

# NewSchool of Architecture & Design 2020-2021 Academic Catalog & Student Handbook Summer Addendum – Updates to Student Code of Conduct and Title IX

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## EFFECTIVE DATES

The information contained in this addendum supplements or replaces information found in the 2020-2021 catalog.

The following changes reflect current information about NewSchool of Architecture & Design and go into effect beginning August 14, 2020, unless otherwise noted.

## CODE OF CONDUCT

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Students are expected to obey all federal, state, and local laws, and all NewSchool policies, and students are not entitled to greater immunity or privilege before the law than that enjoyed by ordinary citizens. As they prize rights and responsibilities for themselves, students are expected to respect the rights and responsibilities of others. For infractions of laws, regulations, policies, and standards, students may be subject to disciplinary action up to and including expulsion.

Any student who commits, attempts, or aids/incites another to commit or attempt the following misconduct is subject to the disciplinary sanctions authorized by NewSchool.

Acts of misconduct, including but not limited to the following:

- Cheating, plagiarism, or other forms of academic dishonesty, including the submission of research papers found, in whole or in part, on Internet sites
- Furnishing false information to any NewSchool official, faculty member, or office
- Forgery, alteration, misuse, or unauthorized transfer of any NewSchool document, record, or instrument of identification
- Tampering with the election of any NewSchool-recognized student organization
- Disruption or obstruction of the teaching, administrative, and/or disciplinary processes, or of other NewSchool activities in a way that unreasonably interferes with the learning or administrative functions of the college, and/or the freedom of movement, either pedestrian or vehicular, on NewSchool premises or at NewSchool-sponsored or supervised functions
- Failure to comply with directions of NewSchool officials, law enforcement officers, or emergency personnel acting in performance of their duties, including failure to identify oneself

and/or to produce the NewSchool identification card to these persons when requested to do so

- Possession of and/or use of any weapon, dangerous chemicals, or hazardous materials on NewSchool premises: "Weapon" is any object or substance designed to inflict a wound, cause injury, incapacitate, or threaten the safety of another person or animal. Weapons include but are not limited to: firearms, BB and pellet guns, paintball guns, brass knuckles, switchblades, swords, knives, or items used in the practice of martial arts. This prohibition also applies to fireworks, explosive devices, pyrotechnics, and flammable materials. Any student found in violation of this prohibition may be immediately suspended from NewSchool.
- Physical assault/abuse or threat of physical assault/abuse or other conduct which endangers the health or safety of any person
- Verbal or written abuse, threats, intimidation, harassment of a sexual, racial, or other nature, coercion and/or other conduct which threatens or endangers the health or safety of any person. This prohibition includes communication by direct or indirect means such as telephone, mail, email, live journals, text messages, social networking sites, etc.
- Sexual misconduct, which includes, but is not limited to, rape and other forms of sexual assault, nonconsensual sexual intercourse, nonconsensual sexual contact, sexual harassment, sexual exploitation, relationship violence, dating violence, , stalking, and other unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it denies a person access to the recipient's education program or activity. Certain of these terms are further defined in NewSchool's Title IX Grievance and Sexual Misconduct Reporting Policy and Procedures. Conduct will be considered "without consent" if no clear affirmative verbal consent is given; if inflicted through force, threat of force, or coercion; or if inflicted upon a person who is unconscious or who otherwise reasonably appears to be without the mental or physical capacity to consent. For example, sexual contact with a person whose judgment appears to be impaired by alcohol or other drugs may be considered "without consent."
- Disrespecting another member of the college community in a manner that interferes with the learning and/or administrative processes
- Conduct, which is disorderly, lewd, or indecent; breach of peace; or aiding, abetting, or procuring another person to breach the peace on NewSchool premises or at functions sponsored by, or participated in by, NewSchool

- Attempted or actual theft of NewSchool property or the property of a member of the college community or other personal or public property and/or possession thereof
- Attempted or actual damage to or vandalism of NewSchool property or the property of a member of the college community or other personal or public property
- Tampering with security, fire, or safety system devices and/or equipment
- Unauthorized possession, duplication, or use of keys to any NewSchool premises or unauthorized or forced entry into any building, structure, facility, or room therein on NewSchool premises or on property owned or controlled NewSchool
- Violation of published NewSchool policies, rules, or regulations including those pertaining to drugs and alcohol
- Participation in campus demonstrations that disrupt the normal operations of NewSchool and/or infringe on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area
- Commission of an act that would constitute a crime under federal, state, or local law

