

AMDA

Title IX Non-Discrimination & Grievance Process Policy

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QUICK REFERENCE GUIDE

AMDA

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NY Deputy Title IX Coordinator: Lauren Trapido
800-367-7908
NYTitleIX@amda.edu.

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U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
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Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

AMDA

Title IX Non-Discrimination & Grievance Process Policy

I. Introduction

Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex in any education program or activity operated by a recipient that receives federal financial assistance. As an educational institution subject to Title IX, AMDA¹ has adopted this Title IX Non-Discrimination & Grievance Process Policy (the “Policy”).² As set forth in detail herein, AMDA

- Does not discriminate on the basis of sex, including in admissions and employment, and is committed to providing an educational and workplace environment that is free from sex-based discrimination, harassment, and retaliation;
- Prohibits discrimination on the basis of sex in its educational programs and activities, as required by law;
- Is committed to promoting fairness and equity in all aspects its operations; and
- Values and promotes the equal dignity of all community members and is committed to the pursuit of just resolutions with respect the rights of all parties involved.

This Policy is adopted to prevent discrimination prohibited under Title IX and provide a prompt, fair, and impartial process to address complaints of alleged discrimination based on sex.

Inquiries about this Policy or the application of Title IX may be referred to AMDA’s Title IX Coordinator, the Assistant Secretary of the Department of Education’s Office for Civil Rights, or both.

II. Overview of Title IX Policy and Grievance Process: General Provisions

Responsibilities of the Title IX Coordinator

The Title IX Coordinator oversees implementation and enforcement of this Policy, which includes primary responsibility for coordinating the School’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

¹ AMDA may be referred to interchangeably as the “School” throughout this Policy.

² All capitalized terms not defined within this Policy are defined in Appendix A.

The School's Title IX Coordinator is identified below and may be contacted with questions about this Policy, to file a report or formal complaint, or to otherwise assist individuals in ensuring equal access to the School's educational programs or activities in compliance with Title IX.

AMDA

Title IX Coordinator: Eugene Smith

(650) 383-4753 EXT 138

esmith@amda.edu.

LATitleIX@amda.edu.

NYTitleIX@amda.edu.

NY Deputy Title IX Coordinator: Lauren Trapido

800-367-7908

NYTitleIX@amda.edu.

Individuals may also contact the U.S. Department of Education's Office for Civil Rights with Title IX questions. *(Please note that inquiries to OCR alone are not sufficient to allow appropriate responsive action by the School. To ensure your concern is appropriately addressed under this Policy, please file a report with the School's Title IX Coordinator).*

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

How to Make a Report or Formal Complaint of an Alleged Title IX Violation

Any person may report alleged sex discrimination, sexual harassment, or retaliation to the Title IX Coordinator, irrespective of whether the reporting person is the alleged victim of such conduct. A report is differentiated from a Formal Complaint ("Complaint"), which is a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the School investigate the allegation(s) and implement the School's Grievance Process. A report or complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail at any time (including during non-business hours), using the contact information in the section immediately above or as described below:

- 1) To the Title IX Coordinator:

Title IX Coordinator:
Eugene Smith
(650) 383-4753 EXT 138
esmith@amda.edu.
LATitleIX@amda.edu.
NYTitleIX@amda.edu.

NY Deputy Title IX Coordinator:
Lauren Trapido
800-367-7908
NYTitleIX@amda.edu.

2) Incident Report Form
https://cm.maxient.com/reportingform.php?AMDA&layout_id=3

After Making a Report or Formal Complaint

Upon receipt of a report or Complaint, the Title IX Coordinator shall undertake an initial assessment to determine appropriate next steps as required under this Policy, including making an initial threat assessment to ensure there is no immediate danger to Complainant or the campus community and, if there is, to take appropriate action, which may include emergency removal of Respondent as described below.

The Coordinator shall contact Complainant to discuss the availability of appropriate supportive measures that may be implemented with input from the Complainant irrespective of, and in addition to, any resolution process including the formal Grievance Process, and will notify Complainant about the right to have an advisor.

If the report has been made without filing a Complaint, the Title IX Coordinator will review the allegations and discuss options with the Complainant, including the option of proceeding with a Complaint. If the Complainant does not want to proceed with a Complaint, the Coordinator may initiate a Complaint if the Coordinator determines that a Complaint is warranted.

If the Complainant files a Complaint, or the Title IX Coordinator initiates a Complaint, the matter will proceed as described under the Grievance Process.

After submission of a Complaint and after notifying the Respondent of the Complaint's allegations, the parties will be notified of the availability of informal resolution, as applicable. All parties must voluntarily consent in writing to any informal resolution process. The parties may withdraw such consent at any time and resume the formal Grievance Process.

At all stages of the process, irrespective of any resolution or grievance process which may be implemented, responsive and reasonable supportive measures will be implemented to ensure continued access to the School's educational program or activities.

Emergency Removal of Respondent

The School reserves the right to remove a Respondent from its education program or activities on an emergency basis when the Respondent poses an immediate threat to the health or safety of any student or campus community member. The School will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. If an emergency removal is imposed, the Respondent will be given notice of the removal and the option to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the removal should not be implemented. Emergency removal decisions are not subject to Appeal.

Administrative Leave of Employee Respondent

Respondents that are School employees may be placed on administrative leave during the pendency of a grievance process as determined by the School and the Title IX Coordinator.

Complainant's Decision to Pursue a Complaint

If a Complainant does not wish to be identified, does not wish for an investigation to take place, or does not want a Complaint to be pursued, the Complainant may make such a request to the Title IX Coordinator, who will evaluate the request in light of the duty to ensure campus safety and compliance with state and federal law. The School will comply with Complainant's wishes unless the Coordinator determines that initiating a Complaint is warranted under the circumstances.

If the Coordinator independently initiates a Complaint, the Complainant may have as much or as little involvement in the process as the Complainant desires. The Complainant retains all rights of a Complainant under this Policy irrespective of participation level. Irrespective of whether a Complaint is filed, the School shall offer supportive measures to ensure Complainant's continued access to the School's educational program and activities. If the Complainant elects not to file a Complaint, the Complaint shall retain the right to file a Complaint later.

Complaint Dismissal

Mandatory Dismissal

The School must dismiss a Complaint if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Complaint does not constitute sexual harassment as defined in under Title IX; and/or

- 2) The conduct did not occur in an educational program or activity controlled by the School (including buildings or property controlled by recognized student organizations); and/or
- 3) The School does not have jurisdiction over the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a Complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the School.

Discretionary Dismissal

The School may dismiss a formal complaint or any allegations therein if at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegation therein; or
- 2) The Respondent is no longer enrolled in or employed by the School; or
- 3) Circumstances prevent the School from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.

Upon any dismissal, the School shall promptly send written notice of the dismissal and its rationale simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal below.

Dismissed Complaints may include conduct that could be considered a potential violation of the School's Code of Conduct or Employee Handbook and may be addressed through other applicable, non-Title IX conduct policies and procedures accordingly.

Consolidated Complaints

If a Complaint involves one or more Complaint, Complainant and/or Respondent and allegations arising out of the same set of circumstances, the School may elect to consolidate complaints.

Time Limits on Reporting

There is no time limitation on making a report or Complaint. However, acting on reports or Complaints is significantly impacted by the passage of time and occurrence of other events (including, but not limited to, the rescission or any revision of this Policy), and is at the discretion of the Title IX Coordinator, who may, among other things, document allegations for future reference, offer supportive measures and/or Remedies, and/or engage in informal or formal action, as appropriate. Additionally, if the Respondent is no longer subject to the School's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible.

Anonymous Report or Complaint

If a Complainant makes a report anonymously, it will be investigated by the School to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or Remedies can be provided. Anonymous reports typically limit the School's ability to investigate and respond, depending on what information is shared. In some situations, the Title IX Coordinator may proceed with the issuance of a Formal Complaint even when the Complainant's report has been made anonymously.

Confidentiality

The School shall undertake reasonable efforts to preserve the confidentiality of reports and Complaints. The School shall not disclose any report or Complaint except as provided herein and as necessary to effectuate this Policy, or as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99, or as required under applicable law.

Certain professionals have a legal and/or ethical responsibility to maintain communications made in the scope of their professional roles in strict confidence.³ Some of these roles include licensed professional counselors/mental health providers, licensed medical and health care providers, victim advocates, ordained/licensed clergy, licensed attorneys and rape crisis or domestic violence resources. Complainants or Respondents wishing to speak to someone confidentially are encouraged to seek out such resources. Communications with such professionals are considered legally privileged and cannot be revealed without a party's express written consent.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the School's education program or activity, including measures designed to protect the safety of all parties or the School's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available upon receipt of a report or a complaint alleging possible sexual harassment. At the time that supportive measures are offered, the School will inform the Complainant, in writing, that they may file a formal complaint with the School either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The School shall maintain the confidentiality of the supportive measures to the greatest extent reasonably practicable, provided that confidentiality does not impair the School's ability to provide

³ In highly limited circumstances, such as when presenting an immediate threat or danger to another, or when subject to a court order, confidential communications may be revealed without

the consent of a party.

supportive measures or otherwise fulfill its obligations under this Policy. The School will implement measures in a way that does not unreasonably burden the other party.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, referral to medical or healthcare services, referral to community-based services, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Amnesty for Complainants and Witnesses

The School encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the School community that Complainants choose to report misconduct to School officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the School may offer parties and witnesses amnesty from minor violations of other School policies – such as underage alcohol consumption or personal use of illicit drugs – that may be associated with the incident.

Amnesty is not applicable to more serious allegations, such as physical abuse of another or illicit drug distribution.

Right to an Advisor

The parties have the right to select an advisor of their choice to accompany them to any or all meetings and interviews during the resolution process. There are no limits on who can serve as an advisor; it may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. Under Title IX, cross-examination is required during the hearing, and must be conducted by the parties' advisors. If a party selects an advisor of their choice, this advisor must perform cross-examination on their behalf during the hearing, as the parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an advisor, or the advisor does not appear for a hearing, the School will provide one for the limited purpose of conducting cross-examination on behalf of the party.

An advisor who is also a witness to the allegations in the complaint creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s) and may, but will not necessarily, impact the Final Determination.

The School cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not select or retain an attorney or cannot afford an attorney, the School is not obligated to provide the other party with an attorney.

Conflict-of-Interest & Bias

Title IX Personnel are trained to ensure they have no conflict of interest and are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. To raise any concern involving bias, conflict of interest or other misconduct by any Title IX Personnel contact the School's President to report your concern.

