Supplemental Procedures for Sexual Assault, Dating Violence, Domestic Violence, and Stalking Charges Against Employees\(^1\)

**Introduction**

Columbia University is committed to fostering an environment that is free from violence and the threat of violence. These Supplemental Procedures for Sexual Assault, Dating Violence, Domestic Violence, and Stalking (“Supplemental Procedures”) govern the investigation and resolution of reports that employees engaged in sexual assault, domestic violence, dating violence, or stalking (the “Prohibited Conduct”).

The University recognizes its responsibility to increase awareness of the Prohibited Conduct, prevent its occurrence, support victims, deal fairly and firmly with offenders, and diligently investigate reports of Prohibited Conduct. In addressing Prohibited Conduct, all members of the University must come together to respect and care for one another in a manner consistent with our deeply held academic and community values.

The University complies with Title IX of the Higher Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. The Supplemental Procedures are intended to ensure a safe and non-discriminatory educational environment and comply with Title IX and other applicable law, including the Campus Sexual Violence Elimination Act.

These Supplemental Procedures first specify the conduct to which they apply. They then describe the investigation and sanctioning process for matters governed by the Supplemental Procedures. Finally, the Supplemental Procedures contain a Definitions section covering important terms. Information about reporting options, accommodations, and available support resources can be found in the Gender-Based Misconduct Policy for Students and the Employment Policies and Procedures on Discrimination and Harassment.

**Nothing in the Supplemental Procedures shall be construed to abridge academic freedom and inquiry, principles of free speech, or the University’s educational mission.**

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\(^1\) To the extent that anything in this policy conflicts with provisions of the Employment Policies & Procedures on Discrimination & Harassment, with respect to matters involving allegations of sexual assault, dating violence, domestic violence and stalking by an employee, the terms of this policy govern.
Scope of the Supplemental Procedures

The Supplemental Procedures apply to reports or allegations of the following employee misconduct: sexual assault, domestic violence, dating violence, and stalking. The Supplemental Procedures cover Prohibited Conduct that: (1) occurs on any University campus or in connection with University programs or activities; (2) creates [or contributes to and/or continues] a hostile environment for University students and/or employees; or (3) involves a student. The Supplemental Procedures apply regardless of a person’s gender, gender identity, gender expression, sexual orientation, age, race, nationality, class status, ability, religion, or other protected status.2

Note: While these Supplemental Procedures identify the University office or employee who will typically perform certain roles or duties, the University may designate other University offices or employees to perform any roles or duties described in the Supplemental Procedures.

2 Pursuant to the Employment Policies and Procedures on Discrimination and Harassment and the Gender-Based Misconduct Policy for Students, all gender-based misconduct claims that fall within Prohibited Conduct brought by students against employees will be processed under these Supplemental Procedures.

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Prohibited Conduct

- **Sexual Assault—Non-Consensual Sexual Intercourse**—Any form of sexual intercourse (vaginal, anal, or oral) with any object without consent. Intercourse means: vaginal or anal penetration (however slight) by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

- **Sexual Assault—Non-Consensual Sexual Contact**—Any intentional sexual touching, however slight, with any object without a person’s consent. Intentional sexual contact includes contact with the breasts, buttocks, or groin, or touching another with any of these body parts; making another person touch any of these body parts; and any intentional bodily contact in a sexual manner.

- **Domestic Violence**—The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards (a) a current or former spouse or intimate partner; (b) a person with whom one shares a child; or (c) anyone who is protected from the respondent’s acts under the domestic or family violence laws of New York. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

- **Dating Violence**—The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards a person who is or has been in a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Dating violence can be a single act or a pattern of behavior in relationships.

- **Stalking**—A course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress. Stalking involves repeated and continued harassment against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Stalking behaviors may include: pursuing or following; unwanted communication or contact—including face-to-face, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation.
Policies Regarding the Investigation and Resolution of Alleged Prohibited Conduct

Rights of the Complainant and Respondent

Throughout the process described in these Supplemental Procedures, both the complainant and respondent have the following rights:

- To respect, dignity, and sensitivity.
- To appropriate support from the University.
- To privacy to the extent possible consistent with applicable law and University policy.
- To information about applicable University policies.
- To the presence of an advisor throughout the process.
- To participate or to decline to participate in the investigation process. However, a decision to refrain from participating in the process either wholly or in part will not prevent the process from proceeding with the information available.
- To a prompt and thorough investigation of the allegations.
- To adequate time to review and comment on a draft investigation report.
- To an opportunity to challenge investigator(s) for a possible conflict of interest.
- To refrain from making self-incriminating statements.
- To report the incident to law enforcement at any time.
- To understand that information collected in the process may be subpoenaed in criminal or civil proceedings.