Acts consisting abuse of the judicial system, including but not limited to:

- Failure to comply with the summons of a judicial body or NewSchool official
- Falsification, distortion, or misrepresentation of information before a judicial body
- Disruption or interference with a judicial proceeding
- Accusing a student of a Code of Conduct violation knowingly without cause
- Attempting to discourage and/or harass an individual who is attempting proper participation in, or use of, the judicial system
- Attempting to influence a member of a judicial body, complainant, respondent, or witness regarding a judicial proceeding (includes harassment or intimidation) prior to and/or following the proceeding
- Failure to comply with the sanction(s) imposed under the Code of Conduct
- Influencing or attempting to influence another person to commit an abuse of the judicial system
- Retaliation, which includes intimidating, threatening, coercing, or discriminating against an individual involved in any way in the investigation or resolution of a report or complaint or the

exercise of any right or responsibility under this policy or any other hearing or investigatory process of NewSchool.

## **NO CONTACT ORDER**

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In order to maintain a safe and secure learning environment, NewSchool maintains the right to issue a No Contact Order (NCO) as in interim protective measure for students who may feel at risk and when there are allegations of behavior or activity prohibited under the university's Title IX Grievance and Sexual Misconduct Reporting Policy and Procedures or other Code of Conduct or policy violations. NewSchool will consider all available facts and circumstances that may be relevant to whether an NCO should be issued, including, but not limited to, the following factors:

- Allegations, threats, or evidence of physical violence by one student against another
- Allegations, threats, or evidence of emotional abuse by one student against another
- There is a substantial risk of emotional harm from continued contact between students
- Continued contact between students may have a material impact on campus disciplinary proceedings

The issuance of an NCO does not in any way imply guilt upon the person that the order is issued to, but it is designed to ensure the safety of the NewSchool community while an investigation is underway. Violations of an NCO will result in disciplinary action up to and including expulsion from NewSchool. If a student is issued an NCO, he or she is not allowed to have any contact with the other student(s) listed—either on or off NewSchool's campus.

Conditions of restriction may include but are not limited to:

- In person contact
- Contact by phone, text message, and voice mail
- Contact via third party
- Notes, letters, or other written communication

- Email or Internet messenger, social media, including Instagram and Facebook, or any other Internet-based communication
- Close physical proximity to the other student(s), closer than 50 feet, except in passing

The university may also restrict a student’s access to cocurricular or extracurricular activities, when academically possible, and provide for revisions to class schedules if appropriate.

An NCO will be issued by the Title IX Coordinator. A student that is issued an NCO order will be required to meet with the Title IX Coordinator to review the NCO. An NCO will remain in effect while either party is still enrolled as an active student at NewSchool. The NCO will end when all parties either withdraw, are withdrawn, or graduate from NewSchool. A student wishing to modify or rescind an NCO can do so by filing a formal written appeal with the Title IX Coordinator.

## **TITLE IX GRIEVANCE & SEXUAL MISCONDUCT REPORTING POLICY & PROCEDURES**

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The U.S. Department of Education mandates that institutions comply with specific requirements under Title IX of the Educational Amendments of 1972. Title IX is a federal civil rights law that prohibits discrimination on the basis of sex. NewSchool is committed to providing a safe educational and working environment for its students, faculty, staff, and other members of the university community.

NewSchool believes that all members of the university community should be free from all acts of sexual misconduct, including sexual assault, sexual harassment and discrimination, sexual exploitation, relationship violence, and stalking. All members of the NewSchool community and all visitors, regardless of sex, gender, sexual orientation, gender identity, or gender expression are advised that any sexual misconduct by any student, employee, or third party is prohibited. Any attempt to commit sexual misconduct, or to assist or willfully encourage any such act, is a violation of this Policy. Sexual misconduct is contrary to the basic values of NewSchool, which include promoting a sense of community, fostering learning, instilling integrity, and achieving excellence. NewSchool is committed to

providing for the prompt and equitable resolution of all complaints of sexual misconduct.

