

**MODERN WELDING SCHOOL**

**SEXUAL MISCONDUCT POLICY  
&  
PROCEDURES FOR RESPONDING TO SEXUAL MISCONDUCT**

**Revised September 17, 2015**

## TABLE OF CONTENTS:

1. Introduction.....	3
2. Scope of the Policy.....	3
3. Prohibited Conduct.....	3
4. Options for Assistance Following an Incident of Sexual Misconduct.....	3
Reporting Incidents of Sexual Misconduct.....	3
Support Services Available.....	4
Evidence Preservation .....	4
5. Title IX Coordinator .....	5
6. Reporting Policies and Protocols.....	5
Reporting to the School.....	5
Reporting to Law Enforcement .....	5
Reporting of Crimes & Annual Security Reports.....	6
Timely Warnings.....	6
Third-Party and Anonymous Reporting.....	6
No Retaliation.....	6
Coordination With Drug Free School Policy.....	6
7. School Policy on Confidentiality.....	7
Privileged and Confidential Communications – Professional & Pastoral Counselors.....	7
Reporting to Title IX Coordinator.....	7
Requesting Confidentiality: How the School Will Weigh the Request and Respond.....	8
Miscellaneous.....	9
8. Investigation Procedures and Protocols .....	9
Notice of Investigation.....	9
Investigation Process.....	10
Investigation Report.....	10
Time Frame for Investigation.....	10
Impact of Victim’s Confidentiality Request.....	11
Voluntary Resolution .....	11
9. Grievance/Adjudication Procedures.....	11
Hearing Panel.....	11
Advisors.....	12
Written Submissions.....	12
Hearing Procedures.....	12
Affirmative Consent Standard.....	13
Panel Determinations/Standard of Proof .....	13
10. Sanctions and Other Remedies.....	14
11. Appeals.....	15
12. Records Disclosure.....	15
13. Education and Prevention Programs .....	16
Bystander Intervention .....	16
Risk Reduction.....	17
14. Amendments.....	18
Students Bill of Rights.....	19
Definitions of Key Terms.....	20
Definitions of Sexual Misconduct under New York Law .....	22

## **1. Introduction**

Modern Welding School is committed to providing a working and educational environment for all students, faculty and staff that is free from sex discrimination, including sexual misconduct. Every member of the Modern Welding School community should be aware that the school is strongly opposed to sexual misconduct, and that such behavior is prohibited by state and federal laws.

As part of Modern Welding School's commitment to providing a working and learning environment free from sexual misconduct, this Policy shall be disseminated widely to the school community through publications, the school website, new employee orientations, student orientations, and other appropriate channels of communication. Modern Welding School provides training to key staff members to enable the school to handle any allegations of sexual misconduct promptly and effectively. Modern Welding School will respond quickly to all reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy.

## **2. Scope of the Policy**

This Policy governs sexual misconduct involving students that occurs on any school property or in connection with any school-sponsored program or event. This Policy applies to all students, employees, and third parties conducting business with Modern Welding School, regardless of the person's gender, gender identity, sexual orientation, age, race, nationality, class status, ability, religion or other protected status. Modern Welding School encourages victims of sexual violence to talk to somebody about what happened – so victims can get the support they need, and so the school can respond appropriately. As further described in this Policy, Modern Welding School will seek to respect a victim's request for confidentiality to the extent possible, while remaining ever mindful of the victim's well-being.

## **3. Prohibited Conduct**

Sexual misconduct comprises a broad range of behaviors focused on sex that may or may not be sexual in nature. Any intercourse or other intentional sexual touching or activity without the other person's consent is sexual assault, which is a form of sexual misconduct under this Policy. Sexual harassment and sexual exploitation, stalking, domestic violence, and dating violence are also forms of sexual misconduct. Intimidation for one of these purposes is sexual misconduct, as is retaliation following an incident of alleged sexual misconduct or attempted sexual misconduct. The definitions for specific acts of sexual misconduct can be found in the Definitions of Key Terms at the end of this Policy statement.

Misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity, and can occur between people of the same or different sex or gender. **This Policy prohibits all forms of sexual misconduct.**

## **4. Options for Assistance Following an Incident of Sexual Misconduct**

Modern Welding School strongly encourages any victim of sexual misconduct to seek immediate assistance. Seeking prompt assistance may be important to ensure a victim's physical safety or to obtain medical care. Modern Welding School strongly advocates that a victim of sexual assault report the incident in a timely manner. Time is a critical factor for evidence collection and preservation.

### **Reporting Incidents of Sexual Misconduct.**

Victims of sexual misconduct may file a report with the local police department. Victims may also file a report with the school's Title IX Coordinator. More information about reporting an incident of sexual misconduct can be found in Section 6 of this Policy, below.

The victim of the sexual assault may choose for the investigation to be pursued through the criminal justice system and Modern Welding School's disciplinary procedures. The school and the criminal justice system work independently from each other. Law enforcement officers do not determine whether a violation of this Policy has occurred. The Title IX Coordinator will guide the victim through the available options and support the victim in his or her decision.