Resolution Timeline

The School will make a good faith effort to complete the resolution process fairly and promptly. Duration of a matter that proceeds through the Formal Grievance Process is determined by many factors including, but not limited to, the cooperation and availability of the parties and witnesses, potential concurrent criminal investigations, and the School closures, among others. The School will avoid all undue delays within its control and will grant reasonable extensions of time, upon written request and showing of good cause, by a party. The School shall provide the parties written notice of delays and/or extensions, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Notifications to Parties

All notifications to the parties noted herein will be made by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official School records, or emailed to the parties' School-issued email or otherwise approved account. Once mailed, e-mailed and/or received in-person, notice will be presumptively delivered.

Clery Act Reporting

Reports or complaints of sexual assault, domestic violence, dating violence, and/or stalking that pose a serious or continuing threat of bodily harm or danger to members of the campus community may trigger a timely warning obligation by the School under the Clery Act. If a warning is deemed necessary, the School will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

In addition, the School is obligated to report and disclose crimes under the Clery Act, including the crimes of sexual assault, domestic violence, dating violence and stalking as defined in this Policy, for statistical reporting purposes only. Reports of these crimes do not include personally identifiable information and therefore preserves the confidentiality of any involved parties.

Retaliation

The School prohibits retaliation under this Policy. Retaliation may include intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure. Alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The School will take appropriate action to protect individuals who fear that they may be subjected to retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation. Relatedly, a determination of responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

The School's Mandatory Response Obligations

AMDA's mandatory response obligations under this Policy arise when it has Actual Knowledge of conduct that may constitute sexual discrimination, harassment, or retaliation, as defined herein. Actual Knowledge occurs when the Title IX Coordinator or a School official with authority to implement corrective measures ("OWA")⁴ becomes aware of the potential occurrence of such conduct. Actual notice received by any of these OWAs constitutes Actual Knowledge upon which the School's mandatory response obligations arise under this Policy. In these cases, the School must act to stop, remedy and prevent future recurrence of prohibited conduct through application of this Policy.

Notice, Dissemination and Publication of Policy

Title IX requires AMDA to notify applicants for admission or employment as well as students, employees, and, if applicable, unions or professional organizations holding collective bargaining of collective agreements with the School, of this Policy. AMDA complies with Title IX's notice requirements, including prominently publishing its Non-Discrimination & Grievance Process Policy and contact information for the Title IX Coordinator on its website and in other publications.

III. Sexual Harassment Defined, Jurisdiction & Scope of Policy

Sexual Harassment Defined

For purposes of this Policy and the grievance process, Sexual Harassment has the meaning set forth below. Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender and/or gender identity of those involved.

⁴ AMDA's Chief of Staff has been designated an OWA.

Sexual Harassment means:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. A School employee,
 - b. conditions the provision of an aid, benefit, or service of the School,
 - c. on an individual's participation in unwelcome sexual conduct; and/or
- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the School's education program or activity.
- 3) Sexual assault, defined as:
 - a. Sex Offenses, Forcible:
 - i) Any sexual act directed against another person,
 - ii) without the consent of the Complainant,
 - iii) including instances in which the Complainant is incapable of giving consent.
 - b. Forcible Rape:
 - i) Penetration,
 - ii) no matter how slight,
 - iii) of the vagina or anus with any body part or object, or
 - iv) oral penetration by a sex organ of another person,
 - v) without the consent of the Complainant.
 - c. Forcible Sodomy:
 - i) Oral or anal sexual intercourse with another person,
 - ii) forcibly,
 - iii) and/or against that person's will (non-consensually), or
 - iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - d. Sexual Assault with an Object:
 - i) The use of an object or instrument to penetrate,
 - ii) however slightly,
 - iii) the genital or anal opening of the body of another person,
 - iv) forcibly,
 - v) and/or against that person's will (non-consensually),

- vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e. Forcible Fondling:
 - i) The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii) for the purpose of sexual gratification,
 - iii) forcibly,
 - iv) and/or against that person's will (non-consensually),
 - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f. Sex Offenses, Non-forcible:
 - i) Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by California or New York law, as applicable.
 - ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent under California or New York law, as applicable.
- 4) Dating Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,

- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California or New York, as applicable or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California or New York, as applicable.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and meanings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Affirmative Consent: Consent is knowing, affirmative permission to engage in sexual activity that is voluntarily given through clear verbal communication or by unambiguous behavior.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on AMDA to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to an alleged sexual assault violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Jurisdiction of the School

If the Respondent is unknown or is not a member of the School community, the Title IX Coordinator will assist the Complainant as requested in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement to file a police report upon request.

Further, even when the Respondent is not a member of the School’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, the School may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from School property and/or events. All vendors serving the School through third-party contracts are subject to the policies and procedures of their employers, or if applicable, to these policies and procedures to which their employer has agreed to be bound by their contracts.

Scope of the School’s Educational Program and Activities

For purposes of this Policy, the School’s educational program or activities includes locations, events, or circumstances, within the U.S., where the School exercises substantial control over both the Respondent and the context in which the alleged sexual harassment or discrimination occurs and also includes any building owned or controlled by the School or by a student organization that is officially recognized by the School. It also includes online, and cyber manifestations of conduct prohibited by this Policy, when those behaviors occur in or have an effect on the School’s education program and activities or use the School networks, technology, or equipment.

IV. Formal Grievance Process

If a Formal Complaint is filed, the matter will proceed through the Grievance Process as outlined below and will include an objective investigation, live hearing with opportunity for cross-examination and the right to appeal. This process will treat complainants and Respondents equitably. Any provisions, rule or practice adopted by the School as part of the grievance process, other than those required under Title IX and its implementing regulations will apply equally to both parties. The process will include an objective evaluation of all relevant evidence (inculpatory and exculpatory), will be conducted by trained Title IX Personnel, free from any known conflict of interest or bias, and presumes Respondent’s non-responsibility until and unless demonstrated

otherwise by the evidence and after a Final Determination as been rendered. Disciplinary sanctions

or punitive measures will not be imposed against a Respondent unless and until there has been a finding of responsibility after application of the process. If at any stage of the investigation it is determined that conditions exist warranting dismissal, the complaint will be dismissed. Complainant will continue to be entitled to appropriate supportive measures in such cases.

The School requires impartiality in the process by ensuring there are no actual or apparent conflicts of interest or disqualifying biases of any Title IX Personnel. The parties may, at any time during the resolution process, raise a concern regarding bias, conflict of interest, or any irregularity which may taint the impartiality of the process. Such concerns should be reported in writing to the Title IX Coordinator, or Chief of Staff, who will evaluate the concern and take appropriate corrective action to ensure integrity of the process.

Notice of Allegations

The Title IX Coordinator will provide written notice of the allegations to the Respondent and Complainant upon receipt of a Formal Complaint. The notice will be provided prior to any initial meeting or interview with the Respondent and their advisor, if applicable, allowing sufficient advanced notice to prepare.

The notice will include:

- A meaningful summary of all allegations,
- The identity of the parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies alleged to have been violated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Respondent is presumed not responsible for the reported misconduct unless and until a Final Determination has been rendered at the conclusion of the process,
- Notice that the parties will be given an opportunity to inspect and review all directly related and relevant evidence obtained during the investigation,
- The School's policy on retaliation,
- Information about the privacy of the process,
- The right to have an advisor of their choice, who may be, but is not required to be, an attorney,
- A statement informing the parties that the School's policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- An instruction to preserve any evidence that is directly related to the allegations.

Investigation

Trained Investigators will be assigned to investigate allegations contained in a Formal Complaint and will do so objectively. The burden to collect all evidence related to the allegations, including both inculpatory and exculpatory, rests on the School, and not on the parties. Investigators must be free from bias and conflicts of interest. Depending on the complexity of the case, more than one Investigator may be assigned.

Investigation Timeline

The School will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. The School may undertake a reasonable delay in its investigation under appropriate circumstances. Such circumstances include, but are not limited to, a concurrent law enforcement investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The School will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates as warranted. The School will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the School will implement supportive measures as deemed appropriate.

Concurrent Law Enforcement Investigation or Criminal Proceedings

The School's grievance process is an administrative procedure required under Title IX to address sexual discrimination, and therefore is separate and independent of any law enforcement investigation or criminal proceedings. While a law enforcement investigation may necessitate a temporary delay in the School's grievance process, such law enforcement investigation does not replace the School's grievance process, as the School is legally obligated to address and remedy potential sexual harassment in its educational programs and activities as set forth in this Policy.

The Investigation Process

Investigators serve free from conflict of interest, objectively and without bias. All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses and obtaining available, relevant evidence. The School, not the parties, bears the burden of gathering evidence and burden of proof. Parties have equal opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The investigation will be conducted within a reasonably prompt timeframe, allowing for thorough collection and evaluation of all evidence related to the allegations. The investigator will keep the parties informed as to estimated timelines, and any delays.

Prior to the conclusion of the investigation, the parties will be provided with an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the allegations in

the Formal Complaint, (whether or not it will be used in reaching a determination. The parties

will have a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence.

The Investigator will incorporate any relevant feedback provided by the parties during the review process, and the final report is then shared with all parties and their advisors through electronic transmission or hard copy at least ten (10) business days prior to a hearing.

Role and Participation of Witnesses in the Investigation

Witnesses who are School employees are expected to cooperate with and participate in the School's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a Policy violation and may warrant discipline.

Interviews may occur in-person or remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used. The School will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

The parties may submit to the Title IX Coordinator a list of witnesses they believe have relevant information to the outcome of the hearing. The Decision-maker will review the parties' requested witnesses and consider any other witnesses. The Decision-maker has discretion to determine which witnesses are relevant and may decline to hear from witnesses where they conclude that the information is not necessary for the review. Witnesses will only be permitted inside the hearing location during their own testimony.

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. Witnesses are subject to the Expectations of Decorum.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of [and consent to] audio and/or video recording.

Evidentiary Considerations in the Investigation

The investigation includes collection of all evidence directly related to the allegations, which is not otherwise privileged. Only evidence which is also deemed relevant is summarized in the investigative report which is considered by the Decision-Maker(s), in rendering a determination of responsibility. All parties are provided the opportunity to review all non-privileged evidence gathered during the investigation which is directly related to the allegations in the complaint, whether or not it is also included in the investigative report. All parties are also provided with a copy of the investigative report summarizing relevant evidence only.

Relevant evidence does not include evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such evidence is offered to prove that someone other than the

Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, and are offered to prove consent.

Privileged evidence is likewise excluded from both the investigation, investigative report and hearing unless a party expressly waives this privilege in writing and consents to the release of this information during the grievance process.

Investigative Report

Upon conclusion of the investigation, the Investigator will create an investigative report that fairly

summarizes relevant evidence and, at least ten (10) days prior to a hearing, will send the report to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.

