



Albert Einstein College of Medicine

Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Students

**(Including Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence &
Dating Violence)**

TABLE OF CONTENTS

	Page
I. Purpose	3
II. Scope	3
III. Policy	4
III.A. Executive Summary	4
III.B. Statement of Non-Discrimination.....	6
III.C. Prohibited Conduct and Definitions.....	6
III.C.1. Prohibited Conduct.....	6
III.C.2. Sexual Harassment	7
III.C.3. Title IX Violation	8
III.C.4. Sexual Assault.....	8
III.C.5. Affirmative Consent (“Consent”)	9
III.C.6. Incapacitation	10
III.C.7. Stalking	10
III.C.8. Dating Violence	11
III.C.9. Domestic Violence.....	12
III.D. Bystander Intervention & Employees’ Duty to Report.....	12
III.D.1. Bystander Intervention.....	12
III.D.2. Employees’ Duty to Report.....	13
III.E. Title IX Coordinator	13
III.F. Complaint & Reporting Procedures.....	14
III.F.1. How to File a Complaint or Make a Report to College Officials.....	15
III.F.2. Other Resources and Reporting Options.....	17
III.F.3. Confidentiality in Complaints & Reporting.....	18
III.F.4. When a Report is Made.....	19
III.F.5. When a Complaint is Filed.....	19
III.F.6. Withdrawing or Dismissing a Complaint.....	20
III.G. Interim Protective Measures and Accommodations.....	21
III.H. Investigation of Reports & Complaints	22
III.H.1. Investigation of Reports and Complaints	22
III.H.2. Confidentiality During Investigations & Grievance Procedures	24
III.I. Resolution & Grievance Procedures	24

**Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and
Complaint Procedures for Students**

III.I.1.	Informal Resolution Process.....	25
III.I.2.	Title IX Grievance Procedures.....	26
III.I.3.	General Grievance Procedures	26
III.I.4.	Remedies and Sanctions.....	26
III.J.	Time Limits	27
III.K.	Education/Training.....	27
III.L.	Documentation of Investigations and Resolution & Grievance Procedures	28
III.M.	Retaliation.....	28
III.N.	Knowing False Claims or Information.....	29
III.O.	Re-Evaluation	29
IV.	Effective Date.....	29
V.	Policy Management and Responsibilities.....	Error! Bookmark not defined.
VI.	Approved (or Revised).....	Error! Bookmark not defined.
Appendix A: Title IX Grievance Procedures.....		31
Appendix B: General Grievance Procedures For Complaints of Prohibited Conduct Not Covered by Appendix A.....		36
Appendix C: Community Members' Bill of Rights		39
Appendix B: Student Bill of Rights		39
Appendix D: Student Alcohol and Drug Use Amnesty Policy.....		40
Appendix E: Additional Crime and Related Definitions.....		41
Appendix F: A Plain Language Explanation of Distinctions between the New York State Penal Law and the College Disciplinary Processes		43
Appendix G: Resources and Reporting Options		47

I. Purpose

This Policy outlines standards of behavior and requirements for gender-based misconduct, discrimination and harassment of students at Albert Einstein College of Medicine (also referred to as “Einstein” or “College of Medicine”) that fall within the Title IX regulations. Title IX violations involving employees and non-students are governed by the “*Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students.*” Other forms of discrimination or harassment falling outside of Title IX regulations are addressed in Einstein’s “*Discrimination and Harassment Policy (Non-Title IX).*”

II. Scope

To Whom Applicable

This Policy applies to all Einstein students, as well as faculty, administration (whether supervisors, administrators, and managers), and other staff, whether full-time or part-time (hereinafter collectively, “employees”), employees of contracted service providers, interns, volunteers, visitors, and other third-parties conducting business with the College, and covers their treatment of each other as well as others with whom they come into contact at or near College of Medicine and/or at Einstein-sponsored and affiliated activities and events.

Where Applicable

This Policy is intended to protect all afore-mentioned individuals and applies to conduct that occurs on Einstein premises, in buildings owned or controlled by a student organization officially recognized by Einstein, at Einstein-sponsored and affiliated activities and events, and/or other circumstances where Einstein exercises substantial control over the accused and the context, including, but not limited to, overnight trips, service learning programs and internships, study or research abroad, work-related travel, off-site conferences, and to all forms/uses of technology by all individuals covered by this policy. College of Medicine may also address off-campus behavior that occurs other than at Einstein-sponsored or affiliated events if it determines that the behavior, or the continued presence of the accused perpetrator creates or contributes to a hostile environment, or impairs, obstructs, substantially interferes with or adversely affects the mission, processes or functions of College of Medicine.

Gender-based discrimination, harassment or sexual misconduct in any form (including Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence and Dating Violence) is a violation of this policy and will be dealt with seriously, promptly and thoroughly. If any of the principles and procedures in this policy are inconsistent with those contained in another Einstein policy, the principles and procedures in this policy will control, except that this policy does not override any applicable rights or provisions contained in any collective bargaining agreement or faculty policy.

Which Procedures Applicable

The specific set of investigative and disciplinary procedures that apply will depend on the parties involved as follows:

- If a student is involved as either an alleged victim (the “Complainant”) or an accused (the “Respondent”), the procedures set forth herein will apply.
- Where both the Complainant and Respondent are employees, faculty, or volunteers, the procedures set forth in the Title IX Policy and Complaint Procedures for Employees or the Gender-Based Misconduct Policy and Complaint Procedures for Employees will apply.
- Where a Respondent is both a student and an employee, faculty, or volunteer, the Title IX Coordinator/Vice President for Human Resources will determine which of these procedures applies based on the circumstances (such as whether the student or employee role predominates, particularly in reference to the relevant incident).

Einstein’s disciplinary authority may not extend to the third parties mentioned above (employees of contracted service providers, interns, volunteers, visitors, and other third-parties conducting business with the College) who are not students, employees, or faculty of College of Medicine. However, a Report or Complaint that such a person engaged in Prohibited Conduct against a student will be investigated in accordance with this policy as will a Complaint of Prohibited Conduct by such a third party about a student. A Report or Complaint that such a third party engaged in Prohibited Conduct against an employee will be investigated in accordance with the *Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students* or the *Discrimination and Harassment Policy (Non-Title IX)*, as applicable, as will a Report or Complaint of Prohibited Conduct by such a third party about an employee.

III. Policy

IIIA. Executive Summary

The following is a brief summary of the policy. Please read the full policy for more details, including definitions and examples of discrimination and harassment; Complaint Reporting Procedures and Guidelines; and the Investigation & Resolution processes.

Einstein prohibits discriminatory practices, harassment and sexual misconduct of any kind and in any form. Detailed definitions of Prohibited Conduct under this policy are set forth in Section III.C and Appendix E.

Complaints and Reports (each defined in Section III.F) may be made to Einstein’s Title IX Coordinator/Vice President for Human Resources, Director of Security, Associate Dean for Student Affairs, or Senior Counsel, as set forth in Section III.F.1. Complaints and Reports also may be made to any other Einstein personnel identified as “campus security authorities” including Office of Student Affairs and Housing Office.

There is no time limit on when a Report or Complaint can be made.

No Einstein employee may discourage an individual from making a Report or Complaint.

Any Einstein employee serving in a managerial or supervisory capacity (except those listed in Appendix G, Section I.A) with any knowledge of Prohibited Conduct by employees, students, or third parties, must report the incident to the Title IX Coordinator/Vice President for Human Resources, Director of Security, Associate Dean for Student Affairs, or Senior Counsel, even if the individual complaining of such discrimination, harassment or sexual misconduct is not interested in filing a formal Complaint. If anyone serving in a managerial or supervisory capacity other than the Title IX Coordinator/Vice President for Human Resources receives the Report or Complaint, they must immediately report it to the Title IX Coordinator/Vice President for Human Resources. *See* Section III.D.1. All other employees are encouraged to make such reports.

Einstein will respond to all Reports and Complaints promptly, thoroughly, fairly and impartially, pursuant to the procedures set forth in Section III. Reports and Complaints will be overseen by the Title IX Coordinator/Vice President for Human Resources.

Einstein expects all members of the Einstein community to cooperate with investigations.

Retaliation is prohibited against anyone who filed and/or participated in the investigation of a Report or Complaint, even if the Report or Complaint is unsubstantiated.

Those who knowingly make a false report will be subject to serious disciplinary action.

Individuals not wishing to make a Report or Complaint have the option of instead anonymously calling the Confidential Compliance Hotline, as set forth in Section III.F.1. Alternatively, an individual may confidentially contact the Office of Academic Support and Counseling, which will not trigger any investigation (see Appendix G, Section I.A).

Individuals who allege they are victims of Sexual Abuse/Assault, Stalking, Domestic Violence, or Dating Violence (defined in Section III.C.) have the right (i) to make a report to the Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to College of Medicine; (iii) to request College of Medicine's assistance in notifying law enforcement authorities; (iv) to be protected by College of Medicine from retaliation for reporting an incident; and (v) to receive assistance and resources from College of Medicine.

Any questions regarding this policy may be directed to Einstein's Title IX Coordinator/Vice President for Human Resources:

Yvonne Ramirez
1300 Morris Park Ave., Belfer 1209
Bronx, NY 10461
(718) 430-2551
yvonne.ramirez@einsteinmed.org

III.B. Statement of Non-Discrimination

This policy is consistent with the College of Medicine’s commitment to the principles of non-discrimination. Einstein prohibits discrimination on the basis of race, religion, color, creed, age, national origin or ancestry, sex, marital status, sexual orientation, gender identity and expression, physical or mental disability, pregnancy-related condition, veteran or disabled veteran status, military status, pregnancy status, genetic predisposition/carrier status, citizenship status, familial status, domestic violence victim status, prior arrest or conviction record, or any other personal characteristic protected under applicable federal, state or local law.

While this policy prohibits and addresses gender-based misconduct, Einstein’s *Discrimination and Harassment Policy (Non-Title IX)* prohibits and addresses other types of discriminatory and related conduct in addition to gender-based misconduct.