Privacy

The University will reveal information about its investigations and evaluation of matters under these Supplemental Procedures only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all individuals participating in an investigation or proceeding that they are expected to maintain the privacy of the process. This does not prohibit either a complainant or respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or similar resources.

Advisors

The complainant and respondent, respectively, may be accompanied to any meeting related to an incident of Prohibited Conduct by the advisor of their choice. Advisors may lend support and provide advice about the investigation and disciplinary process. During meetings, the advisor may talk quietly with the advisee or pass notes in a non-disruptive manner. The advisor may not intervene in a meeting or address the investigator or other disciplinary officials.

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3 Throughout these Supplemental Procedures, “complainant” is used to refer to the person making the allegation(s) of gender-based misconduct and “respondent” to the person said to have committed the Prohibited Conduct.

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If a student complainant desires to have an attorney serve as his or her advisor, the University will arrange for a volunteer attorney-advisor if the student so requests. If the University is asked to arrange for a volunteer attorney for a student complainant, it will notify the respondent.

**Declining to Participate**

A complainant and/or respondent may decline to participate in the investigative or evaluation process. The University may continue the process without the complainant’s and/or respondent’s participation.

**Time Frames**

The University will seek to resolve every report under these Supplemental Procedures within approximately sixty calendar days of an initial report. Generally, the time line will be as follows:

- Investigation begins within 5 days after the initial report
- Investigation completed within 45 days after the investigation begins
- Notice of sanctions issued within 10 days after issuance of the final investigation report

Each of these stages is explained in greater detail below.

Time frames may vary depending on the details of a case and at certain times of the academic year (for example, during breaks, study periods or final exams). The University may extend any time frame for good cause, with a written explanation to the complainant and respondent.

**Notice**

The Equal Opportunity and Affirmative Action Office (“EOAA”) will give the complainant and respondent, respectively, a written explanation of their rights and options, and any available accommodations, as soon as possible after an incident is reported. EOAA will also ensure that both the complainant and respondent are updated throughout the investigative process.

More specifically, the complainant and respondent will simultaneously be given the following written notices:

- **Conclusion of the Investigation**
  - Notice of an opportunity to review in the EOAA Office the draft investigative report, consistent with federal law governing the privacy of student information.
  - Notice of the investigator’s determination of “responsible” or “not responsible,” along with the rationale for the outcome.

- **Administrative Resolution**
  - Notice of whether the respondent accepts responsibility for the alleged Prohibited Conduct.

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• **Sanctioning**
  - The sanctions imposed and the reasons for the sanctions.

**Conflicts of Interest**

The University requires any individual participating in matters under these Supplemental Procedures to disclose to EOAA any potential or actual conflict of interest. If a complainant or respondent believes that any individual involved in the process has a conflict of interest, he or she may make a request to EOAA that the individual not participate. Any request should include a description of the conflict. If EOAA determines that a conflict of interest exists, the University will take steps to address the conflict in order to ensure an impartial process.
Investigation Procedures

EOAA will inform the complainant before starting an investigation. The complainant may request that an investigation not be undertaken. EOAA, in consultation with the appropriate Title IX Coordinator(s), will consider such a request in light of the University’s commitment to provide a safe and non-discriminatory environment. If EOAA determines not to investigate, it will notify the complainant in writing, including that the determination was made at the complainant’s request. At the complainant’s request, EOAA will also notify the respondent in writing, including that the complainant asked the University not to investigate.

If an investigation proceeds, the University will notify the respondent in writing that a report has been filed. The notice will describe the allegations in the report. The complainant and respondent will be given the opportunity to meet separately with EOAA to review these Supplemental Procedures and any applicable policies.

The University’s process for responding to and investigating matters under these Supplemental Procedures will continue during any law enforcement proceeding. EOAA may need to temporarily delay an investigation while the police are gathering evidence but it will resume the investigation after it learns that the police have finished gathering evidence and will not wait for the conclusion of any related criminal proceeding.

EOAA will assign a specially trained investigator (or team of investigators) to interview the complainant, respondent and any witnesses. The investigator will also gather pertinent documentary materials (if any) and other information. The investigator will follow the protocols set forth below:

- **Preserving Evidence.** The investigator will direct the complainant, respondent, witnesses, and other interested individuals to preserve any relevant evidence.

- **Character Witnesses.** The investigator will not interview witnesses whose sole purpose is to provide character information.

- **Romantic or Sexual History in Sexual Assault Cases.** The investigator will not consider information concerning the romantic or sexual history of either the complainant or the respondent, except from either the complainant or respondent regarding their shared sexual history. If either offers such information, the other will have the right to respond.