### **Support Services Available.**

Counseling, advocacy and support services are available for victims of sexual misconduct, whether or not a victim chooses to make an official report or participate in the school's disciplinary or criminal process. Modern Welding School does not provide counseling or health care services. Personal counseling offered by Modern Welding School will be limited to initial crisis assessment and referral.

Sexual misconduct crisis and counseling options are available locally and nationally through a number of agencies, including:

#### National Resources:

National Sexual Assault Hotline - 800-656-4673  
National Domestic Violence Hotline - 800-799-7233

#### Local Resources:

Schenectady Police  
Non-Emergency: 518-630-0911  
Emergency: 9-1-1

Sexual Assault Support Services of Planned Parenthood  
Schenectady, NY  
Hotline: 518-346-2266

County of Albany Crime Victim and Sexual Violence Center  
Albany, NY  
Hotline: 518-447-7716  
Phone: 518-447-7716

Sexual Assault and Crime Victims Assistance Program for Rensselaer County  
Troy, NY  
Hotline: 518-271-3257  
Phone: 518-271-3257

Fulton Montgomery Rape Crisis Service of Planned Parenthood  
Amsterdam, NY  
Hotline: 1-866-307-4086  
Hotline: 518-843-4367 Phone: 518-843-4367

The Title IX Coordinator will work with all students affected by sexual misconduct to ensure their safety and support their wellbeing. This assistance may include providing accommodations to support or protect a student after an incident of sexual misconduct and while an investigation or disciplinary proceeding is pending. Such accommodations may include the ability to alter class schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring). Modern Welding School may be able to provide additional interim measures to victims while an investigation is pending, such as no contact orders and changing the alleged perpetrator's class schedule.

### **Evidence Preservation**

Victims of sexual assault, domestic violence or dating violence should consider seeking medical attention as soon as possible. It is important that a victim of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen where they were assaulted so that evidence

necessary to prove criminal activity may be preserved. In circumstances where the victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address health concerns. Victims of sexual misconduct are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any, that would be useful in connection with a school or police investigation.

## **5. Title IX Coordinator**

The Title IX Coordinator is responsible for monitoring and overseeing Modern Welding School's compliance with Title IX and the prevention of sex harassment, sexual misconduct and discrimination. The Title IX Coordinator is:

- Knowledgeable and trained in Modern Welding School's policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a complainant, respondent, or a third party, about school and community resources and reporting options;
- Available to provide assistance to any Modern Welding School employee regarding how to respond appropriately to a report of Title IX-related prohibited conduct and related retaliation;
- Participates in ensuring the effective implementation of this Policy, including monitoring compliance with all procedural requirements, record keeping, and timeframes; and
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture.

Inquiries or concerns about Title IX may be referred to the school's Title IX Coordinator:

Mr. Jeff Daubert  
1842 State Street  
Schenectady, NY 12304  
Phone: (518) 374-1216  
email: [jdaubert-mws@albany.twcbc.com](mailto:jdaubert-mws@albany.twcbc.com)

## **6. Reporting Policies and Protocols**

Modern Welding School strongly encourages all members of the school community to report information about any incident of sexual misconduct as soon as possible, whether the incident occurred on or off campus. Reports can be made either to the school and/or to law enforcement.

### **Reporting to the School**

An incident of sexual misconduct may be reported directly to the Title IX Coordinator. If the Title IX Coordinator is the alleged perpetrator of the sexual misconduct, the report should be submitted to Modern Welding School's President. Filing a report with a school official will not obligate the victim to prosecute, nor will it subject the victim to scrutiny or judgmental opinions from officers.

An individual who has experienced an incident of sexual misconduct may report the incident at any time, regardless of how much time has elapsed since the incident occurred. Modern Welding School is committed to supporting the rights of a person reporting an incident of sexual misconduct to make an informed choice among options and services available.

Modern Welding School will respond to all reports in a manner that treats each individual with dignity and respect and will take prompt responsive action to end any misconduct, prevent its recurrence, and address its effects.

### **Reporting to Law Enforcement**

An incident of sexual misconduct can be reported to law enforcement at any time, 24 hours a day/7 days a week, by calling 911. At the complainant's request, Modern Welding School will

assist the complainant in contacting law enforcement. If the complainant decides to pursue the criminal process, the school will cooperate with law enforcement agencies to the extent permitted by law. A complainant has the option to decide whether or not to participate in any investigation conducted by law enforcement. Filing a police report will:

- Ensure that a victim of sexual assault receives the necessary medical treatment and tests
- Provide the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later (ideally a victim of sexual assault should not wash, douche, use the toilet, or change clothing prior to a medical/legal exam)
- Assure the victim has a referral to confidential counseling from counselors specifically trained in the area of sexual assault

### **Reporting of Crimes & Annual Security Reports**

Campus safety and security are important issues at Modern Welding School. Our goal is to provide students with a safe environment in which to learn and to keep students, parents, and employees well informed about campus security. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or Clery Act, requires institutions of higher education to record and report certain information about campus safety, including the number of incidents of certain crimes on or near campus, some of which constitute sexual misconduct under this Policy.