This policy applies to all complaints of sexual misconduct in NewSchool’s education programs and activities. It prohibits conduct which occurs on campus or at locations, events, or circumstances over which the institution exercised substantial control over the accused and the context in which the harassment occurs, as well as any buildings owned or controlled by an officially recognized NewSchool student organization. This policy prohibits sexual misconduct by all third parties (including but not limited to visitors, guests, volunteers and contractors) on NewSchool’s campuses and during university activities. It also applies to applicants for admission to, or employment with, NewSchool.

Pursuant to applicable federal Title IX regulations, this policy only applies to incidents and allegations for which NewSchool has actual knowledge. Actual knowledge, as so defined, occurs only if a NewSchool Official (as this term is later defined) with the authority to institute or take corrective measures under this policy receives notice of sexual misconduct. NewSchool is not deemed to have actual knowledge of incidents or allegations based solely on the actions of its employees or agents. The obligation to report sexual harassment does not cause an employee to be deemed an official with authority to institute or take corrective action. Title IX coordinators are NewSchool Officials with authority to institute or take corrective measures.

Violations of this policy may result in disciplinary action up to and including removal from the university for students and termination of employment for faculty and staff. When used in this policy the term complainant refers to a person claiming that a violation of this policy occurred, and the term respondent refers to a person accused of violating this policy.

### **1. Definitions**

**Consent:** Consent is defined at NewSchool as a clear and unambiguous and conscious agreement expressed in mutually understandable words or actions to voluntarily engage in specific sexual or intimate activity or conduct. Conduct will be considered “without consent” if no clear affirmative consent, verbal or otherwise, is given. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others engaged in the sexual activity. Affirmative

consent is not present (1) if obtained through the use of force, threat, coercion, or intimidation; (2) when an individual is incapacitated, such as by consumption of drugs, alcohol, or medication; or being unconscious or asleep; (3) if given by someone who is not able to effectively communicate or to understand the fact, nature, or extent of the sexual activity being engaged in; or 4) if the individual is unable to communicate due to a mental or physical condition.

Silence or an absence of resistance on the part of the individual does not imply or constitute consent. The existing of a dating relationship between the persons involved, or past consent to sexual activity does not imply consent. Affirmative consent must be ongoing throughout a sexual activity and can be withdrawn at any time. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. The intoxication or recklessness of a respondent is not an excuse for him or her not receiving affirmative consent from the complainant before engaging in a specific sexual activity.

Relationship violence: Relationship violence means a violent act committed by a person who is or has been in a social relationship of a romantic nature or intimate nature with the complainant, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Relationship violence includes dating violence and domestic violence.

Retaliation: Retaliation means intimidating, threatening, coercing, or in any way discriminating against an individual because the individual made a report of a claim of sexual misconduct or participated in any way in the investigation or resolution of such a report or complaint, or exercised any right or responsibility under this policy.

Sexual discrimination: Sexual discrimination for the purpose of this policy is defined as including, but not limited to, treating individuals differently because of their gender or sexual orientation, in connection with the terms and conditions of employment or educational opportunities. Discrimination does not occur, however, when an individual is treated differently than another individual for legitimate reasons.

Sexual assault: Sexual assault is nonconsensual physical contact of a sexual nature. Sexual assault includes rape and any other acts using force, threat, intimidation, or coercion, or taking advantage of a

victim's inability to make reasoned decisions about sexual activity. This includes:

- a. Nonconsensual sexual intercourse: Nonconsensual sexual intercourse is any sexual intercourse, however slight, with any object, by one person upon another, which is without consent and/or by force. It includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.
- b. Nonconsensual sexual contact: Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force, threat or intimidation. It includes intentional contact with the genitals, breasts, thighs, buttocks, anus, or groin, touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, any intentional bodily contact in a sexual manner, though not involving contact with/of/by genitals, breasts, thighs, buttock, anus, groin, mouth or other orifice. It also includes attempted nonconsensual intercourse.
- c. Statutory rape: Sexual intercourse with a person who is under the statutory age of consent in the applicable jurisdiction.

Sexual exploitation: Sexual exploitation occurs when an individual takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples include but are not limited to invasion of sexual privacy; prostituting another student; nonconsensual video or audio-taping or photography of sexual activity; distributing sexual or intimate information, images, or recordings of another without that individual's consent; going beyond the boundaries of consent (such as allowing friends to hide in the closet watching consensual sex); voyeurism; knowingly transmitting an STD or HIV to another student; exposing one's genitals in nonconsensual circumstances or inducing another to expose his/ her genitals; and sexually based bullying, including, but not limited to, through social media.

