Policy: 4.5a - Sexual Violence, Harassment and Other Forms of Sexual Misconduct (SOM Staff)

Responsible HR Department: Employee Relations 212-404-3857

New York University’s “Policy on Sexual Assault, Harassment and Other Forms of Sexual Misconduct” (the “University Policy”) applies to all members of the University, including all faculty and staff of the School of Medicine. In addition, this School of Medicine policy augments the University Policy to reflect the needs of the medical school community. This policy applies only to School of Medicine employees, and will be disseminated and published for School of Medicine employees. The School of Medicine maintains a separate policy that applies to School of Medicine students. The School of Medicine also maintains and disseminates to all employees Policy 4.5 – “Avoiding Workplace Harassment and Discrimination” which addresses all forms of discrimination and harassment that fall outside the realm of sexual harassment, violence or misconduct of a sexual nature.

I. General Statement:

New York University, including the School of Medicine, is committed to maintaining a safe working environment that is free of acts of violence, harassment and other forms of sexual misconduct that undermine the character and purpose of the University and its School of Medicine and to creating a campus climate that supports, nurtures, and rewards advancement on the basis of ability and performance. All employees are subject to this policy and should report any incidents of sexual violence or harassment of which they become aware that compromise the well-being of an employee or other member of the University community, including the Medical Center (Hospital and School of Medicine).

II. Policy Statement:

A. Sexual Violence
Within the School of Medicine, sexual violence is defined as a physical sexual act engaged in without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery, and sexual coercion; domestic violence; dating violence; and stalking.

1. Sexual Assault:
Within New York University, sexual assault is defined as a sexual act without the consent of the victim. While defining effective consent in sexually intimate relationships can be difficult, examples of sexual assault include, but are not limited to:

- Sexual contact with someone whom you reasonably should have known was impaired due to the use of alcohol or other drugs.
- Sexual contact with someone who is “passed out” or sleeping.
- Sexual contact with someone who is unable to say “no” and/or change his/her mind due to the presence of coercion or intimidation.
- Sexual contact with someone who is under the legal age of consent.

2. **Domestic Violence**

Within the School of Medicine, domestic violence is defined as abuse committed by one person against another who is a spouse or former spouse, intimate partner, family or household member, including person related by blood or affinity, someone with whom the abuser has a child, and an unrelated person who continually or at regular intervals is living in the same household or in the past continually or at regular intervals lived in the same household as the abuser, or any other person who is protected from an abuser’s acts under the domestic or family violence laws of New York.

3. **Dating Violence**

Within the School of Medicine, dating violence is defined as abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

4. **Stalking**

Within the School of Medicine, stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others, or to suffer substantial emotional distress.

**B. Sexual Harassment:**

Within New York University, sexual harassment is defined as unwelcome conduct of a sexual nature. It includes sexual advances, requests for sexual favors, sexual epithets or jokes, references to sexual conduct, and other verbal, non-verbal, or physical conduct of a sexual nature when:

- Submission to or rejection of the conduct is either an explicit or implicit term or condition of employment, basis for participation or advance in an academic program, or basis for participation in a University activity or benefit;
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- Such conduct creates an intimidating, hostile or offensive work, academic or residential environment; or
- Such conduct otherwise adversely affects employment or academic opportunities.

Examples of sexual harassment include, but are not limited to:
- Verbal abuse or hostile behavior such as insulting, teasing, mocking, degrading or ridiculing another person or group;
- Unwelcome or inappropriate physical contact, comments, questions, advances, jokes, epithets or demands;
- Physical assault or stalking;
- Displays or electronic transmission of derogatory, demeaning or hostile materials;
- Unwillingness to train, evaluate, assist, or work with a student; and
- Engaging in behavior that is invasive or disruptive to a student for the purpose of initiating a sexual or romantic relationship with that person.