- **Prior Conduct Violations.** The investigator may consider the respondent’s prior conduct violations, especially where the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the respondent.

In consultation with the appropriate Title IX Coordinator and Office of General Counsel, the investigator will prepare a report detailing the relevant content from the interviews and the

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documentation gathered. The report will include the investigator’s assessment of individual credibility and recommended findings of responsibility.

The respondent and complainant will each have the opportunity to review a copy of the investigative report. The names and other identifying information of students will be redacted from such materials in accordance with the Family Educational Rights and Privacy Act (FERPA), except to the extent that doing so would interfere with the purpose of Title IX to eliminate sex-based discrimination. EOAA will supervise this review and ensure that reasonable time is afforded for review prior to the investigative report being finalized.
Resolution

Written Submissions

Following their review of the draft investigation report, both the complainant and respondent will have the opportunity to submit to the investigator written responses to the draft report. Each of the complainant and respondent will have the opportunity to review any written submissions by the other. EOAA may set reasonable parameters for these written submissions. In his or her written submission, the respondent will be required to respond to the alleged violation in one of the following ways: 1) Responsible; 2) Not Responsible; or 3) No Response. If the respondent accepts responsibility, the matter will immediately proceed to the sanctions stage. If the respondent does not accept responsibility, the investigator(s) will review the written submissions and make any appropriate revisions to the draft report.

Responsibility Determination

The final investigation report will include a determination whether the respondent is responsible for the alleged Prohibited Conduct. The investigator(s) will make this determination after consulting with the appropriate Title IX Coordinator and Office of General Counsel. The investigator(s) will use “preponderance of the evidence” as the standard of proof to determine whether the respondent is responsible. To find a respondent responsible for violating the Policy, the investigator(s) must conclude that the respondent was more likely than not to have engaged in the conduct at issue.

Informal Resolution

EOAA may seek to resolve certain Prohibited Conduct cases through an informal process involving both the complainant and respondent. (For example, a complainant and respondent may agree with the Office that education and training for the respondent are an appropriate and sufficient response in a particular case). This type of informal resolution can take place during the investigation or after its conclusion. If, based on the information known about the incident, EOAA believes such a resolution is possible, the Office will speak with the complainant. If the complainant agrees, EOAA will speak then with the respondent. If both complainant and respondent are satisfied with a proposed resolution and EOAA believes the resolution satisfies the University’s obligation to provide a safe and non-discriminatory environment for all students, the resolution will be implemented, the disciplinary process will be concluded and the matter will be closed. If these efforts are unsuccessful, the disciplinary process will continue. Before starting these discussions, EOAA will notify the complainant and respondent that each has the right to end the informal process at any time. The University will not use informal resolution for cases involving allegations of sexual assault.

Mediation

An individual may request mediation from EOAA at any stage of the process. The complainant and respondent will be asked not to contact each other to discuss mediation. Mediation will be used only with the consent of both the complainant and respondent, and either has the right to
terminate the mediation process and resume the regular disciplinary process at any time. The mediation process will typically commence within ten days after consent is received from both complainant and respondent and will continue until concluded or terminated by either the complainant or respondent. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the disciplinary process will proceed. The University will not use mediation for cases involving allegations of sexual assault.
Sanctions and Other Remedies

How Sanctions Are Determined

The Office of the President, in consultation with the Provost and the Senior Executive Vice President, will designate appropriate Sanctioning Officers for these matters. To promote consistency with the University’s handling of similar cases: (1) appropriate training will be provided to Sanctioning Officers at least once a year; and (2) prior to imposing any sanction, a Sanctioning Officer will consult with EOAA about sanctions imposed in similar cases. Available sanctions will be consistent across all University schools and departments. Similar offenses may result in different sanctions where there are distinguishing facts and circumstances in the opinion of the Sanctioning Officer.

All investigator determinations of responsibility will be referred to the designated Sanctioning Officer. The Sanctioning Officer will solicit the views of the respondent’s supervisor regarding the appropriate sanction. The Sanctioning Officer will impose sanctions that are:

- Fair and appropriate given the facts of the particular case;
- Consistent with the University’s handling of similar cases;
- Adequate to protect the safety of the campus community; and
- Reflective of the seriousness of the Prohibited Conduct.

The Sanctioning Officer will consider relevant factors, including if applicable: (1) the specific Prohibited Conduct at issue (such as penetration, touching under clothing, touching over clothing, etc.); (2) if applicable, the circumstances accompanying the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.); (3) the respondent’s state of mind (intentional, knowing, bias-motivated, reckless, negligent, etc.); (4) the impact of the offense on the complainant; (5) the respondent’s prior disciplinary history; (6) the safety of the University community; and (7) the respondent’s conduct during the disciplinary process.