Sexual harassment: Sexual harassment can include, but is not limited to, unwelcome sexual advances; requests for sexual favors; unwelcome physical contact of a sexual nature; e-mails containing inappropriate sexual content; obscene or harassing phone calls or jokes of a sexual nature; suggestive gestures, sounds, stares, or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of a student’s academic progress;
- Submission to or rejection of such conduct by an individual is used as a basis for decisions affecting assessment of academic progress; or
- Such conduct, by instructors, staff, or students, including between students, has the purpose or effect of interfering with academic performance or creating an intimidating, hostile, or offensive environment.

Sexual misconduct: Sexual misconduct includes, but is not limited to, rape and other forms of sexual assault, nonconsensual sexual intercourse, nonconsensual sexual contact, sexual harassment, sexual exploitation, relationship violence, dating violence, stalking, and other unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it denies a person access to the recipient’s education program or activity. While NewSchool may use different standards and definitions than state criminal codes, sexual misconduct often overlaps with crimes under applicable criminal codes.

Stalking: Stalking is engaging in a course of conduct that would cause a reasonable person to suffer substantial emotional distress or to fear for his or her safety or the safety of others. A course of conduct means two or more acts in which a person follows, monitors, observes, surveils, communicates with another person, threatens, intimidates or communicates with or about another person, or vandalizes another person’s property

## 2. Reporting Violations of This Policy

Students, faculty, or staff members who believe that they are a victim of sexual misconduct should contact the Title IX coordinator. The Title IX coordinator is responsible for receiving and processing, in a timely manner, reports from students, faculty, staff, and administrators regarding rights and responsibilities concerning sexual misconduct in violation of Title IX. Anyone can report a potential violation to the Title IX coordinator, and anonymous reports are permitted; however, a formal complaint can only be filed by a student complainant or the Title IX coordinator for consideration under this policy.

Pursuant to applicable federal Title IX regulations, when NewSchool receives a report of sexual harassment, the Title IX coordinator is responsible for contacting the victim to offer supportive measures. Supportive measures are defined as “non-disciplinary, non-punitive

individualized services” that are available to both parties and that are designed to support continued access to an education program or activity “without unreasonably burdening the other party.” Supportive measures must be made available regardless of whether the victim decides to file a formal complaint.

Any questions or complaints regarding Title IX may be referred to the NewSchool’s Title IX coordinator or to the U.S. Department of Education’s Office of Civil Rights.

### **NEWSCHOOL’S TITLE IX COORDINATOR**

**Prisca Bermudez**

Telephone: (619) 684-8876

Email: pbermudez@newschoolarch.edu

### **NEWSCHOOL’S DEPUTY TITLE IX COORDINATORS**

**Marcy Madix**

Telephone: (619) 684-8813

Email: mmadix@newschoolarch.edu

### **U.S. DEPARTMENT OF EDUCATION**

**U.S. Department of Education**

50 Beale Street, Room 9700 San Francisco, CA 94105

Telephone: (415) 486-5700

Fax: (415) 486-5719

Email: OCR@ed.gov

### **FILING A CRIMINAL COMPLAINT**

Students, faculty, and staff members have the right to file both a criminal complaint and a Title IX complaint simultaneously. To file a criminal complaint please contact the San Diego Police Department, Central Division:

### **SAN DIEGO POLICE DEPARTMENT – CENTRAL DIVISION**

2501 Imperial Avenue San Diego, CA 92102

Telephone: (619) 744-9500

Email: [sdpcentral@pdsandiego.gov](mailto:sdpcentral@pdsandiego.gov)

Students, faculty, and staff members must report an incident of alleged discrimination to a responsible employee. For the purposes of this policy, the responsible employees are the Title IX coordinator the manager of Student Life. For complaints where both the complainant and respondent are employees, responsible employees include the director of Human Resources.

NewSchool takes all reports of sexual misconduct seriously and, upon receiving notice of any alleged violation of this policy, shall take immediate steps to conduct a thorough, prompt, and appropriate investigation of the complaint.