III.C. Prohibited Conduct and Definitions

Einstein is committed to maintaining an academic, work and living environment in which all individuals are treated with respect and dignity. Each individual at Einstein has the right to learn in a safe environment that promotes equal opportunities for all. This policy prohibits gender-based discriminatory practices or harassment and sexual misconduct of any kind (“Prohibited Conduct,” as set forth below). Where Prohibited Conduct has occurred, Einstein will act promptly to stop it, prevent its recurrence, and discipline and/or take other appropriate action against those responsible.

This policy is not intended to regulate protected speech. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates this policy or otherwise violates federal, state or local anti-discrimination laws.

III.C.1. Prohibited Conduct

Prohibited Conduct for purposes of this policy includes discrimination or harassment based on sex, sexual orientation, gender identity or expression, pregnancy-related condition, pregnancy status, or sexual and reproductive health decisions.¹

Applicable laws that prohibit such discrimination and harassment include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits discrimination on the basis of sex, pregnancy status, and other characteristics; Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination on the basis of sex; Violence Against Women Act of 1994 (“VAWA”); Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”); N.Y. Executive Law, art. 15, §290 et seq. (Human Rights Law); and Title 8 of the Administrative Code of the City of New York (Human Rights Law).

¹ Einstein also prohibits discrimination or harassment based on all other characteristics protected by applicable laws, ordinances and regulations (see Section III.B). Discrimination based on a characteristic not listed here is covered by Einstein’s *Discrimination and Harassment Policy (Non-Title IX)*.

This policy prohibits discrimination against or harassment of any individual's characteristic or perceived characteristic based on sex, sexual orientation, gender identity or expression, pregnancy status, pregnancy-related condition, or sexual and reproductive health decisions, whether or not it rises to the level of unlawful discrimination or harassment.

Examples of conduct that may violate this policy include the use of slurs, jokes, stereotyping, or intimidating, hostile, or violent acts directed at any individual because of his/her protected class status as described above, as well as the failure to provide equal consideration, acknowledgment or access to educational opportunities to equally qualified individuals. Harassment does not have to include intent to harm or be directed at a specific target. Prohibited harassment may involve a single episode or ongoing behavior depending on the severity of the issue. In addition, this policy forbids not only verbal and physical harassment but also harassment in any medium, including email and electronic social media.

Discrimination and harassment can take many forms, including, but not limited to, Sexual Harassment, Sexual Abuse/Assault, Stalking, Domestic Violence and Dating Violence. These and related terms are defined below and in Appendix E. Such behaviors are prohibited by this policy as well as federal, state and local laws. Anyone found responsible by Einstein for such conduct will face serious disciplinary sanctions, including suspension or expulsion from Einstein for students, and disciplinary sanctions for employees as set forth in *Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students*.

III.C.2. Sexual Harassment

Sexual harassment is offensive and includes harassment on the basis of actual or perceived sex, sexual orientation, gender identity or expression, pregnancy status, pregnancy-related condition, or sexual and reproductive health decisions. Sexual Harassment in any form is prohibited and constitutes a violation of this policy, regardless of whether it rises to the level of being unlawful. Einstein may be liable for harm to victims of Sexual Harassment by Einstein employees, students and others, and harassers may also be individually subject to liability.

For purposes of this policy, Sexual Harassment refers to any *unwelcome* or *unwanted* sexual advances, requests for sexual favors, or other verbal, physical, demonstrative, or electronic conduct or communication of a sexual nature, or which is directed at an individual because of the individual's sex, when:

- *Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational experience; or*
- *Submission or rejection of such conduct is used as the basis for a decision regarding an employment, academic, or other College-related activity affecting such individual; or*
- *Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or participation in a College program, department or extra-curricular activity; or*

- *Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working, learning, studying, or school environment.*

Examples of conduct which may constitute Sexual Harassment include, but are not limited to: verbal comments of an overtly sexual nature, whether in the form of jokes, innuendoes, slurs, or other statements; the use of sexual teaching materials or comments of a sexual nature not relevant to the material being taught or any other academic purpose; remarks of a sexual nature about an individual's clothing or body; remarks speculating about an individual's sexual orientation, activity or previous sexual experiences; verbal harassment or abuse of a sexual nature; making offensive gender-based remarks; the display or transmission of sexually offensive objects, photographs, drawings, graffiti, email, electronic social media communications, computer graphics or programs when sexual content is not relevant to any academic purpose; non-verbal behaviors of a sexually degrading or offensive nature, such as gesturing, or leering; unwanted touching, hugging, or brushing against an individual's body; requests, demands or persistent pressure for sexual favors, particularly when accompanied by an offer of rewards or threats of retaliation concerning work, grades, promotions, tenure or any other academic or related decision; and Sexual Abuse/Assault ("sexual violence"). In certain circumstances, such conduct may constitute a Title IX Violation (see Section III.C.3. below).

III.C.3. Title IX Violation

A Title IX Violation refers to one or more of the following:

- An Einstein employee conditioning the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct; or
- Sexual Harassment (as defined in Section III.C.2) that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Einstein's education program or activity.
- Sexual Assault (as defined in Section III.C.4.)
- Dating Violence (as defined in Section III.C.8.)
- Domestic Violence (as defined in Section III.C.9.)
- Stalking (as defined in Section III.C.7.)

III.C.4. Sexual Assault

Sexual Assault is any nonconsensual sexual act prohibited by law,² including when the victim is incapable of giving Consent. New York State does not specifically define Sexual Assault. However, for the purposes of this policy, Sexual Assault is a Title IX Violation (see Section III.C.3.) and includes offenses that meet the definitions herein and in Appendix D of rape, Fondling, Incest, Sexual Abuse, or statutory rape. Sexual Assault includes:

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight and with any object or body part, that is without Affirmative Consent (as defined below) and/or by threat, Intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. This includes intentional contact with

² See below and Appendix D for a discussion and definition of specific crimes and related terms.

breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner.

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without affirmative consent or where the victim is incapable of affirmative consent due to mental or physical incapacity. *Statutory rape* is non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

New York State law specifically defines rape as sexual intercourse with another person by forcible compulsion, or where the person is not incapable of Consent, including in most circumstances where such person is a minor. It similarly defines a criminal sexual act as oral sexual conduct or anal sexual conduct with another person by forcible compulsion, or where the person is not incapable of consent, including in most circumstances where such person is a minor (statutory rape).

III.C.5. Affirmative Consent (“Consent”)

Affirmative Consent is defined as a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. This definition does not vary based upon a participant’s sex, sexual orientation, gender identity or 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 (as hereafter described);
- Consent cannot be given when it is the result of any coercion, Intimidation, force, or threat of harm; and
- When Consent is withdrawn or can no longer be given, sexual activity must stop.

Children under 17 years of age cannot legally consent under New York State Law to having sex or sexual contact with an adult (i.e., someone who is 17 years of age or older). **Any sexual contact in New York between a child under 17 and an adult is a crime, and any such illegal behavior between a member of the Einstein community who is under 17 and a member who is an adult will be reported to an appropriate law enforcement agency. Other jurisdictions may have different standards, and any illegal behavior in such jurisdiction also will be reported to the appropriate law enforcement agency.**

Additionally, state law identifies certain other individuals who are incapable of Consent, including, the mentally disabled, mentally incapacitated, physically helpless, and certain persons who are committed to the care and custody of a client or patient of a health care provider or certain governmental departments, offices or agencies (including the state department of correctional services, a hospital, the office of children and family services, the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services), where the actor is an employee or volunteer of such department or health care provider.

III.C.6. Incapacitation

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.

Evaluating incapacitation requires an assessment of an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and
- Level of consciousness.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a knowing, reasonable decision about whether to engage in sexual activity is in violation of this policy.

Alcohol and Other Drugs: In general, sex while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's ability to provide Affirmative Consent, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one's responsibility to obtain affirmative consent.

See Appendix C for the Student Alcohol and Drug Use Amnesty Policy.

III.C.7. Stalking

Stalking is a Title IX Violation (see Section III.C.3.), and refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety or the safety of others, or to suffer substantial emotional distress (i.e., significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling). Such 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. Stalking may include contact through a third party.

Examples of conduct that may constitute prohibited Stalking include, but are not limited to: unwelcome/unwanted communications of any type, including face-to-face, telephone calls, voice messages, e-mail, text messages, postings, written letters or notes and unwanted gifts; use of threatening words or conduct; pursuing or following; observing and/or surveillance; trespassing or vandalism; entering or remaining on or near a person's property, residence, classroom, place of employment or any other location where the person is present; interfering with or damaging a person's property, including pets; and engaging in other unwelcome contact.

Additionally, New York State law specifically defines Stalking as when a person intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

III.C.8. Dating Violence

Dating violence, for purposes of this policy, is a Title IX Violation (see Section III.C.3.) and refers to violence committed by a person who is or has been in a romantic or intimate relationship with the victim. 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. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

Regarding the appropriateness of romantic or sexual relationships between College employees and students, see Einstein's Workplace Romance & Fraternization Policy.

III.C.9. Domestic Violence

Domestic Violence is a Title IX Violation (see Section III.C.3.), and includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse or intimate partner under applicable law, by a family or household member as defined by New York State law, or by any other person against an adult or youth victim who is protected from that person's acts under applicable law.

Examples of conduct that may constitute, whether alone or in combination, Domestic Violence include, but are not limited to: a pattern of name-calling, insults, put-downs; keeping or limiting a person from contacting family or friends; withholding money, food or other necessities; stopping a person from getting or keeping a job, getting to class, or staying in school; actual or threatened physical harm; Sexual Abuse/Assault ("*sexual violence*"); Stalking; possessiveness or extreme jealousy; Intimidation; physical assault or threats thereof; and emotional isolation/manipulation.

III.D. Bystander Intervention & Employees' Duty to Report

Einstein expects all members of the Einstein community to take reasonable and prudent actions to prevent or stop an act of discrimination, harassment, or sexual misconduct, and provide assistance if an act has occurred. As discussed below, taking action or providing assistance may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. Employees who are not confidential resources or serving in a privileged professional capacity (as set forth in Appendix G, Section I.A) also have a duty to report.