Each year Modern Welding School prepares this report to comply with the Clery Act. The full text of this report can be located on the school's web site at [www.modernwelding.com](http://www.modernwelding.com). This report is prepared in cooperation with the local law enforcement agencies around our campus. Each year notification is made to all enrolled students and employees that provides the web site to access this report. Copies of the report may also be obtained in person from the Director or by calling (518) 374-1216. All prospective employees may obtain a copy from the Director.

### **Timely Warnings**

In the event that a situation arises, either on or off campus, that, in the judgment of the Director constitutes an ongoing or continuing threat, a campus wide "timely warning" will be issued. The warning will be issued through the most effective and efficient means available and may include instant messaging to students and school employees. Notices may also be posted in the common areas throughout the school. Anyone with information warranting a timely warning should report the circumstances to the Director by phone at (518) 374-1216 or in person at the school.

### **Third-Party and Anonymous Reporting**

In cases where sexual misconduct is reported to the Title IX Coordinator by someone other than the complainant (by an instructor, classmate or friend, for example), the Title IX Coordinator will promptly notify the complainant that a report has been received. This Policy and the Procedures will apply in the same manner as if the complainant had made the initial report. The Title IX Coordinator will make every effort to meet with the complainant to discuss available options and resources. Reports from an anonymous source will be treated in a similar fashion.

### **No Retaliation**

Modern Welding School prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness). The school will take strong responsive action if retaliation occurs. Any incident of retaliation should be promptly reported to the Title IX Coordinator or Modern Welding School's President.

### **Coordination With Drug Free School Policy**

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

## **7. School Policy on Confidentiality**

Modern Welding School encourages victims of sexual misconduct to talk to somebody about what happened – so victims can get the support they need, and so the school can respond appropriately.

This policy is intended to make students aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they become a victim of sexual misconduct. Modern Welding School encourages victims to talk to someone identified in one or more of these groups.

### **Privileged and Confidential Communications – Professional & Pastoral Counselors**

Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of the community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX coordinator without a victim's permission. Modern Welding School does not provide professional or pastoral counseling, but can assist a victim of sexual misconduct in obtaining support services from these groups or agencies. Contact information for these support organizations is listed in Section 4 of this Policy.

A victim who at first requests confidentiality may later decide to file a complaint with Modern Welding School or report the incident to local law enforcement, and thus have the incident fully investigated.

**NOTE:** While these professional and pastoral counselors and advocates may maintain a victim's confidentiality vis-à-vis Modern Welding School, they may have reporting or other obligations under state law.

**ALSO NOTE:** If Modern Welding School determines that the alleged perpetrator(s) pose a serious and immediate threat to the school community, the Director may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the victim.

### **Reporting to Title IX Coordinator**

When a victim tells the Title IX Coordinator about an incident of sexual misconduct, the victim has the right to expect Modern Welding School to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

To the extent possible, information reported to the Title IX Coordinator will be shared only with people responsible for handling the school's response to the report. The Title IX Coordinator should not share information with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement.

Before a victim reveals any information to the Title IX Coordinator, the Coordinator should ensure that the victim understands the Coordinator's reporting obligations – and, if the victim wants to maintain confidentiality, direct the victim to confidential resources. If the victim wants to tell the Title IX Coordinator what happened but also maintain confidentiality, the Coordinator

should tell the victim that Modern Welding School will consider the request, but cannot guarantee that the school will be able to honor it.

The Title IX Coordinator will not pressure a victim to request confidentiality, but will honor and support the victim's wishes, including for Modern Welding School to fully investigate an incident. By the same token, the Title IX Coordinator will not pressure a victim to make a full report if the victim is not ready to.

### **Requesting Confidentiality: How the School Will Weigh the Request and Respond**

If a victim discloses an incident to the Title IX Coordinator but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, Modern Welding School must weigh that request against the school's obligation to provide a safe, non-discriminatory environment for all students, including the victim.

If Modern Welding School honors the request for confidentiality, a victim must understand that the school's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when Modern Welding School may not be able to honor a victim's request in order to provide a safe, non-discriminatory environment for all students.

The Title IX Coordinator will evaluate requests for confidentiality. When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, such as:
  - whether there have been other sexual misconduct complaints about the same alleged perpetrator;
  - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
  - whether the alleged perpetrator threatened further sexual misconduct or other violence against the victim or others;
  - whether the sexual misconduct was committed by multiple perpetrators;
- Whether the sexual misconduct was perpetrated with a weapon;
- Whether the victim is a minor;
- Whether Modern Welding School possesses other means to obtain relevant evidence of the sexual misconduct (e.g., security cameras or personnel, physical evidence);
- Whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead Modern Welding School to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the school will likely respect the victim's request for confidentiality.