A complainant who contacts the Title IX coordinator or responsible employee with an allegation of sexual misconduct will be notified of his or her right to confidentiality and his or her right to remain anonymous and how that may affect NewSchool's ability to conduct an investigation. Please note that there are certain situations where NewSchool may not be able to guarantee confidentiality or anonymity. If the complainant wishes to move forward with the process, he or she will be asked a series of questions to provide information. If the complainant prefers, he or she may complete the information from the form and submit it to the Title IX coordinator. The Sexual Misconduct or Discrimination Complaint Incident Report is available from the Title IX coordinator or by downloading here <http://newschoolarch.edu/student-life/title-ix/>. In certain circumstances, it may be necessary for the complaint to go forward even if the complainant does not consent to that course of action.

NewSchool strongly supports the complainant's right to confidentiality in cases involving sexual misconduct. Complainants have the right to ask that their names not be disclosed to the alleged perpetrators. However, there are limited situations in which the university must override a complainant's request for confidentiality to meet the institution's legal obligations under Title IX. In these situations, the information will only be shared with individuals who are responsible for handling the university's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, NewSchool shall ensure that the information is maintained in a secure manner. If the complainant requests that his or her name not be revealed to the alleged perpetrator or if complainant asks the university not to investigate or seek action against the alleged perpetrator, NewSchool will be limited in its ability to respond fully to the incident, including taking disciplinary action against the alleged

perpetrator. If the complainant still requests that his or her name not be disclosed to the alleged perpetrator, or that the university not investigate or seek action against the alleged perpetrator, the Title IX coordinator will need to determine whether or not the institution can honor such a request while providing a safe and nondiscriminatory environment for all students, faculty, and staff.

### **3. Determination of Interim Measures**

Upon notification of an incident of sexual misconduct, NewSchool shall take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. These measures are designed to protect the complainant and provide the complainant with options to avoid contact with the alleged perpetrator. These measures may include a change in academic activities, living, transportation, dining, and working situation as appropriate.

After the initial report of alleged sexual misconduct, possible immediate interim suspension can be invoked on the accused (respondent) if there is a reasonable cause to believe the respondent's behavior is of such a nature as to pose a threat of harm or injury to the complainant or any other member of the campus community. However, pursuant to applicable federal Title IX regulations, a student may only be removed from campus under this policy if that student receives notice of the allegations and an opportunity to respond. The Title IX coordinator shall work with the complainant to determine what, if any, interim measures shall be implemented.

### **4. Student Amnesty Policy & Bystander Intervention**

NewSchool encourages the reporting of sexual misconduct. Sometimes, students may be reluctant to come forward and report an incident of sexual misconduct, or serve as a witness, because they are concerned that they may be charged with violating other campus policies, such as NewSchool's alcohol or drug policy. In order to encourage reporting of sexual misconduct, students who report an incident of sexual misconduct or who serve as witnesses to an incident of sexual misconduct, NewSchool will not face disciplinary sanctions for violations of the Code of Conduct at or near the time of the incident as long as any such violations did not place the health or

safety of any other person at risk, or involves plagiarism, cheating, or academic dishonesty.

## 5. Advocates

For complaints of sexual misconduct where the complainant or respondent is a student, the complainant and the respondent may be accompanied throughout the investigation and appeal process by an advocate of their choice. Advocates should be from the university community, unless otherwise approved, and must agree to keep the matter confidential. However, the advocate may not be a witness or possible witness in the case, a person involved in the university's disciplinary process, or a complainant or a respondent in the case. The purpose of the advocate is to provide advice to the student in a manner that is not disruptive to the proceedings. The advocate may accompany the party to any meeting or hearing held pursuant to this policy. The advocate may not provide verbal, written, or other input during the investigation or appeal process other than to the student being advised; the advocate may not speak on the party's behalf or otherwise participate or address or question the investigator, resolution officer, or other parties or witnesses.

## 6. Informal Resolution

If the complainant and respondent agree voluntarily and in writing, certain cases may be resolved informally, including through mediation in appropriate cases. Cases involving allegations of sexual assault are not suitable for mediation. The Title IX coordinator may also determine that informal resolution is not appropriate based on the facts and circumstances of the particular case. All informal resolutions will be conducted or overseen by the Title IX coordinator or designee. Under no circumstances will a complainant be required to resolve a matter directly with the respondent. Informal resolution is not available to resolve a student complaint of sexual misconduct against an employee.

