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August 4, 2020

David Gomez  
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Audit Status:  
Evaluation of Sexual Harassment Prevention and Response Practices for Audit  
Period January 1, 2018 to December 31, 2019.  
Determination: **PRELIMINARY**

Dear President Gomez:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you and your agency for the cooperation extended to our staff thus far. This letter contains the EEPC's evaluation and preliminary determinations pursuant to the Eugenio Maria De Hostos Community College's Sexual Harassment Prevention and Response Practices for the period covering January 1, 2018 to December 31, 2019.

**Purpose**

Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective equal employment opportunity (EEO) for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any plan, program, procedure, approach, measure, or standard does not provide equal employment opportunity, require appropriate corrective action, and monitor the implementation of the corrective action prescribed.

The Eugenio Maria De Hostos Community College, hereinafter simply termed "agency" or "entity," falls within the EEPC's purview under Chapter 36, Sections 830(a) and 831(a) of the Charter, to review, evaluate, and monitor the coordination and implementation of affirmative employment programs of equal employment opportunity for any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

The purpose of this audit and analysis is to evaluate the subject matter referenced, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

### **Scope**

The EEPC has adopted uniform standards for auditing municipal entities<sup>1</sup> and minimum standards for auditing Community Boards (collectively “Standards”) to review, evaluate, and monitor entities’ employment and EEO-related practices, procedures, approaches, measures, standards, and programs. These standards are founded upon, and consistent with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination. Corrective actions prescribed are consistent with the aforementioned parameters including, but not limited to, the City of New York’s *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies 2014*, as amended (Citywide EEO Policy); the New York City Human Rights Law (New York City Administrative Code Title 8); New York State Human Rights Law (New York Executive Law, Article 15); the New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

### ***Policy and Plan Requirements***

The aforementioned Standards require, at minimum, that mayoral entities distribute the Citywide EEO Policy; non-mayoral entities establish or adopt a comprehensive EEO policy; and Community Boards, which are comprised of members appointed by the respective Borough Presidents, adopt and distribute the corresponding Borough President’s EEO Policy.

Because the EEPC is authorized to review and recommend actions that each entity should consider including in its annual plan of measures and programs to provide equal employment opportunity, or Annual EEO Plan, entities are also required to incorporate the EEPC’s corrective actions in prospective Annual EEO Plans and programs.

### **Methodology**

The EEPC communicates with EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators, Career Counselors, and 55-a Program Coordinators) and other employees identified as having involvement in EEO program administration such as the Principal Human Resources Professional and relevant Counsel.

The EEPC’s audit methodology includes review of the agency’s Annual EEO Plans and Quarterly EEO Reports; analysis of workforce and utilization data; and the collection and analysis of documents, records, and data an entity and its representatives provide in response to the Sexual Harassment Prevention and Response Preliminary Interview Questionnaires (PIQs). All PIQs contain requests to attach supporting documentation for the answer options selected.

EEO Professionals designated for online interviews are assigned a three-week deadline to complete and return the PIQs. The EEPC’s PIQ(s)/requests were sent to the Eugenio Maria De Hostos Community College on January 3, 2020; the completed PIQ(s) were returned on January 24, 2020. Supporting documentation was attached. Additional requests were not necessary.

The following determination indicates where the Eugenio Maria De Hostos Community College has or has not complied, in whole or in part, with the established Standards.

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<sup>1</sup> Corresponding audit/analysis standards are numbered throughout the document.

### Description of the Agency

The Eugenio María de Hostos Community College (Hostos) is one of the seven (7) community colleges of the City University of New York. Consistent with the mission of the City University of New York to provide access to higher education for all who seek it, Hostos was established in the South Bronx to meet the higher educational needs of it and similar communities that historically have been excluded from higher education. Hostos is an educational agent for change, transforming and improving the quality of life in the South Bronx and neighboring communities since 1968. Hostos offers twenty-seven (27) associate degree programs and two (2) certificate programs that facilitate easy transfer to the City University of New York's four-year colleges or baccalaureate studies at other institutions. Its mission is to offer access to higher education leading to intellectual growth and socio-economic mobility through the development of linguistic, mathematical, technological, and critical thinking proficiencies needed for lifelong learning and for success in a variety of programs including careers, liberal arts, transfer, and those professional programs leading to licensure. An integral part of fulfilling Hostos' mission is to provide transitional language instruction for all English-as-a-Second-Language learners along with Spanish/English bilingual education offerings to foster a multicultural environment for all students. Hostos has an award-winning Division of Continuing Education and Workforce Development that offers professional development courses and certificate-bearing workforce training programs. The Hostos Center for the Arts & Culture (HCAC) is one of the pre-eminent Latino arts centers of the northeast. The HCAC has distinguished itself for showcasing traditional art forms as well as emerging and internationally renowned artists. (Adapted from the Hostos website, 3/2019)

The *Workforce Summary*<sup>2</sup> included in Hostos' 2019-2020 Affirmative Action Plan indicated that the total number of employees was 633: 426 were employed in non-pedagogical titles and fall under the EEPC's jurisdiction.

### PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEPC's findings and required corrective actions, where appropriate:

#### I. Issuance, Distribution and Posting of EEO Policies

**Determination: The agency is in partial-compliance with the standards for this subject area.**

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.

✓ On September 10, 2018 and September 12, 2019, the President of Hostos issued a policy statement to all employees via email, which included the following, *"I am committed to oversee Hostos Community College's compliance with the CUNY Policies and Procedures on Equal Opportunity, Non-Discrimination, and on Sexual Misconduct."* Additionally, on September 19, 2019, Hostos' Office of Compliance and Diversity (OCD) issued a policy statement to all employees via email that expressed, *"Sexual Harassment is a form of sex discrimination and is prohibited by the law and by CUNY policy. Sexual Harassment will not tolerated [sic] here at Hostos. Sexual Harassment may include sexual*

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<sup>2</sup> The *Workforce Summary* from Hostos' 2019-2020 Affirmative Action Plan is attached as Appendix 1.

teasing or jokes, pressure for dates, unwelcome touching, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual Harassment also includes Sexual Assault, Stalking, and Domestic and Intimate Partner Violence. Please see the attached link to the CUNY Policy on Sexual Misconduct.” The Hostos President’s policy statement issued in 2018 was also included in Hostos’ 2019-2020 Affirmative Action Plan.

2. Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

✓ Hostos reported that during the period in review *The City University of New York Policy on Sexual Misconduct*<sup>3</sup> (CUNY Policy on Sexual Misconduct), *The City University of New York Policy on Equal Opportunity and Non-Discrimination*<sup>4</sup> (CUNY EEO Policy), and *Notice of Non-Discrimination* were posted on Hostos’ website, where they were accessible to all employees. The CUNY Policy on Sexual Misconduct conforms to city, state, and federal laws against sexual harassment; and included responsive procedures for investigating sexual harassment complaints. The CUNY EEO Policy contained a section on sexual harassment prevention that referenced and linked to the CUNY Policy on Sexual Misconduct; and included the section entitled, *Complaint Procedures Under the City University of New York’s Policy on Equal Opportunity and Non-Discrimination*. The CUNY EEO Policy section *Complaint Procedures Under the City University of New York’s Policy on Equal Opportunity and Non-Discrimination* provided procedures for the investigation of complaints of discrimination and/or retaliation, excluding complaints of sexual harassment and sexual violence (which are covered under the CUNY Policy on Sexual Misconduct). The CUNY Policy on Sexual Misconduct, CUNY EEO Policy, and *Notice of Non-Discrimination* contained the contact information (web addresses) for the federal, state, and local agencies that enforce laws against discrimination; and a link to the current contact information for Hostos’ EEO professionals.

Hostos reported that during the period in review all new employees were given the *CUNY Policy Checklist/Receipt of Policies for New Hires* and signed to acknowledge receipt of CUNY’s policies (which included the CUNY Policy on Sexual Misconduct and CUNY EEO Policy) during onboarding.

NOTE: Subsequent to the period in review, in January 2020, a screenshot demonstrated that the CUNY Policy on Sexual Misconduct, CUNY EEO Policy, and *Notice of Non-Discrimination* were posted to Hostos’ website.

➤ The CUNY Policy on Sexual Misconduct did not include the following as part of its procedures for investigating complaints: a requirement that in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within 90 days, to specify in the complaint file the reason for the delay and a projected timeframe for completion of the report; and a requirement that the complainant and respondent be notified in writing when the

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<sup>3</sup> *The City University of New York Policy on Sexual Misconduct* is attached as Appendix 2.

<sup>4</sup> *The City University of New York Policy on Equal Opportunity and Non-Discrimination* is attached as Appendix 3.

investigation by the EEO Professional has been transferred because of the filing of an external complaint.

The CUNY EEO Policy did not include the following as part of its procedures for investigating complaints: a requirement that in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within 90 days, to specify in the complaint file the reason for the delay and a projected timeframe for completion of the report, and to notify the complainant and respondent of the delay; and a requirement that the complainant and respondent be notified in writing when the investigation by the EEO Professional has been transferred because of the filing of an external complaint. **Corrective Action Required.**

**Corrective Action #1:** Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies -- or an agency Policy that conforms to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

## **II. Training for the Agency**

**Determination: The agency is in compliance with the standards for this subject area.**

3. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

✓ Handouts that Hostos reported were sent to all staff by the Human Resources Office, outlined Hostos' plan to train all employees, including managers, supervisors, and new hires, on the prevention of sexual harassment and the complaint procedures, by stating, "*ESPARC - Employee Sexual and Interpersonal Violence Prevention and Response [Course t]raining [is] Mandatory & must be completed by the end of your first week of employment. After you initially do this upon hire, you will be required together with all employees to again do the [ESPARC training] every year in accordance with New York State Law.*" The curriculum for CUNY's ESPARC training indicated that the training covered the definitions of sexual misconduct, sexual harassment, gender-based harassment and sexual violence (including sexual assault, dating/intimate partner/domestic violence, and stalking), CUNY's EEO-related policies (including the CUNY Policy on Sexual Misconduct and CUNY EEO Policy), reporting incidents of sexual misconduct, sexual misconduct awareness and prevention, interim and supportive measures, the responsibilities of the Title IX Coordinator<sup>5</sup>, the responsibilities of managers and supervisors, retaliation, the external complaint process, and Hostos' EEO-related resources. Hostos'

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<sup>5</sup> The Chief Diversity Officer, Hostos' principal EEO Professional, was responsible for overseeing Hostos' policies and procedures related to discrimination. This individual also served as Hostos' Title IX coordinator, a role responsible for overseeing Hostos' policies and procedures related to Title IX, which addresses Sexual Misconduct, including sexual harassment.

2018-2019 ESPARC records indicated that as of November 25, 2019, approximately 70% of the non-pedagogical workforce (707 of 1,012<sup>6</sup> non-pedagogical employees) completed the ESPARC training.

Additionally, sign-in sheets documented that during the period in review approximately 23% of the non-pedagogical workforce (233 of 1,012 non-pedagogical employees) completed in-person sexual harassment prevention training. The PowerPoint presentation used for the in-person sexual harassment prevention training included sections on the following topics: CUNY Policy on Sexual Misconduct, CUNY EEO Policy, CUNY Policy and Procedures for Reasonable Accommodations, the definitions for different areas covered under sexual misconduct (including sexual harassment, gender-based harassment, sexual violence, sexual assault, domestic/intimate partner/dating violence, and stalking), how to file a complaint for sexual misconduct (including how to file a complaint that occurred off campus), what happens after a complaint of sexual misconduct is made, the supportive measures available to employees, responsible employees (mandated reporters), confidentiality, the investigative process, the external complaint process, the various employee disciplinary processes, retaliation, preventing sexual misconduct, affirmative consent, bystander intervention, and Hostos' EEO-related resources.

NOTE: Hostos' training records indicated that 940 non-pedagogical employees (approximately 93% of the non-pedagogical workforce) completed training on the prevention of sexual harassment and Hostos' complaint and investigation procedures. Hostos' training records did not distinguish if there was overlap between the non-pedagogical employees who completed ESPARC training and in-person sexual harassment prevention training. Hostos should ensure that all employees complete ESPARC training in accordance with its annual training plan.

### III. Complaint and Investigation Procedures

**Summary of Complaint Activity:** The agency reported **11** internal and **0** external complaints were filed during the period in review.

**Determination:** The agency is in partial-compliance with the standards for this subject area.

4. Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.

✓ EEO complaint files Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 each contained a completed *Charge of Discrimination Form*, or a written complaint that captured facts that identified the respondent with reasonable specificity, the alleged basis of the discrimination, and provided the essence of the circumstances which gave rise to the complaint.

5. Provide the option to file a complaint anonymously.

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<sup>6</sup> Hostos' training numbers were based on Hostos' training records which identified 1,012 non-pedagogical employees; this number included part-time employees, interns, and other employees not included as part of the *Workforce Summary* in Hostos' 2019-2020 *Affirmative Action Plan*.

✓ The option to file a complaint anonymously was communicated to employees via the CUNY Policy on Sexual Misconduct which stated, “[a]fter a report of an alleged incident of sexual misconduct is made to the Title IX Coordinator, a complainant may request (a) that the matter be investigated only to the extent possible without further revealing her/his identity or any details regarding the incident being divulged further... [i]n all such cases, the Title IX Coordinator will weigh the complainant’s request against the college’s obligation to provide a safe, non-discriminatory environment for all students, employees and visitors, including the complainant.” The CUNY EEO Policy reiterated, “[a]ll complaints will be taken seriously, including anonymous complaints. In the event that a complaint is anonymous, the complaint should be investigated as thoroughly as possible under the circumstances.” Additionally, Hostos reported that employees were made aware of the option to file a complaint anonymously during training sessions conducted throughout the period in review. The curriculum utilized for in-person sexual harassment prevention training indicated that employees were made aware of the option to file a complaint anonymously.

6. Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

✓ The files for EEO complaint Nos. 22-19, 32-19, and 51-19 contained the notice of complaint provided to the respondent(s) which included the respondent’s right to respond to the allegations, and contained links to the CUNY EEO Policy. The CUNY EEO Policy stated, “the respondent should be informed that a complaint of discrimination has been received and should be provided a copy of the complaint unless circumstances warrant otherwise... A respondent employee who is covered by a collective bargaining agreement may consult with, and have, a union representative present during the interview.” Additionally, the files for EEO complaint Nos. 22-19, 32-19, and 51-19 each contained documentation regarding the service of the notice of the complaint on the respondents.

➤ Although the notices of the complaint provided to the respondent(s) of EEO complaint Nos. 22-19, 32-19, and 51-19 linked to the CUNY EEO Policy (which included the respondent’s rights), the respondent’s right to be accompanied by a representative of his/her choice was not explicitly stated in the notices. Additionally, the files for EEO complaint Nos. 04-18 and 26-18 did not contain the notice of complaint provided to the respondents, or documentation regarding the service of notice on the respondents. **Corrective Action Required.**

NOTE: The *Investigation Report* for EEO complaint No. 32-19 indicated that the respondent was aware of their right to be accompanied by a union representative.

**Corrective Action #2:** Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

7. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

✓ Because EEO complaint Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 were not terminated, withdrawn or resolved by agreement of the parties or EEO office, Hostos’ EEO policies and discrimination complaint procedures were used to measure compliance with this standard. The CUNY

Policy on Sexual Misconduct stated, “[b]oth the complainant and respondent have the right to end the informal resolution process at any time. Any informal resolution must be acceptable to the complainant, the respondent, and the Title IX Coordinator. Even if both the respondent and complainant agree to a resolution, the Title IX Coordinator must also agree with the resolution for it to be final. If a resolution is reached, the complainant and the respondent shall be notified in writing” and “[w]ithin 30 calendar days following the termination of an investigation that has not been completed (for example, because it was resolved by informal resolution or the complainant withdrew cooperation); the Title IX Coordinator will summarize for the file the actions taken in response to the complaint and the basis on which the investigation was closed.” The CUNY EEO Policy reiterated, “[i]ndividuals who believe they have been discriminated or retaliated against may choose to resolve their complaints informally... [i]nformal resolution requires the consent of both the complainant and the respondent... [r]esolutions should be agreed upon, signed by, and provided to both parties” and “[a] complaint of discrimination may be withdrawn at any time during the informal resolution or investigation process. Only the complainant may withdraw a complaint. Requests for withdrawals must be submitted in writing.”

8. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

✓ EEO complaint files Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 each contained an *Investigation Report* that included notes of the words spoken and facts provided during each interview conducted in the course of the respective complaint investigation.

9. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

✓ The *Investigation Reports* for EEO complaint Nos. 04-18, 26-18, 32-19, and 51-19 were issued within 90 days of the date the complaints were filed, and indicated that each investigation was initiated within 3 days of the date the complaint was filed.

➤ The *Investigation Report* for EEO complaint No. 22-19 was issued more than 90 days after the date the complaint was filed. **Corrective Action Required.**

**Corrective Action #3:** Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

10. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

✓ The file for EEO complaint No. 22-19 specified the reason the *Investigation Report* was issued more than 90 days after the date the complaint was filed. Additionally, the CUNY Policy on Sexual Misconduct stated, “[i]f there is a delay in completing the investigation, the Title IX Coordinator shall notify the complainant and the respondent in writing.”



➤ The file for EEO complaint No. 22-19 did not contain a projected time frame for completion of the investigation and documentation that demonstrated the complainant and respondent were notified of the delay. **Corrective Action Required.**

**NOTE:** The *Investigation Reports* for EEO complaint Nos. 04-18, 26-18, 32-19, and 51-19 were issued within 90 days of the date the complaints were filed.

The CUNY Policy on Sexual Misconduct did not require, in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within the time period specified, that the complaint file contain the reason for the delay and a projected time frame for completion of the report. The CUNY EEO Policy did not require, in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within the time period specified, that the complaint file contain the reason for the delay and a projected time frame for completion of the report; nor a requirement to notify the complainant and respondent of the delay. (**See section I.2 for associated corrective action.**)

**Corrective Action #4:** In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

**11.** Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

✓ The files for EEO complaint Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 each contained an *Investigation Report* generated at the end of the complaint investigation. The *Investigation Reports* included a summary of the allegations and responses (via the "Background", "Interview of Complainant", and "Interview of Respondent" sections); a summary of the procedural history of the investigation (via the "Scope of Investigation" section); a statement of the relevant facts gathered (via the "Interview of Complainant", "Interview of Respondent", and "Interview with [Witness]" sections); a determination, and a recommendation (via the "Analysis" and "Conclusion" sections); and documentation of the Hostos President's review (via the "Acknowledgement" section).

**12.** Maintain complaint files in a secure area and ensure that they can be located and reviewed by the agency head, agency general counsel, and other appropriate staff identified by the agency head.

✓ Hostos reported that hard copy complaint files were maintained in a secured file cabinet in the principal EEO Professional's office where they were accessible to the Hostos President and General Counsel upon request.

**13.** Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

✓ The CUNY Policy on Sexual Misconduct established, “[f]ollowing receipt of the Report of Findings, the College President shall, when warranted by the facts, authorize such action as she/he deems necessary to address the issues raised in the Report of Findings, including action to correct the effects of the conduct investigated to prevent further harm to an affected party or others similarly situated. This may include a recommendation that disciplinary action be commenced against a respondent.” The CUNY EEO Policy reiterated, “[p]romptly following the completion of the investigation, the Chief Diversity Officer will report his or her findings to the President... the President will review the complaint investigation report and, when warranted by the facts, authorize such action as he or she deems necessary to properly correct the effects of or to prevent further harm to an affected party or others similarly situated.”