III.D.1. Bystander Intervention

If someone suspects a friend, acquaintance, or stranger may be in a high-risk situation for becoming a victim, is being victimized, or has been victimized, it is important to decide as a bystander whether there is a safe and reasonable way to intervene effectively.

1) **Do's:**

Remind friends that Affirmative Consent is required, and it is the difference between sex and Sexual Assault and that someone can be too intoxicated to Consent.

Take the initiative to help friends who aren't thinking clearly from becoming targets of violence (or) take steps to stop a friend who chooses to use violence.

When possible, prevent an intoxicated friend/person from going to a private location with an acquaintance or friend.

Contact the Security Department, the Title IX Coordinator/Vice President for Human Resources or another person of authority who can assist.

2) Don'ts:

Let friends engage in activities, such as excessive alcohol/drug consumption, that impedes judgment and that therefore could lead to actions, including sexual advances that are unwelcome and/or endanger the rights, safety, and well-being of others.

Let friends walk/run alone in secluded areas or at night.

Leave a friend or acquaintance alone at a party.

Leave residence hall doors unlocked.

Let friends drink to the point of impairment.

Place yourself in a vulnerable situation where you are unable to voice Consent.

III.D.2. Employees' Duty to Report

Any employee serving in a managerial or supervisory capacity (other than an employee serving in a privileged professional capacity or as a confidential resource as set forth in Appendix G, Section I.A) with any knowledge, whether from firsthand observation, having been confided in or having heard about it in some other fashion, of a known or suspected instance of Prohibited Conduct *must* immediately report the incident to the Vice President for Human Resources/Title IX Coordinator, Senior Counsel, or Director of Security, even if the alleged victim of such discrimination or harassment is not interested in filing a Complaint. All other employees are encouraged to make such reports.

Managers and supervisors who knowingly allow Prohibited Conduct to continue without reporting it will be disciplined.

Additionally, all employees have a duty to report immediately to the NYS Maltreatment Hotline (800-342-3720) if they have reasonable cause to suspect abuse or maltreatment of minors (individuals under the age of 18).

However, no employee is authorized to investigate or resolve a suspected violation of this policy without the involvement of the Vice President for Human Resources/Title IX Coordinator.

If you are not sure what your duty or role is in a given situation, please contact the Vice President for Human Resources/Title IX Coordinator.

III.E. Title IX Coordinator

Any questions, concerns, Reports or Complaints about this policy, Prohibited Conduct, and/or Title IX should be directed to the Title IX Coordinator/Vice President for Human Resources:

Yvonne Ramirez
1300 Morris Park Ave., Belfer 1209
Bronx, New York 10461
(718) 430-2551
yvonne.ramirez@einsteinmed.org

Title IX prohibits discrimination on the basis of sex in education programs and activities, including admissions and employment. Sexual Harassment and Sexual Assault are forms of sex discrimination prohibited by Title IX. The College has designated an individual to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator is responsible for ensuring Title IX compliance at the College, as well as compliance with this policy. The Title IX Coordinator for the College is currently Yvonne Ramirez. The Title IX Coordinator is available to respond to inquiries about the application of Title IX and its regulations at Einstein. The Title IX Coordinator is also responsible for overseeing all Title IX Reports and Complaints and other complaints under this policy, identifying and addressing any patterns of systemic problems that are found based on review of such Reports or Complaints or otherwise, and providing education and training about this policy to the Einstein community. Ms. Yvonne Ramirez's contact information is above.

In the event of Ms. Ramirez's absence (or in the event of a conflict of interest), her duties will be carried out by:

Allison Ludwig, M.D.
Associate Dean for Student Affairs
1300 Morris Park Avenue, Belfer 210
Bronx, New York 10461
(718) 430-3060
allison.ludwig@einsteinmed.org

In addition to the Title IX Coordinator/Vice President for Human Resources or Associate Dean for Student Affairs, inquiries regarding Title IX may be directed to the United States Department of Education's Office of Civil Rights ("OCR"). This agency may be contacted as follows:

United States Department of Education, Office for Civil Rights
Region 2 – New York
Jacob Javits Federal Building 26 Federal Plaza - Suite 3312
New York, NY 10278
Voice Phone: (800) 368-1019
Fax: (212) 264-3039
TDD: (800) 537-7697

III.F. Complaint & Reporting Procedures

For purposes of this policy, a "Complaint" is defined as a written document (in hard copy or electronic format) that is filed by anyone who believes they have been subjected to Prohibited Conduct (the Complainant or their legal guardian). The document must contain the Complainant's physical or digital signature or otherwise indicate that the Complainant is the person filing the Complaint. The Title IX Coordinator also has the authority to initiate a Complaint. Other reports or complaints, such as verbal

complaints or any complaints by individuals who have knowledge of Prohibited Conduct but are not the alleged victim (Reporters), will be deemed to be “Reports”.

The procedures for investigating and resolving Complaints and Reports depend on who is involved.

- If a student is a Complainant, or Respondent, the procedures set forth herein (in Sections III.F. through III.I.) will apply.
- If only employees, faculty, and/or volunteers are involved, the procedures set forth in the ***Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students*** will apply.
- Where a Respondent is both a student and an employee, faculty, or volunteer, the Title IX Coordinator/Vice President for Human Resources will determine which of these procedures applies based on the circumstances (such as whether the student or employee role predominates, particularly in reference to the relevant incident).

For more information on which procedures apply, see Section II. If you have any questions, such as which set of procedures apply, please contact the Title IX Coordinator/Vice President for Human Resources or Senior Counsel.

There is no time limit on when a Complaint or Report pursuant to this policy can be made to Einstein, however, evidence may be lost and Einstein’s ability to investigate and respond may be affected by any time delay in reporting.

Einstein strongly encourages alleged victims to promptly file a Complaint or for other persons with knowledge to promptly make a Report in order to ensure campus safety and to preserve important evidence that may be essential for a thorough and fair resolution, including future legal and proceedings. Evidence preservation is particularly important because as time goes by, an investigation becomes more difficult. Memories may become unreliable, and information and witnesses may become unavailable.

Einstein employees may not discourage an individual from reporting Prohibited Conduct covered by this policy. Furthermore, any attempt to retaliate against or penalize an alleged victim or any other person who reports or participates in the resolution of an incident is strictly prohibited, and any party found to have engaged in retaliation will be subjected to discipline (*see* Section III.M).

III.F.1. How to File a Complaint or Make a Report to College Officials

Anyone who wishes to file a Complaint or make a Report regarding a violation of this policy may do so at any time by contacting any of the following:

Title IX Coordinator/Vice President for Human Resources

Yvonne Ramirez
1300 Morris Park Ave., Belfer 1209
Bronx, NY 10461
(718) 430-2551
yvonne.ramirez@einsteinmed.org

Senior Counsel

Dana Lee
1300 Morris Park Avenue
Belfer 310
Bronx, New York 10461
(718) 430-2546
dana.lee@einsteinmed.org

Associate Dean for Student Affairs

Dr. Allison Ludwig
1300 Morris Park Avenue, Belfer 210
Bronx, New York 10461
(718) 430-3060
allison.ludwig@einsteinmed.org

Dr. Victoria Freedman
1300 Morris Park Avenue, Belfer 214B
Bronx, New York 10461
(718) 430-2872
victoria.freedman@einsteinmed.org

Individuals not wishing to make a Report or Complaint may instead anonymously call the Confidential Compliance Hotline. Einstein will investigate anonymous calls to the extent possible, and also keep records of and report certain anonymous calls pursuant to the requirements of the federal Clery Act. However, all anonymous callers should be aware that reporting anonymously may affect the College's ability to investigate and respond effectively. To the extent there is a concern regarding retaliation for making a call or filing a Complaint or Report, any such retaliation is prohibited and Einstein will take steps to prevent such retaliation as well as strong responsive actions should it occur (*see* Section X). calls may be made as follows:

Confidential Compliance Hotline

1-800-662-8595

See Appendix G for information regarding confidential support services. *See* Appendix C for the Student Alcohol and Drug Use Amnesty Policy.

In addition to the options listed above, Sexual Abuse/Assault, Stalking, Domestic Violence, and Dating Violence may also or instead be reported to other College personnel identified by the College as "campus security authorities" in the Annual Security Reports it publishes in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "*Clery Act*"), including:

Security Department

Neil Kaplan, Chief of Security
1300 Morris Park Avenue, Forchheimer G9
Bronx, New York 10461
(718) 430-2180
neil.kaplan@einsteinmed.org

Einstein Office of Student Affairs

(718) 430-3060

Einstein Housing Office

(718) 430-3552

Students who allege they are victims of Sexual Abuse/Assault, Stalking, Domestic Violence, or Dating Violence (defined in Section III.C.) have the right (i) to make a report to the Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to College of Medicine; (iii) to request College of Medicine’s assistance in notifying law enforcement authorities; (iv) to be protected by College of Medicine from retaliation for reporting an incident; and (v) to receive assistance and resources from College of Medicine. Complaints or Reports under this policy and complaints with law enforcement may be filed simultaneously.

Einstein will cooperate with police investigations, but will not delay its investigation of a Complaint in the absence of extenuating circumstances and will conduct its investigation simultaneously with any police/legal system investigation. The College system and police/legal system work independently from one another. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports are not solely determinative of whether or not misconduct under this policy has occurred.³

When any of these afore-mentioned individuals or any other Einstein employee (other than someone serving in a privileged professional capacity or as a confidential resource as set forth in Appendix G, Section I.A) is first notified of a Report or Complaint, that person must promptly inform the Title IX Coordinator/Vice President for Human Resources of the complaint. If the Complaint involves an allegation of Prohibited Conduct, the Title IX Coordinator/Vice President for Human Resources will promptly inform Senior Counsel of such Complaint.

No College employee is authorized to investigate or resolve a suspected violation of this policy without the involvement of the Title IX Coordinator/Vice President for Human Resources.

III.F.2. Other Resources and Reporting Options

Regardless of whether a victim of sexual violence wants to file a Complaint or make a Report to either Einstein or the local police, he/she should promptly seek medical attention both to address his/her own

³ For an explanation of the differences between Einstein’s and law enforcement’s complaint and investigation procedures, see Appendix E.

health and to preserve potential evidence should he/she later decide to file charges or obtain a protective order.