**If Modern Welding School determines that it cannot maintain a victim's confidentiality,** the school will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the school's response. Modern Welding School will remain ever mindful of the victim's well being, and will take ongoing steps to



protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or school employees, will not be tolerated. Modern Welding School will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance;
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to local law enforcement – and provide the victim with assistance if the victim wishes to do so.

Modern Welding School may not require a victim to participate in any investigation or disciplinary proceeding.

Because Modern Welding School is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the school to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/ victimization surveys; and/or revisiting its policies and practices.

**If Modern Welding School determines that it can respect a victim’s request for confidentiality**, the school will also take immediate action as necessary to protect and assist the victim.

## **Miscellaneous**

**Take Back the Night and other public awareness events.** Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which students disclose incidents of sexual violence, are not considered notice to Modern Welding School of sexual misconduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts.

**Off-campus Counselors and Advocates.** Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with Modern Welding School unless the victim requests the disclosure and signs a consent or waiver form. Contact information for these off-campus resources can be found in Section 4 of this Policy.

## **8. Investigation Procedures and Protocols**

The Title IX Coordinator oversees Modern Welding School’s investigation, response to, and resolution of all reports of prohibited sexual misconduct, and of related retaliation, involving students, faculty, and staff. The Title IX Coordinator will designate a specially trained investigator (or team of investigators) to interview the complainant, respondent and any witnesses. The investigator will also gather pertinent documentary materials (if any) and other information.

### **Notice of Investigation**

The Title IX Coordinator will inform the complainant before starting an investigation. The complainant may request that an investigation not be undertaken. The Title IX Coordinator will consider such a request in light of Modern Welding School’s commitment to provide a safe and non-discriminatory environment for all students. If the Title IX Coordinator determines not to investigate, she will notify the complainant in writing, including that the determination was made

at the complainant's request. At the complainant's request, the Title IX Coordinator will also notify the respondent in writing, including that the complainant asked Modern Welding School not to investigate.

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

If an investigation proceeds, Modern Welding School will notify the respondent in writing that a report has been filed. The notice will describe the allegations in the report. The complainant and respondent will be given the opportunity to meet separately with the Title IX Coordinator to review the Policy and these Procedures.

### **Investigation Process**

Modern Welding School's process for responding to, investigating and adjudicating sexual misconduct reports will continue during any law enforcement proceeding. The investigator may need to temporarily delay an investigation while the police are gathering evidence but will resume the investigation after learning that the police department has completed its evidence-gathering and will generally not wait for the conclusion of any related criminal proceeding.

The investigator will interview the complainant, respondent and any witnesses. They will also gather pertinent documentary materials (if any) and other information.

### **Investigation Report**

The investigator will prepare a report detailing the relevant content from the interviews and the documentation gathered. The report will include the assessment of individual credibility and recommended findings of responsibility.

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

### **Time Frame for Investigation**

Consistent with the goal to maximize educational opportunities and minimize the disruptive nature of the investigation and resolution, the Title IX Coordinator seeks to resolve all reports in a timely manner. In general, an investigation may last up to 30 days, from receipt of written notice from the complainant of the intent to proceed with an investigation. Adjudication will generally take up to 30 days from the date the investigative report is provided to both the complainant and the respondent. The Title IX Coordinator may set reasonable time frames for required actions under the Policy. Those time frames may be extended for good cause as necessary to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate delays by the parties, account for school breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

Where necessary, Modern Welding School will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to change class schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator's class schedule.

### **Impact of Victim's Confidentiality Request**

A victim's request for confidentiality will likely limit Modern Welding School's ability to investigate a particular matter. The school may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing Modern Welding School's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

### **Voluntary Resolution**

Voluntary resolution, when selected by the complainant and deemed appropriate by the Title IX Coordinator, is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the complainant and the safety and welfare of Modern Welding School community. Voluntary resolution is not appropriate for all forms of conduct under the Policy.

Modern Welding School retains the discretion to determine, when selected by the complainant, which cases are appropriate for voluntary resolution. If a complainant requests voluntary resolution, and the Title IX Coordinator concludes that voluntary resolution is appropriate, then the Title IX Coordinator will take appropriate action by imposing remedies designed to maximize the complainant's access to all employment, educational, and extracurricular opportunities and benefits at the school and to eliminate a potential hostile environment. A complainant may request and decide to pursue voluntary resolution at any time. In those cases in which the voluntary resolution involves either the notification to or participation by the respondent, it is the respondent's decision whether to accept voluntary resolution.

Voluntary resolution may include: conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; facilitating a meeting with the respondent with the complainant present (in cases that do not involve sexual assault); and any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy. In some forms of voluntary resolution, the remedies imposed will focus on supporting the complainant with no participation or involvement by the respondent. In other forms of voluntary resolution, the respondent may agree to participate. Depending on the type of remedy used, it may be possible for a complainant to maintain anonymity.