The *Investigation Reports* for EEO complaint Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 were signed by Hostos’ President indicating they were reviewed and the recommended actions were adopted.

**14.** Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

✓ Each complainant and respondent of EEO complaint Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 received a determination letter notifying them of the conclusion and outcome of the complaint investigation. Additionally, the CUNY Policy on Sexual Misconduct stated, “[w]henever an investigation takes place, the complainant and respondent shall have... simultaneous notice of the outcome of proceedings.” The CUNY EEO Policy reiterated, “[t]he complainant and the respondent should be apprised in writing of the outcome and action, if any, taken as a result of the complaint.”

**15.** Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.

✓ The files for EEO complaint Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 each contained a completed *Action Taken in Response to Case* form that documented the complaint outcome and the corrective actions taken as a result. Additionally, each complaint file contained determination letters that also documented the outcomes and corrective actions taken as a result of the respective complaint investigations.

**16.** Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

**NOTE:** Because EEO complaint Nos. 04-18, 26-18, 22-19, 32-19, and 51-19 were not transferred because of the filing of an external complaint, Hostos’ EEO policies and discrimination complaint procedures were used to measure compliance with this standard. The CUNY Policy on Sexual Misconduct nor the CUNY EEO Policy did not include a requirement that the complainant and respondent be notified in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint. (See section I.2 for associated corrective action.)

**17.** Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

✓ Hostos' EEO Complaint Tracking System indicated that Hostos utilized an internal complaint tracking and monitoring system that permitted Hostos to identify the location (via the field "Department"), the status (via the field "Status"), the length of time elapsed in the complaint investigation process (via the fields "Date Filed", "Date Resolved", and "Number of Days to Close"), the issues and bases of the complaints (via the field "Basis"), the aggrieved individuals (via the fields "Complainant" and "Respondent"), and other information necessary to analyze complaint activity (via the "Case No." field).

**18.** Ensure that the General Counsel assists the agency head in identifying and determining appropriate responses to sexual harassment; works with the principal EEO Professional in the implementation of the City's policies and procedures pertaining to sexual harassment; informs the principal EEO Professional when external complaints or litigation involving sexual harassment is brought against the agency; is available to consult on internal sexual harassment complaint investigations; and is responsible for the investigation of, and response to, external sexual harassment complaints.

✓ The Executive Counsel/Labor Designee assisted the Hostos President in identifying and determining appropriate responses to sexual harassment as part of the annual reviews of Hostos' complaint activity and employment practices and procedures (see section IV.19 for details). An email from June 2019 indicated that the General Counsel's Office worked with the principal EEO Professional in the implementation of Hostos' policies and procedures pertaining to sexual harassment as part of the Advisory Committee on Campus Security. Additionally, Hostos reported that the Executive Counsel/Labor Designee collaborated with the principal EEO Professional on internal sexual harassment complaint investigation and external sexual harassment complaints or litigation.

NOTE: Hostos reported no external complaints were filed during the period in review. The General Counsel's responsibility of informing the principal EEO Professional when external complaints or litigation was brought against Hostos and the General Counsel's responsibility of investigating and responding to external complaints could not be meaningfully measured.

#### **IV. Annual Review of Practices, Policies and Programs**

**Determination: The agency is in compliance with the standards for this subject area.**

**19.** Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

✓ Hostos' *2018-2019 Affirmative Action Plan* and *2019-2020 Affirmative Action Plan* indicated that the Hostos President, principal EEO Professional, and other members of the President's Cabinet conducted an annual review to determine the effectiveness of Hostos' *Affirmative Action Plan* and decide what, if any action items should be included in the next *Affirmative Action Plan* to correct deficiencies. Additionally, an email from June 2019 and the attached *Advisory Committee on Campus Security Memorandum 2019* indicated that the Advisory Committee on Campus Security (which included the principal EEO Professional and Executive Counsel/Labor Designee) reviewed Hostos'

complaint activity, and policies and procedures pertaining to sexual harassment prevention. Specifically, the Advisory Committee on Campus Security reviewed the CUNY Policy on Sexual Misconduct Policy, sexual harassment and the process for reporting sexual harassment complaints, and ways to promote ESPARC training (see section II.3 for details).

As a result of the aforementioned annual reviews, Hostos did not identify barriers to employment opportunities related to sexual harassment. Hostos did identify trends related to sexual harassment and the MeToo Movement. Hostos reported that it decided to “*make adjustments for the in-person sexual harassment trainings as well as the individual training and counseling sessions done as a result of investigations.*” Additionally, the *Action-Oriented Programs* section of Hostos’ 2019-2020 *Affirmative Action Plan* indicated that Hostos decided to have a number of events to acknowledge Women’s History Month and raise awareness about sexual violence and combatting systematic oppression.

#### **V. Responsibility for Implementation - EEO Professionals**

**Determination: The agency is in compliance with the standards for this subject area.**

**20.** Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency’s EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

✓ On April 24, 2017, the Hostos President announced via email, to all employees, the appointment of the Chief Diversity Officer/Title IX Coordinator (Hostos’ principal EEO Professional). Additionally, all employees were reminded of the name and contact information of the principal EEO Professional in the policy statements issued by Hostos’ President via email in September 2018 and September 2019. Training records demonstrated that the principal EEO Professional completed the CUNY EEO-related training: *CUNY Enough is Enough – Title IX Table Top Training* (2019); the following National Association of College and University Attorneys (NACUA) webinars: *Anti-Diversity Complaints: Understanding and Responding to Challenges against Higher Education Diversity Programs and Policies* (2019) and *ADA and FMLA 2.0: Tackling Difficult Faculty and Staff Issues* (2019); and the State University of New York (SUNY) Student Conduct Institute (SCI) *Title IX Investigator Training* (2019). Certificates of attendance demonstrated that during the period in review the principal EEO Professional completed continuing legal education opportunities that included the following: the Practising Law Institute’s *Employment Law Institute 2018* (2018), *Law Firms #MeTooMoment: Results from a Survey of Workplace Conduct and Behaviors in Law Firms* (2019), *Workplace Accommodation and Leave Challenges 2019* (2019), *Understanding Employment Law 2019* (2019); and the State University of New York Office of the General Counsel’s *SUNY SPECTRUM Conference 2019 Session: Nine on IX* (2019), *SUNY SPECTRUM Conference 2019 Session: Does Title VII Protect LGBTQI+ Individuals from Employment Discrimination? A Look at the U.S. Supreme Court’s Upcoming Landmark Case* (2019), *SUNY SPECTRUM Conference 2019 Session: She/He/They/Zie/Noyb – Transprivacy Issues* (2019), *SUNY SPECTRUM Conference 2019 Session: State Policy Initiatives and LGBTQIA+ Student Experiences* (2019), *SUNY SPECTRUM Conference 2019 Session: Impacts of Conversion Therapy on LGBTQ Youth* (2019), and *SUNY SPECTRUM Conference 2019 Session: Legal/Legislative Updates: GENDA Conversion Therapy Ban & More* (2019). Training agendas and materials indicated

that the aforementioned trainings covered EEO laws and procedures, and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

21. Ensure that the responsibilities of the principal EEO Professional are competently discharged by providing adequate resources such as opportunities for continuing education and professional development, and/or support staff to meet EEO obligations.

✓ During the period in review, the principal EEO Professional received support to address EEO responsibilities from an assistant and the Associate Director of Compliance and Diversity (see section V.24 for principal EEO Professional responsibilities). Hostos reported that the Associate Director of Compliance and Diversity's responsibilities included "*assist[ing] with all EEO Matters.*"

Certificates of attendance demonstrated that during the period in review the principal EEO Professional had access to continuing legal education opportunities (see section V.20 for continuing education opportunities). The principal EEO Professional also attended Chief Diversity Officer meetings and Title IX Coordinator meetings provided by the CUNY Central Office. Sample agendas, sign-in sheets, and meeting materials indicated the meetings covered topics that included the CUNY Policy on Sexual Misconduct, CUNY EEO Policy, Title IX, sexual harassment prevention training, complaint investigation training, mediation, training for managerial and supervisory staff on their EEO-related responsibilities, and *Affirmative Action Plans*.

22. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

✓ During the period in review, Hostos' workforce included 633 employees at several office locations. Hostos' website indicated that Hostos appointed EEO professionals from a variety of levels within the organizational structure. Hostos appointed a Chief Diversity Officer/Title IX Coordinator (the principal EEO Professional) who received assistance from the Associate Director of Compliance and Diversity.

Hostos' website also indicated that the principal EEO Professional and the Associate Director of Compliance and Diversity were stationed at the same location, and indicated that the principal EEO Professional and the Associate Director of Compliance and Diversity were accessible to employees at all Hostos locations by stating, "[t]he Office of Compliance and Diversity ("OCD")... is available to all members of the community".

Training records indicated that the Associate Director of Compliance and Diversity completed the following New York City Department of Citywide Administrative Services (DCAS) instructor-led trainings: "*Everybody Matters*" 2-Day Train-the-Facilitator Program (2013), *Workplace Realities: Responding to People with Disabilities (Disability Etiquette)* (2015); the following DCAS computer-based training: *Everybody Matters, Diversity & Inclusion* (2016) and, *Sexual Harassment Prevention* (2019); the CUNY ESPARC (2019) online interactive training; and the State University of New York (SUNY) Student Conduct Institute (SCI) *Title IX Investigator Training* (2019). The curriculum for the aforementioned trainings indicated that the trainings covered EEO laws and procedures and the investigation and resolution of discrimination and sexual harassment complaints.

23. Ensure that the principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.

✓ An email from June 2019 indicated that during the period in review, the principal EEO Professional and the Executive Counsel/Labor Designee worked cooperatively on the implementation of Hostos' policies and procedures concerning sexual harassment, including its training plan (see section II.3 and section IV.19 for details).

24. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

✓ The job description in the Job Vacancy Notice for the principal EEO Professional's title (Chief Diversity Officer) outlined responsibilities that included the following: *[e]nsures the college's compliance with federal, state, and city regulations and University mandates; Aligns the objectives and strategic plans of the Office of Diversity and Compliance with the college's mission; Counsels the college's administration, faculty, and staff regarding equal employment opportunity (EEO), affirmative action, and related compliance procedures; Serves as the Title IX and Section 504/ADA Coordinator; Trains the college community on diversity and sexual harassment policies; Investigates complaints asserted under Title VI, VIII, IX, Section 504, federal and local disability law, CUNY policy, and any law that prohibits discrimination based on a protected status; Collaborates with Human Resources and Legal Affairs Offices to ensure compliance the EEO and OFCCP as well as other applicable issues; ...Prepares and submits internal and external reports including the federally mandated Affirmative Action plan; Serves as the Chief Diversity Office liaison to The City University of New York and attends meetings of the CUNY Chief Diversity Officers Council as well as other college committees."*

During the period in review, the principal EEO Professional ensured that Hostos' policies against sexual harassment and discrimination complaint procedures were distributed and posted (see section I.2 for further details); and coordinated with the Associate Director of Compliance and Diversity, and Human Resources to ensure that employees received sexual harassment prevention training (see section II.3 for training details). Hostos reported that the Associate Director of Compliance and Diversity reported to the principal EEO Professional for EEO-related activities. The CUNY EEO Policy on Sexual Misconduct established, "[t]he [principal EEO Professional] is responsible for conducting any investigation in a prompt, thorough, an impartial manner" and the CUNY EEO Policy reiterated, "[t]he University is committed to addressing discrimination and/or retaliation complaints promptly, consistently and fairly." Hostos reported that its EEO-related policies would be provided in alternative formats (large print, audio recording and/or Braille) upon request to the principal EEO Professional.

25. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

✓ The Hostos executive organizational chart (dated September 2019) identified the principal EEO Professional by name and title (Chief Diversity Officer/Title IX Coordinator) and illustrated a direct reporting relationship between the principal EEO Professional and the Hostos President.

26. Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

✓ Documentation of directives and decisions between Hostos' President and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment was maintained by the principal EEO Professional. Meeting notes from June 2018, and November 2019 indicated that Hostos' President and the principal EEO Professional made decisions regarding Hostos' *Affirmative Action Plan*; hiring; Hostos' annual training plan and implementation; a sexual harassment related event conducted by the principal EEO Professional; and EEO investigative reports and recommendations.

#### **VI. Responsibility for Implementation – Supervisors/Managers**

**Determination: The agency is in partial-compliance with the standards for this subject area.**

27. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

✓ The expectation that managers and supervisors were held accountable for enforcing Hostos' sexual harassment prevention policies and complaint procedures was documented in the CUNY Policy on Sexual Misconduct which stated, "*CUNY has designated the following individuals as "responsible" employees... Employees who are Managers or Supervisors*" and specified that responsible employees "*have a duty to report incidents of sexual misconduct, including all relevant details, to the Title IX Coordinator... and other people responsible for handling the college's response to the report. To the extent possible, before a complainant reveals any information to a responsible employee, the employee shall advise the complainant of the employee's reporting obligations-and if the complainant wants to maintain confidentiality, [and] direct the complainant to confidential resources.*" The CUNY EEO Policy reiterated, "*[m]anagers must take steps to create a workplace free of discrimination, harassment and retaliation, and must take each and every complaint seriously. Managers must promptly consult with the Chief Diversity Officer if they become aware of conduct that may violate the Policy.*" Additionally, the training curriculum used for in-person sexual harassment prevention training indicated that the expectation for the enforcement of Hostos' sexual harassment prevention policies and complaint procedures was communicated to managers and supervisors during training sessions conducted throughout the period in review.

Hostos documented managers and supervisors accountability for enforcing Hostos' sexual harassment prevention policies and complaint procedures via performance evaluations where managers and supervisors were rated on core competencies that included the following: "*[c]onsiders & promotes workforce diversity and equal opportunity in all established practices. Establishes standards of responsibility & behavior for self & subordinates in relation to diversity. Recognizes & promptly refers*

*complaints or violations to appropriate officials.*” Hostos’ records demonstrated that during the evaluation period from February 2018 to February 2019, approximately 43% (84 out of 196 non-pedagogical managers and supervisors) of non-pedagogical managers and supervisors were evaluated.

➤ Hostos did not demonstrate that it documented implementation of managerial expectations for 57% of the non-pedagogical managers and supervisors during the period in review. **Corrective Action Required.**

**Corrective Action #5:** Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

**28.** Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

✓ Hostos’ managerial performance evaluation form included a section entitled, *Inclusiveness – Diversity*, where managers were rated on the following: “[s]hows respect for people and their differences; promotes fairness and equity; engages the talents, experiences, and capabilities of others; fosters a sense of belonging; works to understand the perspectives of others; creates opportunities for access and success.”

## **VII. Reporting Standard for Agency Head**

**Determination: The agency is required to comply with the standards for this subject area.**

**29.** Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

✓ During the period in review, Hostos submitted to the EEPC its annual *Affirmative Action Plans* (which included Hostos’ measures and programs to provide equal employment opportunity). Specifically, Hostos submitted its *2017-2018 Affirmative Action Plan* (which covered the period of September 1, 2017 to August 31, 2018); its *2018-2019 Affirmative Action Plan* (which covered the period of September 1, 2018 to August 31, 2019); and its *2019-2020 Affirmative Action Plan* (which covered the period the period of September 1, 2019 to August 31, 2020). Hostos’ annual *Affirmative Action Plans* set forth its equal employment opportunity measures and programs in four parts: part one, entitled, *Introduction and Background*, provided the relevant policies addressed by the plan (which included the CUNY Policy on Sexual Misconduct and CUNY EEO Policy) and outlined the individuals responsible for implementation of the plan (which included a section on the responsibilities of the principal EEO Professional); part two, entitled, *Data and Analysis*, included Hostos’ annual workforce and utilization analyses; part three, entitled, *Action-Oriented Programs*, included Hostos’ review of its employment practices, policies and programs, and Hostos’ identified goals and planned activities for the upcoming year; part four, entitled, *Individuals with Disabilities and Protected Veterans*, covered



many of the areas outlined in the previous parts but focused on Hostos' hiring and advancement of individuals with disabilities and veterans.

**30.** Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

**Final Action:** Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

### **Summary of Corrective Actions:**

The Eugenio Maria De Hostos Community College has 6 required corrective action(s) at this time. This includes the aforementioned final action.

### **Conclusion**

Pursuant to Charter Chapter 36, the Eugenio Maria De Hostos Community College has the *option* to respond to this Preliminary Determination, but must respond to our Final Determination if corrective action is required. **Any response must be signed by the agency head and submitted to the EEPC's Executive Director.**

*Optional Response to Preliminary Determination:* If submitted, the Eugenio Maria De Hostos Community College's optional response to the EEPC's Executive Director should indicate, with attached documentation, what steps have been or will be taken to correct outstanding areas of non-compliance, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the Preliminary Determination.

*(Optional Conference)* If requested, at the Optional Conference the EEPC will discuss the immediate steps that should be taken to correct outstanding areas of non-compliance and address questions regarding the Eugenio Maria De Hostos Community College's implementation of the prescribed corrective action(s).

*(No Response Option)* If the Eugenio Maria De Hostos Community College does not respond to this Preliminary Determination within 14 days, it will become the EEPC's Final Determination.

