Family Court and Supreme Court. Provisions that might be contained in an order of protection include: (1) directing the abuser to stop the abusive behavior toward the victim, the victim's children, and others; (2) directing the abuser to cease contact (phone calls, e-mail, letters, etc.) with the victim; (3) limiting where an abuser can go (such as near a school).; and (4) directing the abuser to stop disseminating or publishing intimate images.

If the Law School receives an order of protection, it will provide a copy to the Complainant and answer questions the Complainant may have about the order, including questions about the accused's responsibility to stay away from the Complainant and potential consequences of noncompliance. The Director of Campus Safety will coordinate with local law enforcement to effect an arrest if an individual is found to violate an order of protection.

B. Mandatory Reporting and Investigation

The Law School must report all violent felonies or missing person situations involving students who reside in Law School-owned or operated housing to local law enforcement within twenty-four (24) hours of the incident.

C. Concurrent Criminal and Administrative Investigations

Brooklyn Law School has an obligation to evaluate all Complaints of sexual harassment, regardless of whether a concurrent criminal complaint is pending. (Please refer to **Appendix B** on the distinctions between the criminal and Law School processes). The Law School will not wait for the completion of a criminal investigation to respond to allegations of sexual harassment; however, it will cooperate with law enforcement agencies and may temporarily delay proceedings to allow law enforcement time to gather evidence. Temporary delays shall not last longer than ten (10) days, except when law enforcement specifically requests and justifies a longer delay.

D. State and Local Criminal Penalties

The New York State Penal Law provides the following maximum penalties for the various classifications of sexual and domestic assault offenses, including stalking and the unlawful dissemination and publication of intimate images, depending on the offense:

Class B Felony	Imprisonment for 5 to 25 years
Class C Felony	Imprisonment for 3 1/2 to 15 years
Class D Felony	Imprisonment for 2 to 7 years
Class E Felony	Imprisonment for 1 1/2 to 4 years
Class A Misdemeanor	Imprisonment for up to 1 year
Class B Misdemeanor	Imprisonment for up to 3 months

For more information about how sex offenses are classified in the State of New York, visit <https://ag.ny.gov/rape-and-sexual-offenses-state-statutes>. For more information about how domestic offenses are classified in the State of New York, visit <https://ag.ny.gov/victims-domestic-violence-state-statutes>.

Local ordinances in the City of New York are administrative law, not criminal, and allow for the protection of a person's civil rights. Local ordinances, including Title 8, may be accessed here: <https://www.nyc.gov/site/law/public-resources/laws-of-the-city-of-new-york.page>.

XVIII. REPORTING OF SEXUAL HARASSMENT TO ADMINISTRATIVE AGENCIES

Sexual harassment is not only prohibited by Brooklyn Law School, is prohibited by state, federal, and, New York City law. Aside from the internal process set forth herein, individuals may also choose to pursue legal remedies with the following governmental entities:

U.S. Department of Education Office for Civil Rights

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

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

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

New York State Division of Human Rights (DHR)

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

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

New York City Commission on Human Rights

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

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

United States Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal laws which prohibit employment discrimination.

The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

XIX. DISCLAIMER

This Policy does not form an agreement of any kind. It was created to provide information to the Brooklyn Law School community and may be altered, modified, or rescinded at the discretion of Brooklyn Law within the applicable law.

APPENDIX A

STUDENTS' BILL OF RIGHTS

All students have the right to:

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

APPENDIX B

An Explanation of Distinctions Between the Processes Under New York State Penal Law and the Brooklyn Law School Sexual Harassment Policy

	Criminal Justice System	Brooklyn Law School Sexual harassment Policy
Goals	Public safety; deterrence; and punishment.	Education; safety; prevention, redress, supportive campus environment.
Governing Law,	New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law Sections 129-A and 129-B and BLS policies, including the Sexual harassment and Anti-Harassment and Discrimination Policies which trigger an investigation.
How to report and whether there must be action once a report is made.	Crimes involving sexual harassment may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Disclosure of an incident of sexual harassment to any BLS employee will trigger an investigation. Every effort will be made to ensure privacy to the extent consistent with the Law School’s obligation to provide a safe educational environment. Disclosures made to confidential resources, such as clergy or a mental health professional, will not trigger an investigation. When a report is made to the Title IX Coordinator, the Coordinator will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
Who investigates?	Police or other law enforcement officials.	The Title IX Coordinator.
Procedures	See Governing Law. Procedures established by police departments, prosecutors’ offices, etc.	The procedures are established by the Brooklyn Law School Sexual Harassment Policy.
Standard of Evidence	Crimes must be proven “Beyond a Reasonable Doubt”	A violation of disciplinary rules must be found by a “Preponderance of the Evidence” (more likely than not)
Confidentiality	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Confidential resources are available off-campus, such as clergy and mental health professionals, but a disciplinary proceeding requires that relevant information be shared with those involved.