If both parties are satisfied with a proposed informal resolution, and the Title IX coordinator considers the resolution to satisfy NewSchool's obligations to provide a safe and nondiscriminatory environment, the resolution will be implemented, and the informal resolution process will be concluded. If informal resolution does not resolve the matter, the resolution process will proceed to formal investigation. At any point in the process, either the complainant or

the respondent may elect to end the informal process in favor of proceeding with a formal investigation.

## 7. Investigations

If informal resolution is inappropriate, unsuccessful, or not desired by the complainant and the respondent, a formal investigation will be conducted. However, pursuant to applicable federal Title IX regulations, NewSchool may conduct an investigation only if a formal complaint is filed and NewSchool is required to dismiss formal complaints alleging conduct which does not meet the definition of sexual misconduct, did not occur within a NewSchool educational program or activity, or did not or occur in the United States. These limitations will not prohibit NewSchool from taking action based on violations of the Code of Conduct that do not fall under this policy.

The investigation of a report of sexual misconduct will begin promptly. Notice will be provided simultaneously to the complainant and the respondent in writing that a complaint has been received by NewSchool and will be investigated under this policy. The notice shall specify any interim measures that have been implemented.

NewSchool shall determine, given the circumstances surrounding the complaint, the proper party to conduct the investigation. The proper party may or may not be the Title IX coordinator, and this person shall be the person best able to conduct an impartial and fair review of the complaint. The investigation will normally include interviewing the complainant(s), respondent(s), witnesses, and other relevant parties and will include a review of any relevant documents and other information. It may include reviewing law enforcement investigation documents (if applicable) and reviewing student and personnel files. Both the complainant and the respondent may provide the investigator(s) with the names of witnesses, documents, and other information. The investigator(s) will exercise their discretion in deciding which individuals identified as witnesses during the investigation should be interviewed and which documents or other information should be reviewed. The interviews, meetings, and other proceedings are not recorded by NewSchool and may not be recorded by others. The complainant and the respondent are afforded equal procedural rights during the investigation. No expert witnesses shall be permitted.

The complainant's prior sexual relationships or conduct are neither relevant nor admissible during the investigation and will not be considered, other than the prior sexual relationship or conduct with

the respondent if the respondent alleges consent. The fact that a complainant may currently have or had in the past a dating or sexual relationship with the respondent that was consensual is not sufficient by itself to constitute consent and does not preclude a determination that sexual misconduct occurred.

At any time prior to or during an investigation, the respondent may accept responsibility for some or all of the alleged violations; the matter will then proceed to the sanctioning phase and any appeal of the sanctioning decision.

## **8. Preparation of Investigation Report**

Upon completion of the investigation, the investigator(s) will prepare a report summarizing the interviews conducted and the evidence reviewed. The report will include the investigator's finding of fact, an assessment of the credibility of the parties and witnesses when appropriate, and a recommended determination as to whether a violation of this policy has occurred. In reaching this conclusion, the investigator shall use the preponderance of evidence standard.

## **9. Resolution Procedures**

### **I. Cases Involving Allegations of Employee Violations**

If the respondent is a nonstudent employee, the Title IX coordinator or designee will report his or her findings to university Human Resources and leadership. If leadership determines, based on the contents of the report, that no violation of NewSchool policy has occurred, the incident will be closed.

If leadership determines, based on the contents of the report that a violation of university policy has or may have occurred, university leadership will determine an appropriate resolution including remedial and/or disciplinary action up to and including termination of the employee. University leadership will determine if a hearing is appropriate prior to the determination of the sanctions based on the particular facts presented, including but not limited to the identity of the complainant (student or employee), the nature and/ or severity of the offense, and the evidence presented by the investigative report. Resolution, sanctions, and appeals will be governed by the procedures in NewSchool's personnel policies or Faculty Handbook, if applicable, in accordance with the requirements of Title IX.

### **II. Cases Involving Allegations of Student Violations**

Sexual misconduct complaints involving student respondents will be governed by the following process. Upon the completion of the investigation, the Title IX coordinator shall present the investigative report to university leadership which may include, as appropriate, the chief academic officer or the manager of Student Life. The individual or individuals charged with making a determination as to the resolution of the complaint, and sanction, and any remedies for the complainant shall be referred to herein as the resolution officer, although more than one individual may be charged with resolving the complaint. The resolution officer shall then determine the appropriate resolution to the complaint, considering factors including but not limited to the identity of the complainant (student or employee), the nature and/or severity of the offense, and the evidence presented by the investigative report. The resolution officer shall determine whether a hearing, as outlined in the Judicial Affairs section of the Student Handbook, is appropriate prior to imposition of any sanction. A hearing under the Judicial Affairs section of the Student Handbook must be provided if the sanction to be imposed is suspension or expulsion of a student unless the accused student agrees in writing to an alternative disposition.