*Mandatory Response to Final Determination:* Following this Preliminary Determination, the EEPC will issue a Final Determination where we may modify or eliminate the corrective action(s) based on verified information submitted as part of the response to the Preliminary Determination; identify remaining corrective action(s) that require further monitoring to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Charter Chapter 36, upon receipt, the Eugenio Maria De Hostos Community College must submit a response, signed by the agency head, to our Final

  
Menelik Allsop, EEO Program Analyst

Approved by,

  
Charise L. Terry  
Executive Director

c: Lauren Gretina, Esq., Principal EEO Professional, Hostos  
Ilacia N. Zuell, Manager, EEO Analysis and Audit Unit, EEPC

Appendix 1

**Eugenio Maria De Hostos Community College**

Hostos Community College 2019-2020 Affirmative Action Plan:

*Workforce Summary*

## Exhibit: Job Groups and Staffing 6/1/19

### Exhibit: Workforce Summary

Hostos CC

Total Employees: 633

#### Executive/Administrative/Managerial

Job Group	Staff	Female #	Female %	Minority #	Minority %
Administration 1 (Executive)	16	10	62.5%	12	75.0%
Administration 2 (Manager)	68	39	57.4%	51	75.0%
Facility Manager	2			1	50.0%
IT Computer Manager	2			2	100.0%
Security Manager	3			3	100.0%

#### Professional Faculty

Job Group	Staff	Female #	Female %	Minority #	Minority %
Faculty-Professorial	140	75	53.6%	70	50.0%
Faculty Librarians	10	8	80.0%	6	60.0%
Faculty-Instructor	3	1	33.3%	3	100.0%
Faculty-Lecturer	32	16	50.0%	25	78.1%
Faculty-Developmental	22	16	72.7%	13	59.1%

#### Professional Non-Faculty

Job Group	Staff	Female #	Female %	Minority #	Minority %
Accountant	2	1	50.0%	2	100.0%
Administration 3 (Professional)	129	101	78.3%	116	89.9%
IT Computer Professional	16	3	18.8%	16	100.0%
Nurse	1	1	100.0%	1	100.0%

#### Administrative Support Workers

Job Group	Staff	Female #	Female %	Minority #	Minority %
Accountant Assistant	3	2	66.7%	3	100.0%
Administrative Assistant	8	6	75.0%	8	100.0%
Office Assistant	48	43	89.6%	47	97.9%
Mail Services Worker	3			3	100.0%

#### Craft Workers

Job Group	Staff	Female #	Female %	Minority #	Minority %
Basic Crafts-Buildings and Grounds	8	1	12.5%	3	37.5%
Laborers and Helpers	6			4	66.7%
Skilled Trades-Supervisor	2				
Skilled Trades	13			4	30.8%

#### Technicians

Job Group	Staff	Female #	Female %	Minority #	Minority %
Administration 4 (College Lab Tech)	13	5	38.5%	11	84.6%
IT Support Technician	5	1	20.0%	5	100.0%
Print Shop	2	2	100.0%	2	100.0%

#### Service Workers and Others

Job Group	Staff	Female #	Female %	Minority #	Minority %
Campus Public Safety Sergeant	8	1	12.5%	8	100.0%
Campus Peace Officer	20	7	35.0%	19	95.0%
Campus Security Assistant	7	4	57.1%	7	100.0%
Custodial Supervisor	7	2	28.6%	7	100.0%
Custodial	34	10	29.4%	33	97.1%

Appendix 2

**Eugenio Maria De Hostos Community College**

*The City University of New York Policy on Sexual Misconduct*

2018

THE CITY UNIVERSITY OF NEW YORK  
POLICY ON SEXUAL MISCONDUCT

**TABLE OF CONTENTS**

<b>I. POLICY STATEMENT</b>	<b>3</b>
<b>II. SCOPE OF THIS POLICY</b>	<b>4</b>
<b>III. DEFINITIONS</b>	<b>4</b>
<b>IV. PROHIBITED CONDUCT</b>	<b>8</b>
A. SEXUAL HARASSMENT, GENDER-BASED HARASSMENT AND SEXUAL VIOLENCE	8
B. RETALIATION	9
C. CERTAIN INTIMATE RELATIONSHIPS	9
<b>V. TITLE IX COORDINATOR</b>	<b>9</b>
<b>VI. ASSISTANCE IN CASES OF SEXUAL VIOLENCE</b>	<b>10</b>
A. REPORTING TO LAW ENFORCEMENT	10
B. RELATIONSHIP OF CUNY’S INVESTIGATION TO THE ACTION OF OUTSIDE LAW ENFORCEMENT	10
C. OBTAINING IMMEDIATE MEDICAL ATTENTION AND EMOTIONAL SUPPORT	11
D. ON-CAMPUS RESOURCES	11
<b>VII. IMPORTANT INFORMATION ABOUT CONFIDENTIALITY, PRIVACY AND REQUIRED REFERRALS</b>	<b>11</b>
<b>VIII. REPORTING SEXUAL MISCONDUCT TO THE COLLEGE</b>	<b>12</b>
A. COMPLAINANT’S RIGHTS	12
B. WHERE TO FILE A COMPLAINT ON CAMPUS	13
C. REQUEST THAT THE COLLEGE MAINTAIN A COMPLAINANT’S CONFIDENTIALITY OR NOT CONDUCT AN INVESTIGATION	14
D. FILING EXTERNAL COMPLAINTS	14
E. ACTION BY BYSTANDERS AND OTHER COMMUNITY MEMBERS	15
F. AMNESTY FOR DRUG AND ALCOHOL USE	15
G. REPORTING SUSPECTED CHILD ABUSE	15
H. REPORTING RETALIATION	16
<b>IX. REPORTING/CONFIDENTIALITY OBLIGATIONS OF COLLEGE AND UNIVERSITY EMPLOYEES</b>	<b>16</b>
A. CONFIDENTIAL EMPLOYEES	16
B. “RESPONSIBLE” EMPLOYEES	17
C. ALL OTHER EMPLOYEES	18
D. SPECIAL RULES CONCERNING PUBLIC AWARENESS AND ADVOCACY EVENTS	18

<b>X. NO CONTACT ORDERS AND OTHER INTERIM AND SUPPORTIVE MEASURES</b>	<b>18</b>
A. NO CONTACT ORDERS	19
B. TYPES OF INTERIM AND SUPPORTIVE MEASURES	19
C. INTERIM EMERGENCY SUSPENSIONS	20
D. PROCESS FOR REVIEW OF INTERIM MEASURES, INCLUDING “NO CONTACT” ORDERS AND INTERIM SUSPENSIONS	20
<b>XI. INVESTIGATING COMPLAINTS OF SEXUAL MISCONDUCT</b>	<b>21</b>
A. RIGHTS OF THE COMPLAINANT AND RESPONDENT	21
B. THE INVESTIGATION	22
C. CONFLICTS	23
D. INFORMAL RESOLUTION	23
E. ACTION FOLLOWING THE INVESTIGATION OR CLOSURE OF A COMPLAINT	23
F. MALICIOUS ALLEGATIONS	24
<b>XII. DISCIPLINARY PROCESS AND PROCEDURES</b>	<b>24</b>
A. DISCIPLINARY ACTION	23
B. STUDENT DISCIPLINARY PROCEDURES	26
C. FACULTY STUDENT DISCIPLINARY COMMITTEE STRUCTURE	28
<b>XIII. COLLEGE OBLIGATIONS UNDER THIS POLICY</b>	<b>33</b>
A. DISSEMINATION OF POLICIES, PROCEDURES AND NOTICES	33
B. TRAINING AND EDUCATIONAL PROGRAMMING	33
C. CAMPUS CLIMATE ASSESSMENTS	34
<b>XIV. RULES REGARDING INTIMATE RELATIONSHIPS</b>	<b>34</b>

## **I. POLICY STATEMENT**

Every member of The City University of New York (“CUNY”) community, including students, employees and visitors, deserves the opportunity to live, learn and work free from Sexual Misconduct (sexual harassment, gender-based harassment and sexual violence). Accordingly, CUNY is committed to:

- 1) Defining conduct that constitutes prohibited Sexual Misconduct;
- 2) Providing clear guidelines for students, employees and visitors on how to report incidents of Sexual Misconduct and a commitment that any complaints will be handled respectfully;
- 3) Promptly responding to and investigating allegations of Sexual Misconduct, pursuing disciplinary action when appropriate, referring the incident to local law enforcement when appropriate, and taking action to investigate and address any allegations of retaliation;
- 4) Providing ongoing assistance and support to students and employees who make allegations of Sexual Misconduct;
- 5) Providing awareness and prevention information on Sexual Misconduct, including widely disseminating this policy, as well as a “students’ bill of rights” and implementing training and educational programs on Sexual Misconduct to college constituencies; and
- 6) Gathering and analyzing information and data that will be reviewed in order to improve safety, reporting, responsiveness and the resolution of incidents.

This is the sole policy at CUNY addressing Sexual Misconduct and is applicable at all college and units at the University. It will be interpreted in accordance with the principles of academic freedom adopted by CUNY’s Board of Trustees.

The CUNY community should also be aware of the following CUNY policies:

- [The CUNY Policy on Equal Opportunity and Nondiscrimination](#) prohibits discrimination on the basis of numerous protected characteristics in accordance with federal, state and local law. That policy addresses sex discrimination other than Sexual Misconduct covered by this policy.
- [The CUNY Campus and Workplace Violence Prevention Policy](#) addresses workplace violence.
- [The CUNY Domestic Violence and the Workplace Policy](#) addresses domestic violence in or affecting employees in the workplace.
- [The CUNY Procedures for Implementing Reasonable Accommodations and Academic Adjustments](#) addresses the procedures CUNY will follow when there is a request for a reasonable accommodation and or academic adjustment.

In addition, campus crime statistics, including statistics relating to sexual violence, which CUNY is required to report under the Jeanne Clery Act, are available from the Office of Public Safety at each college and/or on its Public Safety website.



## II. SCOPE OF THIS POLICY

This policy governs the conduct of (i) all the members of CUNY's community, including employees and students, and (ii) non-members of CUNY's community who interact with members of the CUNY community (hereinafter "visitors"). Visitors are both protected by and subject to this policy. A non-member may make a complaint of or report a violation of this policy committed by a member of CUNY's community. A non-member may also be subject to restrictions for failing to comply with this policy. This policy applies to conduct that occurs on and off CUNY property.

## III. DEFINITIONS

- a. **Affirmative Consent** is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of 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 sexual activity between or with any party does not necessarily constitute consent to any other sexual act.

In order to give consent, one must be of legal age (17 years or older).

Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if the 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.

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

- b. **Complainant** refers to the individual who alleges that she/he has been the subject of Sexual Misconduct, and can be a CUNY student, employee (including all full-time and part-time faculty and staff), or visitor. Under this policy, the alleged incident(s) may have been brought to the college's attention by someone other than the complainant.
- c. **Complaint** is an allegation of Sexual Misconduct made under this policy.

- d. **Confidentiality** is the commitment not to share any identifying information with others, except as required by law in emergency circumstances (such as risk of death or serious bodily harm). Confidentiality may only be offered by individuals who are not legally required to report known incidents of Sexual Misconduct to college officials. Licensed mental health counselors, medical providers & pastoral counselors may offer confidentiality.
- e. **Dating Violence** is violence or sexual assault committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship and the frequency of the interaction between the persons involved in the relationship. Dating violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. A relationship may be romantic or intimate regardless of whether the relationship was sexual in nature. Dating violence includes the threat of sexual or physical abuse.
- f. **Domestic Violence** is any violence or sexual assault committed by (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child; (iii) a person who cohabits or cohabited with the victim as a spouse or intimate partner; or (iv) anyone else covered by applicable domestic violence laws. Domestic violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct.
- g. **Forcible Touching/Fondling** is intentionally touching the sexual or other intimate parts of another person without the latter's consent for the purpose of degrading or abusing such person, or for the purpose of gratifying the actor's sexual desire.
- h. **Gender-Based Harassment** is unwelcome conduct of a nonsexual nature based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities. The effect will be evaluated based on the perspective of a reasonable person in the position of the complainant. An example of gender-based harassment would be persistent mocking or disparagement of a person based on a perceived lack of stereotypical masculinity or femininity.
- i. **Intimate Partner Violence ("IPV")** includes both Domestic Violence and Dating Violence.
- j. **Managers** are employees who have authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities.

- k. **Pastoral counselor**. A person who is associated with a religious order or denomination, recognized by that order or denomination as someone who provides confidential counseling, and functioning within the scope of that recognition.
- l. **Privacy** is the assurance that the college will only reveal information about a report of Sexual Misconduct to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required by law. Individuals who are unable to offer the higher standard of confidentiality under law, but who are still committed to not disclose information more than necessary, may offer privacy.
- m. **Rape and Attempted Rape** is the penetration or attempted penetration, no matter how slight, of any body part by a sex organ of another person, without the consent of that person.
- n. **Respondent** refers to the individual who is alleged to have committed Sexual Misconduct against a CUNY student, employee, or visitor.
- o. **Retaliation** is adverse treatment of an individual as a result of that individual's reporting Sexual Misconduct, assisting someone with a report of Sexual Misconduct, opposing in a reasonable manner an act or policy believed to constitute Sexual Misconduct, or participating in any manner in an investigation or resolution of a Sexual Misconduct report. Adverse treatment includes threats, intimidation and reprisals by either a complainant or respondent or by others such as friends or relatives of either a complainant or respondent.
- p. **Sexual Activity** is:
- contact between the penis and the vulva or the penis and the anus;
  - contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
  - penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- q. **Sexual Assault** is any form of sexual activity that occurs without consent.
- r. **Sex Discrimination** is treating an individual differently or less favorably because of sex, including sexual orientation, gender or gender identity (including transgender status), as well as pregnancy, childbirth and related medical conditions. Examples of sex discrimination include giving a student a lower grade, or failing to hire or promote an employee, based on their sex.

- s. **Sexual Harassment** is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct of a sexual nature when:
  - i. submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or
  - ii. such conduct is sufficiently serious that it alters the conditions of, or has the effect of substantially interfering with, an individual's educational or work experience by creating an intimidating, hostile, or offensive environment (hostile environment). The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.

Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive.

While it is not possible to list all circumstances that might constitute sexual harassment, the following are some examples of conduct that might constitute sexual harassment depending on the totality of the circumstances:

- i. Inappropriate or unwelcome physical contact or suggestive body language, such as touching, groping, patting, pinching, hugging, kissing, or brushing against an individual's body;
  - ii. Verbal abuse or offensive comments of a sexual nature, including sexual slurs, persistent or pervasive sexually explicit statements, questions, jokes or anecdotes, degrading words regarding sexuality or gender, suggestive or obscene letters, notes, or invitations;
  - iii. Visual displays or distribution of sexually explicit drawings, pictures, or written materials; or
  - iv. Undue and unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive gestures.
- t. **Sexual Misconduct** is sexual harassment, gender-based harassment or sexual violence, as defined in this policy.
  - u. **Sexual Violence** includes: (1) sexual activity without affirmative consent, such as sexual assault rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking as defined below; and (4) voyeurism, as defined below.
  - v. **Stalking** is intentionally engaging in a course of conduct directed at a specific person that:
    - 1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or 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; or

2. is likely to cause such person to reasonably fear that her/his employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Where stalking is directed at an individual with whom the perpetrator has, had, or sought some form of sexual or romantic relationship, it will be addressed under this Policy. Stalking that lacks a sexual or gender-based nexus may be addressed under the Code of Conduct.

- w. **Supervisors** are employees who are not managers, but have a sufficient degree of control over the working conditions of one or more employees, which might include evaluating their performance and making recommendations for changes in employment status that are given particular weight.
- x. **Visitor** is an individual who is present at a CUNY campus or unit but is not a student or an employee.
- y. **Voyeurism** is unlawful surveillance and includes acts that violate an individual's right to privacy in connection with her/his body and/or sexual activity such as:
  - i. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.
  - ii. Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
  - iii. Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure;
  - iv. Using or installing, or permitting the use or installation of a device for the purpose of recording another person's sexual activity, intimate body parts or nakedness in a place where the person would have a reasonable expectation of privacy without that person's consent.
- z. **Writing**. Whenever this policy requires in "writing," electronic mail satisfies the writing requirement.

#### IV. **PROHIBITED CONDUCT**

##### A. **Sexual Harassment, Gender-Based Harassment and Sexual Violence**

This policy prohibits sexual harassment, gender-based harassment and sexual violence (together "Sexual Misconduct") against any CUNY student, employee or visitor.

Sexual harassment includes unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities.

Sexual harassment is considered a form of employee misconduct and an employee who engages in such conduct, or, managerial and supervisory personnel who knowingly allow such behavior to continue, shall be subject to discipline in accordance with applicable rules, policies and collective bargaining agreements.

Gender-based harassment is unwelcome conduct of a nonsexual nature based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities.

Sexual violence is an umbrella term that includes: (1) sexual activity without affirmative consent, sexual assault, rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking/cyberstalking ("stalking"), and (4) voyeurism.

The complete definitions of these terms, as well as other key terms used in this policy, are in Section III above.

#### B. Retaliation

This policy prohibits retaliation against any person who reports Sexual Misconduct, assists someone making such a report, participates in any manner in an investigation or resolution of a Sexual Misconduct complaint, including testifying or assisting in a legal proceeding, or opposes in a reasonable manner an act or policy believed to constitute Sexual Misconduct. Federal, state, and local laws also prohibit retaliation.

#### C. Certain Intimate Relationships

This policy also prohibits certain intimate relationships when they occur between a faculty member or employee and any student for whom he or she has a professional responsibility as set forth in Section XIII below.

### **V. TITLE IX COORDINATOR**

Each college or unit of CUNY has an employee who has been designated as the Title IX Coordinator. This employee is responsible for compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination, including Sexual Misconduct, in education programs, and with New York State Law Article 129B, commonly referred to as Enough is Enough, Combating Sexual Assault and Domestic Violence on College Campuses (hereafter "Enough is Enough"). The Title IX Coordinator has overall responsibility for implementing this policy, including overseeing the investigation of complaints at her/his college or unit and carrying out the other functions of that position set forth in this policy. All Title IX Coordinators shall receive annual training on Sexual Misconduct as required by Title IX, the Clery Act, Enough is

Enough, and other civil rights law. The name and contact information for all Title IX Coordinators at CUNY can be found on the university's dedicated [Title IX website](#).

## **VI. ASSISTANCE IN CASES OF SEXUAL VIOLENCE**

### **A. Reporting to Law Enforcement**

Students, employees and other community members who experience any form of sexual violence on or off-campus (including CUNY-sponsored trips and events) and visitors who experience sexual violence on a CUNY campus may, but are not required to, report to local law enforcement, and/or state police. CUNY does not require a complainant to report sexual misconduct to law enforcement; however, if a student, employee, or other community member does wish to report to law enforcement, CUNY will provide assistance. Each college public safety office shall have an appropriately trained employee available at all times to provide the complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. Campus public safety officers can also assist the complainant with filing a complaint both on and off-campus, and in obtaining immediate medical attention and other services.

Additional information is available on the university's [Title IX website](#).

### **B. Relationship of CUNY's Investigation to the Action of Outside Law Enforcement**

In cases where the complainant files a complaint with outside law enforcement authorities as well as with the college, the college shall determine what actions to take based on its own investigation. The college may coordinate with outside law enforcement authorities in order to avoid interfering with their activities and, where possible, to obtain information regarding their investigation. Neither a law enforcement determination whether to prosecute a respondent, nor the outcome of any criminal prosecution, is dispositive of whether the respondent has committed a violation of this policy.

Students, employees and other community members should be aware that CUNY procedures and standards differ from those of criminal procedures. When CUNY investigates allegations of sexual misconduct or brings disciplinary proceedings for violations of this policy, the issue is whether the respondent violated CUNY policy. The standard applied in making this determination is whether the preponderance of the evidence substantiates the complaint, or, stated another way, whether it is more likely than not that the alleged conduct occurred. An individual found to have violated this policy may be sanctioned by the college and CUNY. In the criminal justice system, on the other hand, the issue is whether the accused violated state criminal law. The standard applied is proof beyond a reasonable doubt and an individual found *guilty* of a crime is subject to *criminal penalties*, such as incarceration, probation and fines. More information about relevant criminal laws is available in '[A Plain Language Explanation of Distinction Between the New York Penal Law and the College Disciplinary Processes](#)'.

### C. Obtaining Immediate Medical Attention and Emotional Support

CUNY encourages anyone who has experienced sexual assault or domestic, dating or intimate partner violence to seek medical attention as soon as possible. Medical resources can provide treatment for injuries, preventative treatment for sexually transmitted diseases, emergency contraception, and other health services. They can also assist in preserving evidence or documenting any injuries. Taking these steps promptly after an incident can be very helpful if an individual later decides to seek criminal proceedings or a protective order.

Individuals who have experienced or witnessed sexual violence are also encouraged to seek emotional support, either on or off-campus.

### D. On-campus resources

On campus resources include nurses and/or nurse practitioners at campus health offices and counselors at campus counseling centers. Counselors are trained to provide crisis intervention and provide referrals for longer-term care as necessary.

CUNY also maintains a [list of off-campus emergency contacts and resources](#), including rape crisis centers, available throughout New York City on its dedicated web page. This includes a list of local hospitals designated as SAFE (Sexual Assault Forensic Examiner) hospitals, which are specially equipped to handle sexual assaults and trained to gather evidence from such assaults.