In determining what sanctions will protect the safety of the University community, the Sanctioning Officer will be advised by Public Safety or other experts and will consider: (1) the risk that the respondent may engage in additional Prohibited Conduct; and (2) the deterrent or permissive effect of a particular sanction on the campus community, including on particular individuals and organizations aware of the offense (keeping in mind that a sanction must always be fair and appropriate for the particular case).

The Sanctioning Officer will render a sanctioning decision within 10 days following issuance of final investigation report. The sanctioning decision will be communicated in writing to the complainant and the respondent.

List of Sanctions

The University may impose any of the following sanctions on an employee determined to have violated the Policy:

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• Reprimand/warning
• Changing the respondent’s job duties
• Disciplinary probation
• Revocation of honors or awards
• Restricting access to University facilities or activities (including student activities and campus organizations)
• Issuing a “no contact” order to the respondent or requiring that such an order remain in place
• Moving the respondent’s residence, if provided by the University
• Dismissal or restriction from University employment
• Suspension (limited time or indefinite)

In addition to any other sanction (except where the sanction is dismissal), the University will require any employee determined to be responsible for Prohibited Conduct to receive appropriate education and/or training related to the Prohibited Conduct at issue. The University may also recommend counseling or other support services for an employee.

Restrictions on Sanctions

University policies or contracts require the University to use additional processes before taking certain employment-related actions with respect to faculty and certain other employees. Where a person covered by such a policy or contract has allegedly engaged in Prohibited Conduct, the investigation and sanctioning process will proceed in accordance with these Supplemental Procedures, except that the Sanctioning Officer will not impose any sanction that would require the use of additional processes. Instead, the Sanctioning Officer will impose all appropriate sanctions that do not require the use of additional processes and then refer the matter, if appropriate, for action under the additional process. The University’s disciplinary action will be considered complete with the Sanctioning Officer’s imposition of sanctions and referral, subject to any appeals.

Additional Responses

The University may also determine that additional measures are appropriate to respond to the effects of the incident on the University community. Additional responses for the benefit of the University community may include:

• Increased monitoring, supervision, or security at locations or activities where the Prohibited Conduct occurred
• Additional training and educational materials for students and employees
• Revision of University policies
• Climate surveys
Amendments

The University may amend these Supplemental Procedures from time to time. Nothing in the Supplemental Procedures shall affect the inherent authority of Columbia, Barnard or Teachers College to take such actions as it deems appropriate to further the educational mission or to protect the safety and security of the University community, including its authority to terminate at-will employees immediately, with or without cause.
Definitions

The definitions that follow provide further guidance as to the conduct this Policy prohibits:

- **Coercion.** Unreasonable pressure for sexual activity. When someone makes it clear that he or she does not want to engage in sexual activity or does not want to go beyond a certain point of sexual interaction, continued pressure beyond that point can be considered coercive. The use of coercion can involve the use of pressure, manipulation, substances, and/or force. Ignoring objections of another person is a form of coercion.

- **Consent.** Consent requires unambiguous communication and mutual agreement concerning the act in which the participants are engaging.
  - A sexual interaction is considered consensual when individuals willingly and knowingly engage in the interaction.
  - Someone who is incapacitated (by alcohol or drug use, unconsciousness, disability, or other forms of helplessness) cannot consent.
  - Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion.
  - Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity is not consent to sexual activity on a different occasion.
  - Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
  - Silence or the absence of resistance is not the same as consent.
  - Consent can be withdrawn at any time.
  - Previous consent does not mean ongoing consent. (For example, consent to certain acts at one point in an evening does not mean consent to the same acts later in the same evening.)

  - *How drugs and alcohol affect consent:*
    - Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone consented to sexual activity after consuming drugs or alcohol, the University will examine the issue from the perspective of a reasonable person. Specifically, the University will consider whether the respondent reasonably should have known about the impact of alcohol and other drugs on the complainant’s ability to give consent.
    - The use of alcohol or drugs does not justify or excuse behavior that constitutes Prohibited Conduct.
The use of alcohol or other drugs never makes someone at fault for experiencing Prohibited Conduct.

- **Force.** The use of physical violence and/or imposing on someone physically to gain sexual access. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance.

- **Incapacitation.** A state where a person cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision. A person can become incapacitated as a result of disability, involuntary physical constraint, sleep, or consumption of alcohol or other drugs.

**Other Definitions**

- **Complainant.** The person making the allegation(s) of Prohibited Conduct.

- **Respondent.** The person alleged to have engaged in Prohibited Conduct.