The Hearing

Upon conclusion of the investigation and distribution of the investigative report to the parties, the matter will proceed to the hearing stage of the grievance process. The hearing will be offered live, in real-time and will include cross-examination. A Decision-maker(s) will be appointed to preside over the hearing, evaluate the evidence and make a determination as to each allegation in the complaint. The Decision-maker will be independent and neutral, and will not have had any previous involvement with the investigation. Investigators, Title IX Coordinator (or designee) or advisors are prohibited from serving as Decision-makers.

The School reserves the right to adopt any hearing protocols, which will be applied and be made available equally to both parties, to ensure the efficiency, order and decorum of the hearing process. Any such protocols will be provided in writing to the parties, witnesses and participating individuals at least ten (10) days prior to the scheduled hearing date.

The School may designate an administrative facilitator of the hearing, which may include the Title IX Coordinator, as long as they do not have a conflict of interest.

The School may conduct the hearing virtually at their discretion or upon request of a party. Request for remote participation by any party or witness should be directed to the Title IX Coordinator made at least five (5) business days prior to the hearing.

The Decision-maker may question the parties and any witness at the hearing.

Only relevant questions, testimony and evidence may be proffered at the hearing, and the Decision-maker will make determinations as to relevancy of every question posed by an advisor during cross-examination before it is answered, and of any evidence offered.

Privileged evidence or testimony, likewise, may not be proffered during the hearing, without a party's waiver and written consent allowing its consideration at the hearing.

Parties may not conduct cross-examination. Advisors only will conduct cross-exam on a party's behalf. Only relevant questions will be allowed.

Parties, advisors, witnesses, and all participating individuals are expected to behave respectfully during the hearing. Harassing, intimidating or disruptive behavior will not be tolerated, and the School reserves the right to exclude anyone from participation in the process that fails to comport themselves accordingly.

An audio or audiovisual recording, or transcript will be made of the hearing, and will be made available to the parties for inspection and review. No other recording of the hearing will be allowed.

Evidentiary Considerations in the Hearing

Only Relevant Evidence Allowed

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. Only evidence, which is directly related to the allegations, not subject to an enforceable legal privilege and not otherwise excludable as described here is considered relevant.

The hearing does not consider the following which are deemed not relevant: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Privileged Evidence Must be Excluded

Evidence subject to any recognized legal privilege will not be allowed in the hearing without the prior written waiver of the privilege and consent for its consideration during the grievance process.

Responding to Questions

If a party or witness is present at the live hearing, but disagrees with a relevance determination, they may have the choice of either (1) abiding by the Decision-maker(s) determination and answering, or (2) refusing to answer the questions. If a party or witness refuses to submit themselves to questioning by the Decision-maker(s), the Decision-maker(s) may not draw any inference about the determination of responsibility based solely on the refusal by the party or witness but can still rely on statement evidence. Additionally, the Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing but can still rely on statement evidence.

Final Determination as to Responsibility and Standard of Proof

Upon completion of the hearing, the Decision-maker will deliberate privately and will render a finding within ten (10) business days following the hearing. The Final Outcome Letter will contain each allegation in the complaint by applying the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged. The decision will be provided simultaneously to the parties through the issuance of a written determination letter, delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official the School records, or emailed to the parties' the School-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The determination letter will include:

1. Identification of the allegations potentially constituting sexual harassment as defined under the Policy;

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits methods used to gather evidence, and hearing held;

3. Findings of fact supporting the determination;
4. Conclusions regarding application of the School's code of conduct to the facts;
5. A statement, and rationale for, the results as to each allegation, including a determination regarding responsibility, and disciplinary sanctions the School imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Schools' education program or activity will be provided by the School to the Complainant; and
6. The School's permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final after expiration or exhaustion of any appeal rights.

Sanctions. Disciplinary Action & Remedies

The School may consider a number of factors when determining a sanction and/or remedy and will focus primarily on actions aimed at ending, and preventing the recurrence of, discrimination, harassment, and/or retaliation and the need to remedy the effects its effects on the Complainant and campus community. Sanctions will be imposed upon either expiration of the appeal window, or after Final Determination on any appeal filed.

Sanctions or actions may include, but are not limited to, those listed below. These may be applied individually or in combination and the School may assign sanctions not listed, as deemed appropriate.

Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any School policy, procedure, or directive will result in more severe sanctions/responsive actions.

Required Counseling: A mandate to meet with and engage in either School-sponsored or external counseling to better comprehend the misconduct and its effects.

Probation: A written reprimand for violation of School policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any School policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the School.

Expulsion: Permanent termination of student status and revocation of rights to be on campus

for any reason or to attend School-sponsored events.

Withholding Diploma: The School may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

Other Actions:

Applicable Employee Actions:

Warning – Verbal or Written

Performance Improvement/Management Process

Required Counseling

Required Training or Education

Probation

Loss of Annual Pay Increase

Loss of Oversight or Supervisory Responsibility

Demotion

Suspension with pay

Suspension without pay

Termination

Other Actions: In addition to or in place of the above sanctions, the School may impose any other sanction as deemed appropriate.

False Allegations and Evidence

Making deliberately false and/or malicious accusations, knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation are policy violations subject to discipline.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions imposed, the Title IX Coordinator may implement additional long-term Remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These Remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys

- Policy modification
- Training or awareness campaigns
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Adjustments to academic deadlines, course schedules, etc.
- Modified campus security measures

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no Policy violation is found.

The School will maintain the privacy of any long-term Remedies, provided privacy does not impair the School's ability to provide these services.

Failure to Comply with Disciplinary Sanctions or other Remedies

Respondents are expected to comply with any disciplinary sanction or remedy as set forth in the Final Determination or in response to a final outcome. Failure to abide by the sanction(s)/action(s) whether by refusal, neglect, or any other reason, may result in additional disciplinary action, including suspension, expulsion, and/or.

Appeals

Any party may file an Appeal on the following grounds. Appeals must be submitted in writing to the Title IX Coordinator within 7 days of the delivery of the Notice of Outcome. After expiration of the appeal window, the determination will be considered final, and any applicable sanctions will be imposed.

Grounds for Appeal

Appeals may be made on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Any sanctions imposed as a result of the Final Determination are stayed during the appeal process.

Title IX personnel with prior involvement in the matter will not be permitted to serve as a Decision-maker in the appeal. Appeals will not include a hearing. A decision on the merits will be based on information provided in the appeal document. If an appeal is based on the availability of new evidence, this evidence must be described with specificity and must be available for review within

a reasonably prompt timeframe for consideration.

The appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, and the rationale supporting the findings. Appeal decisions will be made within seven (7) business days, barring exigent circumstances, including the review of new evidence not immediately available for submission with the appeal request. Decisions on appeal will be made by applying the preponderance of evidence.

Notification of the appeal outcome will be made in writing and will be delivered simultaneously to the parties by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official School records, or emailed to the parties' School-issued email or otherwise approved account. Once mailed, e-mailed and/or received in-person, notice will be presumptively delivered. Decisions on appeal are considered final.

Record Retention

The School shall maintain the following records related to the implementation of this Policy for at least seven years:

1. Reports or Formal Complaints alleging sexual discrimination, including harassment.
2. Records of any dismissal of a Formal Complaint.
3. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
4. Any disciplinary sanctions imposed on the Respondent;
5. Any Remedies implemented by the School designed to restore or preserve equal access to the School's education program or activity;
6. Any appeal and the result therefrom;
7. Any Informal Resolution and the result therefrom;
8. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The School will make these training materials publicly available on the School's website. (Note: If the School does not maintain a website, the School must make these materials available upon request for inspection by members of the public.); and
9. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the School's education program or activity; and
 - c. If no supportive measures were provided, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Revision of this Policy

This Policy and procedures supersede any previous policy addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated and subject to any relevant change in law or School policy, and on an annual basis, by the

Title IX Coordinator. The School reserves the right to make changes annually to this Policy as necessary, which become effective when published.

This Policy will not restrict any rights guaranteed against government action by the U.S. Constitution and should be interpreted accordingly and should also be construed to comply with the most recent government regulations or applicable judicial decisions.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020. This Policy and procedures were revised September 18, 2023.

V. Appendix A: Definitions

Actual Notice. Notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or any official of the School who has the authority to institute corrective measures on behalf of the School. The School receives notice when an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

Complainant. An individual who is alleged to be the victim of conduct that could constitute harassment, discrimination or retaliation under Title IX.

Consolidated Complaint. A formal complaint with more than one Complainant or Respondent arising when multiple parties submit formal complaints arising out of the same facts and circumstances and as deemed appropriate for consolidation by the Title IX Coordinator.

Education Program or Activity. Locations, events, or circumstances where the School exercises substantial control over both the Respondent and the context in which the alleged sexual harassment or discrimination occurs and also includes any building owned or controlled by the School or by a student organization that is officially recognized by the School.

Final Determination: A decision rendered and provided in writing to the parties of a Formal Complaint after application of the School's Grievance Process concluding whether or not Respondent is responsible for conduct alleged within a Formal Complaint in violation of this Policy.

Finding: A conclusion within the Final Determination as evaluated under the burden of proof that a specific allegation within a Formal Complaint did or did not occur.

Formal Complaint. A document filed and signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that the School investigate the allegation(s).

Formal Grievance Process. The method of formal resolution designated by the School to address conduct that falls within the scope of this Policy, and which complies with the requirements of 34 CFR Part 106.45.

Decision-maker(s). A trained individual with responsibility for making a Final Determination as set forth in the School's Grievance Process. A Decision-maker must maintain neutrality and cannot perform the function of either the Title IX Coordinator or Investigator.

Informal Resolution Process. An alternative resolution process which may be available to the parties to seek Resolution of a Formal Complaint in lieu of the Formal Grievance Process. Informal resolution is facilitated by appropriately trained individuals, is made available at the discretion of the School and as deemed appropriate by the Title IX Coordinator, and offered only if informed,

voluntary and written consent is made by all parties to a complaint. Any party may opt-out of the informal process at any time, and the matter will proceed through the Formal Grievance Process. Examples of informal resolution include, but are not limited to, mediation and restorative justice.

Investigator. A trained individual responsible for fulfilling the School's burden of gathering and evaluating all evidence related to allegations within a Formal Complaint as required under the School's Grievance Process.

Mandated Reporter. An employee of the School who is obligated by Policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

Official with Authority. An employee of the School explicitly vested with the responsibility to implement corrective measures for Title IX harassment, discrimination, and/or retaliation on behalf of the School.

Parties. The Complainant(s) and Respondent(s), collectively.

Remedies. Post-Finding actions directed to the Complainant and/or the community implemented to address safety, prevent the recurrence of harassment, and ensure continued access to the School's educational program.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute harassment, discrimination or retaliation under Title IX.

Sanction. A disciplinary consequence imposed by the School on a Respondent who is found to have violated this Policy.

Sexual Harassment. Behavior or conduct as defined under Title IX and its implementing regulations at 34 CFR 106, and as more fully articulated in this Policy.