Privacy	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the Law School, the Parties, and pursuant to law.
Who are the Parties?	The prosecution and defendant. The victim/survivor is not a Party, but often the critical witness for the prosecution.	The institution and the respondent can be the Parties. Otherwise, the reporting individual and accused/respondent are the Parties.
Participation in the process	In limited circumstances, a criminal prosecution can proceed without the Participation or cooperation of the reporting individual, but without a reporting individual's Participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to Participate in the investigative and disciplinary process. However, the Law School will be limited in its ability to respond if a reporting individual does not Participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The Law School initiates proceedings.
Testimony	In a court, testimony is generally public. Other Parties are, through counsel, entitled to cross-examine witnesses.	The rules are established by the Law School and outlined in the applicable disciplinary procedures.
Role of attorneys	Both the state and the defendant are represented by counsel; counsel may question witnesses.	The attorney or advisor may question witnesses and conduct cross examination directly, orally, and in real time.
Mental Health and Sexual History	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally, not admissible, but Education Law 129-b permits Parties to exclude information about their prior sexual history with persons other than the other Party and to exclude evidence of their own mental health history in the fact-finding phase of the disciplinary process.
Possible Results	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> • plead guilty or "no contest" • have the case dismissed by the judge (on legal grounds) • be found "guilty" or "not guilty" by a judge or jury 	In cases that do not involve sexual assault, the Law School permits informal resolution or similar procedures if Parties agree, except in cases involving an incident between a student and a member of the faculty or staff. If there is a formal proceeding, the respondent may be found to have violated the Law School's rules or policies. Respondents may also accept responsibility
Sanctions	An individual found guilty may be fined, given probation, and/or imprisoned. In some courts, alternative sanctions are sometimes used.	An individual found to have violated Law School Policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the Law School.

APPENDIX C – RESOURCES

SAFE Centers of Excellence

Sexual Assault Forensic Examiner (SAFE) services are considered the most victim- centered approach to acute health care for sexual assault patients. The New York State Department of Health certifies Emergency Departments as SAFE Centers of Excellence. SAFE Centers provide sexual assault patients with:

- Sensitive, victim-centered, medical and forensic health care performed by a specially trained Sexual Assault Forensic Examiner (SAFE) – a SAFE is a healthcare provider such as a doctor, nurse, physician’s assistant or nurse practitioner;
- Care that is timely, compassionate, and patient-centered, in a designated and appropriately equipped private room;
- Assurance about the quality of collection, documentation, preservation and custody of physical evidence by utilizing a trained and New York State Department of Health-certified sexual assault forensic examiner to perform exams. These examiners are available to provide expert testimony if patients choose to report crimes to law enforcement;
- Psycho-social and legal support by a specially trained Rape Crisis Advocate or Counselor; and
- Reliable referrals to mental and physical health care and follow-up services.

Hospitals and Organizations in Brooklyn with SAFE Centers:

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

A. On-Campus Resources

RESOURCE	EMAIL ADDRESS	PHONE NUMBER
Title IX Coordinator	TitleIX@brooklaw.edu	718-780-0377;
Director of Campus Safety	Campussafety@brooklaw.edu	718-780-7506
Dean of Students	DeanofStudents@brooklaw.edu	718-780-0679
Human Resources	HumanResources@brooklaw.edu	718-780-0656

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

B. Off-Campus Resources

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

C. Legal Assistance

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

D. Confidential Resources

- The New York City Alliance Against Sexual Assault includes confidential resources in its Sexual Violence Survivor Resource Guide: <https://svfreenyc.org/resource-guide/>
- The New York State Office from the Prevention of Domestic Violence Hotlines: www.opdv.ny.gov/help/dvhotlines.html
- Legal Momentum: <https://www.legalmomentum.org/>
- NYSCADV: <http://www.nyscadv.org>
- Safe Horizons: <http://www.safehorizon.org>

Appendix D – INFORMAL RESOLUTION PROCESS

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

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

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

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

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

Appendix E – Summary of Relevant New York Criminal Law

Sex Offenses

Under the New York State Penal Law, any of the following acts, if perpetrated against a victim without the victim's consent is a sexual assault crime.

- **Rape and Attempted Rape:** engaging or attempting to engage in sexual contact with another person either: (1) without the person's consent; (2) where a person is incapable of consent due to a mental disability, mental incapacitation, or physically helpless; or (3) the person is less than seventeen (17) years old. Sexual intercourse is any penetration of the penis into the vagina, however slight. There is no requirement of physical injury, ejaculation or orgasm.
- **Criminal sexual acts (oral or anal sexual conduct)** occur upon contact between penis and mouth, penis and anus (rectum), mouth and anus, or mouth and vaginal area. No penetration is required.
- **Sexual contact** is any touching of the sexual or intimate parts of the body, whether over or under clothing, done for the purpose of gratifying the sexual desire of the perpetrator. Sexual contact includes both: (i) the touching of the victim's sexual or intimate parts by the perpetrator; and (ii) the touching of the perpetrator's sexual or intimate parts by the victim.
- **Sexual abuse** is subjecting a person to sexual contact without that person's consent.
- **Forcible touching** is the intentional and forcible touching of another, done for the purpose of: (i) degrading or abusing such person, or (ii) for the purpose of gratifying the actor's sexual desire.

Sexual Exploitation

Sexual Exploitation occurs when: (1) a person takes advantage of another sexually without the individual's consent for the initiator's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited; and (2) that behavior does not otherwise constitute one of the other sex-based harassment offenses.

Unlawful Dissemination or Publication of Intimate Images

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

Domestic Violence and Dating Violence

The crime of domestic violence includes the following acts by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim: (1) actual physical abuse; (2) an attempt to harm another; (3) placing another in fear of imminent, serious, physical harm, like violating a protective order; or (4) causing another to engage in sexual relations by force, threat of force, or duress.

Dating violence is prosecuted under domestic violence laws.

Stalking

A person is guilty of stalking when intentionally, and for no legitimate purpose, the person engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

- is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third-party with whom such person is acquainted;
- causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning, or initiating communication or contact with such person, a member of such person's immediate family or a third-party with whom such person is acquainted, and the perpetrator was previously clearly informed to cease that conduct; or
- is likely to cause such person to reasonably fear a threat to employment, business or career, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the perpetrator was previously clearly informed to cease that conduct.

In some circumstances, two instances of such behavior(s) may be sufficient to constitute stalking.