For information on resources including emergency assistance, hospitals, law enforcement, security, medical care, mental health treatment, counseling, and other support services, see Appendix G. If desired, Einstein can assist with accessing these resources.

III.F.3. Confidentiality in Complaints & Reporting

Einstein will maintain as confidential the identity of anyone who makes a Report or Complaint, Respondent(s), and witnesses, except as required by FERPA or a government investigation, hearing, or judicial proceeding, or as otherwise required by law, and except that where a Complaint is filed, Einstein must give notice to Complainant and Respondent of the identities of any individuals involved as well as certain information regarding the incident (see Section III.F.5). In all instances, Einstein will endeavor to maintain the Complainant's and Respondent's privacy and reveal the parties' identities only to those individuals who need to know it in order for an investigation to commence or continue (as applicable) and the matter to be resolved.

Einstein is not able to guarantee confidentiality because doing so may limit Einstein's ability to provide parties with notice of allegations in a Complaint, to investigate the allegations and respond effectively, to ensure a safe, non-discriminatory and harassment-free environment and/or to comply with crime reporting or other legal requirements. In addition, consistent with law, information regarding violations of this policy may be shared among Einstein personnel as appropriate and necessary.

To the extent there is a concern regarding retaliation for making a Report or Complaint, any such retaliation is prohibited and Einstein will take steps to prevent such retaliation as well as strong responsive actions should it occur (*see* Section X). However, even Einstein officers and employees who cannot guarantee confidentiality will maintain the privacy of the parties' involved to the greatest extent possible. The information provided by the parties involved to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator/Vice President for Human Resources to investigate and/or seek a resolution.

Clery Act: The College has an obligation to report certain crimes in its annual security report pursuant to the Clery Act. However, it will do so in an anonymized manner that identifies neither the specifics of the crime nor the identity of the alleged victim or the reporting individual. The Clery Act also requires the College to issue timely warnings of certain crimes that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual; that a reporting individual shall not be identified in a timely warning.

FERPA: The Family Educational Rights and Privacy Act allows institutions to share information with Parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either parent's prior year federal income tax return. However, the College will generally not share information

about a report of Domestic Violence, Dating Violence, Stalking, or Sexual Assault with Parents without the permission of the reporting individual.

III.F.4. When a Report is Made

Following a Report of an incident to the Title IX Coordinator/Vice President for Human Resources, the Complainant will be immediately advised in writing of Einstein's policies and procedures, as described herein, including the availability of interim protective measures and accommodations (see Section III.E), and next steps and procedures, including any option for filing a Complaint, if the reporting individual is the alleged victim of the Prohibited Conduct.

Reports will be overseen by the Title IX Coordinator/Vice President for Human Resources, in consultation with the Senior Counsel as appropriate. Every effort will be made, consistent with the need to discharge Einstein's responsibilities and protect the safety of the Einstein community, to respect the wishes of the alleged victim regarding further investigation. A Complaint will not be pursued without the alleged victim's consent, unless Einstein is obligated to do so or, in its judgment, the allegations are serious enough to warrant further action. Einstein at all times reserves the right to proceed as necessary to protect the safety of the campus community and workplace and to maintain compliance with all applicable laws and regulations. The Title IX Coordinator therefore reserves the right to file a Complaint even if the alleged victim chooses not to do so. In such instance, the Title IX Coordinator would not be considered a party, but rather the alleged victim would be referred to as the Complainant, regardless of whether the alleged victim actually filed the Complaint.

III.F.5. When a Complaint is Filed

When a Complaint alleging Prohibited Conduct is filed by a Complainant or the Title IX Coordinator/Vice President for Human Resources, the Complainant (alleged victim) will be immediately advised in writing of Einstein's policies and procedures, as described herein, including their rights and options, the availability of interim protective measures and accommodations (see Section III.G.), and next steps in terms of investigation and procedures. The Title IX Coordinator/Vice President for Human Resources will discuss the Complainant's rights and options, as well as any confidentiality concerns.

When a Complaint alleging a Title IX Violation under this policy is filed by a Complainant or initiated by the Title IX Coordinator, Einstein will provide written notice to the parties who are known as follows:

- a) Notice of Einstein's Complaint, Investigation, Resolution, & Grievance Procedures
- b) Notice of the allegations, including:
 - sufficient details and time to allow for preparation of a response before any initial interview, including:
 - i. the identities of the parties involved,

- ii. the alleged conduct constituting Prohibited Conduct with reference to applicable provisions in this policy,
 - iii. the date, time, location and factual allegations concerning the incident,
 - iv. a reference to the specific prohibited conduct the Respondent is alleged to have engaged in,
 - v. possible sanctions;
- 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;
 - a statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney;
 - an explanation that the parties may inspect and review evidence;
 - a reference to the prohibition on knowingly making false statements or knowingly submitting false information during the grievance process.

Complaints will be overseen by the Title IX Coordinator/Vice President for Human Resources, in consultation with the Senior Counsel as appropriate. Where multiple Complaints arise out of the same factors or circumstances, Einstein reserves the right to consolidate the Complaints for purposes of Investigation, Informal Resolution, Title IX Grievance Procedures, and/or General Grievance Procedures, as appropriate.

Every effort will be made, consistent with the need to discharge Einstein's responsibilities and protect the safety of the Einstein community, to respect the wishes of the Complainant regarding further investigation. A Complaint will not be pursued if the Complainant notifies the Title IX Coordinator in writing that he or she wishes to withdraw the Complaint, unless Einstein is obligated to do so or, in its judgment, the allegations are serious enough to warrant further action. Einstein at all times reserves the right to proceed as necessary to protect the safety of the campus community and workplace and to maintain compliance with all applicable laws and regulations.

III.F.6. Withdrawing or Dismissing a Complaint

A Complaint may be dismissed or withdrawn in several circumstances:

- If the Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Complaint;

- If Einstein determines that conduct in a Complaint alleging a Title IX Violation does not meet the definition of that term, it will dismiss the Complaint as to such conduct (although a Complaint may be pursued for other Prohibited Conduct);
- If the Respondent is no longer enrolled or employed by Einstein; or
- If specific circumstances prevent Einstein from gathering evidence sufficient to reach a determination on the Complaint or the allegations therein.

If a Complaint is dismissed or withdrawn, any investigation or resolution or grievance procedures will be suspended, and Einstein will promptly send written notice of the dismissal or withdrawal and the reason(s) for such dismissal or withdrawal. The dismissal of a Complaint of Title IX Violations may be appealed according to the process set forth in Appendix A.

III.G. Interim Protective Measures and Accommodations

Einstein may take reasonable and prudent interim measures to protect and ensure safety, prevent retaliation, avoid an ongoing hostile environment, and/or restore or preserve equal access to the Einstein's education program. Interim measures may be available to the Complainant, the Reporter (if different than the Complainant), the Respondent, and all third-party witnesses pending resolution of the Complaint or the Report, regardless of whether the Complainant or Reporter chooses to report the conduct to campus security or local law enforcement. Interim measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact (Einstein-issued "no contact" orders),⁴ leaves of absence, increased security and monitoring of certain areas of the campus, bans from areas of campus, and changes to academic, living/housing, transportation, employment, or working situations (including transferring to a different class, moving to a different room or residence hall, and changing work schedules). Non-student employees may also be placed on administrative leave. Otherwise, a Respondent will be subject to emergency removal from Einstein's education program or activity only if Einstein determines that doing so is necessary to prevent an immediate threat to physical health or safety, and Einstein also provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

Individuals may discuss their options for any such interim measures or accommodations, as applicable, with the Title IX Coordinator/Vice President for Human Resources, who may assist with identifying and obtaining reasonably available accommodations. Upon request by the Complainant or Respondent, an individual's request for an interim measure or accommodation will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and

⁴ No contact orders prohibit continued intentional contact with the Complainant. If the accused/Respondent and Complainant/reporting individual observe each other in a public place, it shall be the responsibility of the accused/Respondent to leave the area immediately and without directly contacting the reporting individual. Einstein may establish an appropriate schedule for the accused/Respondent to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Complainant/reporting individual. Intentional and/or continued violations of a College-issued "no contact" order is a violation of this policy and may result in additional misconduct charges and additional disciplinary sanctions including suspension and expulsion for students, or up to and including termination of employment for employees.

accommodation that directly affects him or her, including potential modification, and shall be allowed to submit evidence in support of his or her request.

Einstein may also assist an individual with obtaining an Order of Protection or other protective measures via reports to law enforcement or otherwise. If an Order of Protection or the equivalent is received by Einstein, individuals have a right to receive a copy of it, and have an opportunity to meet or speak with an Einstein representative, or other appropriate individual, who can explain the order and answer questions about it, including information about the accused's responsibility to stay away from protected persons. An explanation of the consequences for violating such an order will also be explained, and may include, but not be limited to, arrest, as well as suspension or expulsion for students, and termination for employees. If an Order of Protection or the equivalent is violated, campus security may provide assistance in making an appropriate arrest.

Interim measures may be modified as necessary throughout while the complaint is pending.

Einstein also will consider the safety of the Einstein community when making decisions regarding appropriate interim measures. Einstein will endeavor to maintain as confidential any accommodations or protective measures to the extent that maintaining them would not impair the ability of College of Medicine to provide such measures.

III.H. Investigation of Reports & Complaints

Einstein will respond to all Reports and Complaints in a prompt, thorough, fair, and impartial manner. All Reports or Complaints of Prohibited Conduct under this policy will be overseen by the Title IX Coordinator/Vice President for Human Resources.