Title IX Coordinator. The School's employee responsible for ensuring compliance with Title IX.

Title IX Personnel. Those individuals collectively tasked with implementation of this Policy and Grievance Process including specifically, the Title IX Coordinator (including any designees as applicable), any Investigator or any Decision-maker.

VI. Appendix B: Administrative Resolutions for Non-Title IX Offenses (New York)

This appendix shall apply to complaints that involve incidents of sexual misconduct at AMDA New York and do not fall under Title IX.

I. Policy Overview

This policy sets forth the American Musical and Dramatic Academy's (AMDA) obligations under the New York State Education Law as it relates to sexual harassment against students that is not covered under the jurisdiction of the AMDA's [Title IX Policy](#).

In addition to the requirements under federal law to respond to certain instances of harassment and violence, New York has state laws that require additional steps or actions. Please know that in all cases, [you may reach out](#) to the Title IX and Equity Coordinator or Deputy with questions or to understand specific elements of this Policy and its application.

II. Scope

This policy applies to all actively enrolled students, faculty, and staff who experience prohibited sexual harassment involving any individual subject to AMDA's policies, including students, employees and third parties where applicable, in connection with any educational activity or other program of AMDA, as well as incidents that occurred outside of those educational activities or programs, whether they occurred on or off-campus.

III. Student Bill of Rights

- Make a report (or decline to report) to local law enforcement and/or state police;
- Have disclosures of Sexual Assault, Domestic Violence, Dating Violence, and Stalking and all other forms of Prohibited Conduct treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the complaint resolution process and/or criminal justice process free from pressure by AMDA;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the Colleges courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few representatives of the College as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the Colleges, any student, the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the Colleges;
- Access to at least one level of appeal of a determination;
- Be accompanied by an Advisor of choice who may assist and advise a Complainant or a Respondent during any meetings and hearings under the Policy and procedures; and

- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or complaint resolution process of the Colleges.

IV. Prohibited Conduct

- A. This policy incorporates by reference all definitions of Prohibited Conduct contained in AMDA's Title IX Policy – which can be found here [[Title IX Policy](#)]. This policy is used for conduct that is prohibited by the Title IX Policy but is outside the jurisdiction of the Title IX policy.
- B. In addition to the Title IX Policy definitions, the following are prohibited by this policy:
 1. Sexual Harassment, defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
 - a. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - b. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - c. The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
 - d. Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.
 2. Sexual Violence, defined as physical sexual acts perpetrated against a person without the person's affirmative consent. Physical sexual acts include both of the following:
 - a. Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim
 - b. Sexual battery, defined as the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.
 3. Sexual Exploitation, defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:
 - a. the prostituting of another person;
 - b. the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
 - c. the recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, 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 the disclosure;

- d. the viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

4. Sex Offenses, defined as any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.

- a. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- b. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- c. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.
- d. Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - i. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - ii. For the purposes of this definition— (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. (B) Dating violence does not include acts covered under the definition of domestic violence.
- e. Domestic violence. (i) A felony or misdemeanor crime of violence committed
 - i. By a current or former spouse or intimate partner of the victim;
 - ii. By a person with whom the victim shares a child in common;
 - iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of New York if this is the jurisdiction in which the crime of violence occurred, or
 - v. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of New York if that is the jurisdiction in which the crime of violence occurred.
- f. Stalking (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - i. Fear for the person's safety or the safety of others; or
 - ii. Suffer substantial emotional distress.
 - iii. For the purposes of this definition— (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. (C) Substantial emotional distress means significant

mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

V. Definitions

- A. This policy incorporates by reference all other definitions contained in AMDA's Title IX Policy.
- B. In addition to these definitions, the following definitions are included under the purview of this policy:
 1. Responsible Employee - means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. Responsible Employee includes but is not limited to any of the following positions or job duties regardless of the specific job title:
 - Title IX Coordinator;
 - Residential advisors while performing the duties of employment by AMDA;
 - Housing directors, coordinators, or dean;
 - Student life director, coordinator or dean;
 - Athletic director, coordinator or dean;
 - Coaches of any student athletic or academic team or activity;
 - Faculty and associate faculty, teachers, instructors, or lecturers;
 - Graduate student instructors, while performing the duties of employment by AMDA;
 - Laboratory directors, coordinators or principal investigators;
 - Internship or externship directors or coordinators;
 - Study abroad program directors or coordinators.
 2. Excluded from the above are any individual acting in a professional capacity for which confidentiality is mandated by law. Such an individual shall inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.
 3. 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 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.
 - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent.
- Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

VI. Reporting Prohibited Sexual Harassment

A. Reporting to Law Enforcement and Public Safety

Under NY law, victims of sexual misconduct have the right to notify or decline to notify law enforcement. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred or may be helpful in obtaining protection or restraining orders from the police. The Department of Public Safety and other Institute representatives indicated below, are available to assist in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies.

For local Police and Emergency Assistance dial 911

For Public Safety:

AMDA Campus Security (24 hrs)

212-957-3391

Reporting Campus Assault to New York Police

844-845-7269

Urgent Care Manhattan

212-721-4200

Bellevue Hospital Sexual Assault Response Team SAFE Center

212-562-3435

New York Presbyterian Hospital DOVE (Domestic and Other Violent Emergencies)

212-305-9060

St. Luke's Roosevelt Hospital Crime Victims Treatment Center

212-523-4728

B. Resources

C. **Confidential Resources**

To discuss options and other support (including medical care, counseling, and advocacy) in a confidential setting with or without filing a formal complaint, these resources are available:

- Mental Health Counseling: LACounseling@amda.edu
- NY Mental Health Counseling: counselorNY@amda.edu
- National Sexual Assault Hotline: 800-656-HOPE (4673)
- National Resource Center on Domestic Violence Hotline: 800-799-SAFE (7233)

Information about public awareness and advocacy events and how information disclosed there is treated by the College

SAVR: <https://www.suny.edu/violence-response/>

Peace over Violence Rape and Battering Hotline*

213-626-3393

D. Notice of Allegations

AMDA has notice of sexual harassment or allegations of sexual harassment under this policy when such conduct is reported to a Responsible Employee or where such Responsible Employee, in the exercise of reasonable care, knew or should have known about the sexual harassment prohibited by this policy. However, all employees of AMDA are required to report sexual harassment, as defined and prohibited by this policy, to the Title IX Coordinator, consistent with the requests of the complainant as described below in Section XIV Confidentiality.

Regardless of whether or not a complaint has been filed under this policy, if AMDA knows, or should reasonably know, about possible sexual harassment involving individuals subject to AMDA's policy at the time of the alleged conduct, AMDA shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond unless AMDA determines that an investigation is not required or that it can honor a request for confidentiality.

E. Disclosing or Reporting to the Title IX Coordinator

Any person may disclose sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving

the person's oral or written report.

A disclosure may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator. Please click [here](#) to report any misconduct related to the Title IX and Sexual Misconduct policy.

Upon receipt of a disclosure of Prohibited Conduct, the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. The Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate safety or well-being concerns raised by the report.

In this intake assessment, the Title IX Coordinator will conduct a preliminary assessment and:

- Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
 - Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- Inform the Complainant about campus and community resources, including no-contact orders;
- Inform the Complainant of the right to file a Formal Complaint and the right to seek Informal Resolution after filing a Formal Complaint; ascertain the Complainant's expressed preference for resolution (Informal Resolution, Formal Resolution, or neither); and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution by AMDA;
 - Explain AMDA's prohibition against Retaliation and that AMDA will take prompt action in response to any act of Retaliation;
 - Inform the Complainant of the right to withdraw their complaint at any time;
 - Assess the nature and circumstances of the report, including whether it provides the names and/or other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
 - Ascertain the ages of the Parties, and if either of the parties is a minor (under 18), and follow any applicable reporting protocols;
 - Coordinate with appropriate officials regarding Clery Act reporting, if applicable and inform the complainant Clery counting/reporting, which does not personally identify parties;
 - Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet and discuss the resources and options, including information about STI's, forensic exams, and resources available through NYS Office of Victim Services.

- Assess any threat to the safety or well-being of the Complainant or the AMDA community. A non-exhaustive list of safety factors to be considered by AMDA includes a Respondent's prior history, use of a weapon, use of physical violence, age of the Complainant, and other aggravating circumstances.

Where the Complainant requests that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible taking into consideration the safety factors listed above and its legal obligations. The Title IX Coordinator will determine whether the Title IX Coordinator will sign a Formal Complaint even if the Complainant declines to do so. Where the Title IX Coordinator has determined that the Colleges must proceed with a Formal Complaint despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, AMDA's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that AMDA intends to proceed with the Formal Complaint, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by AMDA. In all cases, the initial report, intake assessment, and the determinations of the Title IX Coordinator will be documented and retained by AMDA in accordance with applicable law.

Bystander Reports

If AMDA receives a report of alleged sexual misconduct by someone other than the alleged victim (e.g., by a friend or coworker, roommate, resident advisor) or from an anonymous source, AMDA's Title IX Coordinator will promptly notify the alleged victim of the report, and inform the alleged victim of the available resources and assistance. To the extent possible, AMDA will respond to the report of sexual misconduct as if the victim had made the initial report.

Reports with Employee Respondents

Generally, allegations of Prohibited Conduct against an employee will be addressed by the Title IX Coordinator in partnership with AMDA's Human Resources. This includes student-employees when the Prohibited Conduct is alleged to have occurred in the context of their employment.

Reports with Third-Party Respondents

Any Respondent who is not an Institute student, faculty member, or staff member is generally considered a Third Party. AMDA's ability to take appropriate corrective action against a Third Party may be limited, and will depend on the nature of the Third Party's relationship, if any, to AMDA. AMDA Title IX Coordinator will determine which office(s) will address allegations against all other Third-Party Respondents.

F. Outreach/Information Packet

Additionally, upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, AMDA shall provide to the identifiable complainant, an information packet that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about:

- 1.The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order and the identification and location of witnesses;
- 2.How and to whom the alleged offense should be reported;
- 3.Options regarding law enforcement and campus authorities, including notification of the option to:
 - a. Notify proper law enforcement authorities, including the AMDA Department of Safety and Security and local police;
 - b. Be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
 - c. Decline to notify such authorities.
- 4.Where applicable, their rights and AMDA's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
- 5.Information about applicable and available services both at AMDA and in the community including information about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate;
- 6.Options for reasonably available assistance and accommodations and how to request them;
- 7.Information about the participation of victim advocates and other supporting individuals;
- 8.Confirmation or acknowledgment that AMDA has received a report that the student may have been a victim of sexual harassment;
- 9.A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited; and
10. A statement that this policy is established pursuant to and New York law and is consistent with Title IX for the investigation of student sexual harassment complaints.

AMDA's information packet for victims of sexual harassment as described in this policy can be found at is available from the Title IX Coordinator.