## VII. IMPORTANT INFORMATION ABOUT CONFIDENTIALTY, PRIVACY and REQUIRED REFERRALS

CUNY values the privacy of its students, employees, and visitors. They should be able to seek the assistance they need without fear that the information they provide will be shared more broadly. Some individuals who serve as resources on campus are **confidential** resources and will not share any identifying information with others, except as required by law in emergency circumstances. Other individuals are not permitted to maintain confidentiality but will protect **privacy** to the greatest extent possible and share information with other staff only on a need-to-know basis.

**Confidential resources.** Individuals considered confidential resources include counselors and health care providers at the college counseling centers and health offices, pastoral counselors, and designated staff members at women's or men's centers, if they exist on campus. *Students may use these resources even if they decide not to make a report or participate in University disciplinary proceedings or the criminal justice process.*

**Private but non-confidential resources.** Many college employees are required by federal and state law to provide information about possible sexual misconduct to the Title IX Coordinator. Individuals designated as non-confidential but private resources will protect **privacy** to the greatest extent possible, but must share relevant information about sexual misconduct with the Title IX Coordinator.

More information about confidential and private but non-confidential resources is provided in Section IX, below.



Under the Clery Act, the College is required to maintain records, advise the government about reports of certain crimes, and issue timely warnings when there is a serious, continuing threat to the community. Such reports and warnings do not disclose the names of reporting individuals.

## **VIII. REPORTING SEXUAL MISCONDUCT TO THE COLLEGE**

In order for the University to address allegations of sexual misconduct, it has to learn about them. Accordingly, CUNY strongly encourages individuals who have experienced sexual misconduct to file a complaint with a designated campus official, as outlined below. The designated officials are trained to accept complaints, to ensure they are investigated in accordance with this policy, and to help complainants get necessary assistance.

Students, faculty, staff and visitors are encouraged to report incidents of sexual misconduct to campus officials, even if they have reported the incident to outside law enforcement authorities, and regardless of whether the incident took place on or off-campus (including “study abroad” programs). Such reporting will enable complainants to get the support they need and provide the college with the information it needs to take appropriate action.

### **A. Complainant’s Rights**

Individuals who have experienced sexual misconduct have the right to file a complaint with the college or to decide not to do so. (The decision on whether to bring disciplinary charges, however, rests with the campus.) Students who report sexual misconduct have all of the rights contained in the Students Bill of Rights (copy attached).

Complainants also have these rights:

- To notify campus public safety, local law enforcement, and/or the state police; or to choose not to report.
- To have emergency access to a college official trained to interview victims of sexual assault and able to provide certain information, including reporting options and information about confidentiality and privacy. The official will, where appropriate, advise the reporting individual about the importance of preserving evidence and obtaining a sexual assault forensic examination (“SAFE”) as soon as possible. The official will also explain that the criminal process uses different standards of proof, evidence, and that any questions about whether an incident violated criminal law should be addressed to a law enforcement official or a district attorney’s office.
- To disclose the incident to a college representative who can offer confidentiality or privacy and assist in obtaining services for reporting individuals. See Section IX, below.
- To describe the incident only to those campus officials who need the information in order to properly respond and to repeat the description as few times as practicable.
- To have complaints investigated in accordance with CUNY policy.
- To have privacy preserved to the extent possible.
- To receive assistance and resources on campus, including confidential and free on-campus counseling, and to be notified of other services available on- and off-campus, including the New York State Office of Victim Services.

- To disclose the incident to the college’s Human Resources Director or designee (if the accused is a college employee) or request that a confidential or private resource assist in doing so.
- To disclose the incident confidentially and obtain services from state and local governments.
- To receive assistance from the campus or others in filing a criminal complaint, initiating legal proceedings in family court or civil court, and /or seeking an Order of Protection or the equivalent. In New York City, this assistance is provided by Family Justice Centers located in each borough: <http://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>.
- To receive assistance with effecting an arrest when an individual violates an Order of Protection, which may be provided by assisting local law enforcement in effecting such an arrest.
- To withdraw a complaint or involvement from the process at any time.

Students can speak with confidential resources on a strictly confidential basis before determining whether to make a report to college authorities. See Section IX, below. Students also have the right to consult confidentially with state, local and private resources who can provide other assistance.

#### B. Where to File a Complaint on Campus

Students, employees and visitors who experience sexual misconduct should bring their complaints to one of these campus officials/offices:

- Title IX Coordinator;
- Office of Public Safety;
- Office of Vice President for Student Affairs or Dean of Students (students only);
- Residence Life staff in CUNY owned or operated housing (students and residence visitors only); and
- Human Resources Director (employees only).

Contact information for these officials can be found at <https://www1.cuny.edu/sites/title-ix/campus-websites/>.

There is no prescribed method for filing a complaint of sexual misconduct and the college will respond to complaints whether they are oral or written. Complainants may, but are not required to, fill out the CUNY Sexual Misconduct Complaint form (see page 38). After the form is filled out, it should be brought to one of the offices listed above.

Once any of the officials or offices above is notified of an incident of sexual misconduct, she/he will provide a copy of this Policy to the Complainant and coordinate with appropriate college offices to address the matter in accordance with this policy, including taking appropriate interim and supportive measures. These officials and offices will maintain a complainant’s privacy to the greatest extent possible, and all information in connection with the complaint, including the identities of the complainant and the respondent, will be shared only with those who have a legitimate need for the information.

Visitors: CUNY strongly encourages visitors to report all incidents of sexual misconduct that they observe or experience while on a CUNY campus or at a CUNY sponsored event to the Office of Public Safety, Residence Life staff, or other appropriate college officials listed above. In certain instances, CUNY may be able to offer those visitors who have experienced sexual misconduct with resources and assistance. For more information on such assistance, please visit <http://www1.cuny.edu/sites/title-ix/>.

C. Request that the College Maintain a Complainant's Confidentiality or Not Conduct an Investigation

After a report of an alleged incident of sexual misconduct is made to the Title IX Coordinator, a complainant may request (a) that the matter be investigated only to the extent possible without further revealing her/his identity or any details regarding the incident being divulged further (b) that no investigation into a particular incident be conducted, or (c) that an incident not be reported to outside law enforcement.

In all such cases, the Title IX Coordinator will weigh the complainant's request against the college's obligation to provide a safe, non-discriminatory environment for all students, employees and visitors, including the complainant. Factors used to determine whether to honor such a request include, but are not limited to: (a) whether the respondent has a history of violent behavior or is a repeat offender; (b) whether the incident represents escalation of unlawful conduct by the accused from previously noted behavior; (c) any increased risk that the accused will commit additional acts of violence, (d) whether the accused used a weapon or force; (e) whether the complainant is a minor; (f) whether the college possesses other means to obtain evidence such as security footage; and (g) whether available information reveals pattern of misconduct at a given location or by particular group.

A decision to maintain confidentiality does not mean that confidentiality can be absolutely guaranteed in all circumstances, but that reasonable efforts will be made to keep information confidential consistent with law. Notwithstanding the decision of the Title IX Coordinator regarding the scope of any investigation, the college will provide the complainant with ongoing assistance and support, including, where appropriate, the interim and supportive measures set forth in Section X of this policy.

If the Title IX Coordinator determines that the college may maintain confidentiality as requested by the complainant, the college will, if possible, take reasonable steps to investigate the incident consistent with the request for confidentiality. However, a college's ability to meaningfully investigate the incident and pursue disciplinary action may be limited by such a request for confidentiality.

D. Filing External Complaints

Complainants who feel that they have been subjected to unlawful sexual harassment and/or violence have the right to avail themselves of any and all of their rights under law, including but not limited to filing complaints with one or more of the outside agencies listed below.

- U.S. Department of Education, Office for Civil Rights  
<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>

- U.S. Equal Employment Opportunity Commission  
[https://www.eeoc.gov/federal/fed\\_employees/filing\\_complaint.cfm](https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm)
- New York State Division of Human Rights  
<https://dhr.ny.gov/complaint>
- New York City Commission on Human Rights  
<http://www1.nyc.gov/site/cchr/about/resources.page>

E. Action by Bystanders and Other Community Members

While only employees designated as “responsible” employees are required reporters as set forth in Section IX below, CUNY encourages all other community members, including faculty, students and visitors, to take reasonable and prudent actions to prevent or stop an act of sexual misconduct that they may witness. Although these actions will depend on the circumstances, they may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

In addition, CUNY encourages all community members to report any incident of sexual misconduct that they observe or become aware of to the Title IX Coordinator, or the offices of Public Safety, Vice President of Students Affairs (students), Dean of Students (students) or Human Resources (employees) at their college. Community members who take action in accordance with this paragraph will be supported by the college, and anyone who retaliates against them will be subject to disciplinary charges.

F. Amnesty for Drug and Alcohol Use

The health and safety of every student at CUNY is of the utmost importance. CUNY recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at a time that violence (including but not limited to sexual violence) occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. CUNY strongly encourages students to report sexual violence to college officials. A bystander or complainant acting in good faith who discloses any incident of sexual violence to college officials or law enforcement will not be subject to discipline under [CUNY’s Policy Against Drugs and Alcohol](#) for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the sexual violence.

This policy does not provide amnesty for drug dealers or those who use drugs or alcohol as a weapon or to facilitate assault. Under CUNY’s Amnesty for Drug and Alcohol Policy, personal drug use and possession, whether it is intentional or accidental, will not form the basis of faculty student disciplinary charges.

G. Reporting Suspected Child Abuse

Certain members of the CUNY community who interact with, supervise, chaperone, or otherwise oversee minors in programs or activities at CUNY or sponsored by CUNY are required to report immediately to the New York State Maltreatment Hotline if they have reasonable cause to suspect

abuse or maltreatment of individuals under the age of 18. Information regarding mandated child abuse reporting is available on the [Office of the General Counsel web page](#). If anyone other than New York State mandated reporters has reasonable cause to believe that a minor is being or has been abused or maltreated on campus, she/he should notify either the Title IX Coordinator or Director of Public Safety. If any CUNY community member witnesses child abuse while it is happening, she/he should immediately call 911.

#### H. Reporting Retaliation

An individual may file a complaint with the Title IX Coordinator if the individual has been retaliated against for reporting sexual misconduct, opposing in a reasonable manner an act or policy believed to constitute sexual misconduct, assisting someone making such a report, or participating in any manner in an investigation or resolution of a sexual misconduct complaint. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in Section XI of this policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

### **IX. REPORTING/CONFIDENTIALITY OBLIGATIONS OF COLLEGE AND UNIVERSITY EMPLOYEES**

An individual who speaks to a college or CUNY employee about sexual misconduct should be aware that employees fall into three categories:

- “confidential” employees, who have an obligation to maintain a complainant’s confidentiality regarding the incident(s);
- “responsible” employees, who are required to report the incident(s) to the Title IX Coordinator
- all other employees, who are strongly encouraged but not required to report the incident(s).

#### A. Confidential Employees

- i. **For Students.** Students at CUNY who wish to speak to someone who will keep all of the communications confidential should speak to one of the following:
  - Counselor or other staff member at their college counseling center;
  - Nurse, nurse practitioner or other college health office staff member;
  - Pastoral counselor, if available at the college; or
  - Designated staff member in a women’s or men’s center, if one exists at their college.

These individuals will not report information about an incident to the college’s Title IX Coordinator or other college employees without the student’s permission. The only exception is in the case where there is an imminent threat of serious harm to the complainant or any other person.

If a student speaks solely to a “confidential” employee, the college will rarely be able to conduct an investigation into the particular incident or pursue disciplinary action against

the alleged perpetrator. Confidential employees will assist students in obtaining other necessary support. A student who first requests confidentiality may later decide to file a complaint with the college or with local law enforcement.

- ii. **For Employees.** Although CUNY does not directly employ individuals to whom CUNY employees can speak on a confidential basis regarding sexual misconduct, free confidential support services are available through [CUNY's Work/Life Program](#), which is administered by an outside company. Confidential community counseling resources are also available [throughout New York City](#).

B. “Responsible” Employees – Private, but not confidential.

“Responsible” employees have a duty to report incidents of sexual misconduct, including all relevant details, to the Title IX Coordinator. Such employees are not permitted to maintain a complainant’s confidentiality, except that the Title IX Coordinator may honor a request for confidentiality under the circumstances described in Section VII above. However, these employees will maintain a complainant’s privacy to the greatest extent possible, and information reported to them will be shared only with the Title IX Coordinator and other people responsible for handling the college’s response to the report.

To the extent possible, before a complainant reveals any information to a responsible employee, the employee shall advise the complainant of the employee’s reporting obligations—and if the complainant wants to maintain confidentiality, direct the complainant to confidential resources identified above.

CUNY has designated the following individuals as “responsible” employees. Complainants who wish to report sexual violence are encouraged to speak with one of the responsible employees marked: \*

- i. Title IX Coordinator and her/his staff
- ii. \* Office of Public Safety employees (all)
- iii. \* Vice President for Student Affairs or Dean of Students and all staff housed in those offices
- iv. \* Residence Life staff in CUNY owned or operated housing, including Resident Assistants (all) (for students and housing visitors)
- v. \* Human Resources staff (all) (for employees)
- vi. College President, Vice Presidents and Deans
- vii. Athletics Staff (all)
- viii. Faculty Athletics Representatives
- ix. Department Chairpersons/Executive Officers
- x. University Office of the General Counsel employees (all)
- xi. College/unit attorney and her/his staff
- xii. College/unit labor designee and her/his staff

- xiii. International Education Liaisons/Study Abroad Campus Directors and Field Directors
- xiv. Faculty and staff members at times when they are leading or supervising student on off-campus trips
- xv. Faculty or staff advisors to student groups
- xvi. Employees who are Managers or Supervisors (all)
- xvii. SEEK/College Discovery staff (all)
- xviii. College Childcare Center staff (all)
- xix. Directors of “Educational Opportunity Centers” affiliated with CUNY colleges
- xx. Faculty or staff academic advisors

C. All Other Employees

Employees other than those identified in subsections “A” and “B” above are strongly encouraged but not required to report any possible sexual misconduct to the Title IX Coordinator. They are also strongly encouraged to maintain individual privacy to the greatest extent possible by sharing information, including the identities of the complainant and the respondent, only with the Title IX coordinator.

It is important to emphasize that faculty members other than those specifically identified in sub-Section “B” above have not been designated as “responsible” employees and do not have an obligation to report the matter to the Title IX Coordinator, although they are strongly encouraged to do so. An individual who wishes to ensure that the Title IX Coordinator is notified of an incident is strongly encouraged to speak with the Title IX Coordinator or one of the other individuals identified above.

D. Special Rules Concerning Public Awareness and Advocacy Events

CUNY supports public awareness events that help provide its community with information about sexual misconduct and how it can be addressed and prevented. In order to preserve the ability to participate freely in public awareness and advocacy events, if an individual discloses information about sexual misconduct at such event (for example, Take Back the Night gatherings, candlelight vigils, or protests) the college will not treat the disclosure as triggering an obligation to commence an investigation based on that information. Such individuals are encouraged to report sexual misconduct to college officials so that the college can provide resources and assistance.

**X. NO CONTACT ORDERS AND OTHER INTERIM AND SUPPORTIVE MEASURES**

When a college becomes aware of an allegation of sexual misconduct and the complainant or other affected parties request interim or supportive measures, the college will take appropriate interim and supportive measures to protect the complainant and other affected parties, to assist the parties, and to protect against retaliation. Appropriate interim and supportive measures may also be available to respondents. The college may also take interim measures to protect the college community at large.

The college's Title IX Coordinator is responsible for coordinating interim and supportive measures, which are available even if the complainant chooses not to file or continue to pursue a complaint. Requests for interim and supportive measures should be made to the Title IX Coordinator.

The Title IX Coordinator will work with the Chief Student Affairs Officer to identify a trained staff member to assist students to obtain interim and supporting measures. The Title IX Coordinator will work with the Human Resources Director to assist employee complainants to obtain interim and supporting measures.

A. No Contact Orders

When respondent is a student, the complainant has the right to a college-issued "no contact order" under which continued intentional contact with the complainant would violate this policy. No contact orders may be issued for both the complainant and the respondent, as well as other individuals as appropriate.

B. Types of Interim and Supportive Measures

Possible interim and supportive measures include:

- i. Making appropriate changes to academic programs, including changes in class schedule, accommodations to permit the complainant to take an incomplete or drop a course or courses without penalty, permitting complainant or respondent to attend a class via skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;
- ii. Making appropriate changes to residential housing situations or providing assistance in finding alternate housing;
- iii. Changing an employee's work assignment or schedule;
- iv. Providing the complainant with an escort to and from class or campus work location;
- v. Arranging appropriate transportation services to ensure safety;
- vi. Offering counseling services through the college Counseling Center or other appropriate office, or referral to an off-campus agency;
- vii. Assisting the complainant in obtaining medical and other services, including access to rape crisis centers;
- viii. Assisting the complainant with filing a criminal complaint and/or seeking an order of protection;
- ix. Enforcing an order of protection;
- x. Obtaining a copy and/or explaining the terms of an order of protection and the consequences of violating it;
- xi. Addressing situations in which it appears that a complainant's academic progress is affected by the alleged incident;
- xii. In exceptional circumstances, where a respondent is determined to present a continuing threat to the health and safety of the community, the college may seek an emergency interim suspension of a student or take similar emergency measures against an employee, consistent with applicable CUNY Bylaws, rules, policies and collective bargaining agreements. The Office of Public Safety will, in cooperation with the Title IX Coordinator



and appropriate other campus officials, determine whether a respondent presents a continuing threat to the health and safety of the campus, including (a) whether the respondent has a history of violent behavior or is a repeat offender; (b) whether the incident represents escalation in unlawful conduct by the accused; and (c) any increased risk that the accused will commit additional acts of violence.

C. Interim Emergency Student Suspensions

The president or her/his designee may in emergency or extraordinary circumstances, temporarily suspend a student pending an early hearing for not more than twelve (12) calendar days, unless the student requests an adjournment. See Section B above.

Prior to the commencement of a temporary suspension of a student, the college shall give the student respondent oral notice (which shall be confirmed via email to the address appearing on the records of the college) or written notice of the charges. If the respondent denies them, the college shall forthwith give the respondent an informal oral explanation of the evidence supporting the charges and the student may present informally her/his explanation or theory of the matter.

Both complainant and the respondent will be notified of the suspension and if or when it the suspension is lifted at the same time and in the same manner.

D. Process for Review of Interim Measures, including “No Contact” Orders and Interim Suspensions.

Upon request, the complainant and the respondent shall each be afforded a prompt review of the need for and terms of restrictive interim measures, including “no contact” orders and interim suspensions. Issues that may be raised include possible modification or discontinuance of a “no contact” order. Complainants and respondents shall be allowed to submit evidence to support their request. The request shall be made to the college’s Chief Student Affairs Officer, if either the complainant or the respondent is a student, or to the college’s Human Resources Director, if neither the complainant nor the respondent are students. If a request is made in a case involving both a student and an employee, the Chief Student Affairs Officer shall consult with the Human Resources Director. The Chief Student Affairs Officer or Human Resources Director may consult with the Title IX Coordinator and other relevant officials regarding the request. If appropriate and possible, the college may establish an appropriate schedule for the complainant and the respondent to access college facilities when they are not being used by the other party to enable both parties to use college facilities to the maximum extent feasible, without violation of the “no contact” order.

Requests for accommodations that were made under CUNY’s Procedures for Implementing Reasonable Accommodations and Academic Adjustments and do not directly affect the other party are governed by the appeals provisions set forth in those Procedures.