Voluntary resolution may also include restorative principles that are designed to allow a respondent to accept responsibility for misconduct and acknowledge harm to the complainant or to Modern Welding School community. Restorative models will be used only with the consent of both parties, and following a determination by the Title IX Coordinator that the matter is appropriate for a restorative approach.

Modern Welding School will not compel a complainant to engage in mediation, to confront directly the respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, is never appropriate in sexual misconduct cases and will not be used in such cases. As the title implies, participation in voluntary resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation and adjudication at any time, including if voluntary resolution is unsuccessful at resolving the report. Similarly, a complainant can request to end an investigation and pursue voluntary resolution at any time.

The time frame for completion of voluntary resolution may vary, but Modern Welding School will seek to complete the process within 15 days of the complainant's request.

## **9. Grievance/Adjudication Procedures**

### **Hearing Panel**

If voluntary resolution is not available, Modern Welding School will convene a hearing panel

following the end of the investigation. The hearing panel determines whether the respondent is responsible or not responsible for a violation of the Policy. If the respondent is determined to be responsible, the matter proceeds to the sanctions stage.

The hearing panel will generally include the Title IX Coordinator and two additional members who will be individuals associated with Modern Welding School. These additional hearing panel members may include administrators, officers, lawyers or other individuals with relevant experience and special training. Panel members may participate remotely so long as the hearing room is equipped with telephone equipment that allows the panel member to hear all the participants and to be heard by all the participants throughout the hearing proceedings. All panelists will receive training from experts in the field at least once a year. In addition to training on how the adjudicatory process works, the training will include specific instruction about how to approach students about sensitive issues that may arise in the context of sexual misconduct. The complainant and respondent will be informed of the panel's membership before the hearing process begins.

### **Advisors**

Both the complainant and the respondent are entitled to be accompanied to any meeting or proceeding relating to the allegation of sexual misconduct by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled.

### **Written Submissions**

Both the complainant and respondent will have the opportunity to submit written responses to the investigation report and other relevant information to the hearing panel. Each of the complainant and respondent will have the opportunity to review any written submissions by the other. The hearing panel may set reasonable parameters for these written submissions. The hearing panel will review the investigation report and written submissions.

### **Hearing Procedures**

The Title IX Coordinator will, whenever possible, give the complainant and respondent at least five days' advance notice of the hearing. The Title IX Coordinator may arrange to hold the hearing at an off-campus location. The hearing is a closed proceeding, meaning that no one other than the panel members, the complainant and respondent, their respective advisors, witnesses (when called), and necessary school personnel may be present during the proceeding. The Director will work with school staff so that any student whose presence is required may participate in the hearing.

In general, hearings will proceed as follows:

- The Title IX Coordinator may set reasonable time limits for any part of the hearing. Each of the complainant and respondent will have the opportunity to present witnesses and other information consistent with the Policy and these Procedures. The panel may determine the relevance of, place restrictions on, or exclude any witnesses or information. When the complainant and respondent are not able to be present for the hearing panel, arrangements will be made for participation via alternate means.
- In cases where either the complainant or respondent opts not to participate in the hearing, the panel may still hear from the other.
- Additional hearing rules include:
  - Questioning. Only the panel may ask questions of the complainant and respondent and any witnesses. Both the complainant and respondent will have the opportunity to suggest questions of the other and of witnesses by submitting suggested questions to the panel in writing. The panel may revise or not ask any or all submitted questions.

- Information Regarding Romantic or Sexual History. The panel will not consider the romantic or sexual history of either the complainant or respondent in cases involving allegations of sexual misconduct, except for testimony offered by one or the other about the complainant's and respondent's shared sexual history that the panel deems relevant. If such information is offered by the complainant or respondent, the other has the right to respond. The existence of a prior consensual dating or sexual relationship between the complainant and respondent by itself does not support an inference of consent to alleged sexual misconduct.
- Prior Conduct Violations. The hearing panel will not consider the respondent's prior conduct violations, unless the investigator provided that information to the hearing panel because the respondent was previously found to be responsible, and the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the respondent.

Modern Welding School will keep an audio recording of the hearing for the use of the panel, for sanctioning, and for purposes of appeal. Cell phones and recording devices may not be used in the hearing room(s) unless approved by the panel in advance.

### **Affirmative Consent Standard**

Modern Welding School uses an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative Consent" is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following principles shall serve as guidance for the school community:

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

### **Panel Determinations/Standard of Proof**

The panel will use "preponderance of the evidence" as the standard of proof to determine whether a violation of the Policy occurred. Preponderance of the evidence means that a panel must be convinced based on the information it considers that the respondent was more likely than not to have engaged in the conduct at issue in order to find the respondent responsible for violating the Policy. The panel will find a student responsible, or not responsible, based on a majority vote. The panel will generally render a decision within 10 days after the conclusion of a hearing. The panel's decision will include an explanation of the basis for the decision. If the panel finds the respondent responsible, the matter will proceed to the sanctions stage.