G. Implementation of Supportive Measures

AMDA shall treat parties equitably by offering Supportive Measures, as defined by the Title IX Policy, to the parties, and by following the grievance process in this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the respondent. AMDA will maintain as confidential any Supportive Measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of AMDA to provide the Supportive Measures. The Title IX Coordinator is responsible

for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator should record and retain records regarding requests and provision of Supportive Measures in accordance with the requirements set out at Section XVI, Record Keeping, below.

H. Requests for Accommodations

AMDA shall consider and respond to requests for accommodation relating to prior instances of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to AMDA's policies.

I. No-Contact Directives

1. Unilateral No-Contact Directives

- a. When requested by a complainant or otherwise determined to be appropriate, AMDA shall issue an interim, unilateral no-contact directive prohibiting the respondent from contacting the complaint during the pendency of the grievance process.
- b. Upon issuance of an interim no-contact directive, AMDA shall provide the parties with a written justification for the directive and an explanation of the terms of the directive, including the circumstances, if any, under which a violation could be subject to disciplinary action.
- c. Where a unilateral no-contact directive is issued after a decision of responsibility, it shall only apply against the party found responsible.

2. Mutual No-Contact Directives

- a. AMDA shall not automatically issue a mutual no-contact directive but shall consider the specific circumstances of each case to determine whether such a directive is appropriate to:
 - i. Protect the non-complaining party's safety or well-being; or
 - ii. To respond to interference in the grievance process.
- b. Upon issuance of a mutual no-contact directive, AMDA shall provide the parties with a written justification for the directive and an explanation of the terms of the directive, including the circumstances, if any, under which a violation could be subject to disciplinary action.

J. Interim Action

AMDA retains the authority to remove a respondent from AMDA's program or activity on an emergency basis, where AMDA (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If AMDA determines such removal is necessary, the parties will be provided notice and an opportunity to challenge the decision immediately following the removal, by

notifying the Title IX Coordinator in writing. AMDA will designate an individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

K. Administrative Leave

AMDA reserves the right to place a non-student employee respondent on administrative leave during the pendency of a grievance process under this policy.

L. Amnesty for Student Code of Conduct Violations

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

VII. Grievance Procedures Principles

A. Non-Adversarial Process

The investigation and adjudication of alleged misconduct is not an adversarial process between the complainant, the respondent(s), and the witnesses. It is a process for AMDA to comply with AMDA's obligations under existing law.

B. Evidentiary Standard

Any finding of responsibility, whether made via written determination after an investigation or via written determination after a live hearing shall use the *preponderance of the evidence* standard. This standard requires that *it is more likely than not* that the alleged conduct occurred.

C. Burden of Proof

1. The complainant does not have the burden of proving the underlying allegation(s) or allegation(s) of misconduct
2. The respondent does not have the burden of disproving the underlying allegation(s) or allegation(s) of misconduct.

3. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on AMDA and not on the parties, provided that AMDA cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless AMDA obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then AMDA must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).

- D. AMDA will require and ensure that any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person to facilitate an informal resolution process is neutral and does not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. AMDA may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.
- E. AMDA shall ensure that the investigation and adjudication of complaints is impartial and trauma-informed.
- F. All parties have an opportunity to have a support person or advisor accompany the party to any stage of the process. All parties have the right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. AMDA will provide a party with an advisor if the party is unable to.
- G. Extensions of Time in the Grievance Process

The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Such requests will not be unreasonably denied by AMDA where the request is related to a period of examination or school closure.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

- H. AMDA will provide periodic updates on the grievance process to the complainant and respondent consistent with the timelines referenced in this policy.

VIII. Evidentiary Principles

The following principles apply equally to the investigatory phase and the hearing

phase of a grievance process under this policy where a determination is made by AMDA that a hearing phase is necessary.

- A. An investigator and/or hearing officer shall not consider the past sexual history of a complainant or respondent except in the following limited circumstances:
 - 1. Only where prior or subsequent sexual history between the complainant and anyone other than the respondent is directly relevant to provide that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual;
 - 2. Where the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and respondent is relevant to how the parties communicated consent in prior or subsequent sexual relations.
- B. Where an investigator and/or hearing officer allows consideration of evidence of a dating relationship or prior or subsequent consensual sexual relations between complainant and respondent pursuant to the above, the mere fact that complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, in isolation, to establish that the conduct in question was consensual.
- C. Prior to allowing consideration of any evidence described in this section, the investigator and/or hearing officer shall provide a written explanation to the parties as to why consideration of this evidence is consistent with these standards.
- D. Parties shall be given the opportunity to identify witnesses and other evidence to assist in determining whether a violation of this policy has occurred. Parties are informed that any evidence available, but not disclosed during the investigation, might not be considered at a subsequent hearing, if such a hearing takes place.

IX. Informal Resolution of Complaints of Prohibited Sexual Harassment

- A. Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility AMDA may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that AMDA:
 - 1. Provides to the parties a written notice disclosing:
 - a. The allegations;
 - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the complaint; and
 - c. Obtains the parties' voluntary, written consent to the informal resolution process and does not offer or facilitate an informal

resolution process to resolve allegations that an employee sexually harassed a student.

2. Completes the informal resolution process within sixty (60) days of receiving the complaint, unless unusual or complex circumstances exist

- B. AMDA cannot mandate mediation to resolve allegations of sexual harassment and cannot allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.
- C. AMDA will not require informal resolution as a prerequisite to the receipt of remedial measures from AMDA which safeguard the complainant's access to education.
- D. AMDA does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. AMDA shall not require the parties to participate in an informal resolution process.

X. Procedural Steps for Investigation of Complaints

A. Notice of Investigation

The AMDA's Title IX Coordinator initiates the investigation process by providing written notification to both parties that AMDA is conducting a formal investigation into the complaint (a Formal Complaint, as defined in the Title IX Policy is not required). This written notification shall contain the following:

- 1. This policy;
- 2. Notice of the allegations of prohibited conduct as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date, time, and location of the alleged incident, if known, and factual allegations concerning the violation;
- 3. Identification of the alleged institutional policy violations under review;
- 4. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- 5. A statement on the possible sanctions.
- 6. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
- 7. Notice to the parties regarding appropriate counseling resources developed and maintained by AMDA for parties in misconduct matters involving sexual harassment;
- 8. Notification to the parties that they may inspect and review evidence, as set forth in this policy; and

- 9.A statement (or reference to any provision in AMDA's code of conduct) that AMDA prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
10. Notice to the parties they have a right to written or electronic notice of any meeting they are required or eligible to attend

B. Consolidation of Related Complaints

Where multiple complaints arise out of the same set of factual allegations or where multiple policies may be implicated by the same set of factual allegations, AMDA reserves the discretion to bifurcate, consolidate and/or combine the investigation and/or adjudication of those complaints.

C. Amended Notice of Investigation

If, in the course of an investigation, AMDA decides to investigate allegations about the complainant or respondent that are not included in the initial notice of investigation, AMDA must provide notice of the additional allegations to the parties whose identities are known.

- D. If not serving as the Investigator, the Title IX Coordinator will appoint an Investigator, who may be an employee or official of AMDA or may be an external investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed Investigator and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Title IX Coordinator within three (3) days of notice of the appointment. The Title IX Coordinator will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not

- E. When investigating a complaint, AMDA shall, within 30 days of notifying the parties of the investigation, unless unusual or complex circumstances exist:

1. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process;
2. Provide both parties an equal opportunity to provide, inspect, and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including the evidence upon which AMDA does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
3. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10)

- days to submit a written response, which the investigator will consider prior to completion of the investigative report;
4. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
 5. Create an investigative report that fairly summarizes relevant evidence.
- F. At least ten (10) days prior to a hearing, if one is held, or other time of determination regarding responsibility, the Title IX Coordinator shall send to each party and the party's advisor, if any, the investigative report in in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator shall provide it to the decision-maker(s).

XI. Hearings for Complaints of Prohibited Sexual Harassment

- A. Following the investigation, AMDA shall make a determination as to whether a live hearing is necessary to determine whether the alleged conduct is more likely than not to have occurred. In making this determination, AMDA shall consider:
- Whether the parties elected to participate in the investigation;
 - Whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation; and
 - Whether the credibility of witnesses is at issue and significant disciplinary sanctions are possible such that a live hearing would help to resolve credibility determinations.

Where AMDA has determined that it is appropriate and necessary to hold a live hearing, the following procedures shall be used:

- B. Following the investigation, within 30 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, AMDA shall conduct a live hearing in front of the decision-maker(s), which may be an individual or a Review Panel, for the purposes of determining responsibility for allegations of sexual harassment in the complaint. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s). Decision-maker(s) may include internal employees or external third-parties contracted by AMDA. If using a Review Panel, the Title IX Coordinator will choose three Review Panel members from its pool to attend the hearing and make determinations. All potential Review Panel members will receive annual training as specified by this policy. The parties each may challenge the participation of any member of the Review Panel for conflict of interest or other good cause. The Title IX Coordinator will make the final decision whether to select an alternate upon a challenge from a party. If using a Review Panel, the Title IX Coordinator will appoint a member of the Review Panel to be Chair of the Review Panel.
- C. Pre-Hearing Procedures

- 1.The parties shall separately participate in a pre-hearing meeting with the decision maker(s) to discuss the process and administration of the live hearing.
- 2.Prior to or during this meeting, the decision maker(s) will set the deadlines for submitting and exchanging the names of witnesses, evidence and pre-hearing questions.
- 3.All parties shall have the opportunity to submit written questions to the decision maker(s) in advance of the live hearing.
- 4.The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the complainant and respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
- 5.Live hearings may be conducted with all parties physically present in the same geographic location or, at AMDA's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- 6.At the request of either party, AMDA shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- 7.The decision maker(s) shall provide an explanation of the meaning of the *preponderance of the evidence* standard and affirm that it will apply to the adjudication of the issues before the decision maker(s).

D. Questioning at the Live Hearing

- 1.The parties shall have the opportunity to submit written questions to the decision maker(s) in advance of the hearing;
- 2.No direct examination or cross examination of any party or witness shall be conducted by a party or party advisor. Direct examination or cross examination will only be conducted by the decision maker(s);
- 3.The decision maker(s) shall prohibit questions of either party or of any witnesses that are repetitive, irrelevant or harassing;
- 4.The parties or their advisors shall have the opportunity to note a written objection to the question(s) posed. Neither the decision maker(s) nor AMDA are obligated to respond to the objection – other than to include any objection in the record.
- 5.The decision maker(s) shall have the authority and obligation to discard or rephrase any question that the decision maker(s) determines to be repetitive, irrelevant, or harassing.
- 6.Generally, the parties or their advisor(s) may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. The decision maker(s) has the discretion, for good cause, to accept or exclude such new evidence offered at the hearing.