In the event there is a conflict between any part of this policy and any applicable provision of the Judicial Affairs section of the Student Handbook as used to implement this policy (The Judicial Affairs policy), this policy shall control.

In addition to the rights and obligations set forth in this policy or the Judicial Affairs policy, the following provisions shall apply:

Any process shall be prompt and equitable.

No one person may serve in more than one capacity with respect to the roles of the assigned Title IX coordinator(s), investigator(s), resolution officer(s), hearing officer(s), or appeal officer(s) (collectively, NewSchool Official). A person serving in a capacity under this policy cannot have a conflict of interest (as that term is reasonably understood) with respect to the process.

The process will include an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.

All NewSchool Officials authorized to act under this policy shall have completed appropriate training program as determined by NewSchool. Training materials will promote objective investigations and disciplinary procedures and will not rely on sex stereotypes.

The responding student shall be presumed to be not responsible.

The hearing procedure will preclude the use of questions that would violate a legally recognized privilege, unless such privilege is waived.

All required notices given under this policy or the Judicial Affairs policy must contain:

- Information about this process and the hearing process of the Judicial Affairs policy.
- Appropriate information about the alleged misconduct, including, if known, identities of the parties involved, date and location of the alleged incident, and the conduct that allegedly constitutes a violation;
- Sufficient time to prepare for any interview or meeting;
- A statement that the respondent is presumed not responsible; and
- A statement informing the parties that they may be represented by an advisor of their choice and may request disclosure of evidence.

During investigations conducted under this policy or the Judicial Affairs policy, NewSchool Officials shall:

- Assume the burden of gathering evidence, although medical treatment records cannot be accessed or used without consent;
- Allow both parties an equal opportunity to present witnesses;
- Not restrict the ability of either party to discuss the allegations or to gather or present relevant evidence;
- Provide an equal opportunity for both parties to be accompanied to proceedings by advisors of their choice, although an advisor's participation could be limited at the official's discretion;

- Provide written notice and sufficient preparation time for any meetings related to the investigation or disciplinary process;
- Provide equal access to evidence and an opportunity to respond to such evidence;
- Disclose all requested evidence, even if such evidence will not be relied upon in reaching a determination; and
- Produce an investigative report to be provided to both parties for review and response.

In any formal hearing conducted under this policy including hearings under the Judicial Affairs policy:

- The hearing shall be live and allow advisors for both parties to ask relevant questions and cross-examine the other party and witnesses;
- Cross-examination may not be conducted by a party personally;
- If a student does not have an advisor to conduct the cross-examination, the institution must provide an advisor of its choice;
- Only relevant cross-examination and other questions may be asked of a party or witness, as determined by the decision-maker, who must explain any decision to exclude a question;
- Cross-examination may not include questions about a complainant's sexual behavior or disposition, unless evidence of such behavior is offered to establish consent or to demonstrate that another party is responsible for committing the violation;
- At the request of either party, an institution must permit cross-examination to occur with the parties located in separate rooms;
- The hearing officer(s) will not rely on statements made by a party or witness who does not submit to cross-examination; and
- An audio recording or transcript of the live hearing must be made and be made available to the parties.

The resolution officer shall provide written notice to both the complainant and the respondent of the process to be used to resolve the complaint. If no hearing is to be held, both complainant and respondent may make a written submission to the resolution officer if they choose. If a hearing is held, the proceedings shall be closed.

The complainant and respondent and their respective advisors may be present in the hearing room for all or any portion of the hearing; any witnesses may only be present in the hearing room when being questioned by the resolution officer.

If either the complainant or respondent does not wish to be present in the hearing room, he or she shall be given the opportunity to hear or view the proceedings via audio or video transmission from a separate room. Neither party shall be permitted to ask questions at the hearing, although either party may submit to the resolution officer requested questions for the other party or witnesses. It shall be in the discretion of the resolution officer whether or not to ask the submitted questions, in whole or in part.