III.H.1. Investigation of Reports and Complaints

Upon receipt of a Report or Complaint of Prohibited Conduct, or upon receiving information which Einstein determines on its own warrants further investigation (even if no Complaint is filed or even if a Complaint is filed and later withdrawn), a fair, prompt, and impartial investigation will commence in accordance with the procedures set forth below, assuming one or more of the parties (Respondent and/or Complainant) are students. (As discussed above in Section II above, if only employees are involved, the procedures set forth in the ***Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students*** will apply). The investigation will be conducted by officials who are impartial, with no conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent. Training for such officials will be conducted pursuant to Section III.K. Generally, the investigation will be conducted by the Title IX Coordinator/Vice President for Human Resources, the Security Department or another appropriate entity as determined by Einstein (it being understood that the College reserves the right to use an outside individual or organization to conduct or assist with the investigation). Depending on the nature of the allegations, the investigation may include interviews with the Complainant and Respondent, interviews of witnesses, collection of documentation (including email and other communications relevant to the complaint), a review of documents or any other steps deemed important by the investigator in order to

thoroughly and fairly conduct the investigation. The investigator will consult with the Senior Counsel, as appropriate, throughout this process. Einstein will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The Title IX Coordinator/Vice President for Human Resources (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 business days after receipt of the Respondent's statement regarding the allegations, and generally within 40 business days after receipt of the formal complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline (see Section III.K.).

Where a Report has been made, but no Complaint filed, the alleged victim may nevertheless decide at any point during the investigation to file a Complaint, or the Title IX Coordinator may initiate the Complaint process should it determine the allegations are serious enough to initiate the Complaint process, such action would trigger all procedures applicable to Complaints, including the provisions in Sections III.F.5. Otherwise, investigation of a Report may be discontinued for failure to file a Complaint.

If, in the course of an investigation of a Complaint, Einstein decides to investigate allegations of Title IX Violations that were not included in the notice regarding the original Complaint allegations (as discussed in Section III.F.5.), Einstein will provide notice of the additional allegations to all parties whose identities are known, pursuant to the process set forth in Section III.F.5.

All members of the Einstein community are encouraged to cooperate with investigations. However, in no event will a Complainant or Respondent be compelled to participate in the investigation. Further, Einstein's ability to compel a third party to participate in the investigation process may be limited.

Investigation of Reports or Complaints of Title IX Violations

Any party who is invited or expected to participate in any investigative interview or other meeting will be provided with written notice of the date, time, location, participants, and purpose of the interview or meeting, with sufficient time for the party to prepare to participate. Parties will have the same opportunities to have others present during any interview or other meeting, including the opportunity to be accompanied by an advisor of their choice (who may, but need not be, an attorney), and any restrictions on advisors' participation will apply equally to both parties. The burden of proof gathering evidence rests with Einstein and not on the parties, except that Einstein cannot access a party's records maintained by a medical or other professional without the voluntary, written consent of that party.

Parties will have equal opportunities to present witnesses and other inculpatory and exculpatory evidence. Neither party is restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence.

Parties will have an equal and timely 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 information that may exonerate or show responsibility—subject to reasonable time, place, and manner restrictions as well as heightened restrictions on sensitive information that is not directly relevant. Such evidence will

be provided regardless of whether Einstein intends on relying on such evidence. Each party will have the opportunity to meaningfully respond to such evidence prior to the conclusion of the investigation. Prior to completion of the investigation, Einstein must send to each party and the party's advisor (if any), the evidence subject to inspection and review in an electronic format or hard copy, and give the parties at least 10 business days to submit written response. The investigator will consider such written responses prior to completion of the Investigative Report.

III.H.2. Confidentiality During Investigations & Grievance Procedures

Information gathered during the Investigation, Informal Resolution, Title IX Grievance Procedures, and Grievance Procedure processes will be handled by Einstein with due diligence and care. Discreet inquiry, corrective counseling, and trust will be stressed by Einstein in dealing with all Complaints and Reports. Einstein will maintain as confidential records and information concerning investigations, except as required by FERPA or a government investigation, hearing, or judicial proceeding, or as otherwise required by law, and except that where a Complaint is filed, Einstein must give notice to Complainant and Respondent of the identities of any individuals involved as well as certain information regarding the incident (see Section III.F.5). In all instances, Einstein will endeavor to maintain the Complainant's and Respondent's privacy and reveal the parties' identities only to those individuals who need to know it in order for an investigation to commence or continue (as applicable) and the matter to be resolved.

Einstein is not able to guarantee complete confidentiality because doing so may limit Einstein's ability to provide parties with notice of allegations in a Complaint, to investigate the allegations and respond effectively, to ensure a safe, non-discriminatory and harassment-free environment and/or to comply with crime reporting or other legal requirements. In addition, consistent with law, information regarding violations of this policy may be shared among Einstein personnel as appropriate and necessary, even Einstein officers and employees who cannot guarantee confidentiality will maintain the privacy of the parties' involved to the greatest extent possible. The information provided by the parties involved to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator/Vice President for Human Resources to investigate and/or seek a resolution.

III.I. Resolution & Grievance Procedures

In any investigation of a Complaint involving a student as either a Complainant or Respondent, there are two sets of procedures that might apply, depending on the type of Prohibited Conduct described in the Complaint:

- For Complaints regarding Title IX Violations (as defined in Section III.C.3), the Title IX Grievance Procedures will generally apply, as set forth in Section III.I.2 below. If the Respondent is a student, the parties may instead choose to participate in the Informal Procedures set forth in Section III.I.1.
- For Complaints regarding other Sexual Harassment or discrimination that do not qualify as Title IX Violations, the General Grievance Procedures will apply (see Section III.I.3.), unless the

parties instead choose to participate in the Informal Procedures set forth in Section III.I.1.

As discussed above in Section II, if only employees and/or third-parties are involved, the procedures set forth in the *Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students* will apply. If you have any questions, such as to which set of procedures apply, please contact the Vice President for Human Resources/Title IX Coordinator or Senior Counsel.

Regardless of which process is used, it will be conducted by officials who are impartial, with no conflict of interest or bias for or against either the Complainant or Respondent. Training for officials involved in the resolution and/or grievance processes will be conducted pursuant to Section III.K.

III.I.1. Informal Resolution Process

The Informal Resolution Process may apply only where:

- a Complaint has been filed;
- all parties receive a written notice disclosing: the allegations in the Complaint, their options to pursue Title IX or General Grievance Procedures, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming Title IX Grievance Procedures or General Grievance Procedures arising from the same allegations), and the consequences resulting from participating in the Informal Resolution Process;
- all parties voluntarily agree to pursue the Informal Resolution Process, and sign written consent to do so; and
- the Respondent is not an employee.

The Informal Resolution process will be overseen by officials who are impartial, with no conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent. Training for such officials will be conducted pursuant with Section III.K.

Informal means of addressing the issues raised in a Complaint may include, but are not limited to:

- An informal direct discussion between the Complainant and the Respondent in the presence of the Title IX Coordinator/Vice President for Human Resources;
- Requesting additional education for the area or department where the Complaint originated; or
- Commencing mediation of the Complaint. The Complainant and the Respondent must agree to mediation if mediation is to go forward. **Mediation is optional.** The mediator will be designated by the Title IX Coordinator/Vice President for Human Resources within 10 business days after the parties' agreement to participate in mediation. The mediator will contact the parties to set the

date, time, and location of the mediation session(s). Only the mediator and the parties will be participants in the mediation session(s), except as provided below. During the mediation process, the mediator normally will: (i) ask the parties to give their versions of the incident, including both factual information and their feelings; (ii) identify key issues; (iii) seek the agreement of both parties on the issues; (iv) facilitate discussion; and (v) work with both parties to develop a written document that will include a statement of agreement. If either party is dissatisfied with the mediation process at any time prior to the signing of a mediation agreement, that party may request that the mediation process cease.

The Complainant or Respondent may at any time prior to resolution decide to withdraw from the Informal Resolution Process and instead proceed with the Title IX or General Grievance Procedures process (see Sections III.I.2. and III.I.3.) by notifying the Title IX Coordinator/Vice President for Human Resources of his or her desire to do so. No negative inference may be drawn from such a request.

III.I.2. Title IX Grievance Procedures

The Title IX Grievance Procedures apply to Complaints of Title IX Violations that a Complainant has filed with the Title IX Coordinator/Vice President for Human Resources (see Section III.F.1).

For more information about the Title IX Grievance Procedures, please refer to **Appendix A**. In certain circumstances, parties may voluntarily agree to pursue an Informal Resolution Process in lieu of Title IX Grievance Procedures (see Section III.I.1.).

III.I.3. General Grievance Procedures

The General Grievance Procedures apply to Complaints of Prohibited Conduct other than Title IX Violations that are covered by the Title IX Grievance Procedures (see Section III.I.2). For more information about the General Grievance Procedures, please refer to **Appendix B**. Parties may voluntarily agree to pursue an Informal Resolution Process In lieu of General Grievance Procedures (see Section III.I.1.).

III.I.4. Remedies and Sanctions

Einstein has the discretion to issue any disciplinary action it deems appropriate up to, and including expulsion and/or termination.

If Einstein determines that an individual is responsible for a Title IX Violation, sanctions which may be imposed by Einstein include suspension or expulsion for students and up to and including termination of employment for employees. Other sanctions that may be imposed include a warning, disciplinary probation, restriction from employment by the College, removal from College housing, removal from courses or activities, loss of privileges, no contact, exclusion from areas of the campus and facilities, removal or non-renewal of scholarships, a notation on the Respondent's official College transcript, community service, restitution, and a fine. In addition, the Respondent may also be required to undergo an assessment and treatment by a therapist or counselor, attend an intervention treatment program and/or issue a letter of apology.

Students suspended or expelled for committing an act of Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, or a “violent crime,” as defined by the Clery Act,⁵ will have a notation placed on their transcript as follows: “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” Einstein will consider requests to remove transcript notations. Requests for removal of a transcript notation should be sent to the Title IX Coordinator. A transcript notation will not be removed prior to one year after conclusion of the suspension. If a finding of responsibility is vacated for any reason, a corresponding transcript notation will be removed. Expulsion notations will not be removed in any case. If an accused student withdraws from Einstein while charges are pending and declines to complete the disciplinary process the following notation will be placed on his/her transcript: “withdrew with conduct charges pending.”