E. Use of Witness Statements

- 1.If a party or witness does not submit to cross examination at the live hearing, for cases involving significant disciplinary sanctions against students, the decision maker(s) must not rely on any statement of that party or witness that has not been subject to cross-examination when making a credibility determination but may reach a determination based on evidence that does not constitute a statement by the party. For purposes of this paragraph, cross examination refers to questions posed by the decision maker(s), whether its own or questions provided by a party.
- 2.The decision maker(s), cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions

F. Impact Statements

Both parties may provide an impact to the decisionmaker(s) at the conclusion of the hearing, in writing. The decisionmaker will read and consider these statements if there is a finding of responsibility and sanctions are to be imposed.

G. Written Determination of the Decision-Maker(s)

- 1.Either after the submission of the final investigative report if there is no live hearing or after the completion of the live hearing, unless unusual or complex circumstances exist, the decision-maker shall issue a written determination regarding responsibility. Such a written determination shall be issued within fourteen days of the conclusion of the live hearing or, if there is no hearing, of the submission of the final investigative report to the parties.
- 2.If the decision-maker is a Review Panel, a majority of the Review Panel members must find that a policy violation occurred and a majority of the Review Panel members must assent to any sanction(s) imposed. To reach this determination, the decision-maker(s) must utilize the preponderance of the evidence standard.
- 3.The written determination must be sent simultaneously to both parties and must include:
 - a. Notice of the outcome of the complaint including identification of the allegations potentially constituting sexual harassment as defined by this policy;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of AMDA's policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed

- to restore or preserve equal access to AMDA's education program or activity will be provided to the complainant; and
- f. The procedures and permissible bases for appeal, as set forth in this policy.
4. In the written determination, AMDA shall provide assurances that it will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
5. The determination regarding responsibility becomes final either on the date that AMDA provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely

XII. Appeals

A. Grounds

Within ten (10) days receiving the written determination, either party may appeal from a determination of responsibility, and from AMDA's dismissal of a complaint or any allegations therein, on the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), and/or decision-makers had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The appeal must be made in writing and sent to the Title IX Coordinator.

B. Response to Appeals

As to all appeals, the Title IX Coordinator (or designee) shall:

1. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the panel for the appeal does not include the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
3. Ensure that the panel for the appeal complies with the standards set forth in this policy; and
4. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within ten (10) days of receipt of the appeal, which shall be transmitted within two (2) business days to the appeals panel.

C. Decision on Appeal

Within twenty (20) days of receiving the appeal and the response, the appeal panel

shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The appeals panel may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the appeals panel shall identify which aspects merit further review.

XIII. Remedies and Sanctions

- A. Remedies must be designed to restore or preserve equal access to AMDA's education program or activity.
- B. In determining appropriate sanctioning, past findings of violations of AMDA's policies may be considered.
- C. A student found responsible for a violation of this policy will be subject to sanction(s) regardless of whether legal proceedings involving the same incident are underway or anticipated. An employee found responsible for a violation of this policy will be subject to sanction(s) up to and including termination of employment.
- D. Possible sanctions and remedies that AMDA may implement following any determination of responsibility against a student may include: expulsion, withdrawal of an awarded degree, a no contact order, written warning, suspension, a fine, restitution, community service, probation, reference to counseling, termination of employment, and notation in the respondent's official student or personnel file of the fact of the violation and the sanction.
- E. The Title IX Coordinator is responsible for effective implementation of any remedies.

XIV. Confidentiality

- A. Consistent with the requirements of this policy, AMDA shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that AMDA will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know, and, in order to process complaints under this policy. Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for AMDA to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct

In most cases, Confidential Resources at AMDA will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that AMDA will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with Confidential Resources. Reports or records maintained by AMDA (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of AMDA's compilation of campus crime statistics. In addition, when appropriate and legally permissible, AMDA shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally-identifiable information of any complainants.

AMDA's offices and employees who cannot guarantee confidentiality will maintain the individual's privacy to the greatest extent possible. Information provided to a non-confidential resource will only be relayed as necessary for the Title IX coordinator to investigate and/or seek a resolution.

Note that AMDA will maintain as confidential any supportive measures provided to a party, to the extent that maintaining such confidentiality would not impair the ability of AMDA to provide the support measures. AMDA will keep confidential who has made a report or complaint of sex discrimination, including sexual harassment, as well as any respondent or witness, outside of necessary disclosures of information to comply with federal and state law, and to conduct an investigation or hearing under this Policy.

As to matters involving students, under federal privacy laws, the investigative report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by AMDA, including documents by or for the adjudicators in advance of the hearing and the hearing transcript, constitute

education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. Access to materials will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this policy. Inappropriately sharing materials provided during this process may constitute retaliation and result in disciplinary action.

XV. Training

AMDA provides training to all non-confidential responsible employees, as defined above, relating to sexual harassment. AMDA requires all non-confidential responsible employees, as defined below, to report sexual harassment and has provided direction and training as to the reporting of sexual harassment.

All employees of AMDA are provided training on the identification of sexual harassment including training on the process of notification to the appropriate institutional official(s). All employees are notified of their obligation to report sexual harassment to the appropriate institutional officials.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of AMDA's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual comprehensive, trauma-informed training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The trainings these individuals receive will also encompass the Rights of the Respondent along with information on Institutional policies and procedures.

Such training will address the effects of trauma, trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual violence complaint, best practices for questioning of the complainant, respondent, and witnesses, and implicit bias and racial inequities, both broadly and in school disciplinary processes.

Materials shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

XVI. Recordkeeping

A. AMDA shall maintain for a period of seven years records of:

1. Each investigation conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to AMDA's education programs or activities;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. Records of any actions, including any Supportive Measures, taken in response to a report or complaint under this policy. In each instance, AMDA will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to AMDA's education program or activity. If AMDA does not provide a complainant with Supportive Measures, then AMDA must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit AMDA in the future from providing additional explanations or detailing additional measures taken.

XVII. Effective Date

This policy is effective as September 18, 2023 and was approved by AMDA's Chief Operating Officer, Chief of Staff, General Counsel, and Vice President of Equity on September 11, 2023.

VII. Appendix C: Administrative Resolution for Non-Title IX Offenses (Los Angeles)

This appendix shall apply to complaints that involve incidents of sexual misconduct at AMDA Los Angeles and do not fall under Title IX.

I. Policy Overview

This policy sets forth the American Musical and Dramatic Academy's (AMDA) obligations under the California Education Code as it relates to sexual harassment against students that is not covered under the jurisdiction of the AMDA's [Title IX Policy](#).

In addition to the requirements under federal law to respond to certain instances of harassment and violence, California has state laws that require additional steps or actions. Please know that in all cases, [you may reach out](#) to the Title IX and Equity Coordinator or Deputy with questions or to understand specific elements of this Policy and its application.

II. Notice of Non-Discrimination

Pursuant to California Education Code Section 66281.5, it is the policy of AMDA that all persons, regardless of sex, should enjoy freedom from discrimination of any kind at AMDA.

Our Title IX Coordinator for purposes of Title IX compliance as well as for the purposes described in section 66281.8 of the California Education Code is:

Eugene Smith, EdD
esmith@amda.edu
(650) 383-4753, ext. 138
6305 Yucca Street
Los Angeles, CA, 90028
Office: 8th Floor Tower Building

III. Scope

This policy applies to all actively enrolled students, as well as faculty and staff who experience prohibited sexual harassment involving any individual subject to AMDA's policies, including students, employees and third parties where applicable, in connection with any educational activity or other program of AMDA, as well as incidents that occurred outside of those educational activities or programs, whether they occurred on or off-campus, if, based on the allegations, there is any reason to believe that the incident(s) could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

IV. Prohibited Conduct

- A. This policy incorporates by reference all definitions of Prohibited Conduct contained in AMDA's Title IX Policy – which can be found here [[Title IX Policy](#)]. This policy is used for conduct that is prohibited by the Title IX Policy but is outside the scope of that policy.
- B. In addition to the Title IX Policy definitions, the following are prohibited by this policy:
 - 1. Sexual Harassment, defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
 - a. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - b. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - c. The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
 - d. Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.
 - 2. Sexual Violence, defined as physical sexual acts perpetrated against a person without the person's affirmative consent. Physical sexual acts include both of the following:
 - a. Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim
 - b. Sexual battery, defined as the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.
 - 3. Sexual Exploitation, defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:
 - a. the prostituting of another person;
 - b. the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;

- c. the recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, 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 the disclosure;
 - d. the viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.
- 4. Sex Offenses, defined as any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.
 - a. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - b. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - c. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.
 - d. Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - i. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - ii. For the purposes of this definition— (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. (B) Dating violence does not include acts covered under the definition of domestic violence.
 - e. Domestic violence. (i) A felony or misdemeanor crime of violence committed
 - i. By a current or former spouse or intimate partner of the victim;
 - ii. By a person with whom the victim shares a child in common;
 - iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of New York if this is the jurisdiction in which the crime of violence occurred, or
 - v. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of New York if that is the jurisdiction in which the crime of violence occurred.
 - f. Stalking (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - i. Fear for the person's safety or the safety of others; or
 - ii. Suffer substantial emotional distress.
 - iii. For the purposes of this definition— (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly,

indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

V. Definitions

A. In addition to those definition contained in AMDA's Title IX Policy; the following definitions are included under the purview of this policy:

1. Responsible Employee - means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. Responsible Employee includes but is not limited to any of the following positions or job duties regardless of the specific job title:

- Title IX Coordinator;
- Residential advisors while performing the duties of employment by AMDA;
- Housing directors, coordinators, or dean;
- Student life director, coordinator or dean;
- Athletic director, coordinator or dean;
- Coaches of any student athletic or academic team or activity;
- Faculty and associate faculty, teachers, instructors, or lecturers;
- Graduate student instructors, while performing the duties of employment by AMDA;
- Laboratory directors, coordinators or principal investigators;
- Internship or externship directors or coordinators;
- Study abroad program directors or coordinators.

2. Excluded from the above are any individual acting in a professional capacity for which confidentiality is mandated by law. Such an individual shall inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

3. Affirmative Consent: means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence

mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

VI. Reporting Prohibited Sexual Harassment

AMDA Campus Security (24 hrs)
(323) 603-5937

A. Confidential Resources

To discuss options and other support (including medical care, counseling, and advocacy) in a confidential setting with or without filing a formal complaint, these resources are available:

- Mental Health Counseling: LACounseling@amda.edu
- NY Mental Health Counseling: counselorNY@amda.edu
- National Sexual Assault Hotline: 800-656-HOPE (4673)
- National Resource Center on Domestic Violence Hotline: 800-799-SAFE (7233)

Information about public awareness and advocacy events and how information disclosed there is treated by the College

Rape and Treatment Center at Santa Monica-UCLA
(424) 259-7208

YWCA of Los Angeles
(877) HELPS-U (877-943-5778)

Los Angeles LGBTQ Center - <https://lalgbtcenter.org/social-service-and-housing/legal-services/anti-violence-project-legal-advocacy-project-for-survivors>.