## **10. Sanctions and Other Remedies**

The Title IX Coordinator, with the advice and counsel of the other hearing panel members, shall be responsible for imposing sanctions that are:

- Fair and appropriate given the facts of the particular case;
- Consistent with Modern Welding School's handling of similar cases;
- Adequate to protect the safety of the campus community; and
- Reflective of the seriousness of sexual misconduct.

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

The Title IX Coordinator will render a sanctioning decision within three days following the receipt of the panel's determination. The sanctioning decision will be communicated in writing to the complainant and the respondent.

Modern Welding School may impose any one or more of the following sanctions on a student determined to have violated the Policy:

- Reprimand/warning
- Changing the respondent's academic schedule
- Disciplinary probation
- Restricting access to school facilities or activities
- Community service
- Issuing a "no contact" order to the respondent or requiring that such an order remain in place
- Dismissal or restriction from Modern Welding School employment
- Suspension (limited time or indefinite)
- Expulsion

In addition to any other sanction (except where the sanction is expulsion), Modern Welding School may require any student determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the sexual misconduct violation at issue. Modern Welding School may also recommend counseling or other support services for the student.

Whatever the outcome of the hearing process, a complainant may request ongoing or additional accommodations and the Title IX Coordinator will determine whether such measures are appropriate. Potential ongoing accommodations include:

- Providing an escort for the complainant
- Changing the complainant's academic schedule
- Allowing the complainant to withdraw from or retake a class without penalty
- Providing access to tutoring or other academic support, such as extra time to complete or re-take a class

Modern Welding School may also determine that additional measures are appropriate to respond to the effects of the incident on the school community. Additional responses for the benefit of Modern Welding School community may include:

- Increased monitoring, supervision, or security at locations or activities where the misconduct occurred
- Additional training and educational materials for students and employees
- Revision of Modern Welding School's policies relating to sexual misconduct
- Climate surveys regarding sexual misconduct

## **11. Appeals**

Either the respondent or the complainant or both may appeal the determination of the hearing panel and/or the sanctions. Appeals are decided by the President of Modern Welding School. The three grounds for appeal are:

1. A procedural error affecting the determination or sanction;
2. New information that was not available at the time of the investigation or hearing and that may change the determination or sanction; and
3. Excessiveness or insufficiency of the sanction.

Disagreement with the finding or sanctions is not, by itself, grounds for appeals.

The appealing student must submit the appeal in writing to the President of Modern Welding School within five days after receiving the sanctioning notice. If either the complainant or respondent submits an appeal, the Title IX Coordinator will notify the other that an appeal has been filed and the grounds of the appeal. The non-appealing student may submit a written response within five days after notice of an appeal.

If the President concludes that a change in the hearing panel's determination is warranted, the President may enter a revised determination, reconvene the panel to reconsider the determination, or return the matter for additional investigation. After consultation with the Title IX Coordinator, the President may also change the sanction. If both the complainant and respondent appeal, the appeals will be considered concurrently.

The President will notify the complainant and respondent of the final decision in writing. Appeals decisions will be rendered within 10 days after the receipt of the written appeal. All appeal decisions are final.

## **12. Records Disclosure**

Disciplinary proceedings conducted by Modern Welding School are subject to the Family Educational Records and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits disclosure of student information outside Modern Welding School without the student's consent, but it does provide for release of student disciplinary

information without a student's consent in certain circumstances.

Any information gathered in the course of an investigation may be subpoenaed by law enforcement authorities as part of a parallel investigation into the same conduct, or required to be produced through other compulsory legal process.

Additional information about FERPA can be found on Modern Welding School's website at [www.modernwelding.com](http://www.modernwelding.com).

### **13. Education and Prevention Programs**

As set forth in Section 3 of this Policy statement, Sexual Assault, Sexual Harassment, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking are all forms of Prohibited Conduct.

Modern Welding School is committed to offering educational programs to promote awareness and prevention of Prohibited Conduct. Educational programs include an overview of Modern Welding School's policies and procedures; relevant definitions, including prohibited conduct; discussion of the impact of alcohol and illegal drug use; consent; safe and positive options for bystander intervention; review of resources and reporting options available for students, faculty, and staff; and information about risk reduction. Incoming students and new employees will receive primary prevention and awareness programming as part of their orientation. The Title IX Coordinator maintains an education and prevention calendar and tailors programming to campus needs and climate.

As part of Modern Welding School's commitment to provide an educational and work environment free from Prohibited Conduct, this Policy will be disseminated widely to the school community through e-mail communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

The Title IX Coordinator, hearing panel members, and anyone else who is involved in responding to, investigating, or adjudicating sexual misconduct will receive annual training from experts in the field. In addition to training on how the adjudicatory process works, the training will include specific instruction about how to approach students about sensitive issues that may arise in the context of sexual misconduct.