In addition to any disciplinary action, Einstein may take action to eliminate a hostile environment created by discrimination, harassment or sexual misconduct, to prevent the recurrence of the discrimination, harassment or sexual misconduct, and to address the effects of the discrimination, harassment or sexual misconduct on the parties involved, the witnesses and the Einstein community, as appropriate. Such efforts may include additional training and awareness programs for the Einstein community.

More information about possible sanctions can be found in **Appendices A and B**.

III.J. Time Limits

Einstein will exercise due diligence in complying with the stated time limits set forth in this policy. However, stated time limits may be extended for good cause depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance. 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. All parties will be notified in writing of any delay or extensions and the reason therefore. Any party may request an extension of any deadline by submitting a written request to the Title IX Coordinator detailing the reason for such request and the amount of additional time requested. The Title IX Coordinator has the discretion to grant or deny any such request.

III.K. Education/Training

As part of Einstein’s commitment to providing a safe, non-discriminatory and harassment-free environment, this policy shall be disseminated widely to the Einstein community through publications, websites, student orientations, new employee orientations, current employee training and other appropriate channels of communication. Einstein also provides training programs for Einstein employees and students to promote awareness and a safe and respectful Einstein environment. Additionally, officials and/or Decision makers involved in responding to Reports and Complaints, conducting investigations and/or overseeing resolution and grievance procedures will receive appropriate training consistent with applicable law, including, as applicable, training on:

⁵ “Violent crimes” defined by the Clery Act are murder, sexual offenses (forcible and non-forcible), robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.

- the scope of the recipient’s education program or activity,
- Prohibited Conduct and Title IX Violations
- how to conduct an investigation and grievance process that protects the safety of victims and the rights of Respondent and promotes accountability (including hearings, appeals, and informal resolution processes),
- the effects of trauma,
- how to serve impartially (including by avoiding prejudice of the facts at issue, conflicts of interest, and bias),
- issues of relevance of questions and evidence (including on when the Complainant’s sexual predisposition or prior sexual behavior are not relevant),
- issues of relevance to create an investigative report that fairly summarizes relevant evidence, and
- technology to be used at a live hearing.

III.L. Documentation of Investigations and Resolution & Grievance Procedures

The Title IX Coordinator/Vice President for Human Resources will maintain records of all Complaints (both formal and informal), investigations, findings (including the basis for those findings) and appeals. These records will be kept on file in accordance with Einstein’s records and retention policy.

Parties have the right to access a full and fair record of any disciplinary hearing involving allegations of a Title IX Violation. Such records shall be preserved and maintained for at least five years from the hearing and may include a transcript, recording or other appropriate record.

The Title IX Coordinator/Vice President for Human Resources also will inform the applicable Registrar if any transcript notations are required (see Section III.I.4).

III.M. Retaliation

This policy prohibits retaliation against any individual for the purpose of interfering with any Title IX right or privilege, 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, even if the Complaint is unsubstantiated. Retaliation includes threats, intimidation, coercion, discrimination, reprisals, harassment, and/or any other adverse action threatened (expressed or implied) or taken, including charges against an individual for code of conduct violations that do not involve sex discrimination or a Title IX Violation, but arise out of the same facts or circumstances as a Report or Complaint of sex discrimination, or a Report or Complaint of a Title IX Violation, for the purpose of interfering with Title IX rights or privileges. Retaliation may take place in person, over the telephone or through electronic or social media means. Regardless of how it manifests itself, retaliation is prohibited.

Einstein will maintain as confidential the identity of anyone who makes a Report or Complaint, Respondents, and witnesses, except as required by FERPA or a government investigation, hearing, or judicial proceeding, or as otherwise required by law, and except that where a Complaint is filed, Einstein must give notice to Complainant and Respondent of the identities of any individuals involved.

Retaliation is a serious violation of this policy, as well as federal, state and local law. Anyone who either observes or becomes aware of such retaliatory behavior is strongly encouraged to report it to the Title IX Coordinator/Vice President for Human Resources, and all Einstein employees are under a business duty to do so. Complaints alleging retaliation may be filed according to the procedures in Section III.F, or (for violations that do not involve students) the procedures in the *Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Employees and Non-Students* or the *Discrimination and Harassment Policy (Non-Title IX)*, as applicable. Violations of this prohibition will be addressed through the procedures outlined in this policy.

III.N. Knowing False Claims or Information

Einstein considers any allegation of discrimination, harassment or sexual misconduct a serious matter and encourages individuals to report all incidents to Einstein. All good faith reports will be treated seriously. Any individual who knowingly files a false claim, or who *knowingly* provides false information during an investigation or proceeding may be subject to appropriate disciplinary action, up to and including suspension and expulsion for students and termination of employment for employees.

III.O. Re-Evaluation

Einstein reserves the right to modify and/or amend any or all of the terms and/or procedures outlined herein at any time, in its sole discretion. In the event Einstein determines that circumstances warrant modification or amendment of this policy, timely notice of the same will be communicated to all affected parties. This policy is made available to the entire faculty, staff, and student body of Einstein, as well as all interested others, and can be accessed via the Human Resources webpage or can be obtained from the Title IX Coordinator/Vice President for Human Resources, Senior Counsel, or the Einstein Office of Student Affairs.

IV. Effective Date

Effective as of: August 14, 2020

V. Policy Management and Responsibilities

Einstein's Human Resources department is the Responsible Office under this Policy. Einstein's Dean is the Responsible Executive, and Einstein's Vice President of Human Resources and Diversity is the Responsible Officer for the management of this Policy.

VI. Approved (or Revised)



Responsible Executive

8/31/20

Date

Appendix A: Title IX Grievance Procedures

Title IX Grievance Procedures

These Procedures will apply to Complaints of Title IX Violations, following an Investigation and Investigative Report, unless the parties voluntarily agree to instead participate in the Informal Resolution Process where permitted. These Procedures are intended to implement 34 C.F.R. 106.45, and as such, should be interpreted consistently with its requirements. **The Hearing**

The Title IX Coordinator/Vice President for Human Resources (or his/her designee) will provide all parties involved with a copy of these Procedures:

- 1) Following the Investigation and issuance of the Investigative Report, the Complaint will proceed to a live Hearing, which will be conducted by a neutral Decisionmaker appointed by Einstein (Einstein reserves the right to appoint more than one neutral Decisionmaker to a given case). The Decisionmaker(s) will not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent. Training for the Decisionmaker will comport with Section III.K. The Title IX Coordinator will coordinate details of the Hearing and parties' submissions, but will not serve as a Decisionmaker.
- 2) At least 10 business days before the Hearing date, parties will receive notice of the Hearing date, the Complaint which will be heard at the Hearing, and a copy of the Investigative Report.
- 3) The Respondent will be presumed to be not responsible for the alleged conduct unless and until proven otherwise under a clear and convincing standard of evidence.
- 4) Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. However, at least 5 business days before the Hearing date, parties must:
 - a. Submit the name of their Advisor who will assist them at the hearing. The Advisor may be, but is not required to be, an attorney. If a party does not submit the name of an Advisor, Einstein will provide an Advisor without charge.
 - b. Submit any request that the Hearing be conducted virtually via live video, with the parties located in separate rooms. The parties must be able to simultaneously see and hear the party or witness that is answering questions.
 - c. Submit a written response, if any, to the Investigative Report

- d. Submit a list of any evidence or witnesses the party wishes to present at the Hearing, including names of possible witnesses, the nature and description of possible evidence, and any relevant supplemental information that becomes available after the Investigation.
- 5) Prior to the hearing, the Decisionmaker(s) will review the Investigative Report, as well as any submissions from the Complainant or Respondent. The Decisionmaker(s) may ask that witnesses attend the Hearing, so that they may be asked questions in person.
- 6) The burden of proof is on Einstein to gather sufficient evidence to reach a determination regarding responsibility. Einstein will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Einstein cannot access, consider, disclose, or 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 Einstein obtains that party's voluntary, written consent to do.
- 7) The Decisionmaker will preside over the Hearing, and may question the parties in order to assist him/her in deciding whether or not the charges are supported by clear and convincing evidence.
- 8) The Hearing will be recorded via audio recording, audiovisual recording, or transcript, and will be made available to the parties for inspection and review in sufficient time to allow them to meaningfully prepare for an appeal.
- 9) The parties are encouraged to attend the Hearing, so that they are given a full opportunity to explain their positions. However, the Decisionmaker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Hearing.
- 10) At the Hearing, Einstein will make available for parties' inspection, review, and use, all evidence obtained as part of the investigation that is directly related to the allegations in the Complaint.
- 11) At the Hearing, each party's Advisor will be given an opportunity to ask the other party and any witnesses all relevant questions and follow-up questions in real time, including questions challenging credibility. The party may not personally ask such questions.
- 12) Before a Complainant, Respondent or witness answers a question from an Advisor, the Decisionmaker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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. However, past findings of Domestic Violence,

Dating Violence, Stalking, or Sexual Assault may be admissible solely for purposes of determining appropriate sanctions. Additionally, parties have the right to exclude questions and evidence about their mental health diagnosis and/or treatment.

- 13) The Advisor must abide by the Decisionmaker(s)' determination as to whether a question is relevant. The Advisor may be asked to leave the meeting/proceeding if he/she deviates from his/her role. In such case, the party would have an opportunity to appoint a different Advisor, or Einstein would appoint an Advisor for the party. The Advisor will be subject to the same confidentiality expectations applicable to others in attendance at the meeting/proceeding.
- 14) If a party or witness refuses to submit to cross-examination at the Hearing, the Decisionmaker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Decisionmaker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's refusal to answer cross-examination or other questions.
- 15) The Decisionmaker(s) will objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence.
- 16) Credibility determination will not be based on a person's status as a Complainant, Respondent, or witness.
- 17) Parties have the right make an impact statement related to appropriate sanctions.
- 18) Within 10 business days of the Hearing, the Decisionmaker(s) will issue a written decision on whether the Respondent is responsible for the alleged violation(s). The written determination will be provided to both parties simultaneously, and will include:
 - a. Identification of the allegations potentially constituting a Title IX Violation;
 - b. A description of the procedural steps taken from the receipt of the 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 held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of Einstein's *Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and Complaint Procedures for Students* to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Einstein imposes on the Respondent, the rationale for each sanction, and whether remedies designed to restore or preserve equal access to Einstein's education program or activity will be provided by Einstein to the Complainant; and

- f. Einstein's procedures and permissible bases for the Complainant and Respondent to Appeal.