C. Other Forms of Sexual Misconduct:
Other forms (in addition to sexual violence and sexual harassment) of sexual misconduct that compromise the well-being of another member of the University community also are subject to review at the School of Medicine. Examples of such misconduct may include, but are not limited to, actions that are sexually exploitative or degrading, retaliatory and/or abusive acts directed toward former relationship partners, or retaliatory/abusive actions directed toward someone who has rejected the efforts of another to establish a relationship.

III. Consensual Relationships:
Sexual behavior that is welcome or consensual does not constitute sexual harassment. However, consensual sexual relationships in situations where one individual has power or authority over another may result in claims of harassment when the relationship ends and/or may give rise to complaints by others of favoritism while the relationship continues. Examples of such relationships may include: a faculty member and his/her student or a supervisor and a subordinate. If such a consensual relationship occurs, any situation of authority should be discontinued immediately.
IV. Violations of Law:
Behavior which violates the University policy may also violate the laws of the locality in which the incident occurred and subject the perpetrator to criminal prosecution by the presiding authority. Applicable laws may include, for example:


Title VII of the Civil Rights Act of 1963 (Title VII), 42 U.S.C. §§ 2000e-2 et seq., prohibits employment discrimination on the basis of sex and other protected grounds by covered employers, which includes entities engaged in an industry affecting commerce that employ fifteen or more employees.

B. **New York State**: Sex Offenses are described in Sections 130.00 to 130.90 of the New York State Penal Code. http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS

C. **Global Academic Centers/Campus**: Individuals studying or working at one of the University’s Global Academic Centers/Campus or are overseas working on a field trip should be aware that they are subject to the laws of that country with regard to what constitutes sexual violence or other sex-based offenses.

V. Reporting an Incident of Sexual Violence, Harassment or other Sexual Misconduct:
Employee victims, or anyone else who is aware of the occurrence of such an incident, are encouraged to report such offenses as soon as possible, whether the incident took place on or off campus. Student victims should refer to the School of Medicine’s policy for reporting information.

A. **New York Campus**:
Employees are required to report incidents of discrimination or harassment to officials at the NYU Langone Medical Center (which includes the School of Medicine) by filing a complaint with their supervisor or Employee Relations. In addition, individuals may contact one of the following offices, as applicable, to report an incident:

1. The NYU Langone Medical Center Campus Security Department (212) 263-5120
2. NYU Langone Medical Center Office of the Vice President (NYU School of Medicine Title IX Coordinator), Employee and Labor Relations (212) 404-3871
3. School of Medicine Student Health Services (212) 263-5489
4. School of Medicine Office of the Dean of Student Affairs (212) 263-6088

If they prefer, individuals may contact one of the following University offices:

- NYU Department of Public Safety (212-998-2222)
- NYU Title IX Coordinator (212-998-2352) or via the web at: http://www.nyu.edu/about/policies-guidelines-compliance/equal-opportunity/harassment-and-discrimination/submitcomplaint.html
- a Residence Life and Housing staff member (212-998-4600), the Office of the Dean of Students in his/her school, NYU Office of Community Standards (212-998-4403)
- NYU Student Health Center (212-4431000)
- NYU Wellness Exchange (212-443-9999)
- or another campus official from the contact list available at: http://www.nyu.edu/content/dam/nyu/equalOpp/documents/OEOcontactlist.pdf

B. Global Academic Centers/Campus:
Employees at a Global Academic Center or Campus should report incidents to their supervisor or Employee Relations. Employees may also report incidents to a campus security officer, a residence hall staff member, the site Wellness Coordinator, or the appropriate Student Affairs administrator, as listed in the University Policy. Student victims should refer to the School of Medicine’s policy for reporting information.