## **XI. INVESTIGATING COMPLAINTS OF SEXUAL MISCONDUCT**

The college will conduct an investigation when it becomes aware, from any source (including third-parties not connected to the college or university), that sexual misconduct may have been committed against a student, employee or visitor, unless the information provided is insufficient to permit an investigation or the complainant has requested that the college refrain from such an investigation and the college has determined that refraining from an investigation will not result in a continuing threat to the college community. See Section VIII, above.

### **A. Rights of the Complainant and Respondent.**

Whenever an investigation takes place, the complainant and respondent shall have these rights:

- to an investigation and process that is fair, impartial, timely and thorough and provides a meaningful opportunity to be heard;
- to have the complaint investigated and/or adjudicated by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, and the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until any finding of responsibility;
- to have the college's judicial or conduct process run concurrently with any criminal justice investigation and proceeding, except for temporary delays requested by external municipal entities while law enforcement gathers evidence;
- to receive reasonable advance written or electronic notice of any meeting they are required to or eligible to attend, of the specific rule or law alleged to have been violated and in what manner;
- to exclude their own prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis and/or treatment from admittance in the stage that determines responsibility. (Past findings of sexual misconduct may be admissible in the stage that determines sanction.)
- to offer evidence during the investigation;
- to review documents and tangible evidence, consistent with FERPA and other law;
- to be accompanied by an attorney or other advisor of their choice, who may assist and advise the complainant or respondent throughout the process including during all related meetings and hearings. Such attorneys or advisors must comply with the CUNY policies and procedures; and
- to simultaneous notice of the outcome of proceedings.

## B. The Investigation

The college Title IX Coordinator is responsible for conducting any investigation in a prompt, thorough, and impartial manner and may designate another appropriately trained administrator to conduct all or part of the investigation. Whenever an investigation is conducted, the Title IX Coordinator shall:

- coordinate investigative efforts with other appropriate offices;
- inform the complainant that an investigation is being commenced and that the respondent will receive a written summary of the allegations;
- inform the respondent that an investigation is being commenced and provide the respondent with a written summary of the allegations of the complaint. A respondent employee who is covered by a collective bargaining agreement may consult with and have a union representative present at any interview of that employee conducted as part of such investigation;
- interview witnesses who might reasonably be expected to provide information relevant to the allegations, and review relevant documents and evidence. Both the complainant and respondent shall be informed that they have the right to provide relevant documents and to propose for interview witnesses whom they reasonably believe can provide relevant information.

Neither the complainant nor the respondent is restricted from discussing and sharing information related to the complaint with others who may support or assist them. This does not, however, permit unreasonable sharing of private information in a manner intended to harm or embarrass another, or in a manner that would recklessly do so regardless of intention. Such unreasonable sharing may constitute retaliation under this Policy.

The college Title IX Coordinator shall maintain all documents of the investigation in accordance with the [CUNY Records Retention and Disposition Policy](#).

The college shall make reasonable efforts to ensure that the investigation and resolution of a complaint are carried out as timely and efficiently as possible. However, the college may need to temporarily delay the fact-finding portion of its investigation during the evidence-gathering phase of a law enforcement investigation. Temporary delays will generally not last more than ten days except when law enforcement specifically requests and justifies a longer delay. While some complaints may require more extensive investigation, when possible, the investigation of complaints should be completed within sixty (60) calendar days of the receipt of the complaint. If there is a delay in completing the investigation, the Title IX Coordinator shall notify the complainant and the respondent in writing.

### i. Role of the Advisor

In cases involving this Policy, both the complainant and respondent may be accompanied by an advisor of their choice (including an attorney) who may advise throughout the entire process, including all meetings and hearings. While advisors may represent a party and fully participate at a hearing, they may not speak during the meetings that proceed the hearing nor give testimony as a witness at the hearing.

### C. Conflicts

If a complainant or respondent believes that any individual involved in the investigatory or adjudication process has a conflict of interest, he or she may make a request to the Chief Student Affairs Officer (or, if no students are involved, to the Legal or Labor Designee) to have that conflicted individual removed from the process. The request for removal must be in writing within five days of the complaint or respondent's notification that the individual is to be involved and include a detailed description of the conflict. If the Chief Student Affairs Officer (or Legal or Labor Designee) determines that a conflict does exist, he or she will take immediate steps to address the conflict in order to ensure an impartial and fair process.

If any administrator designated by this policy to participate in the investigation or resolution of a complaint (including but not limited to the Title IX Coordinator) is the respondent, the College President will appoint another college administrator to perform such person's duties under this policy. If the President is the respondent, the investigation will be handled by the University Title IX Coordinator or her/his designee.

### D. Informal Resolution

Except in instances involving sexual assault, the Title IX Coordinator, in his or her discretion, may offer the respondent and the complainant the opportunity to participate in the informal resolution process. Informal resolution may take place after the Title IX Coordinator has completed the investigation, but before the Title IX report has been completed, in an effort to resolve the matter by mutual agreement. The informal resolution process shall be conducted by the Title IX Coordinator, or by a qualified staff or faculty member designated by Title IX Coordinator, in coordination with the Chief Student Affairs Officer.

Both the complainant and the respondent have the right to end the informal resolution process at any time. Any informal resolution must be acceptable to the complainant, the respondent, and the Title IX Coordinator. Even if both the respondent and complainant agree to a resolution, the Title IX Coordinator must also agree with the resolution for it to be final.

If a resolution is reached, the complainant and the respondent shall be notified in writing, and the Title IX Coordinator will confer with the Chief Student Affairs Officer when creating a written memorandum memorializing the agreed upon resolution and consequences for non-compliance. This memorandum will be included in the respondent's student record.

If no agreement is reached within a reasonable time, the Title IX Coordinator shall complete the Title IX report and take action in accordance with subsection E below. Information learned during and directly from the informal resolution process will not be documented in the Title IX report.

### E. Action Following the Investigation or Closure of a Complaint.

- i. Within 30 days following the completion of an investigation, the Title IX Coordinator shall report her/his findings to the College President in writing ("Report of Findings"). In the event the complainant or the respondent is a student, the report shall also be sent to the

Chief Student Affairs Officer. A copy of the report shall be maintained in the files of the Title IX Coordinator.

- ii. In making findings regarding the allegations, the Title IX Coordinator shall use the “preponderance of the evidence” standard.
- iii. Following receipt of the Report of Findings, the College President shall, when warranted by the facts, authorize such action as she/he deems necessary to address the issues raised in the Report of Findings, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. This may include a recommendation that disciplinary action be commenced against a respondent, as set forth in Section XII below.
- iv. Within 30 calendar days following the termination of an investigation that has not been completed (for example, because it was resolved by informal resolution or the complainant withdrew cooperation); the Title IX Coordinator will summarize for the file the actions taken in response to the complaint and the basis on which the investigation was closed.

#### F. Malicious Allegations

Members of the CUNY community who make false and malicious complaints of violations of this policy of as opposed to complaints which, even if erroneous, are made in good faith, may be subject to disciplinary action.

## **XII. DISCIPLINARY PROCESS AND PROCEDURES**

### A. Disciplinary Action

If the College President recommends that disciplinary action be commenced against a respondent student or employee for violations of this Policy, the following procedures shall apply:

#### Discipline Against Students:

- a. In cases where a College President recommends discipline against a student for violations of this Policy, the matter shall be referred to the college’s Office of Student Affairs and action shall be taken in accordance with Section 11.A-C of this Policy, below. This Section provides for, among other things, a Faculty-Student Disciplinary Committee consisting of faculty members, students and in some cases staff members specially trained to hear and decide charges of violation of this Policy.
- b. As described in Sections XI above, complainants have the same rights as respondents:
  - to receive notice of the charges, including the date, time, location and factual allegations, concerning alleged violation of this Policy;
  - to receive notice of the specific provisions alleged to have been violated and possible sanctions;
  - to present evidence and testimony at any hearing, where appropriate;
  - to be represented by an attorney or advisor of their choice;

- to receive access to a full and fair record of any hearing;
  - to receive written notice of the decision of the faculty-student disciplinary committee, specifically whether the allegations were substantiated and what, if any, penalty was imposed;
  - to make an impact statement at the point when the decision maker is deliberating on appropriate sanctions;
  - To written notice of findings of fact, decisions and sanctions if any, as well as the rationale for the decision and any sanction;
  - to choose whether to or discuss the outcome of a conduct or judicial process;
  - to appeal to a decision maker that is fair and impartial and does not include individuals with conflicts of interest;
  - to have all information obtained during the conduct process protected from public release until a decision maker on appeal makes a final determination, unless otherwise required by law.
- c. Penalties for students instituted after a hearing before the faculty-student disciplinary committee range from a warning to suspension or expulsion from the University. Students accused of crimes of violence are also subject to the university's policy on transcript notations which is discussed in this Section below.

#### Discipline Against Employees

In cases where the college President recommends discipline against an employee, the matter shall be referred for disciplinary action in accordance with the applicable CUNY policies, rules and collective bargaining agreements. Penalties for employees include, depending on the employee's title, reprimand, suspension, demotion, fine, or termination of employment following applicable disciplinary procedures. For many respondent employees, these procedures may include a hearing before a non-CUNY fact-finder, as required by the particular collective bargaining agreement.

For additional information on the disciplinary process in specific cases, complainants should consult their campus Title IX Coordinator, who will work with campus Human Resources Director to provide information. Respondents should consult their union representative, if any, or campus Human Resources Director.

#### Action Against Visitors

In cases where the person accused of sexual misconduct is not a CUNY student or employee, the college's ability to take action against the accused is usually extremely limited. However, the college shall take all appropriate actions within its control, such as restricting the visitor's access to campus. In addition, subject to Section VI, above, the matter may be referred to local law enforcement for legal action, including seeking Orders of Protection and/or reporting to local law

enforcement, where appropriate. College Public Safety will assist both students and employees in enforcing Orders of Protection on the campus.

#### No Disciplinary Action

In cases where a determination is made not to bring disciplinary action, the Title IX Coordinator shall inform the complainant and respondent of that decision at the same time, in writing, and shall offer any appropriate support services, including counseling, to both.

#### B. Student Disciplinary Procedures

##### Referral of Violation for Disciplinary Action

If the President decides that discipline is warranted, the President will refer the matter to the Chief Student Affairs Officer for further action. The chief student affairs officer may rely on the investigation and determination of the Title IX Coordinator and prefer disciplinary charges.

In instances where a respondent is alleged to have violated this Policy as well as other CUNY policies, rules or bylaws, the entire matter will be heard before the Faculty Student Disciplinary Committee and will follow the rules and procedures outlined in this Policy.

##### Respondent Withdrawal Before Completion of the Process

In the event that a respondent withdraws from the college before a decision is rendered on the charges, the respondent is required to participate in the disciplinary hearing or otherwise to resolve the pending charges and shall be barred from attending any other unit of the university until a decision on the charges is made, or the charges are otherwise resolved.

Immediately following such withdrawal, the college shall place a notation on the respondent's transcript that the respondent "withdrew with conduct charges pending." If the respondent fails to appear, the college may proceed with the disciplinary hearing in absentia, and any decision and sanction shall be binding, and the transcript notation, if any, resulting from that decision and penalty shall replace the notation.

##### Issuance of Charges & Notice of Hearing

Notice of the charge(s) and of the time and place of the hearing shall be sent to the respondent by both first-class mail and email to the address appearing on the records of the college. Notice shall also be sent in a similar manner to the complainant to the extent that charges relate to the complainant. The Chief Student Affairs Officer is also encouraged to send the notice of charges to any other e-mail address that he or she may have for the respondent and the complainant.

The hearing shall be scheduled within a reasonable time following the filing of the charges or the mediation conference. Notice of at least seven (7) calendar days shall be given to the respondent in advance of the hearing unless the respondent consents to an earlier hearing. The respondent is permitted one (1) adjournment, for a reasonable amount of time under the circumstances, without specifying a reason. Additional requests for an adjournment must be made at least five (5) calendar days prior to the hearing date, and shall be granted or denied at the discretion of the chairperson

of the Faculty Student Disciplinary Committee. If the respondent fails to respond to the notice, appear on the adjourned date, or request an extension, the college may proceed without the respondent present, and any decision and sanction shall be binding.

#### Content of Notice of Charges and Hearing

The notice shall contain the following:

- A. A complete and itemized statement of the charge(s) being brought against the respondent including the policy, rule and/or bylaw the respondent is charged with violating, and the possible penalties for such violation.
- B. A statement that the respondent and the complainant have the right to attend and participate fully in the hearing including the right:
  - i. to present their side of the story;
  - ii. to present witnesses and evidence on their behalf;
  - iii. to cross-examine witnesses presenting evidence, the exception being that the complainant and respondent may not cross-examine each other as discussed below;
  - iv. for the respondent to remain silent without assumption of guilt; and
  - v. to be represented by an advisor or legal counsel at their expense; if the respondent or the complainant requests it, the college shall assist in finding a legal counsel or advisor.
  - vi. A warning that anything the respondent says may be used against the respondent at a non-college hearing.

#### Review of Evidence before Hearing:

At least five (5) calendar days prior to the commencement of a student disciplinary hearing, the college shall provide the respondent and the complainant and/or their designated representative, with similar and timely access to review documents or other tangible evidence that the college intends to use at the disciplinary hearing, consistent with the restrictions imposed by the Family Educational Rights and Privacy Act ("FERPA"). Should the college seek to introduce additional documents or other tangible evidence during the disciplinary hearing, the respondent and the complainant shall be afforded the opportunity to review the additional documents or tangible evidence. If during the hearing the complainant or the respondent submits documentary evidence, the chairperson may, at the request of any other party grant, adjournment of the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

#### Admission & Acceptance of Penalty

After the charges have been preferred by the chief student affairs officer, but prior to the commencement of a disciplinary hearing, the respondent may admit to the charges and accept the penalty that the chief student affairs officer or designee determines to be appropriate to address the misconduct. If required by this Policy, the agreed-upon penalty



shall be placed on the respondent's transcript consistent with CUNY's policy on Transcript Notations (see below). Before resolving a complaint in this manner, the chief student affairs officer, or designee, shall first consult with the complainant and provide the complainant with an opportunity to object to the proposed resolution, orally and/or in writing. If a resolution is reached over the complainant's objection, the chief student affairs officer or designee shall provide the complainant with a statement of the reasons supporting such resolution, and the complainant may appeal the resolution to the college President.

C. Faculty Student Disciplinary Committee Structure:

Each faculty-student disciplinary committee shall consist of two (2) faculty members or one (1) faculty member and one (1) member of the Higher Education Officer series (HEO), and two (2) student members and a chairperson, who shall be a faculty member. A quorum shall consist of the chairperson and any two (2) members, one of whom must be a student. Hearings shall be scheduled promptly (including during the summers) at a convenient time and efforts shall be made to insure full student and faculty representation.

The president shall select in consultation with the head of the appropriate campus governance body or where the president is the head of the governance body, its executive committee, three (3) members of the faculty of that college to receive training upon appointment and to serve in rotation as chairperson of the disciplinary committee. The following schools shall be required to select two (2) chairpersons: CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism. If none of the chairpersons appointed from the campus can serve, the president, at her/his discretion, may request that a chairperson be selected by lottery from the entire group of chairpersons appointed by other colleges. The chairperson shall preside at all meetings of the faculty-student disciplinary committee and decide and make all rulings for the committee. She/he shall not be a voting member of the committee but shall vote in the event of a tie.

The faculty members shall be selected by lot from a panel of six (6) elected biennially by the appropriate faculty body from among the persons having faculty rank or faculty status. Members of the panel shall be trained on an annual basis in compliance with the law and this Policy. CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism shall be required to select four (4) faculty members. The HEO members shall be selected by lot from a panel of six (6) HEO appointed biennially by the president. CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism shall be required to select four (4) HEO's. The student members shall be selected by lot from a panel of six (6) elected annually in an election in which all students registered at the college shall be eligible to vote. CUNY School of Law, Guttman Community College, CUNY School of Professional Studies, and the CUNY School of Journalism shall be required to select four (4) students. In the event that the student or faculty panel or both are not elected, or if more panel members are needed, the president shall have the duty to select the panel or panels which have not been elected.

In the event that the chairperson cannot continue, the president shall appoint another chairperson. In the event that a seat becomes vacant and it is necessary to fill the seat to

continue the hearing, the seat shall be filled from the respective faculty, HEO, or student panel by lottery

Each academic year, the chief student affairs officer, and her or his designee, shall appoint/identify one or more college employees to serve as presenters for the hearings. This list shall be forwarded to the Office of the Vice Chancellor for Student Affairs, and the Office of the General Counsel and Sr. Vice Chancellor for Legal Affairs prior to the first day of the academic year

Persons who are to be participants in the hearings as witnesses or have been involved in preferring the charges or who may participate in the appeals procedures or any other person having a direct interest in the outcome of the hearing shall be disqualified from serving on the committee

### Roles and Responsibilities of Individuals during the Hearing

#### a. Role and Responsibilities of Panel Chairperson:

The chairperson shall preside at the hearing. The parties to the hearing are the college, the respondent, and if the complainant chooses to participate, the complainant. At the commencement of the hearing, the chairperson shall inform the respondent of the charges, the hearing procedures, and her or his rights. After informing the respondent of the charges, the hearing procedures, and respondent's rights, the chairperson shall ask the respondent to state whether he or she is responsible or not responsible for the conduct. Prior to accepting testimony at the hearing, the chairperson shall rule on any motions questioning the impartiality of any committee member or the adequacy of the notice of the charge(s). Subsequent thereto, the chairperson shall rule on any motions regarding the admissibility of evidence and may exclude irrelevant, unreliable or unduly repetitive evidence. The chairperson shall exclude from the hearing room all persons who are to appear as witnesses, except the respondent and the complainant.

The chairperson shall preside at all hearing sessions and meetings and make all rulings for the panel. The chairperson has discretion to limit the number of witnesses and the length of testimony for the presentations by any party and/or their representative. All hearings pursuant to this Policy shall be closed hearings. The chairperson shall not be a voting member of the panel but shall vote in the event of a tie. In the event that the chairperson cannot continue, the President, or his or his designee, shall appoint another chairperson from the committee. In the event that a seat on the panel becomes vacant and it is necessary to fill the seat to continue the hearing, the seat shall be filled from the respective faculty, HEO, or student committee members by lot.

#### b. Presenters:

Each academic year, the chief student affairs officer at each College or designee shall identify one or more college employees to serve as presenters for the hearings. This list will be forwarded to the Offices of the Vice Chancellor for Student Affairs and General Counsel and Vice Chancellor for Legal Affairs prior to the first day of the academic year. The employee who serves as presenter during the hearing shall be from the same institution as the respondent.

### c. Recording of Proceeding

The college shall make a recording of each fact-finding hearing by some means such as a stenographic transcript, an audio recording or the equivalent. No other recording of the proceedings shall be permitted. A respondent who has been found to have committed the conduct charged after a hearing is entitled upon request to a copy of such a record without cost upon the condition that it is not to be disseminated except to the respondent's advisor. In the event of an appeal, both the respondent and the complainant are entitled upon request to a copy of such a record without cost, upon the condition that it is not to be disseminated except to their advisors.