Appeal Process

Both parties have the right to appeal from a determination regarding responsibility and from a dismissal of a Complaint or any allegations therein. The appeal must be submitted to the Title IX Coordinator/Vice President for Human Resources within 5 business days of the date of the determination or dismissal of the Complaint. A request for an appeal must consist of a plain, concise, and complete written statement outlining the grounds for the appeal. In all cases, there are three possible grounds for appeal:

- Existence of a procedural irregularity that affected the outcome of the matter;
- 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; or
- The Title IX Coordinator, investigator(s), or Decisionmaker(s) had a conflict of interest for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- The sanction is excessive, inconsistent or insufficient with the nature of the offense.

Upon receipt of an appeal, the Title IX Coordinator/Vice President for Human Resources will promptly notify the other party in writing that an appeal was filed, and provide a copy of the appeal. The appeal will be referred to an **Appeal Panel**, which will include the Dean (or his/her designee) and at least one other individual to be selected by the Dean and the Title IX Coordinator/Vice President for Human Resources. The Appeal Panel will not include any of the following: the Title IX Coordinator/Vice President for Human Resources, anyone who investigated the Complaint, or any Decisionmakers involved in the determination regarding responsibility or dismissal of the Complaint. Both parties will receive notice of the appointment of the Appeal Panel.

Within 10 business days after receiving notice of the appointment of the Appeal Panel, parties may submit a written statement supporting or challenging the outcome.

The appeal will be conducted in a fair and impartial manner. The appeal is not a re-hearing of the underlying matter. The Appeal Panel will review the written investigation report, decisions and all supporting documents, and also may consult with both parties. The Appeal Panel (by majority vote of panelists, or by unanimous decision if less than 3 panelists) can affirm the original determination of responsibility, alter the determination of responsibility either in whole or in part, and/or alter the sanctions, depending on the circumstances. The matter can also be referred back for further investigation or consideration if appropriate. The Appeal Panel will issue its written decision within 10 business days from the date of the submission of all appeal documents by both parties. The decision will describe the result of the appeal and the rationale for the result. The Title IX Coordinator/Vice President for Human Resources will simultaneously notify the parties as soon as practicable of the decision.

Appeal decisions are final.

If there is no appeal, the Title IX Coordinator/Vice President for Human Resources will simultaneously notify the parties that the initial decision is final because the time for an appeal has expired.

Timing

Einstein will endeavor to fully resolve all Complaints of Title IX Violations generally within 60 business days after receipt of the formal Complaint. The 60-day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.

Confidentiality

Parties have the right to choose whether to disclose or discuss the outcome of this process. However, subject to the exceptions discussed in Section III.H.2 and unless otherwise required by law, Einstein will to the extent possible maintain as confidential all information obtained during the course of this process and will refrain from public release of such information until the appeals panel makes a final determination.

Appendix B: General Grievance Procedures For Complaints of Prohibited Conduct Not Covered by Appendix A

- 1) These Procedures will apply to Complaints of Prohibited Conduct not involving Title IX Violations, following an Investigation and Investigative Report, unless the parties voluntarily agree to instead participate in the Informal Resolution Process where permitted. The Title IX Coordinator/Vice President for Human Resources (or his/her designee) will provide all parties involved with a copy of these procedures.

- 1) The Title IX Coordinator/Vice President for Human Resources (or his/her designee) will request the Complainant to provide to the Title IX Coordinator, within 5 business days after the Title IX Coordinator/Vice President for Human Resources' request and preferably in writing, a description of all facts that bear on the allegations; specifically, the details surrounding the accusation, names of possible witnesses, and the nature and description of possible evidence. The Complainant is expected to share with the Title IX Coordinator/Vice President for Human Resources, or other appropriate investigative entity as designated by Einstein, any relevant supplemental information that subsequently becomes available.

- 2) The Title IX Coordinator/Vice President for Human Resources (or his/her designee) will promptly inform the Respondent in writing (and send a copy to the Complainant) of the allegations (including the date, time, location, nature of the alleged misconduct, and factual allegations) and ask the Respondent to respond to them within 5 business days after such notice. Such response should include all facts that bear on the allegations, including the names of possible witnesses and the nature and description of possible evidence. The Respondent is expected to share with the Title IX Coordinator/Vice President for Human Resources, or other appropriate investigative entity as designated by the College, any relevant supplemental information that subsequently becomes available. The Title IX Coordinator/Vice President for Human Resources will inform the Complainant of any defenses that the Respondent may provide. The Title IX Coordinator/Vice President for Human Resources (or his/her designee) may ask to meet with the parties separately to discuss the allegations.

- 3) Where appropriate, in the judgment of the Title IX Coordinator/Vice President for Human Resources, both the Complainant and the Respondent may be invited to engage in mediation or conciliation.

- 4) The Title IX Coordinator/Vice President for Human Resources may also work with Senior Counsel, as appropriate, in responding to the receipt of a Complaint.

- 5) The Title IX Coordinator/Vice President for Human Resources (or other designated investigator) will fully, fairly and impartially investigate the complaint, and each party equally will have the opportunity to present witnesses and other evidence to the investigator. Each party and appropriate officials will also be afforded equal and timely access to information that will be used to adjudicate the Complaint.

- 6) Both parties will be advised by the Title IX Coordinator/Vice President for Human Resources (or his/her designee) that reasonable efforts will be made by the College to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see Sections III.F.3 and III.H.2.).
- 7) The Title IX Coordinator/Vice President for Human Resources will explore possible interim protective measures and accommodations with both parties.
- 8) The Title IX Coordinator/Vice President for Human Resources (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.
- 9) The Title IX Coordinator/Vice President for Human Resources (or his/her designee) will provide the Complainant and the Respondent with periodic status updates.
- 10) Each party will be provided written notice in advance of any interview or hearing, with sufficient time to prepare for meaningful participation. The Title IX Coordinator/Vice President for Human Resources (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 business days after receipt of the Respondent's statement regarding the allegations, and generally within 40 business days after receipt of the formal complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline (see Section III.K.).
- 11) The Title IX Coordinator/Vice President for Human Resources (or other designated investigator) will compile a written neutral investigation Report, summarizing the evidence and making findings of fact and conclusions, and will then determine the credible evidence and make a finding as to whether this policy has been violated. A finding of a violation of this policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the discrimination or harassment occurred).
- 12) The Title IX Coordinator/Vice President for Human Resources will simultaneously inform the parties of the conclusion of the investigation and the finding. The Complainant and Respondent may respond to such findings, either verbally or in writing, and such response will be furnished to the appropriate disciplinary authority along with the investigation's findings. Neither the Complainant nor the Respondent is entitled to receive a copy of the internal investigative report or any other related documents. If Einstein determines to furnish a document to one party, it will also simultaneously furnish a copy to the other party.
- 13) Findings and recommendations concerning a Respondent will be promptly referred to the Dean for consideration of appropriate disciplinary action. The Dean will consult with the Title IX Coordinator/Vice President for Human Resources and the designated investigator (as applicable) to review the findings and recommendations, as well as any responses to such findings received from the Complainant or Respondent.

- 14) The Title IX Coordinator/Vice President for Human Resources will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, except that the Complainant will only be notified of sanctions that directly relate to said Complainant. Such notice may also include any other remedial or preventative action being taken or provided by the school. A Respondent may appeal the sanctions to be imposed on him/her, but no other party has a right of appeal. Within 5 business days of notice of the sanctions to be imposed on the Respondent, the Respondent may appeal the sanctions by submitting a written request to the Title IX Coordinator/Vice President for Human Resources. The only grounds for an appeal are that the sanctions are excessive or inconsistent with the nature of the offense. The appeal is not a re-hearing of the underlying matter. Upon receipt of the appeal, the Title IX Coordinator/Vice President for Human Resources will provide the other party with notice of the appeal and the opportunity to respond in writing. The other party's response to the appeal must be submitted within 5 business days from receipt of notice of the appeal. The appeal will be reviewed by the Dean (or his/her designee), and he/she will issue a determination generally within 5 business days from the date of the submission of all appeal documents by both parties. The Title IX Coordinator/Vice President for Human Resources will simultaneously notify the parties as soon as practicable of the decision. Appeal decisions are final. If there is no appeal, the Title IX Coordinator/Vice President for Human Resources also will simultaneously notify the parties that the initial decision is final because the time for an appeal has expired.
- 15) Einstein will endeavor to fully resolve all formal complaints generally within 60 business days after receipt of the formal complaint. The 60-day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.

Appendix C: Community Members' Bill of Rights

Einstein is committed to providing options, support and assistance to victims/survivors of Sexual Abuse/Assault, Stalking, Domestic Violence and/or Dating Violence to ensure that they can continue to participate in College-wide and campus programs, activities, and employment. All Einstein community members have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All Einstein community members have the right to:

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

See Section III.F.1 for information about filing a Report or Complaint, Sections III.F.3. and III.H.2. for information about confidentiality during the Report/Complaint process and an investigation and Appendix G for confidential support options.

Appendix D: Student Alcohol and Drug Use Amnesty Policy

The health and safety of every student at Einstein is of utmost importance. Einstein 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. Einstein strongly encourages students to report Domestic Violence, Dating Violence, Stalking, or Sexual Assault to Einstein 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 Einstein's officials or law enforcement will not be subject to a 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.

Einstein will provide students with the assistance needed to respond to high risk drinking and/or other drug abuse. In a crisis, students are encouraged to seek such assistance by contacting the Security Department or 911.

Security Department

Forchheimer Building, Room G9
1300 Morris Park Avenue
(718) 430-2180
security@einsteinmed.org

Additional resources and information can be found in Einstein's Drug and Alcohol Policy.

Appendix E: Additional Crime and Related Definitions

The following definitions are drawn from the Violence Against Women Act (VAWA) and its regulations, as well as various New York State laws.