C. Referral to Police:
A victim of sexual misconduct has the option to report the incident to the appropriate local law enforcement authorities for the purpose of filing a criminal complaint and/or seeking and enforcing a no contact, restraining or similar court order and has the right to be assisted by the University, including the School of Medicine, in exercising this option. (In New York: contact the Victims Services Liaison in the Department of Public Safety at 212-998-9829. At a Global Academic Center: contact the office of the site Director.) A criminal investigation into an allegation of sexual misconduct does not relieve, or substitute for, the University’s duty and authority to conduct its own prompt review of a complaint; the University, including the School of Medicine, will not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation and resolution of an alleged violation. Furthermore, because the standards for criminal proceedings differ from those used in campus investigations, conduct that may not be subject to criminal prosecution or sanctions may still be addressed through the University or School of Medicine investigation process, and/or a finding of “not guilty” in a criminal case does not preclude a finding of responsibility in a campus investigation for violating University or School of Medicine policy. Victims are advised to preserve physical
evidence to support their complaint in the event they wish to pursue criminal action or seek a protective order.

D. Retaliation:
The School of Medicine prohibits retaliation against anyone who reports sexual violence, harassment or other misconduct; assists someone with making a report; or participates as a witness in an investigation or resolution of a report.

E. Specific Rights Afforded to Sexual Violence Complainants:
Victims of sexual violence are entitled to specific rights, among them:

- The right to a prompt and equitable investigation and resolution of a complaint.
- The right to file a complaint with the appropriate local law enforcement authorities, including on-campus and local police, for the purpose of filing a criminal complaint and/or seeking and enforcing a no contact, restraining or similar court order.
- The right to be assisted by the University/School of Medicine in notifying law enforcement authorities if the victim so chooses.
- The right to decline to notify law enforcement authorities.
- The right to seek to obtain an order of protection, no contact order, restraining order, or similar lawful order issued by a criminal, civil or tribal court.
- The right to request and receive a change in his/her living situation, as applicable, if such a change is reasonably available.
- The right to request and receive a change in his/her academic situation, as applicable, if such a change is reasonably available.
- The right to be referred to on- and off-campus counseling, mental health or other services for victims of sex offenses.
- The right to file a complaint on campus and to avail him/herself of the process for doing so including, but not limited to, the following: adequate, reliable, and impartial investigation of complaints; an equal opportunity to present relevant witnesses and other evidence; an equal opportunity to be accompanied by an adviser (who may be an attorney); an equal opportunity to the appeal processes.
- The Family Educational Rights and Privacy Act (FERPA) permits a school to disclose to the student victim information about the sanction imposed upon a student who was found to have engaged in violative behavior when the sanction directly relates to the victim. Furthermore, when the conduct involves allegations of a crime of violence or a non-forcible sex offense, a postsecondary
institution is required to simultaneously provide written notification of the final results of a disciplinary proceeding against the alleged perpetrator to both the victim and the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.

VI. Procedures for Resolving Allegations of Sexual Violence, Harassment or other Sexual Misconduct:
The University, including the School of Medicine, will act promptly in response to a report of an incident of sexual violence, harassment or other form or sexual misconduct. Reports will be investigated and addressed in a timely manner, typically within 60 calendar days.

A. Confidentiality:
If a complainant requests confidentiality or asks that the complaint not be pursued, the University, including the School of Medicine, still must take all reasonable steps to investigate and respond to the complaint within the parameters of such a request. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the complainant must realize that the University/School of Medicine’s ability to respond may be limited. When a complainant insists that his or her name or other identifiable information not be revealed, the University/School of Medicine must evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the University/School of Medicine will weigh the request for confidentiality against the following factors:

- the seriousness of the alleged harassment;
- the complainant’s age;
- whether there have been other complaints about the same individual;
- the alleged perpetrators’ rights to receive information about the allegations under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15; and
- the University’s publically-available recordkeeping requirements, which will be met without the inclusion of identifying information about the victim to the extent permissible by law.

If the University cannot ensure confidentiality, the complainant will be so informed. If the University cannot take disciplinary action against the alleged perpetrator because the complainant insists on confidentiality, it may pursue other steps to limit the effects of the alleged conduct and prevent its recurrence.
B. Investigation and Resolution:
The University, including the School of Medicine, provides mechanisms for timely resolution of allegations of sexual violence, harassment, or sexual misconduct against an employee, which take into account the freedoms and rights of both the respondent and the complainant. Students should refer to the School’s student policy for information on the investigation process and resolution of complaints.