The resolution officer shall provide both parties with written notice of his or her findings and the reasons for such findings. The resolution officer shall use the preponderance of evidence standard in making his or her findings. If a violation of this policy is found, the notice shall provide the sanctions to the respondent and to the complainant, as appropriate under Title IX. The notice shall set forth either party's right to appeal, the identity of the appeal officer, and the process and time limit for such an appeal.

In addition to discipline against the respondent, resolutions may include remedies for the complainant, which may include steps such as reassignment of a course, change in housing, counseling services, medical services, academic support services, or changes to the school's overall services or policies, including altering withdrawal penalties within courses. Any remedies offered would be separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of any investigation. Resolutions may also include remedies for the broader university population, such as training or changes to policies or services.

## **10. Appeals**

Appeals for sexual misconduct complaints involving nonstudent employee respondents will be governed by the procedures in university personnel policies or Faculty Handbook, as applicable. If any right of appeal is granted through those policies, both the complainant and the respondent shall have equal rights of appeal.

In cases involving student respondents, both parties have the right to appeal the resolution or hearing officer's finding of responsibility and/or imposition of sanctions. Any appeal must be filed in writing within

5 days from the notice of resolution. NewSchool will determine the appropriate individual in university leadership to hear any appeal (appeal officer), depending on the circumstances of the case, including the identity of the respondent. There is a presumption that the decision, and any sanction or discipline, were made properly, and the appeal officer may not substitute his or her judgment for that of the resolution or hearing officer. The sole grounds for appeal are (1) a procedural error that substantially impacted the determination or sanction; (2) new information that was not available at the time of the investigation or hearing and that could reasonably have had a substantial impact on the determination or sanction; (3) bias or conflict of interest on the part of any responsible NewSchool Official; or (4) excessiveness or insufficiency of the sanction. The sanction may be increased only if the complainant appeals on the ground that the sanction was insufficient, and it may only be decreased if the respondent appeals on the ground that the sanction was excessive.

The appeal officer shall give both parties timely notice of the receipt of an appeal. Both parties shall be provided the opportunity to make a written submission to the appeal officer. The appeal officer shall be limited to the record below, including any information that was part of the investigation or the hearing. The appeal officer shall not conduct another hearing but may conduct interviews with the complainant, respondent, or witnesses in his or her discretion. The party appealing shall have the burden of proof in any appeal.

The appeal officer shall give written notice to both parties of the outcome of the appeal and the reasons for his or her decision and shall be rendered in compliance with this policy. The decision of the appeal officer is final.

## **RETALIATION**

Title IX includes protections against retaliation. NewSchool will take immediate and appropriate steps to investigate or otherwise determine if retaliation due to the reporting of sexual misconduct or discrimination occurs.

## **TRAINING**

All individuals with responsibilities under this policy shall have appropriate training in this policy and in the requirements of Title IX and related laws. Training shall include training relating to sexual misconduct, including sexual assault, relationship violence, and stalking as defined in this policy.

## **SOURCES OF COUNSELING, ADVOCACY, & SUPPORT**

Victims of sexual misconduct can receive assistance immediately by calling the local police department (911, if emergency). Students may contact the Student Assistance Program (SAP) by calling 1-866-465-8942 or TDD: 1-800-697-0353. When contacting the SAP, please reference NewSchool's ID, NEWSCHOOL. NewSchool employees may contact the SAP is free, confidential resources at NewSchool, which means that all conversations will remain confidential and will not initiate any type of investigation into the incident. Sexual assault reports must be made by contacting the NewSchool Title IX coordinator who is the appropriate university official for receiving reports of sexual assault. Victims of sexual misconduct can also receive counseling and support services through the Center for Community Solutions (CCS). CCS is a member of the San Diego County Sexual Assault Response Team (SART). To contact, please call: 24-Hour Toll Free Crisis Line: 1-888-DVLINKS (385- 4657); Coastal Location: 858-272- 5777; East County Location: 619-697- 7477 North County Location: 780-747-6282.

Time Frames for Process: While each situation is different and there can be no way to determine how long an investigation will take, the Title IX coordinator shall use her or his best efforts to reach resolution within 60 days from the time the complaint is reported to notice of resolution, exclusive of any appeals.

## **RIGHT TO APPEAL**

At the conclusion of the investigation and disciplinary process, both parties have the right to appeal any findings. The appeals process is described in the Code of Conduct.