#### Basic Hearing Rules:

If, at the commencement of the hearing, the respondent admits the conduct charged, the respondent shall be given an opportunity to explain her/his actions before the hearing panel and the college shall be given an opportunity to respond and present evidence regarding the appropriate penalty. If the respondent denies the conduct charged, the college shall present its evidence. At the conclusion of the college's presentation, the respondent may move to dismiss the charges. If the motion is denied by the committee, the complainant, if the complainant chooses to participate, shall be given an opportunity to make a presentation. After the college's, and, if complainant chooses to participate, complainant's presentation, the Respondent shall be given an opportunity to make a presentation.

The college bears the burden of proving the charge(s) by a preponderance of the evidence. The role of the hearing panel is to listen to the testimony, ask questions of the witnesses, review the testimony and evidence presented at the hearing and the papers filed by the parties and make a decision as to responsibility. In the event the respondent is found responsible for the conduct, the committee shall then determine the penalty to be imposed.

The college, the respondent and the complainant are permitted to have advisors act on their behalf during the pendency of a hearing, which shall include the calling and examining of witnesses, and presenting evidence. Any party intending to appear with an attorney shall give the other party five (5) calendar days' notice of such representation.

Neither the respondent nor the complainant shall be permitted to cross-examine the other directly. Rather, if they choose to, the respondent and the complainant shall cross-examine each other only through an advisor. If either or both of them do not have an advisor, the college shall assist them to find an advisor to conduct such cross-examination. In the alternative, the complainant and respondent may provide written questions to the chairperson to be posed to the witness, in the chairperson's discretion.

#### Responsibility Phase

The following rules apply to the introduction of evidence at the hearing: Evidence of the mental health diagnosis and/or treatment of a complainant, respondent, or witness may not be introduced; and b) evidence of either party's prior sexual history may not be introduced except that (i) evidence of prior sexual history between complainant and respondent is admissible at any stage of the hearing, and (ii) past findings of domestic

violence, dating violence, stalking, or sexual assault may be admissible in the stage of that hearing related to penalty.

### Penalty Phase

If the panel has found the Respondent responsible for the conduct, then the complainant, respondent, and college, will have the opportunity to introduce evidence and make arguments related what the appropriate penalty should be. The complainant, respondent and college will also have the opportunity to introduce evidence of and comment on the respondent's character, including any past findings of a respondent's responsibility for domestic violence, stalking, or sexual assault or any other sexual misconduct, and submit a statement regarding the impact of the conduct.

The College may also introduce a copy of the respondent's previous disciplinary records, if any, from any CUNY institution the respondent has attended, provided the respondent was shown a copy of the records prior to the commencement of the hearing. The previous disciplinary record shall be submitted to the panel in a sealed envelope, bearing the respondent's signature across the seal, and shall only be opened if the respondent has been found responsible for the conduct charged. The hearing panel, to determine an appropriate penalty, shall use the disciplinary records, as well as any documents or character evidence introduced by the respondent, the complainant, or the college.

If either the complainant or the respondent chose not to participate in the hearing, they still have the opportunity to introduce evidence and make arguments related what the appropriate penalty should be and to provide or make an impact statement.

### ii. Decision

The panel shall issue a written decision, which shall be based solely on the testimony and evidence presented at the hearing, including the penalty phase. The college shall send to the respondent a copy of the panel's decision within seven (7) calendar days of the conclusion of the hearing, by regular mail and e-mail to the address appearing on the records of the college. In cases involving two or more complainants or respondents, the college has fourteen (14) calendar days of the conclusion of the hearing to send the panel's decision. The college is also encouraged to send the decision to any other e-mail address that it may have for the respondent. The decision shall be final subject to any appeal.

In cases involving a crime of violence or a non-forcible sex offense, the complainant shall simultaneously receive notice of the outcome of the faculty-student disciplinary committee's decision as it relates to the offense(s) committed against the complainant, in the same manner as notice is given to the respondent.

When a disciplinary hearing results in a penalty of dismissal or suspension for one term or more, the decision is a faculty-student disciplinary committee penalty and the respondent shall be barred from admission to, or attendance at, any other unit of the university while the penalty is being served.

iii. Appeals/Review

A respondent or a complainant may appeal a decision of the faculty-student disciplinary committee to the president on the following grounds: (i) procedural error, (ii) newly discovered evidence that was not reasonably available at the time of the hearing, or (iii) the disproportionate nature of the penalty. The president may remand for a new hearing or may modify the penalty either by decreasing it (on an appeal by the respondent) or increasing it (on an appeal by the complainant). If the president is a party to the dispute, her/his functions with respect to an appeal shall be discharged by an official of the university to be appointed by the chancellor or her or his designee.

If the penalty after appeal to the president is one of dismissal or suspension for one term or more, a respondent or a complainant may appeal to the board committee on student affairs and special programs. The board may dispose of the appeal in the same manner as the president

An appeal under this section shall be made in writing within fifteen (15) calendar days after the delivery of the decision appealed from. This requirement may be waived in a particular case for good cause by the president or the board committee as the case may be. Within three (3) calendar days of the receipt of any appeal, either to the president or the board committee on student affairs and special programs, the non-appealing party shall be sent a written notice of the other party's appeal. In addition, the respondent and/or the complainant shall have the opportunity to submit a written opposition to the other party's appeal within fifteen (15) calendar days of the delivery of the notice of receipt of such appeal

The president shall decide and issue a decision within fifteen (15) calendar days of receiving the appeal or within fifteen (15) calendar days of receiving papers in opposition to the appeal, whichever is longer. The board committee shall decide and issue a decision within five (5) calendar days of the meeting at which it hears the appeal.

iv. Transcript Notation(s)

In cases in which the panel finds the respondent responsible and the penalty is either suspension or expulsion, the college shall place a notation on the respondent's transcript stating that respondent was suspended or expelled after a finding of responsibility for a code of conduct violation. In cases where a student has been expelled as a result of a Clery Act crime of violence, the notation will not be removed.

For all other cases, after four years from the date of the conclusion of the disciplinary proceeding, or one year after the conclusion of any suspension, whichever is later, the Respondent has the right to request that a transcript notation from a finding of responsibility be removed. If a finding of responsibility for any violation is vacated for any reason, the notation shall be removed.

### **XIII. COLLEGE OBLIGATIONS UNDER THIS POLICY**

In addition to addressing possible violations of this policy, colleges/units of CUNY have the following obligations:

#### **a. Dissemination of Policies, Procedures and Notices**

The college Title IX Coordinator, in coordination with the Office of Student Affairs, Office of Public Safety, Human Resources Department and other appropriate offices, is responsible for the wide dissemination of the following on her/his campus: (i) this Policy; (ii) CUNY's Notice of Non-Discrimination; (iii) the Title IX Coordinator's name, phone number, office location, and email address; and (iv) contact information for the campus Public Safety Office. Such dissemination shall include posting the documents and information on the college website, and including it in residence life materials and training and educational materials. In addition, the Students' Bill of Rights, which is appended to and made a part of this policy, must be distributed to any individual reporting an incident of sexual misconduct at the time the report is made. It must also be distributed annually to all students, made available on the college's website and posted in college campus centers and in CUNY owned and operated housing.

#### **b. Training and Educational Programming**

CUNY is responsible for providing training to college Title IX Coordinators and others who may serve as investigators. The college Title IX Coordinator, in coordination with other applicable offices, including Public Safety, Human Resources and Student Affairs, is responsible for ensuring that the college provides training to college employees on their obligations under this policy; provides education on this policy and on sexual misconduct (including domestic violence, dating violence, stalking and sexual assault) to new and continuing students; and promotes awareness and prevention of sexual misconduct among all students and employees. Specific required trainings include the following:

##### **i. Training For Responsible and Confidential Employees**

The college shall provide training to all employees who are required to report incidents of sexual misconduct under this policy, as well as those employees who have been designated as confidential employees.

##### **ii. Training For Title IX Coordinator and other investigators**

CUNY shall provide at least annual training to Title IX Coordinators and other investigators in conducting investigations of sexual misconduct, including

- the effects of trauma;
- impartiality;
- the rights of the respondent, include the right to a presumption that the respondent is "not responsible" until any finding of responsibility is made;

- relevant CUNY policies and procedures; and
- other issues including what constitutes crimes of sexual misconduct.

### iii. Student Onboarding and Ongoing Education

Each college shall adopt a comprehensive student onboarding and ongoing education campaign to educate students about sexual misconduct, including domestic violence, dating violence, stalking, and sexual assault. During the student onboarding process, all new first-year and transfer students shall receive training on this policy and on a variety of topics relating to sexual misconduct. In addition, each college shall offer and administer appropriate educational programming to residence hall students, athletes, and student leaders. Each college shall also provide such educational programming to any other student groups which the college determines could benefit from education in the area of sexual misconduct. The college shall also share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students. This may be done by linking to <http://www1.cuny.edu/sites/title-ix/information-for-parents-and-families/campus/university/>

### c. Campus Climate Assessments

Each college of the University shall conduct, no less than every other year, a climate assessment using an assessment instrument provided by the University central office, to ascertain its students' general awareness and knowledge of the University's policy and procedures regarding sexual misconduct, including but not limited to student experiences with and knowledge of reporting, investigation and disciplinary processes. The assessment instrument shall include all topics required to be included under applicable law, including Section 129-B of the New York State Education Law. The University shall publish the results of the surveys on its Title IX web page. The published results shall not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

## XIV. Rules Regarding Intimate Relationships

### d. Relationships between Faculty or Employees and Students

Amorous, dating or sexual activity or relationships (“intimate relationships”), even when apparently consensual, are inappropriate when they occur between a faculty member or employee and any student for whom he or she has a professional responsibility. Those relationships are inappropriate because of the unequal power dynamic between students and faculty members and between students and employees who advise or evaluate them, such as athletic coaches or workplace supervisors. Such relationships necessarily involve issues of student vulnerability and have the potential for coercion. In addition, conflicts of interest or perceived conflicts of interest may arise when a faculty member or employee is required to evaluate the work or make personnel or academic decisions with respect to a student with whom he or she is having an intimate relationship. Finally, if the relationship ends in a way that is not amicable, the relationship may lead to charges of and possible liability for sexual misconduct.

Therefore, faculty members and other employees are prohibited from engaging in intimate relationships with students for whom they have a professional responsibility, including undergraduates, graduate and professional students and postdoctoral fellows.

For purposes of this Section, professional responsibility for a student means responsibility over any academic matters, including teaching, counseling, grading, advising for a formal project such as a thesis or research, evaluating, hiring, supervising, coaching, making decisions or recommendations that confer benefits such as admissions, registration, financial aid, other awards, remuneration, or fellowships, or performing any other function that might affect teaching, research, or other academic opportunities.

e. Relationships between Supervisors and Employees

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are strongly discouraged. Supervisors shall disclose any such relationships to their supervisors in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have an intimate relationship. Mitigation may involve the transfer of either the supervisor or employee, reassigning the responsibility to evaluate the employee to a different supervisor, or other appropriate action.

For purposes of this Section, supervising an employee means supervising in an employment setting, including hiring, evaluating, assigning work, or making decisions or recommendations that confer benefits such as promotions, raises or other remuneration, or performing any other function that might affect employment opportunities.



The City University of New York  
Students' Bill of Rights

For CUNY students who experience Sexual Violence, including sexual assault; domestic, dating or, intimate partner violence, stalking or voyeurism

All students have the right to

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

This *Student Bill of Rights* was established by the “Enough is Enough” Law, New York State Education Law Article 129-B, effective October 7, 2015.

For more information about preventing and addressing Sexual Violence at CUNY see <http://www1.cuny.edu/sites/title-ix/campus-websites>.

Information about filing a report, seeking a response, and options for confidential disclosure is available also available [CUNY's Title IX web page](#).

Questions about CUNY's Sexual Misconduct policy and procedures may be directed to [your campus Title IX Coordinator](#).

Policy adopted by the Board of Trustees on 12/1/2014 Cal. 4.C., with effective date of 1/1/2015. Amended by the Board of Trustees on 10/1/2015. Cal. 6.B. Adopted as revised by BOT on 6/25/2018. Cal.9.A.

Appendix 3

**Eugenio Maria De Hostos Community College**

*The City University of New York Policy on Equal Opportunity and Non-Discrimination*

2016

# THE CITY UNIVERSITY OF NEW YORK POLICY ON EQUAL OPPORTUNITY AND NON-DISCRIMINATION

## I. Policy on Equal Opportunity and Non-Discrimination

The City University of New York (“University” or “CUNY”), located in a historically diverse municipality, is committed to a policy of equal employment and equal access in its educational programs and activities. Diversity, inclusion, and an environment free from discrimination are central to the mission of the University.

It is the policy of the University—applicable to all colleges and units— to recruit, employ, retain, promote, and provide benefits to employees (including paid and unpaid interns) and to admit and provide services for students without regard to race, color, creed, national origin, ethnicity, ancestry, religion, age, sex (including pregnancy, childbirth and related conditions), sexual orientation, gender, gender identity, marital status, partnership status, disability, genetic information, alienage, citizenship, military or veteran status, status as a victim of domestic violence/stalking/sex offenses, unemployment status, or any other legally prohibited basis in accordance with federal, state and city laws.<sup>1</sup>

It is also the University’s policy to provide reasonable accommodations when appropriate to individuals with disabilities, individuals observing religious practices, employees who have pregnancy or childbirth-related medical conditions, or employees who are victims of domestic violence/stalking/sex offenses.

This Policy also prohibits retaliation for reporting or opposing discrimination, or cooperating with an investigation of a discrimination complaint.

### **Prohibited Conduct Defined**

**Discrimination** is treating an individual differently or less favorably because of his or her protected characteristics—such as race, color, religion, sex, gender, national origin, or any of the other bases prohibited by this Policy.

**Harassment** is a form of discrimination that consists of unwelcome conduct based on a protected characteristic that has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, hostile or abusive work or academic environment. Such conduct can be spoken, written, visual, and/or physical. This policy covers prohibited harassment based on all protected characteristics

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<sup>1</sup> As a public university system, CUNY adheres to federal, state and city laws and regulations regarding non-discrimination and affirmative action. Should any federal, state or city law or regulation be adopted that prohibits discrimination based on grounds or characteristics not included in this Policy, discrimination on those additional bases will also be prohibited by this Policy.

other than sex. Sex-based harassment and sexual violence are covered by [CUNY's Policy on Sexual Misconduct](#).

**Retaliation** is adverse treatment of an individual because he or she made a discrimination complaint, opposed discrimination, or cooperated with an investigation of a discrimination complaint.

## **II. Discrimination and Retaliation Complaints**

The City University of New York is committed to addressing discrimination and retaliation complaints promptly, consistently and fairly. There shall be a Chief Diversity Officer at every college or unit of the University, who shall be responsible for, among other things, addressing discrimination and retaliation complaints under this Policy. There shall be procedures for making and investigating such complaints, which shall be applicable at each unit of the University.

## **III. Academic Freedom**

This policy shall not be interpreted so as to constitute interference with academic freedom.

## **IV. Responsibility for Compliance**

The President of each college of the University, the CUNY Executive Vice Chancellor and Chief Operating Officer, and the Deans of the Law School, Graduate School of Journalism, School of Public Health and School of Professional Studies and Macaulay Honors College, have ultimate responsibility for overseeing compliance with these policies at their respective units of the University. In addition, each vice president, dean, director, or other person with managerial responsibility, including department chairpersons and executive officers, must promptly consult with the Chief Diversity Officer at his or her college or unit if he or she becomes aware of conduct or allegations of conduct that may violate this policy. All members of the University community are required to cooperate in any investigation of a discrimination or retaliation complaint.

Part of Policies and Procedures adopted and approved effective November 27, 2012, Cal.No.4; and revised policy amended and adopted December 1, 2014, Cal. No. C., with effective date of January 1, 2015; Cal. Item C.

# COMPLAINT PROCEDURES UNDER THE CITY UNIVERSITY OF NEW YORK'S POLICY ON EQUAL OPPORTUNITY AND NON- DISCRIMINATION<sup>1</sup>

## 1. Reporting Discrimination and/or Retaliation

The University is committed to addressing discrimination and/or retaliation complaints promptly, consistently and fairly.

Members of the University community, as well as visitors, may promptly report any allegations of discrimination or retaliation to the individuals set forth below:

A. Applicants, employees, visitors and students with discrimination complaints should raise their concerns with the Chief Diversity Officer at their location.

B. Applicants, employees, visitors and students with complaints of sexual harassment or sexual violence, including sexual assault, stalking, domestic and intimate violence, should follow the process outlined in [CUNY's Policy on Sexual Misconduct](#).

C. There are separate procedures under which applicants, employees, visitors and students may request and seek review of a decision concerning reasonable accommodations for a disability, which are set forth in CUNY's [Procedures on Reasonable Accommodation](#).

## 2. Preliminary Review of Employee, Student, or Visitor Concerns

Individuals who believe they have experienced discrimination and/or retaliation should promptly contact the Chief Diversity Officer at their location to discuss their concerns, with or without filing a complaint. Following the discussion, the Chief Diversity Officer will inform the complainant of the options available. These include seeking informal resolution of the issues the complainant has encountered or the college conducting a full

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<sup>1</sup> These Procedures govern any complaint of discrimination and/or retaliation, except complaints of sexual harassment and sexual violence, which are covered by CUNY's Sexual Misconduct Policy. These procedures are applicable to all of the units and colleges of the University. The Hunter College Campus Schools may make modifications to these procedures, subject to approval by the University, as appropriate to address the special needs of their elementary and high school students.

These Procedures are intended to provide guidance for implementing the University Policy on Equal Opportunity and Non-Discrimination. These Procedures do not create any rights or privileges on the part of any others.

The University reserves the right to alter, change, add to, or delete any of these procedures at any time without notice.

investigation. Based on the facts of the complaint, the Chief Diversity Officer may also advise the complainant that his or her situation is more suitable for resolution by another entity within the University.

### **3. Filing a Complaint**

Following the discussion with the Chief Diversity Officer, individuals who wish to pursue a complaint of discrimination and/or retaliation should be provided with a copy of the University's complaint form. Complaints should be made in writing whenever possible, including in cases where the complainant is seeking an informal resolution.

### **4. Informal Resolution**

Individuals who believe they have been discriminated or retaliated against may choose to resolve their complaints informally. Informal resolution is a process whereby parties can participate in a search for fair and workable solutions. The parties may agree upon a variety of resolutions, including but not limited to modification of work assignment, training for a department, or an apology. The Chief Diversity Officer will determine if informal resolution is appropriate in light of the nature of the complaint. Informal resolution requires the consent of both the complainant and the respondent and suspends the complaint process for up to thirty (30) calendar days, which can be extended upon consent of both parties, at the discretion of the Chief Diversity Officer.

Resolutions should be agreed upon, signed by, and provided to both parties. Once both parties reach an informal agreement, it is final. Because informal resolution is voluntary, sanctions may be imposed against the parties only for a breach of the executed voluntary agreement.

The Chief Diversity Officer or either party may at any time, prior to the expiration of thirty (30) calendar days, declare that attempts at informal resolution have failed. Upon such notice, the Chief Diversity Officer may commence a full investigation.

If no informal resolution of a complaint is reached, the complainant may request that the Chief Diversity Officer conduct a full investigation of the complaint.

### **5. Investigation**

A full investigation of a complaint may commence when it is warranted after a review of the complaint, or after informal resolution has failed.