For employee complaints of sexual violence, harassment or other misconduct of a sexual nature, the University, including the School of Medicine, will conduct an investigation and resolution process as follows, which may be in addition to any School of Medicine student investigation or disciplinary proceedings that are initiated as appropriate:

1) Phases:
Step One: Initial Investigation: If the initial investigation reveals that there is insufficient evidence to support the allegations, the complaint will be dismissed. As the circumstances warrant, preliminary administrative actions, as appropriate (e.g. interim suspension, restricted access to campus facilities, no-contact orders, etc.) may be taken to preserve the safety and well-being of those involved and/or the campus community.

Step Two: Complete Investigation: If the initial investigation reveals that there is sufficient evidence to determine that the allegations probably have merit, the investigator will conduct a complete investigation of the complaint in the manner he or she deems necessary. The parties to the complaint each will be contacted and kept apprised as appropriate.

Step Three: Resolution: The parties to the complaint are informed of the conclusion of the investigation and outcomes thereof, as appropriate.

2) Standard of Evidence: If the investigation reveals that there is insufficient evidence to support the allegations, the complaint will be dismissed.

3) Disciplinary Actions: The specific disciplinary actions may differ depending on the circumstances of the matter being addressed. In general, however, disciplinary actions imposed upon employees determined to have violated this policy may include a range of actions, such as counseling, warning, final warning, suspension, probation or dismissal from the University.

4) Notification: When the conduct involves allegations of a crime of violence or a non-forcible sex offense, a postsecondary institution is required to simultaneously provide written notification of the final results of a disciplinary proceeding against the alleged perpetrator to both the victim and the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.
Disciplinary Procedures Specific to the School of Medicine:
The School of Medicine follows the procedures listed below for complaints of sexual violence, harassment or other misconduct of a sexual nature:

- If the accused is a medical student or a graduate student, the adjudication will fall under the School of Medicine’s Honor Code, including its process for Informal and/or Formal Resolution as determined appropriate by the Administration.
- If the accused is a faculty member, House Staff officer or voluntary physician, the case may be referred to the Standing Committee on Student Abuse as outlined under the Policy of Student Mistreatment in the Medical Student Handbook.
- If the accused is a non-faculty employee, the case will be referred to the Human Resources Department.
- All other complaints against individuals not identified above (e.g., third party vendors) will be referred to the appropriate oversight office as determined on a case-by-case basis.

In addition, the School of Medicine follows these disciplinary proceeding standards in cases involving sexual violence of students:

- The investigation will be conducted by officials who receive annual training on issues related to sexual violence and how to conduct an investigation and resolution process that protects the safety of victims and promotes accountability;
- The accuser and the accused are entitled to the same opportunities to have others present during the disciplinary proceedings, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and
- Both the accuser and accused shall be simultaneously informed in writing of (a) the outcome of any institutional investigation that arises from an allegation of sexual violence; (b) the institution’s procedures for the accused and the victim to appeal the results of the institutional investigation, as applicable; (c) when such results become final; and (d) any change to the results that occurs prior to the time that such results become final.

Finally, members of the School of Medicine community should be aware that the filing of a report about a medical student with external police, the University or the NYU Langone Medical Center Campus Security Department may but will not automatically initiate
disciplinary action proceedings within the School of Medicine. Therefore, even if a report is filed elsewhere, individuals are encouraged to also file a complaint with the School of Medicine to ensure that disciplinary action may be considered where appropriate.

VII. Resources Available to Victims/Complainants and Bystanders:
Many services, including resources for medical and emotional well-being, are available to victims of sexual assault, harassment and other forms of sexual misconduct whether the incident occurred in New York or at one of the University’s Study Away Sites. Contact information and general advice on how to seek assistance for yourself or another person who has been subjected to such behavior can be obtained from one of the offices listed above that receive reports. Counseling and additional resources are available under Section II (SPECIFIC UNIVERSITY POLICIES) on the following webpage: http://www.nyu.edu/life/student-life/student-communitystandards/university-student-conduct-policies.html.