Family or Household Member

The following individuals: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) person formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; (e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; (f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship;” or (g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Parent

Natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.

Sexual Misconduct

When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

Rape in the Third Degree

When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

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.

New York State law specifically prohibits forcible touching, defined as when a person intentionally, and for no legitimate purpose: (1) forcibly touches the sexual or other intimate parts of another person, or for the purpose of gratifying the actor's sexual desire; or (2) subjects another person to sexual contact for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire and with intent to degrade or abuse such other person while such other person is a passenger on a bus, train, or subway car operated by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions. Forcing touching includes squeezing, grabbing, or pinching.

Sexual Abuse

When a person subjects another person to sexual contact without the person's consent or where the person is incapable of consent, including in most instances where such person is a minor.

Appendix F: A Plain Language Explanation of Distinctions between the New York State Penal Law and the College Disciplinary Processes

New York State Education Law Article 129-B requires that Einstein officials explain differences between Einstein processes and the criminal justice process in addressing sexual and interpersonal violence.

There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. Einstein’s disciplinary process seeks to determine whether an individual has violated Einstein policy. In this process, a clear and convincing standard of proof is used to determine responsibility for alleged Title IX Violations, whereas a preponderance of the evidence standard will apply to allegations of other violations. A person who is found to have violated Einstein policy may be suspended, expelled or otherwise restricted from full participation in the Einstein community. This document is intended to help explain the differences between the criminal justice system and Einstein disciplinary processes.

	Criminal Justice System	College Disciplinary System
Goals.	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
Governing Law.	NYS Penal Code; NYS Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act, as amended by the Violence Against Women Act; NYS Education Law Articles 129-A and 129-B; College’s Non-Discrimination and Gender-Based Misconduct Policies for Students and Employees; Student Bill of Rights; Faculty Policies; Code of Conduct.
How to report and whether there must be action once a report is made.	Crimes involving sexual violence may be reported to the local police agency or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a	Victims may disclose sexual violence to various Einstein employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with Einstein’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a Report or Complaint is made to the Title IX Coordinator/Vice President for Human Resources(TIXC) or

**Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and
Complaint Procedures for Students**

	reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	another Non-Confidential resource, the TIXC will generally commence an investigation of the incident.
Who investigates?	Police or other law enforcement officials.	Investigators employed or retained by Einstein; these individuals may work for different departments within Einstein, including, but not limited to, Human Resources, the Security Department, Student Affairs and Academic Affairs, and the Office of General Counsel.
Procedures.	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	Einstein policies, which generally incorporate requirements of Governing Law. Collective bargaining agreements and faculty policies may impact some procedures.
Standard of Evidence.	Crimes must be proven "Beyond a Reasonable Doubt."	A Title IX Violation must be found by a "Clear and Convincing" evidence, whereas any other violation must be found by a "Preponderance of the Evidence" standard.
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Einstein offers confidential resources, but filing a Complaint requires that relevant information be shared with those involved.
Privacy.	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within Einstein, the parties to the proceedings, and pursuant to law.
Who are the parties?	The prosecution/State and defendant. The victim/survivor is not a party, but often the	Complainant and accused/Respondent.

**Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and
Complaint Procedures for Students**

	critical witness for the prosecution.	
Participation in the process.	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Complainants and Respondents cannot be required to participate in Einstein's process. However, Einstein will be limited in its ability to respond if a Complainant or Respondent does not participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the State (or the United States in federal cases).	Einstein initiates proceedings, with the Complainant generally having an active role.
Testimony.	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	Upon conclusion of a formal investigation, a Hearing may be scheduled where the Decisionmaker(s) and/or the parties' Advisors may question the parties and witnesses. Einstein permits both parties to participate in any Hearing.
Role of attorneys.	Both the State and the defendant are represented by counsel; counsel may question witnesses.	The parties may have a personal Advisor of their choice and at their expense (who may or may not be an attorney) present with them during any Einstein meeting, interview or Hearing. If a party does not bring an Advisor to a Hearing, Einstein will provide an Advisor without charge. The Advisor may ask relevant questions of parties and witnesses at the Hearing.
Mental Health and Sexual History.	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Evidence regarding sexual history is generally not admissible, but subject to quite limited exceptions, , such as if evidence about prior sexual behavior is offered to prove that someone other than Respondent committed the conduct alleged, or if the evidence concerns specific incidents of the

**Title IX Gender-Based Misconduct, Discrimination and Harassment Policy and
Complaint Procedures for Students**

		Complainant’s prior sexual behavior with respect to the Respondent and is offered to prove consent. NYS Education Law Article 129-B also permits parties to exclude information about their own mental health history in the fact-finding phase of the disciplinary process.
Possible Results.	<p>If a prosecution takes place, the defendant may</p> <ul style="list-style-type: none"> • plead guilty or “no contest” • have the case dismissed by the judge (on legal grounds) • be found “guilty” or “not guilty” by a judge or jury 	<p>Parties may engage in a formal proceeding, , and the Respondent may be found “responsible” or “not responsible” for violations of the College’s rules.</p> <p>Alternatively, parties may choose a method of Informal Resolution, such as mediation.</p>
Sanctions.	<p>An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.</p>	<p>An individual found responsible for violating Einstein policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from Einstein (for students), and up to and including termination (for employees).</p>

* From <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>

Appendix G: Resources and Reporting Options

I. On-Campus Resources

A. Confidential Einstein Resources

A report made to the following Einstein resources will not trigger an investigation by Einstein:

Office of Academic Support and Counseling

718-430-3154 / oasc@einsteinmed.org

Student Mental Health Center

(718) 839-7400

Additionally, if an individual discloses information through a public awareness event, such as candlelight vigils, protests, or other public event, the institution is not obligated to begin an investigation based on such information, though it may use the information to inform its efforts for additional education and prevention.

B. Non-Confidential Einstein Resources

A report also may be made to Einstein's Title IX Coordinator/Vice President for Human Resources, Security Department, Associate Dean for Student Affairs, or other "campus security authorities" (See Section III.F.1.), however it will trigger an investigation by Einstein.

II. Off-Campus Resources⁶

A. Law Enforcement

Einstein's first and foremost concern for anyone who has been the victim of an incident of Sexual Abuse/Assault, Stalking, Domestic violence, Dating violence, or any other crime is their physical safety. Thus, if anyone who has been a victim of such unlawful behavior is feeling physically unsafe, he/she should immediately call the Security Department, the local police precinct, 911, or the state police for assistance.

New York City Police Department & State Police

911 (Emergency)

Local Police Precincts

49th Precinct

2121 Eastchester Rd., Bronx, NY 10461

(718) 918-2000

⁶Fees may apply to off-campus resources. Complainants should check with each resource to determine whether reporting is confidential.

B. Medical Care & Evidence Preservation

If anyone has been the victim of an incident of Sexual Abuse/Assault, Stalking, Domestic Violence, Dating Violence, or any other crime is in need of immediate medical treatment, he/she should go to the nearest hospital emergency room or call 911.

Additionally, victims of Sexual Assault should consider the following:

Sexual Assault Forensic Examination

Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services.

To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

To obtain a **Sexual Assault Forensic Examination (SAFE)**, a sexual assault victim may contact Jacobi Medical Center, Social Work Department, 1400 Pelham Parkway, room 1E4, Bronx, NY 10467, tel. 718-918-5800, or the North Central Bronx Hospital, Sexual Assault Treatment Program, 3424 Kossuth Avenue, Bronx, NY 10467, tel. 718-519-5722. Both Jacobi Medical Center and North Central Bronx Hospital are SAFE-designated hospitals. Emergency care and support is available 24 hours/7 days a week, and a Victim Service Program social worker or volunteer advocate is on call at all times.

C. Financial Assistance for Healthcare

The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf, or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

D. Sexually Transmitted Infections

Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available at Einstein's Occupational Health Services.

Victims of Sexual Assault, Stalking, Domestic Violence, Dating Violence or other crime should also consider seeking mental health services.

The College is well aware of the emotional trauma often suffered by a victim of sexual violence, and therefore it has designated trained counselors in its Counseling Center to serve as sexual assault coordinators for the College. They can be reached by calling (929) 246-6791 or emailing

oasc@einsteinmed.org and asking for a sexual assault coordinator. Advice and support will be offered on a confidential basis as the victim begins to make choices regarding how to proceed post-assault.

III. Other Resources Not Affiliated with Einstein

The NYC Alliance Against Sexual Assault on-line at www.svfreenyc.org or (212) 229-0345 has compiled numerous resources available to victims.

SOVRI (Support for Orthodox Victims of Rape and Incest) Hotline at Beth Israel Medical Center, (888) 613-1613 is a confidential hotline (no caller- ID is used) that may be called anonymously for information and support.

Manhattan Family Justice Center can provide a wide range of services and support. The Manhattan location is at 80 Centre Street, New York, NY, 10013; **Phone:** (212) 602-2800; <https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>

Family Court Volunteer Lawyer Program (part of the New York State Access to Justice Program)
900 Sheridan Avenue
Bronx, NY 10451
Phone: (718) 618-2150
Hotline: (718) 618-2150

Safe Horizon (NYC)
2 Lafayette Street, 3rd Floor
New York, NY 10007
Phone: (212) 227-3000
<https://www.safehorizon.org/get-help/contact-us/>
Hotline: (866) 689-4357

Lifenet Helpline 1-800-543-3638 is a general crisis hotline

Immigration & Visa Assistance Services for Victims of Sexual & Interpersonal Violence:

U.S. Citizenship and Immigration Services (USCIS)
<http://www.uscis.gov/citizenship/learners/find-help-your-community>

USCIS Find Legal Services Webpage
<http://www.uscis.gov/avoid-scams/find-legal-services>

Board of Immigration Appeals (BIA) (Listing of attorneys by state who provide immigration services either for free or for little cost)
<http://www.justice.gov/eoir/probono/states.htm>

American Immigration Lawyers Association (AILA) Immigration Lawyer Referral Service
<http://www.aialawyer.org/>

American Bar Association (ABA) (Information on finding legal services by state)

https://www.americanbar.org/groups/legal_services/flh-home/