A. Notice of Allegations

AMDA has notice of sexual harassment or allegations of sexual harassment under this policy when such conduct is reported to a Responsible Employee or where such Responsible Employee, in the exercise of reasonable care, knew or should have known about the sexual harassment prohibited by this policy. However, all employees of AMDA are required to report sexual harassment, as defined and prohibited by this policy, to the Title IX Coordinator, consistent with the requests of the complainant as described below in Section XIV, Confidentiality.

Regardless of whether or not a complaint has been filed under this policy, if AMDA

knows, or should reasonably know, about possible sexual harassment involving individuals subject to AMDA's policy at the time of the alleged conduct, AMDA shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond unless AMDA determines that an investigation is not required or that it can honor a request for confidentiality.

B. Requests for the Process to Not Move Forward Made by Complainants

1. A complainant may request that the process not move forward (sometimes referred to as confidentiality), even when such a request may preclude a meaningful investigation or potential discipline of the potential respondent or that no investigation or disciplinary action be pursued to address the alleged sexual harassment.
2. AMDA will consider such a request seriously and will generally grant such requests. However, given AMDA's legal responsibility to provide a safe and nondiscriminatory environment for all students, AMDA may disclose a complainant's identity and/or proceed with an investigation over the objection of complainant where AMDA considers whether any of the following apply:
 - a. there are multiple or prior reports of sexual harassment or misconduct against the respondent or the incident represents escalation of conduct from previously noted behavior;
 - b. the respondent allegedly used a weapon, physical restraints, and/or engaged in battery;
 - c. the respondent is a faculty or staff member with oversight of students;
 - d. there is a power imbalance between complainant and respondent;
 - e. complainant believes that the complainant will be less safe if complainant's name is disclosed and/or an investigation is conducted;
 - f. complainant is a minor;
 - g. AMDA is able to conduct a thorough investigation and obtain relevant evidence in the absence of complainant's cooperation or if available information represents a pattern of perpetration at a given location or by a particular group.
3. Where AMDA determines that it must disclose complainant's identity to respondent and/or proceed with an investigation:
 - a. AMDA shall notify complainant prior to making the disclosure and/or initiating the investigation.
 - b. AMDA shall take immediate steps to provide for the safety of complainant where appropriate.
 - c. Upon the request of complainant, AMDA shall notify respondent that complainant requested the AMDA not investigate or seek discipline.
4. Where AMDA determines that it can honor complainant's request to not move forward in the process, AMDA shall take reasonable steps to respond to the complaint, consistent with complainant's request, to limit the effects of the alleged sexual harassment and prevent recurrence

without formal action against the alleged respondent. These steps may include, but are not limited to:

- a. Monitoring, supervision and/or security at the location(s) or activities where the alleged harassment occurred;
- b. Providing additional training and/or educational materials to students and employees;
- c. Conducting climate surveys regarding sexual violence and harassment

5. Where AMDA determines that it can honor complainant's request to not move forward in the process, AMDA shall take immediate steps to provide for the safety of complainant while keeping complainant's identity confidential as appropriate. Complainant shall be notified that the steps may be limited by the request not to move forward in the process.

These steps may include:

- a. Changing living arrangements;
- b. Changing course schedules, assignments or tests.

C. Response to Report

Upon a report of sexual harassment, where there is an identifiable complainant, the Title IX Coordinator (or designee) will promptly contact the complainant to:

1. Confirm that AMDA has received a report that the student may have been a victim of sexual harassment;
2. Discuss the availability of Supportive Measures;
3. Consider the complainant's wishes with respect to Supportive Measures;
4. Inform the complainant of the availability of Supportive Measures with or without the filing of a complaint;
5. Explain to the complainant the process for filing a complaint and explain AMDA's investigation process including the manner in which AMDA responds to reports of sexual harassment and a description of potential disciplinary consequences;
6. Request that the student meet with the Title IX Coordinator (or designee) to discuss options for responding to the report.
7. The Title IX Coordinator will inform the complainant that an investigation may be initiated even where the complainant chooses not to file a complaint, as required by California law, unless specifically requested by the complainant not to initiate an investigation. AMDA, consistent with California law, shall make the decision whether an investigation should occur.

D. Outreach/Information Packet

Additionally, upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, AMDA shall provide to the identifiable complainant, an

information packet that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about:

- 1.The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order and the identification and location of witnesses;
- 2.How and to whom the alleged offense should be reported;
- 3.Options regarding law enforcement and campus authorities, including notification of the option to:
 - a. Notify proper law enforcement authorities, including the AMDA Department of Safety and Security and local police;
 - b. Be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
 - c. Decline to notify such authorities.
- 4.Where applicable, their rights and AMDA's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
- 5.Information about applicable and available services both at AMDA and in the community including information about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate;
- 6.Options for reasonably available assistance and accommodations and how to request them;
- 7.Information about the participation of victim advocates and other supporting individuals;
- 8 Confirmation or acknowledgment that AMDA has received a report that the student may have been a victim of sexual harassment;
- 9.A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited; and
10. A statement that this policy is established pursuant to California law and is consistent with Title IX for the investigation of student sexual harassment complaints.

AMDA's information packet for victims of sexual harassment as described in this policy can be found at is available from the Title IX Coordinator.

E. Implementation of Supportive Measures

AMDA shall treat parties equitably by offering Supportive Measures, as defined by the Title IX Policy, to the parties, and by following the grievance process in this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the respondent. AMDA will maintain as confidential any Supportive Measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of AMDA to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX

Coordinator should record and retain records regarding requests and provision of Supportive Measures in accordance with the requirements set out at Section XVI, Record Keeping, below.

F. Requests for Accommodations

AMDA shall consider and respond to requests for accommodation relating to prior instances of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to AMDA's policies.

G. No-Contact Directives

1. Unilateral No-Contact Directives

- a. When requested by a complainant or otherwise determined to be appropriate, AMDA shall issue an interim, unilateral no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the grievance process.
- b. Upon issuance of an interim no-contact directive, AMDA shall provide the parties with a written justification for the directive and an explanation of the terms of the directive, including the circumstances, if any, under which a violation could be subject to disciplinary action.
- c. Where a unilateral no-contact directive is issued after a decision of responsibility, it shall only apply against the party found responsible.

2. Mutual No-Contact Directives

- a. AMDA shall not automatically issue a mutual no-contact directive but shall consider the specific circumstances of each case to determine whether such a directive is appropriate to:
 - i. Protect the non-complaining party's safety or well-being;
 - or
 - ii. To respond to interference in the grievance process.
- b. Upon issuance of a mutual no-contact directive, AMDA shall provide the parties with a written justification for the directive and an explanation of the terms of the directive, including the circumstances, if any, under which a violation could be subject to disciplinary action.

H. Interim Action

AMDA retains the authority to remove a respondent from AMDA's program or activity on an emergency basis, where AMDA (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If AMDA determines such removal is necessary, the parties will be provided notice and an opportunity to challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. AMDA will designate an individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

I. Administrative Leave

AMDA reserves the right to place a non-student employee respondent on administrative leave during the pendency of a grievance process under this policy.

J. Amnesty for Student Code of Conduct Violations

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

VII. Grievance Procedures Principles

A. Non-Adversarial Process

The investigation and adjudication of alleged misconduct is not an adversarial process between the complainant, the respondent(s), and the witnesses. It is a process for AMDA to comply with AMDA's obligations under existing law.

B. Evidentiary Standard

Any finding of responsibility, whether made via written determination after an investigation or via written determination after a live hearing shall use the *preponderance of the evidence* standard. This standard requires that *it is more likely than not* that the alleged conduct occurred.

C. Burden of Proof

1. The complainant does not have the burden of proving the underlying allegation(s) or allegation(s) of misconduct

- 2.The respondent does not have the burden of disproving the underlying allegation(s) or allegation(s) of misconduct.
- 3.The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on AMDA and not on the parties, provided that AMDA cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless AMDA obtains that party’s voluntary, written consent to do so for a grievance process under this section (if a party is not an “eligible student,” as defined in 34 CFR 99.3, then AMDA must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR 99.3).

- D. AMDA will require and ensure that any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person to facilitate an informal resolution process is neutral and does not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. AMDA may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.
- E. AMDA shall ensure that the investigation and adjudication of complaints is impartial and trauma-informed.
- F. All parties have an opportunity to have a support person or advisor accompany the party to any stage of the process. All parties have the right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. AMDA will provide a party with an advisor if the party is unable to.
- G. Extensions of Time in the Grievance Process

The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Such requests will not be unreasonably denied by AMDA where the request is related to a period of examination or school closure.

Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

- H. AMDA will provide periodic updates on the grievance process to the complainant and respondent consistent with the timelines referenced in this policy.

VIII. Evidentiary Principles

The following principles apply equally to the investigatory phase and the hearing phase of a grievance process under this policy where a determination is made by AMDA that a hearing phase is necessary.

- A. An investigator and/or decision maker shall not consider the past sexual history of a complainant or respondent except in the following limited circumstances:
 - 1. Only where prior or subsequent sexual history between the complainant and anyone other than the respondent is directly relevant to provide that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual;
 - 2. Where the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and respondent is relevant to how the parties communicated consent in prior or subsequent sexual relations.
- B. Where an investigator and/or decision maker allows consideration of evidence of a dating relationship or prior or subsequent consensual sexual relations between complainant and respondent pursuant to the above, the mere fact that complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, in isolation, to establish that the conduct in question was consensual.
- C. Prior to allowing consideration of any evidence described in this section, the investigator and/or decision maker shall provide a written explanation to the parties as to why consideration of this evidence is consistent with these standards.
- D. Parties shall be given the opportunity to identify witnesses and other evidence to assist in determining whether a violation of this policy has occurred. Parties are informed that any evidence available, but not disclosed during the investigation, might not be considered at a subsequent hearing, if such a hearing takes place.

IX. Informal Resolution of Complaints of Prohibited Sexual Harassment

- A. Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility AMDA may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that AMDA:
 - 1. Provides to the parties a written notice disclosing:
 - a. The allegations;
 - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the

- right to withdraw from the informal resolution process and resume the grievance process with respect to the complaint; and
 - c. Obtains the parties' voluntary, written consent to the informal resolution process and does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
2. Completes the informal resolution process withing sixty (60) days of receiving the complaint, unless unusual or complex circumstances exist
- B. AMDA cannot mandate informal resolution to resolve allegations of sexual harassment and cannot allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.
 - C. AMDA will not require informal resolution as a prerequisite to the receipt of remedial measures from AMDA which safeguard the complainant's access to education.
 - D. AMDA does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. AMDA shall not require the parties to participate in an informal resolution process.