It is recommended that the intake and investigation include the following, to the extent feasible:

- a. Interviewing the complainant. In addition to obtaining information from the complainant (including the names of any possible witnesses), the complainant should be informed that an investigation is being commenced, that interviews

of the respondent and possibly other people will be conducted, and that the President<sup>2</sup> will determine what action, if any, to take after the investigation is completed.

- b. Interviewing the respondent. In addition to obtaining information from the respondent (including the names of any possible witnesses), the respondent should be informed that a complaint of discrimination has been received and should be provided with a written summary of the complaint unless circumstances warrant otherwise. Additionally, the respondent should be informed that an investigation has begun, which may include interviews with third parties, and that the President will determine what action, if any, to take after the investigation is completed. A respondent employee who is covered by a collective bargaining agreement may consult with, and have, a union representative present during the interview.

The respondent must be informed that retaliation against any person who files a complaint of discrimination, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited under this policy and federal, state, and city laws. The respondent should be informed that if retaliatory behavior is engaged in by either the respondent or anyone acting on his/her behalf, the respondent may be subject to disciplinary charges, which, if sustained, may result in penalties up to and including termination of employment, or permanent dismissal from the University if the respondent is a student.

- c. Reviewing other evidence. The Chief Diversity Officer should determine if, in addition to the complainant, the respondent, and those persons named by them, there are others who may have relevant information regarding the events in question, and speak with them. The Chief Diversity Officer should also review documentary evidence that may be relevant to the complaint.

## **6. Withdrawing a Complaint**

A complaint of discrimination may be withdrawn at any time during the informal resolution or investigation process. Only the complainant may withdraw a complaint. Requests for withdrawals must be submitted in writing to the Chief Diversity Officer. The University reserves the right to continue with an investigation if it is warranted. In a case where the University decides to continue with an investigation, it will inform the complainant.

In either event, the respondent must be notified in writing that the complainant has withdrawn the complaint and whether University officials have determined that continuation of the investigation is warranted for corrective purposes.

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<sup>2</sup> References to the President in these Procedures refer to the Executive Vice Chancellor and Chief Operating Officer and the Deans of the Law School, Graduate School of Journalism, CUNY School of Public Health, School of Professional Studies and Macaulay Honors College, wherever those units are involved, rather than a college.



## **7. Timeframe**

While some complaints may require extensive investigation, whenever possible, the investigation of a complaint should be completed within sixty (60) calendar days of the receipt of the complaint.

## **8. Action Following Investigation of a Complaint**

- a. Promptly following the completion of the investigation, the Chief Diversity Officer will report his or her findings to the President. In the event that the respondent or complainant is a student, the Chief Diversity Officer will also report his or her findings to the Chief Student Affairs Officer.
- b. Following such report, the President will review the complaint investigation report and, when warranted by the facts, authorize such action as he or she deems necessary to properly correct the effects of or to prevent further harm to an affected party or others similarly situated. This can include commencing action to discipline the respondent under applicable University Bylaws or collective bargaining agreements.
- c. The complainant and the respondent should be apprised in writing of the outcome and action, if any, taken as a result of the complaint.
- d. The President will sign a form that will go into each investigation file, stating what, if any, action will be taken pursuant to the investigation.
- e. If the President is the respondent, the Vice Chancellor of Human Resources Management will appoint an investigator who will report his/her findings to the Chancellor. The Chancellor will determine what action will be taken. The Chancellor's decision will be final.

## **9. Immediate Preventive Action**

The President may take whatever action is appropriate to protect the college community in accordance with applicable Bylaws and collective bargaining agreements.

## **10. False and Malicious Accusations**

Members of the University community who make false and malicious complaints of discrimination, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action.

## 11. Anonymous Complaints

All complaints will be taken seriously, including anonymous complaints. In the event that a complaint is anonymous, the complaint should be investigated as thoroughly as possible under the circumstances.

## 12. Responsibilities

### a. Responsibilities of the President:

- Appoint a Chief Diversity Officer responsible for addressing complaints under this Policy
- Ensure that the Chief Diversity Officer is fully trained and equipped to carry out his/her responsibilities.
- Ensure that managers receive training on the Policy.
- Annually disseminate the Policy and these Procedures to the entire college community and include the names, titles and contact information of all appropriate resources at the college. Such information should be widely disseminated, including placement on the college website.

### b. Responsibilities of Managers:

Managers must take steps to create a workplace free of discrimination, harassment and retaliation, and must take each and every complaint seriously. Managers must promptly consult with the Chief Diversity Officer if they become aware of conduct that may violate the Policy.

For purposes of this policy, managers are employees who either (a) have the authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities; or (b) have the authority to make recommendations on tangible employment decisions that are given particular weight. Managers include vice presidents, deans, directors, or other persons with managerial responsibility, including, for purposes of this policy, department chairpersons and executive officers.

### c. Responsibilities of the University Community-at-Large:

- Members of the University community who become aware of allegations of discrimination or retaliation should encourage the aggrieved individual to report the alleged behavior.
- All employees and students are required to cooperate in any investigation.

## **Some Relevant Laws Concerning Non-discrimination and Equal Opportunity**

*Section 1324b of the Immigration and Nationality Act* prohibits employers from intentional employment discrimination based upon citizenship or immigration status, national origin, and unfair documentary practices or “document abuse” relating to the employment eligibility verification or Form I-9 process. Document abuse prohibited by the statute includes improperly requesting that an employee produce more documents than required by the I-9 form, or a particular document, such as a “green card”, to establish the employee’s identity and employment authorization; improperly rejecting documents that reasonably appear to be genuine during the I-9 process; and improperly treating groups of applicants differently when completing the I-9 form.

*Executive Order 11246*, as amended, prohibits discrimination in employment by all institutions with federal contracts and requires affirmative action to ensure equal employment opportunities.

*Title VII of the Civil Rights Act of 1964*, as amended, prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other terms, conditions, and privileges of employment) on the basis of race, color, religion, national origin, or sex.

*Title VI of the Civil Rights Act of 1964* prohibits discrimination or the denial of benefits because of race, color, or national origin in any program or activity receiving federal financial assistance.

*Equal Pay Act of 1963*, as amended, requires that men and women performing substantially equal jobs in the same workplace receive equal pay.

*Title IX of the Education Amendments of 1972* prohibits discrimination or the denial of benefits based on sex in any educational program or activity receiving federal financial assistance.

*Age Discrimination in Employment Act*, as amended, prohibits discrimination against individuals who are age 40 or older.

*Section 504 of the Rehabilitation Act of 1973* defines and forbids acts of discrimination against qualified individuals with disabilities in employment and in the operation of programs and activities receiving federal financial assistance.

*Section 503 of the Rehabilitation Act of 1973* requires federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

*Vietnam Era Veterans' Readjustment Act of 1974*, as amended, requires government contractors and subcontractors to take affirmative action to employ and advance in employment disabled and other protected veterans.

*Uniformed Services Employment and Reemployment Rights Act of 1994*, as amended, prohibits employment discrimination based on military status and requires reemployment following military service in some circumstances.

*Americans with Disabilities Act of 1990*, as amended, prohibits discrimination on the basis of disability.

*Genetic Information Nondiscrimination Act of 2008* prohibits employment discrimination based on genetic information.

*New York City Human Rights Law* prohibits discrimination based on age (18 and older), race, creed, color, national origin, gender (including gender identity and expression), disability, marital status, partnership status, sexual orientation, alienage or citizenship status, arrest or conviction record, unemployment status, or status of an individual as a victim of domestic violence, sex offenses or stalking.

*New York City Workplace Religious Freedom Act* requires an employer to make accommodation for an employee's religious needs.

*New York State Education Law Section 224-a* requires institutions of higher education to make accommodations for students who are unable to attend classes or take examinations due to their religious beliefs.

*New York State Human Rights Law* prohibits discrimination based on race, creed, color, national origin, sexual orientation, military status, sex, age (18 and older), marital status, domestic violence victim status, disability, predisposing genetic characteristics or prior arrest or conviction record.

*New York City Pregnant Workers Fairness Act* provides that employers provide pregnant employees with reasonable accommodations for the employee's pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

SENT VIA E-MAIL DUE TO PANDEMIC

Charise L. Terry Executive Director  
Equal Employment Practices Commission 253  
Broadway, Suite 602  
New York, NY 10007  
[cterry@eepc.nyc.gov](mailto:cterry@eepc.nyc.gov)

August 18, 2020

Re: Response to Preliminary Determination Letter

Dear Executive Director Terry,

Eugenio Maria De Hostos Community College ("Hostos") received the August 4<sup>th</sup> Preliminary Determination letter from the Equal Employment Practices Commission (EEPC). Below please find the College's response to the five corrective actions, including the final action, identified by the EEPC.

Per the EEPC Preliminary Determination Letter, *The CUNY EEO Policy did not include the following as part of its procedures for investigating complaints: a requirement that in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within 90 days, to specify in the complaint file the reason for the delay and a projected timeframe for completion of the report, and to notify the complainant and respondent of the delay; and a requirement that the complainant and respondent be notified in writing when the investigation by the EEO Professional has been transferred because of the filing of an external complaint. Corrective Action Required.*

*Corrective Action #1: Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies -- or an agency Policy that conforms to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.*

**Hostos Response:** On August 12<sup>th</sup>, 2020, the CUNY Board of Trustees approved the new CUNY Policy on Sexual Misconduct. This new policy states that respondents and complainants will be notified in writing of the "reason for the delay" and a "projected time frame" for completion of the report. Furthermore, the policy states that in circumstances where the investigation has been transferred because of the filing of an external complaint, the Title IX Coordinator must notify the parties in writing that this has occurred.

For your reference, below is the full relevant text from the policy.

*If there is a delay in completing the investigation, the Title IX Coordinator must notify the parties in writing and indicate the reason for the delay. The Title IX Coordinator should also note the reason for delay and projected timeline for completing the investigation in their case file. The reason for extension of the time frame of an investigation may include, but is not limited to: compliance with a request by law enforcement; a limited accommodation for the availability of parties, their advisors and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for the complexities of a specific investigation, including the number of witnesses and volume of information provided by the parties. (pp. 32, 41)*

*In certain circumstances, the college or unit may close an investigation upon the filing of an external complaint. When this happens, the outside agency takes over the investigation and the college or unit will cooperate with the investigation conducted by the outside agency. If a college or unit closes an investigation for this reason, the Title IX Coordinator must notify the parties in writing (pp 17). For the full policy, please see Attachment A.*

Hostos is currently updating our website so that this new policy will be there. Consistent with the new CUNY Policy on Sexual Misconduct, going forward the college will offer a projected time frame and reason for the delay. Hostos will also notify parties when there has been a filing of an external complaint and an outside agency has taken over the investigation or the college has delayed the completion of their own investigation because of the filing of an external complaint.

According to the EEPD Preliminary Determination Letter, *respondent's right to be accompanied by a representative of his/her choice was not explicitly stated in the notices. Additionally, the files for EEO complaint Nos. 04-18 and 26-18 did not contain the notice of complaint provided to the respondents, or documentation regarding the service of notice on the respondents.*

*Corrective Action #2:* *Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.*

**Hostos Response:** Hostos will continue to give all respondents the CUNY Policy on Non-Discrimination and Equal Opportunity as well as the new CUNY Sexual Misconduct Policy.

The former CUNY Policy on Sexual Misconduct stated:

*In cases involving this Policy, both the complainant and respondent may be accompanied by an advisor of their choice (including an attorney) who may advise throughout the entire process, including all meetings and hearings.*

Similarly, the new Policy on Sexual Misconduct states that parties have a right to be accompanied by an advisor of their choice (who may be an attorney), who may assist and advise throughout the process, including during all related meetings and hearings.

As part of that notice, the Office of Compliance and Diversity (“OCD”) will provide respondent with an electronic link to the above-referenced policies. Furthermore, even though the requested language is in the policy, the college will amend its emails to include this language going forward.

Per the EEPIC Preliminary Report, *EEO complaint No. 22-19 was issued more than 90 days after the date the complaint was filed. Corrective Action Required*. The EEPIC Preliminary Report also noted that the file for *EEO complaint No. 22-19 did not contain a projected time frame for completion of the investigation and documentation that demonstrated the complainant and respondent were notified of the delay. Corrective Action Required*.

*Corrective Action #3: Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.*

**Hostos Response:** Hostos respectfully disagrees that Corrective Action is required. As noted in the EEPIC Preliminary Report, Investigation Report 22-19 documented the reason for the delay, namely Complainant requested OCD wait to interview respondent and during the course of the investigation, complainant and respondent both transferred and no longer work at Hostos. As the EEPIC Preliminary Report noted: *The Investigation Reports for EEO complaint Nos. 04-18, 26-18, 32-19, and 51-19 were issued within 90 days of the date the complaints were filed.* It is the position of the college that this investigation was an outlier and there were legitimate reasons for the delay. Specifically, as stated in Investigation Report 22-19, Complainant had requested that OCD delay meeting with Respondent since Complainant was “hoping to hoping to be transferred before that happened.” (pp 1, FN 3). As noted in Investigation Report 22-19, both complainant, respondent and the Deputy Director of Human Resources left the College during this time (pp1, FN 1-3). Despite this, OCD still completed the investigation in 94 days. Accordingly, we believe that corrective action is not warranted in this case.

The EEPIC Preliminary Determination Letter, noted that *The CUNY Policy on Sexual Misconduct did not require, in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within the time period specified, that the complaint file contain the reason for the delay and a projected time frame for completion of the report. The CUNY EEO Policy did not require, in rare circumstances where a complaint investigation cannot commence immediately, or where an investigative report cannot be issued within the time period specified, that the complaint file contain the reason for the delay and a projected time frame for completion of the report; nor a requirement to notify the complainant and respondent of the delay. (See section 1.2 for associated corrective action.)*

*Corrective Action #4:* In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

**Hostos Response:** As previously noted, going forward OCD will give a projected time frame for the completion of the report and will notify complainant and respondent of the delay.

According to the EEPC Preliminary Determination Letter, *Hostos documented managers and supervisors accountability for enforcing Hostos' sexual harassment prevention policies and complaint procedures via performance evaluations where managers and supervisors were rated on core competencies that included the following: "[c]onsiders & promotes workforce diversity and equal opportunity in all established practices. Establishes standards of responsibility & behavior for self & subordinates in relation to diversity. Recognizes & promptly refers complaints or violations to appropriate officials."* Hostos' records demonstrated that during the evaluation period from February 2018 to February 2019, approximately 43% (84 out of 196 non-pedagogical managers and supervisors) of non-pedagogical managers and supervisors were evaluated. Since, Hostos did not demonstrate that it documented implementation of managerial expectations for 57% of the non-pedagogical managers and supervisors during the period in review. Corrective Action Required.

Corrective Action #5: *Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.*

**Hostos Response:** While we cannot ensure that managers and supervisors will be more diligent in completing these evaluations, OCD has spoken with [REDACTED] the Interim Executive Director of Human Resources at Hostos, who has assured us that there will be increased efforts to increase the completion of evaluations rates. Hostos is in the process of filling positions and getting the necessary staffing in the department. Singh started in this role on January 6<sup>th</sup>, 2020. She has assured OCD that her staff will be focused on the completion of these evaluations. The staff will be reviewing the administration and the tracking of these evaluations going forward.

Per the EEPC Preliminary Determination Letter, EEPC Corrective Action #6: Final Action: *Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.*

Hostos Response: Hostos will distribute the above referenced memorandum, with the enumerated elements listed above, upon receipt of the EEPC determination that the entity does not require further review or monitoring.

Thank you to the entire EEPC team for taking the time to review Hostos' EEO program. We look forward to working with the EEPC during the compliance monitoring period. If any questions arise in the interim, please do not hesitate to contact Chief Diversity Officer Lauren Gretina at [lgretina@hostos.cuny.edu](mailto:lgretina@hostos.cuny.edu).

Sincerely,

  
Daisy Cocco De Filippis, Ph.D.  
Interim President





Sasha Neha Ahuja  
Chair

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**BY EMAIL**

August 26, 2020

Daisy Cocco De Filippis  
Interim President  
Eugenio María de Hostos Community College  
500 Grand Concourse  
Bronx, NY 10451

**Audit Status:**

Evaluation of Sexual Harassment Prevention and Response Practices for Audit  
Period January 1, 2018 to December 31, 2019.

**Determination: FINAL**

**Resolution #: 2020AP/241-468-(2020)**

Dear President De Filippis:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you for the continued cooperation extended to our staff. This document serves as a follow-up evaluation and Final Determination to the following:

Preliminary Determination Issued on: August 4, 2020

Response Received: August 18, 2020

**Purpose**

Chapter 35, Sections 815(a)(15) and (19) of the New York City Charter (Charter) calls for agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women.

Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective EEO for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any plan, program, procedure, approach, measure, or standard does not provide

equal employment opportunity, require appropriate corrective action, and monitor the implementation of the corrective action prescribed. The attachment contains the EEPCC's final determination regarding the audit, review, and evaluation of the Eugenio María de Hostos Community College's Sexual Harassment Prevention and Response Practices.

As the Eugenio María de Hostos (Hostos) falls within the EEPCC's purview under Charter Chapter 36, Section 831(a), the EEPCC is authorized to review, evaluate, and monitor the coordination and implementation of its affirmative employment programs of EEO and related practices. As indicated in our Preliminary Determination, the EEPCC has adopted uniform standards<sup>1</sup> to this end. The purpose of this Final Determination, as authorized by Charter Chapter 36, Section 832(c), is to determine the sufficiency of the Eugenio María de Hostos Community College's actions taken or planned thus far to correct areas of non-compliance identified in the EEPCC's Preliminary Determination. Further, Chapter 36, Section 832(c) requires that: (1) the EEPCC assign a compliance-monitoring period of up to six (6) months to monitor efforts taken to eliminate areas of non-compliance, if any; and (2) the agency respond in thirty (30) days and submit a report each month during this period on the progress of efforts taken to correct outstanding areas of non-compliance.

### Next Steps

**The assigned compliance-monitoring period is: September 1, 2020 to February 28, 2021. Correcting all outstanding areas of non-compliance without delay is highly encouraged and will serve to shorten this period.**

***If corrective actions remain:*** Corrective actions will be listed under the *Monitoring Required* section of the attached Final Determination. The EEPCC requires that the agency head submit a signed response to this Final Determination. The signed response should indicate what steps the Eugenio María de Hostos Community College has taken, or will take, to correct outstanding areas of non-compliance during the designated compliance-monitoring period. The Eugenio María de Hostos Community College will be monitored monthly until all outstanding areas of non-compliance have been sufficiently corrected. The Eugenio María de Hostos Community College is required to submit documentation that supports the implementation of each corrective action via TeamCentral, the EEPCC's Automated Compliance-Monitoring System. Instruction on how to access and navigate TeamCentral is attached.

***Final Memorandum:*** Upon the Eugenio María de Hostos Community College's implementation of the final corrective action, if any, the EEPCC requires that the Eugenio María de Hostos Community College submit a final memorandum, signed by the agency head, that recognizes the EEPCC's audit and reiterates commitment to equal employment practices. **Upon receipt of this final memorandum, the EEPCC will issue a *Determination of Compliance*.**

***If no corrective actions remain:*** In lieu of a response to this Final Determination, the Eugenio María de Hostos Community College must submit a final memorandum (See Next Steps, Final Memorandum). Upon the EEPCC's receipt of the final memorandum, the Eugenio María de Hostos Community College will be exempt from the abovementioned compliance-monitoring period.