#### **Bystander Intervention**

Modern Welding School's primary prevention and awareness program includes a description of safe and positive options for bystander intervention. Active bystanders take the initiative to help someone who may be targeted for a sexual assault. They do this in ways that are intended to avoid verbal or physical conflict. Active bystanders also take the initiative to help friends, who are not thinking clearly, from becoming offenders of crime. Intervention does not mean that you directly intervene to stop a crime in progress; rather, these steps are "early intervention" – before a crime begins to occur. There are three important components to consider before taking action that we refer to as the ABCs:

- **Assess for safety.** Ensure that all parties are safe, and whether the situation requires calling authorities. When deciding to intervene, your personal safety should be the #1 priority. When in doubt, call for help.
- **Be with others.** If it is safe to intervene, you are likely to have a greater influence on the parties involved when you work together with someone or several people. Your safety is increased when you stay with a group of friends that you know well.
- **Care for the person.** Ask if the target of the unwanted sexual advance/attention/behavior is okay – does he or she need medical care? Ask if someone they trust can help them get safely home.



## Risk Reduction

Modern Welding School's primary prevention and awareness program includes information on risk reduction. This includes:

*Avoiding Dangerous Situations.* While you can never completely protect yourself from sexual assault, there are some things you can do to help reduce your risk of being assaulted.

- Be aware of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- Try to avoid isolated areas. It is more difficult to get help if no one is around.
- Walk with purpose. Even if you don't know where you are going, act like you do.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
- Try not to load yourself down with packages or bags as this can make you appear more vulnerable.
- Make sure your cell phone is with you and charged and that you have cab money.
- Don't allow yourself to be isolated with someone you don't trust or someone you don't know.
- Avoid putting music headphones in both ears so that you can be more aware of your surroundings, especially if you are walking alone.

*Safety Planning.* Things to think about:

- How to get away if there is an emergency? Be conscious of exits or other escape routes. Think about options for transportation (car, bus, subway, etc.).
- Who can help? Friends and/or family, or support centers in your area. Please see Section 4 of this Policy for a list of support organizations.
- Where to go? Options may include a friend's house or relative's house, or you may consider going to a domestic violence or homeless shelter. You may also go to the police. **Important Safety Note:** If the dangerous situation involves a partner, go to the police or a shelter first.
- What to bring? This may include important papers and documents such birth certificate, social security card, license, passport, medical records, lease, bills, etc. This will also include house keys, car keys, cash, credit cards, medicine, important numbers, and your cell phone. If you are bringing children with you, remember to bring their important papers and legal documents. You can keep all of these things in an emergency bag. You should hide the bag—it is best if it is not in your house or car. If the bag is discovered, you can call it a "tornado" or "fire" bag.

*Protecting Your Friends.* You have a crucial role to play in keeping your friends safe. No matter what the setting, if you see something that doesn't feel quite right or see someone who might be in trouble, there are some simple things you can do to help out a friend.

- Distract. If you see a friend in a situation that doesn't feel quite right, create a distraction to get your friend to safety. This can be as simple as joining or redirecting the conversation: suggest to your friend that you leave the party, or ask them to walk you home. Try asking questions like: "Do you want to head to the bathroom with me?" or "Do you want to head to another party – or grab pizza?"
- Step in. If you see someone who looks uncomfortable or is at risk, step in. If you feel safe, find a way to de-escalate the situation and separate all parties involved. Don't be shy about directly asking the person if they need help or if they feel uncomfortable.
- Enlist others. You don't have to go it alone. Call in friends or other people in the area as reinforcements to help defuse a dangerous situation and get the at-risk person home safely. There is safety in numbers.

- Keep an eye out. Use your eyes and ears to observe your surroundings. If you see someone who has had too much to drink or could be vulnerable, try to get them to a safe place. Enlist friends to help you. Even if you weren't around when the assault occurred, you can still support a friend in the aftermath.

*Social Situations.* While you can never completely protect yourself from sexual assault, there are some things you can do to help reduce your risk of being assaulted in social situations.

- When you go to a social gathering, go with a group of friends. Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- Trust your instincts. If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately.
- Don't leave your drink unattended while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
- Don't accept drinks from people you don't know or trust. If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
- Watch out for your friends, and vice versa. If a friend seems out of it, is way too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
- If you suspect you or a friend has been drugged, contact law enforcement immediately. Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).

*Information on Risk Reduction was provided by RAINN: Rape, Abuse & Incest National Network: [www.rainn.org](http://www.rainn.org).*

#### **14. Amendments**

Modern Welding School may amend the Policy or the Procedures from time to time. Nothing in the Policy or Procedures shall affect the inherent authority of Modern Welding School to take such actions as it deems appropriate to further the educational mission or to protect the safety and security of the school community.

## **Students Bill of Rights**

All students 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 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.