X. Procedural Steps for Investigation of Complaints

A. Notice of Investigation

The AMDA's Title IX Coordinator initiates the investigation process by providing written notification to both parties that AMDA is conducting a formal investigation into the complaint (a Formal Complaint, as defined in the Title IX Policy is not required). This written notification shall contain the following:

1. This policy [attached];
2. Notice of the allegations of prohibited conduct as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known;
3. Identification of the alleged institutional policy violations under review;
4. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
5. A statement on the possible sanctions.
6. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;

7. Notice to the parties regarding appropriate counseling resources developed and maintained by AMDA for parties in misconduct matters involving sexual harassment;
8. Notification to the parties that they may inspect and review evidence, as set forth in this policy; and
9. A statement (or reference to any provision in AMDA's code of conduct) that AMDA prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
10. Notice to the parties they have a right to written or electronic notice of any meeting they are required or eligible to attend

B. Consolidation of Related Complaints

Where multiple complaints arise out of the same set of factual allegations or where multiple policies may be implicated by the same set of factual allegations, AMDA reserves the discretion to bifurcate, consolidate and/or combine the investigation and/or adjudication of those complaints.

C. Amended Notice of Investigation

If, in the course of an investigation, AMDA decides to investigate allegations about the complainant or respondent that are not included in the initial notice of investigation, AMDA must provide notice of the additional allegations to the parties whose identities are known.

- D. If not serving as the Investigator, the Title IX Coordinator will appoint an Investigator, who may be an employee or official of AMDA or may be an external investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed Investigator and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Title IX Coordinator within three (3) days of notice of the appointment. The Title IX Coordinator will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not

- E. When investigating a complaint, AMDA shall, within 30 days of notifying the parties of the investigation, unless unusual or complex circumstances exist:
1. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process;
 2. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including the evidence upon which AMDA does not intend to rely in reaching a determination regarding

- responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
3. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report;
 4. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
 5. Create an investigative report that fairly summarizes relevant evidence.
- F. At least ten (10) days prior to a hearing, if one is held, or other time of determination regarding responsibility, the Title IX Coordinator shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator shall provide it to the decision-maker(s).

XI. Hearings for Complaints of Prohibited Sexual Harassment

- A. Following the investigation, AMDA shall make a determination as to whether a live hearing is necessary to determine whether the alleged conduct is more likely than not to have occurred. In making this determination, AMDA shall consider:
- Whether the parties elected to participate in the investigation;
 - Whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation; and
 - Whether the credibility of witnesses is at issue and significant disciplinary sanctions are possible such that a live hearing would help to resolve credibility determinations.

Where AMDA has determined that it is appropriate and necessary to hold a live hearing, the following procedures shall be used:

- B. Following the investigation, within 30 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, AMDA shall conduct a live hearing in front of the decision-maker(s), which may be an individual or a Review Panel, for the purposes of determining responsibility for allegations of sexual harassment in the complaint. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s). Decision-maker(s) may include internal employees or external third-parties

contracted by AMDA. If using a Review Panel, the Title IX Coordinator will choose three Review Panel members from its pool to attend the hearing and make determinations. All potential Review Panel members will receive annual training as specified by this policy. The parties each may challenge the participation of any member of the Review Panel for conflict of interest or other good cause. The Title IX Coordinator will make the final decision whether to select an alternate upon a challenge from a party. If using a Review Panel, the Title IX Coordinator will appoint a member of the Review Panel to be Chair of the Review Panel.

C. Pre-Hearing Procedures

1. The parties shall separately participate in a pre-hearing meeting with the decision maker(s) to discuss the process and administration of the live hearing.
2. Prior to or during this meeting, the decision maker(s) will set the deadlines for submitting and exchanging the names of witnesses, evidence and pre-hearing questions.
3. All parties shall have the opportunity to submit written questions to the decision maker(s) in advance of the live hearing.
4. The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the complainant and respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
5. Live hearings may be conducted with all parties physically present in the same geographic location or, at AMDA's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
6. At the request of either party, AMDA shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
7. The decision maker(s) shall provide an explanation of the meaning of the *preponderance of the evidence* standard and affirm that it will apply to the adjudication of the issues before the decision maker(s).

D. Questioning at the Live Hearing

1. The parties shall have the opportunity to submit written questions to the decision maker(s) in advance of the hearing;
2. No direct examination or cross examination of any party or witness shall be conducted by a party or party advisor. Direct examination or cross examination will only be conducted by the decision maker(s);
3. The decision maker(s) shall prohibit questions of either party or of any witnesses that are repetitive, irrelevant or harassing;

- 4.The parties or their advisors shall have the opportunity to note a written objection to the question(s) posed. Neither the decision maker(s) nor AMDA are obligated to respond to the objection – other than to include any objection in the record.
- 5.The decision maker(s) shall have the authority and obligation to discard or rephrase any question that the decision maker(s) determines to be repetitive, irrelevant, or harassing. In making these determinations, the decision maker(s) is not bound by, but may take guidance from, the California Rules of Evidence.
- 6.Generally, the parties or their advisor(s) may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. The decision maker(s) has the discretion, for good cause, to accept or exclude such new evidence offered at the hearing.

E. Use of Witness Statements

- 1.If a party or witness does not submit to cross examination at the live hearing, for cases involving significant disciplinary sanctions against students, the decision maker(s) must not rely on any statement of that party or witness that has not been subject to cross-examination when making a credibility determination but may reach a determination based on evidence that does not constitute a statement by the party. For purposes of this paragraph, cross examination refers to questions posed by the decision maker(s), whether its own or questions provided by a party.
- 2.The decision maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions

F. Impact Statements

Both parties may provide an impact to the decisionmaker(s) at the conclusion of the hearing, in writing. The decisionmaker will read and consider these statements if there is a finding of responsibility and sanctions are to be imposed.

G. Written Determination of the Decision-Maker(s)

- 1.Either after the submission of the final investigative report if there is no live hearing or after the completion of the live hearing, unless unusual or complex circumstances exist, the decision-maker shall issue a written determination regarding responsibility. Such a written determination shall be issued within fourteen days of the conclusion of the live hearing or, if there is no hearing, of the submission of the final investigative report to the parties.
- 2.If the decision-maker is a Review Panel, a majority of the Review Panel members must find that a policy violation occurred and a majority of the

Review Panel members must assent to any sanction(s) imposed. To reach this determination, the decision-maker(s) must utilize the preponderance of the evidence standard.

3. The written determination must be sent simultaneously to both parties and must include:

- a. Notice of the outcome of the complaint including identification of the allegations potentially constituting sexual harassment as defined by this policy;
- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of AMDA's policy to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to AMDA's education program or activity will be provided to the complainant; and
- f. The procedures and permissible bases for appeal, as set forth in this policy.

4. In the written determination, AMDA shall provide assurances that it will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

5. The determination regarding responsibility becomes final either on the date that AMDA provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely

XII. Appeals

A. Grounds

Within ten (10) days receiving the written determination, either party may appeal from a determination of responsibility, and from AMDA's dismissal of a complaint or any allegations therein, on the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), and/or decision-makers had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The appeal must be made in writing and sent to the Title IX Coordinator.

B. Response to Appeals

As to all appeals, the Title IX Coordinator (or designee) shall:

1. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal are not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy; and
4. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within ten (10) days of receipt of the appeal, which shall be transmitted within two (2) business days to the appeal decision-maker(s).

C. Decision on Appeal

Within twenty (20) days of receiving the appeal and the response, the appeal decision-maker(s) shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The appeal decision-maker(s) may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the appeal decision-maker(s) shall identify which aspects merit further review.

XIII. Remedies and Sanctions

- A. Remedies must be designed to restore or preserve equal access to AMDA's education program or activity.
- B. A student found responsible for a violation of this policy will be subject to sanction(s) regardless of whether legal proceedings involving the same incident are underway or anticipated. An employee found responsible for a violation of this policy will be subject to sanction(s) up to and including termination of employment.
- C. Possible sanctions and remedies that AMDA may implement following any determination of responsibility against a student may include: expulsion, withdrawal of an awarded degree, a no contact order, written warning, suspension, a fine, restitution, community service, probation, reference to counseling, termination of employment, and notation in the respondent's official student or personnel file of the fact of the violation and the sanction.

- D. The Title IX Coordinator is responsible for effective implementation of any remedies.

XIV. Confidentiality

- A. Consistent with the requirements of this policy, AMDA shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that AMDA will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know, and, in order to process complaints under this policy.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for AMDA to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct

Counselors and medical providers working at or on behalf of AMDA are Confidential Resources. In most cases, Confidential Resources at AMDA will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that AMDA will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with Confidential Resources. Reports or records maintained by AMDA (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of AMDA's compilation of campus crime statistics. In addition, when appropriate and legally permissible, AMDA shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally identifiable information of any complainants.

Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a *physical condition* to a person who he or she knows or reasonably suspects is suffering from: (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury where the injury is the result of assaultive or abusive conduct (including Sexual Assault, and Dating and Domestic Violence). This requirement does *not* apply to sexual assault and domestic violence counselors and advocates.

XV. Training

AMDA provides training to all non-confidential responsible employees, as defined above, relating to sexual harassment. AMDA requires all non-confidential responsible employees, as defined below, to report sexual harassment and has provided direction and training as to the reporting of sexual harassment.

All employees of AMDA are provided training on the identification of sexual harassment including training on the process of notification to the appropriate institutional official(s). All employees are notified of their obligation to report sexual harassment to the appropriate institutional officials.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of AMDA's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual comprehensive, trauma-informed training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The trainings these individuals receive will also encompass the Rights of the Respondent along with information on Institutional policies and procedures.

Such training will address the effects of trauma, trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual violence complaint, best practices for questioning of the complainant, respondent, and witnesses, and implicit bias and racial inequities, both broadly and in school disciplinary processes.

Materials shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

- In the year 2021, there were no documented cases or reports of sexual assault or sexual harassment occurring within or in the vicinity of our LA Campus.

XVI. Recordkeeping

A. AMDA shall maintain for a period of seven years records of:

1. Each investigation conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to AMDA's education programs or activities;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. Records of any actions, including any Supportive Measures, taken in response to a report or complaint under this policy. In each instance, AMDA will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to AMDA's education program or activity. If AMDA does not provide a complainant with Supportive Measures, then AMDA must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit AMDA in the future from providing additional explanations or detailing additional measures taken.

XVII. Effective Date

This policy is effective as September 18, 2023, and was approved by AMDA's Chief Operating Officer, Chief of Staff, General Counsel, and Vice President of Equity on September 11, 2023.