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<sup>1</sup> The EEPCC's uniform standards for auditing municipal entities and minimum standards for auditing community boards (collectively "Standards") are founded upon, and consistent with, federal, state, and local laws and regulations, and policies and procedures, including, but not limited to, the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies 2014*; New York City Human Rights Law (NYC Administrative Code 8); New York State Human Rights Law (New York Executive Law, Article 15); New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

**Conclusion**

This is the EEPCC's Final Determination. Questions regarding next steps may be addressed to Jennifer Shaw, Esq., Executive Agency Counsel/Director of Compliance at [jshaw@eepc.nyc.gov](mailto:jshaw@eepc.nyc.gov) or 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,



Charise L. Terry  
Executive Director

c: Lauren Gretina, Esq., Principal EEO Professional, Hostos

Enclosed: TeamCentral Agency Manual

**FINAL DETERMINATION**

A response indicating progress of the Eugenio María de Hostos Community College's efforts to correct outstanding areas of non-compliance, with supporting documentation, is due within 30 days.

The Equal Employment Practices Commission's findings and corrective actions required to remedy areas of non-compliance are based on the audit methodology, which included collection and analysis of the documents, records, and data provided; the EEPC's *Preliminary Interview Questionnaires* (PIQs) for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*, the *EEPC Supervisor/Manager Survey*, the *Annual EEO Plans* and *Quarterly EEO Reports* of the audited entity; and workforce data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted as appropriate.

After reviewing the optional response<sup>2</sup> (if applicable) to the EEPC's Preliminary Determination, our Final Determination is as follows:

**Agree**

Regarding your responses to the following EEPC required corrective actions, we *Agree* based on documentation that is attached to your response.

**Corrective Action #1:**

Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

**Agency Response:**

*“On August 12, 2020, the CUNY Board of Trustees approved the new CUNY Policy on Sexual Misconduct. This new policy states that respondents and complainants will be notified in writing of the “reason for the delay” and a “projected time frame” for completion of the report. Furthermore, the policy states that in circumstances where the investigation has been transferred because of the filing of an external complaint, the Title IX Coordinator must notify the parties in writing that this has occurred. For your reference, below is the full relevant text from the policy.*

*If there is a delay in completing the investigation, the Title IX Coordinator must notify the parties in writing and indicate the reason for the delay. The Title IX Coordinator should also note the reason for delay and projected timeline for completing the investigation in their case file. The reason for extension of the time frame of an investigation may include, but is not limited to: compliance with a request by law enforcement; a limited accommodation for the availability of parties, their advisors and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for the complexities of a specific investigation, including the number of witnesses and volume of information provided by the parties. (pp. 32, 41)*

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<sup>2</sup> Excerpts are italicized.

*In certain circumstances, the college or unit may close an investigation upon the filing of an external complaint. When this happens, the outside agency takes over the investigation and the college or unit will cooperate with the investigation conducted by the outside agency. If a college or unit closes an investigation for this reason, the Title IX Coordinator must notify the parties in writing (pp 17). For the full policy, please see Attachment A.*

*Hostos is currently updating our website so that this new policy will be there. Consistent with the new CUNY Policy on Sexual Misconduct, going forward the college will offer a projected time frame and reason for the delay. Hostos will also notify parties when there has been a filing of an external complaint and an outside agency has taken over the investigation or the college has delayed the completion of their own investigation because of the filing of an external complaint.”*

EEPC Response:

The EEPC recognizes Hostos’ commitment to implement corrective action #1. The EEPC accepts Hostos’ submission of the new CUNY Policy on Sexual Misconduct received from CUNY Central that has been updated in the manners highlighted in the EEPC’s Preliminary Determination, as confirmation that corrective action #1 has been implemented.

EEPC requires the complainant and respondent be notified of the delay and that the reason for the delay and projected time frame for completion of the report be noted in the complaint file. As there are circumstances where notifying the complainant and/or respondent(s) of the reason for the delay could be impractical, the reason for the delay must be specified in the complaint file in a manner (e.g. as a notation in the conclusive report) that does not require the agency to communicate the reason for the delay to both parties.

**Monitoring Required**

The agency’s implementation of the following required corrective actions will be monitored during the assigned compliance-monitoring period.

Corrective Action #2:

Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

Agency Response:

*“Hostos will continue to give all respondents the CUNY Policy on Non-Discrimination and Equal Opportunity as well as the new CUNY Sexual Misconduct Policy.*

*The former CUNY Policy on Sexual Misconduct stated:*

*In cases involving this Policy, both the complainant and respondent may be accompanied by an advisor of their choice (including an attorney) who may advise throughout the entire process, including all meetings and hearings.*

*Similarly, the new Policy on Sexual Misconduct states that parties have a right to be accompanied by an advisor of their choice (who may be an attorney), who may assist and advise throughout the process, including during all related meetings and hearings.*

*As part of that notice, the Office of Compliance and Diversity (“OCD”) will provide respondent with an electronic link to the above-referenced policies. Furthermore, even though the requested language is in the policy, the college will amend its emails to include this language going forward.”*

EEPC Response:

The EEPC recognizes Hostos’ commitment to implementing corrective action #2. To demonstrate compliance with this standard, please provide a redacted notice of complaint to respondent that contains their right to respond to the allegations and their right to be accompanied by a representative of his/her choice for a complaint investigation conducted subsequent to the period in review.

Corrective Action #3:

Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

Agency Response:

*“Hostos respectfully disagrees that Corrective Action is required. As noted in the EEPC Preliminary Report, Investigation Report 22-19 documented the reason for the delay, namely Complainant requested OCD wait to interview respondent and during the course of the investigation, complainant and respondent both transferred and no longer work at Hostos. As the EEPC Preliminary Report noted: The Investigation Reports for EEO complaint Nos. 04-18, 26-18, 32-19, and 51-19 were issued within 90 days of the date the complaints were filed. It is the position of the college that this investigation was an outlier and there were legitimate reasons for the delay. Specifically, as stated in Investigation Report 22-19, Complainant had requested the OCD delay meeting with Respondent since Complainant was “hoping to be transferred before that happened.” (pp1, FN3). As noted in Investigation Report 22-19, both complainant, respondent, and the Deputy Director of Human Resources left the College during this time (pp1, FN 1-3). Despite this, OCD still completed the investigation in 94 days. Accordingly, we believe that corrective action is not warranted in this case.”*

EEPC Response:

The EEPC recognizes Hostos’ commitment to implementing corrective action #3. To demonstrate compliance with this standard, please provide a redacted conclusive report dated within 90 days of the date the complaint was filed for a complaint investigated subsequent to the period in review.

Corrective Action #4:

In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

Agency Response:

*“As previously noted, going forward OCD will give a projected time frame for completion of the report and will notify complainant and respondent of the delay.”*

EEPC Response:

The EEPC recognizes Hostos’ commitment to implementing corrective action #4. To demonstrate compliance with this standard, please provide a redacted completed complaint file that contains the reason for the delay, a projected time frame for completion of the report, and the delay notification letters issued to the complainant and respondent for a complaint that was investigated subsequent to the period in review where the conclusive report was issued more than 90 days after the date the complaint was filed.

Corrective Action #5:

Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

Agency Response:

*"While we cannot ensure that managers and supervisors will be more diligent in completing these evaluations, OCD has spoken with... the Interim Executive Director of Human Resources at Hostos, who has assured us that there will be increased efforts to increase the completion of evaluation rates. Hostos is in the process of filing positions and getting the necessary staffing in the department. [The Interim Executive Director of Human Resources] started in this role on January 6<sup>th</sup>, 2020. She has assured OCD that her staff will be focused on the completion of these evaluations. The staff will be reviewing the administration and the tracking of these evaluations going forward."*

EEPC Response:

The EEPC recognizes Hostos' commitment to implementing corrective action #5. To demonstrate compliance with this standard, please provide Hostos' plan (that includes a timeline and outlines the individuals responsible for implementing the plan) for holding managers and supervisors accountable for enforcing Hostos' sexual harassment prevention policies and complaint procedures.

Final Action: Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

The EEPC thanks you and your staff for your continued cooperation.



RESOLUTION NO.  
2020AP/241-468-(2020)  
Eugenio María de Hostos Community College  
Interim President Daisy Cocco De Filippis  
Sexual Harassment Prevention and Response Practices  
DETERMINATION: FINAL

S Y N O P S I S

Corrective Action(s):	Total: 5		
Period Audit Covered:	January 1, 2018 to December 31, 2019		
Preliminary Determination Issued:	August 4, 2020	Response Received	August 18, 2020
Final Determination Issued:	August 26, 2020	Response Due	September 25, 2020
Compliance-Monitoring :	Required		September 1, 2020 to February 28, 2021

**Whereas**, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

**Whereas**, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, the EEPC conducted an audit, review, and evaluation of the Eugenio María de Hostos Community College’s Sexual Harassment Prevention and Response Practices; and

**Whereas**, pursuant to the audit, review, and evaluation of the Eugenio María de Hostos Community College’s Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated August 4, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy,



Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

2. Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.
4. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.
5. Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

**Whereas**, within a two-week deadline following the EEPC’s Preliminary Determination, the entity submitted a preliminary response; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on August 26, 2020, which indicated that the following areas required corrective action: no(s). 2, 3, 4, and 5; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from September 1, 2020 to February 28, 2021, to determine whether the entity eliminated areas of non-compliance, if any; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on August 26, 2020, the entity was required to issue a response to the EEPC’s Final Determination; Now Therefore,

**Be It Resolved**, that pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the EEPC approves the issuance of this Final Determination to Interim President Daisy Cocco De Filippis to assign compliance-monitoring.

Approved unanimously on August 27, 2020.

/s/Sasha Neha Ahuja

**Sasha Neha Ahuja  
Chair**

/s/Angela Cabrera

**Angela Cabrera  
Commissioner**

/s/Arva R. Rice

**Arva R. Rice  
Commissioner**

/s/Elaine S. Reiss

**Elaine S. Reiss, Esq.  
Commissioner**

On behalf all Commissioners in attendance,



Charise L Terry  
**Charise L Terry  
Executive Director**

SENT VIA E-MAIL

September 23, 2020

Charise L. Terry Executive Director  
Equal Employment Practices Commission 253  
Broadway, Suite 602  
New York, NY 10007  
[cterry@eepc.nyc.gov](mailto:cterry@eepc.nyc.gov)

Re: Response to Final Determination Letter

Dear Executive Director Terry,

Eugenio María de Hostos Community College (“Hostos”) received the August 4<sup>th</sup> Preliminary Determination letter from the Equal Employment Practices Commission (EEPC) and the Final Determination letter on August 26<sup>th</sup>. Below please find the College’s response to the remaining corrective actions, including affirming the steps that Hostos will be taking regarding the remaining corrective actions. As requested, the supporting documentation will be uploaded via TeamCentral.

*Corrective Action #2: Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.*

**Hostos Response:** To demonstrate compliance, Hostos will provide Respondent(s) with notice of the alleged allegations that will include their right to respond and to be represented by a representative of their choice.

*Corrective Action #3: Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.*

**Hostos Response:** To demonstrate compliance, Hostos will provide a completed redacted report that has been issued within 90 days of the complaint being filed with the Office of Compliance and Diversity (“OCD”).

*Corrective Action #4: In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.*

**Hostos Response:** To demonstrate compliance, Hostos will provide a redacted complaint file that contains the reason for the delay (if any exist during the compliance monitoring period) and the delay notification letters that were issued to Complainant and Respondent for any investigations where a report cannot be issued within the 90-day timeframe.


*Corrective Action #5: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.*

**Hostos Response:** To demonstrate compliance, OCD will provide a plan which will include a timeline and indicate individuals who will be responsible for implementing the plan to hold managers and supervisors accountable for enforcing the CUNY policies. OCD has spoken with [REDACTED] Interim Executive Director of Human Resources at Hostos, who will be designating a member of her department who will be tasked with efforts to increase rates of completion for staff evaluations. Additionally, OCD conducted a training on the CUNY Sexual Misconduct Policy for the President's Cabinet on September 17<sup>th</sup> regarding the responsibilities of employees and how managers and supervisors at Hostos are responsible for enforcing the College's policies regarding sexual harassment and ensuring that proper reporting procedures are being followed. OCD has also scheduled additional training sessions for Fall 2020 including presentations to the Academic department Chairs and Coordinators and other Hostos staff.

Upon receipt of the EEPD determination that the entity does not require further review or monitoring Hostos will distribute the above referenced memorandum, with the enumerated elements listed above.

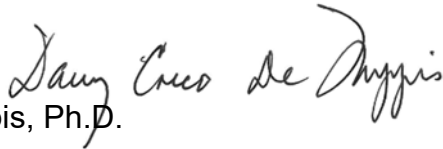
Thank you again for taking the time to review our EEO program. We look forward to continuing to work with the EEPD during the compliance monitoring period. If any questions arise in the interim, please do not hesitate to contact Chief Diversity Officer Lauren Gretina at [lgretina@hostos.cuny.edu](mailto:lgretina@hostos.cuny.edu).

Sincerely,

  
Daisy Cocco De Filippis, Ph.D.  
Interim President

To: Campus Community

From: Daisy Cocco De Filippis, Ph.D.  
Interim President



Date: February 10, 2021

Re: Equal Employment Practices Commission (EEOC)

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At Hostos Community College, we are committed to creating an equitable and inclusive environment, free of discrimination. As Interim President, I reaffirm our deep and established commitment to equal employment opportunity (EEO) and non-discrimination including the prohibition of sexual misconduct. My office, which includes the Office of Compliance and Diversity (OCD), will continue to work to advance, support, and promote equity and inclusion at Hostos.

The NYC Equal Employment Practices Commission (EEOC) recently completed a scheduled audit of the EEO and sexual harassment compliance practices at Hostos Community College. The College worked closely with the EEOC to share our existing practices and to demonstrate our continued commitment to EEO and the prohibition of sexual misconduct. As a result, the audit was successfully completed.

I have attached CUNY's policy on EEO and non-discrimination, and its policy on sexual misconduct which was amended this past year. Hostos will continue to handle complaints of discrimination and sexual misconduct in accordance with these policies. Complaints will continue to be investigated in a timely manner and parties will be notified when there is a delay for any reason. Additionally, the College will continue to train managers and supervisors to ensure that they know CUNY's policies on these topics and are ensuring a workplace free of discrimination and sexual misconduct.

If anyone has a complaint of unlawful discrimination or sexual misconduct, please contact Director of Compliance and Diversity, Lauren Gretina at [lgretina@hostos.cuny.edu](mailto:lgretina@hostos.cuny.edu) or (718) 518-4284 or Associate Director Jewel Jones at [jjones@hostos.cuny.edu](mailto:jjones@hostos.cuny.edu) or (718) 518-4328. The Office of Compliance and Diversity continues to operate remotely due to COVID-19.

I want to thank the Hostos community for your continued support in creating a workplace and community free from unlawful discrimination and sexual misconduct where all members can thrive.



Vacant  
Chair

Angela Cabrera  
Elaine S. Reiss, Esq.  
Arva R. Rice  
Commissioners

Charise L. Terry  
Executive Director

Jennifer Shaw, Esq.  
Executive Agency Counsel/  
Director of Compliance

253 Broadway  
Suite 602  
New York, NY 10007

212. 615. 8939 tel.  
212. 676. 2724 fax

BY EMAIL

February 25, 2021

Daisy Cocco De Fillippis  
Interim President  
Eugenio María de Hostos Community College  
500 Grand Concourse  
Bronx, NY 10451

Re: Resolution #2020AP/247-468-(2021)C7  
DETERMINATION: Compliance

Dear President De Fillippis:

On behalf of the members of the Equal Employment Practices Commission (EEPC), I write to inform you that pursuant to New York City Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women, the EEPC's Board of Commissioners has approved the attached Determination.

Thank you and principal EEO Professional Lauren Gretina for the cooperation extended to the EEPC during the course of our review, evaluation, and monitoring of your agency's employment and EEO-related practices.

Sincerely,  
A handwritten signature in purple ink, appearing to read "Elaine S. Reiss".

Elaine S. Reiss, Esq.  
Commissioner

c: Lauren Gretina, Esq., Principal EEO Professional, Hostos

**Monitoring of Sexual Harassment Prevention and Response Practices  
 RESOLUTION NO.**

**2020AP/247-468-(2021)C7**

**Eugenio María de Hostos Community College  
 Interim President Daisy Cocco De Fillippis  
 DETERMINATION: COMPLIANCE**

**S Y N O P S I S**

<b>Corrective Action(s)</b>	Total: 5		
<b>Period Audit Covered</b>	January 1, 2018 to December 31, 2019		
<b>Preliminary Determination Issued</b>	August 4, 2020	Response Received	August 18, 2020
<b>Final Determination Issued</b>	August 26, 2020	Response Received	September 24, 2020
<b>Compliance-Monitoring</b>	Required	September 1, 2020 to February 28, 2021 without extension	

**Whereas**, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

**Whereas**, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, the EEPC conducted an audit, review, and evaluation of the Eugenio María de Hostos Community College’s Sexual Harassment Prevention and Response Practices; and

**Whereas**, pursuant to the audit, review, and evaluation of the Eugenio María de Hostos Community College’s Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated August 4, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
2. Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.
4. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.
5. Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

**Whereas**, within a two-week deadline following the EEPC’s Preliminary Determination, the entity submitted a preliminary response; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on August 26, 2020, which indicated that the following areas required corrective action: no(s). 2, 3, 4, and 5; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from September 1, 2020 to February 28, 2021, to determine whether the entity eliminated areas of non-compliance, if any; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on September 24, 2020, the entity issued a response to the EEPC’s Final Determination; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the Eugenio María de Hostos Community College was monitored until January 29, 2021; and

**Whereas**, pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the Interim President submitted a copy of a memorandum to staff dated



February 10, 2021, which recognized the EEPC's audit and reiterated commitment to the Eugenio María de Hostos Community College's equal employment practices; Now Therefore,

**Be It Resolved**, that the Eugenio María de Hostos Community College has satisfied the equal employment standards set by the EEPC pursuant to its authority under New York City Charter Chapters 35 and 36; and

**Be It Resolved**, that the EEPC's Board of Commissioners approves the issuance of this Determination of Compliance to Interim President Daisy Cocco De Fillippis of the Eugenio María de Hostos Community College.

Approved unanimously on February 25, 2021.

\_\_\_\_\_  
/s/Angela Cabrera  
**Angela Cabrera**  
Commissioner/Mayoral Appointee

\_\_\_\_\_  
/s/Elaine S. Reiss  
**Elaine S. Reiss, Esq.**  
Commissioner/Mayoral Appointee

\_\_\_\_\_  
/s/Arva R. Rice  
**Arva R. Rice**  
Commissioner/City Council Appointee

\_\_\_\_\_  
**Vacant**  
Commissioner/City Council Appointee

\_\_\_\_\_  
**Vacant**  
Chair/Commissioner/Joint Appointee

On behalf of all Commissioners in attendance,

  
\_\_\_\_\_  
**Charise L Terry**  
Executive Director



*This*

# *Determination of Compliance*

*is hereby issued to the*

*Eugenio María de Hostos Community College*

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*for successful implementation of 5 of 5 required corrective action(s),  
thereby achieving compliance with the Equal Employment Practices Commission's  
Sexual Harassment Prevention and Response Practices  
from January 1, 2018 to this date.*

On this 25th day of February in the year 2021,

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Charise L. Terry, Executive Director

*In care of Interim President Daisy Cocco De Fillippis,  
and Principal EEO Professional Lauren Gretina*