# Modern Welding School

## Sexual Misconduct Policy

### Definitions of Key Terms

- Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment, (ii) submission to or rejection of such conduct by an individual is used as the basis for education or employment decisions affecting such individuals, or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's school or work performance or creating an intimidating, hostile, or offensive educational or working environment.
  - Hostile Environment Caused By Sexual Harassment - refers to a situation where students and/or [employees](#) are subject to a pattern of exposure to unwanted sexual behavior that is so severe, persistent, or pervasive that it alters the conditions of education, employment, or participation in a school program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not amount to a hostile environment caused by sexual harassment.
  - Quid Pro Quo Harassment – refers to a situation where students and/or employees are subject to unwanted sexual behavior where submission or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a school program or activity.
- Sexual Assault - is any unwanted physical contact of a sexual nature that occurs either without the consent of each participant or when a participant is unable to give consent freely. Sexual assault can occur either forcibly and/or against a person's will, or when a person is unable to give consent freely. Non-consensual sexual intercourse is any form of sexual intercourse (vaginal, anal or oral) with any object without consent. Non-consensual sexual contact is any intentional sexual touching, however slight, with any object without a person's consent.
- Domestic Violence - A felony or misdemeanor crime of violence committed (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- Dating Violence - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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. For the purpose of this definition 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.

- Prohibited Conduct – Modern Welding School prohibits the crimes of Sexual Assault, Sexual Harassment, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking as defined in these Definitions of Key Terms.
- Sexual Exploitation - sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for his or her own advantage or benefit or for the benefit or advantage of anyone other than the exploited party; and that behavior does not otherwise constitute sexual assault. Examples of sexual exploitation include, but are not limited to, videotaping or photographing of any type (web-cam, camera, Internet exposure, etc.) without knowledge and consent of all persons; prostituting another person; knowingly transmitting HIV or a sexually transmitted disease to an unknowing person or to a person who has not consented to the risk; or inducing incapacitation with the intent to commit sexual assault, without regard to whether sexual activity actually takes place.
- Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress. 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Retaliation - means any adverse action, or attempted adverse action, against an individual or group of individuals because of their participation in any manner in an investigation, proceeding, or hearing under this Policy.
- 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.
- Complainant – means the person making the allegation(s) of sexual misconduct.
- Respondent – means the person alleged to have committed sexual misconduct.

**Definitions of Sexual Misconduct under New York Law**

The New York Penal Code provides the following definitions with respect to Sexual Abuse, Sexual Assault and Consent:

S 130.00 Sex offenses; definitions of terms.

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.
2. (a) "Oral sexual conduct" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
- (b) "Anal sexual conduct" means conduct between persons consisting of contact between the penis and anus.
3. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

\* \* \*

8. "Forcible compulsion" means to compel by either:

- a. use of physical force; or
- b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury.

10. "Sexual conduct" means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.

S 130.05 Sex offenses; lack of consent.

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

2. Lack of consent results from:

- (a) Forcible compulsion; or
- (b) Incapacity to consent; or
- (c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or
- (d) Where the offense charged is rape in the third degree as defined in subdivision three of section [130.25](#), or criminal sexual act in the third degree as defined in subdivision three of section [130.40](#), in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

3. A person is deemed incapable of consent when he or she is:

- (a) less than seventeen years old; or
- (b) mentally disabled; or
- (c) mentally incapacitated; or
- (d) physically helpless; or
- (e) committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital, \* \* \*, and the actor is an employee who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital. \* \* \*
- (g) committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. \* \* \*
- (h) a client or patient and the actor is a health care provider or mental health care provider \* \* \*, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination; or (i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. \* \* \*

S 130.20 Sexual misconduct.

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or

3. He or she engages in sexual conduct with an animal or a dead human body.  
Sexual misconduct is a class A misdemeanor.

S 130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she 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.

Rape in the third degree is a class E felony.

S 130.30 Rape in the second degree.

A person is guilty of rape in the second degree when:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

S 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

S 130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

S 130.45 Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when:

1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Criminal sexual act in the second degree is a class D felony.

S 130.50 Criminal sexual act in the first degree.

A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.

S 130.52 Forcible touching.



A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

S 130.55 Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

S 130.60 Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

S 130.65 Sexual abuse in the first degree.

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony.

S 130.65-a Aggravated sexual abuse in the fourth degree.

1. A person is guilty of aggravated sexual abuse in the fourth degree when:

- (a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or
- (b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

S 130.66 Aggravated sexual abuse in the third degree.

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:

- (a) By forcible compulsion; or
- (b) When the other person is incapable of consent by reason of being physically helpless; or
- (c) When the other person is less than eleven years old.

2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

S 130.67 Aggravated sexual abuse in the second degree.

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

- (a) By forcible compulsion; or
- (b) When the other person is incapable of consent by reason of being physically helpless; or
- (c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

S 130.70 Aggravated sexual abuse in the first degree.

1. A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:
    - (a) By forcible compulsion; or
    - (b) When the other person is incapable of consent by reason of being physically helpless; or
    - (c) When the other person is less than eleven years old.
  2. Conduct performed for a valid medical purpose does not violate the provisions of this section.
- Aggravated sexual abuse in the first degree is a class B felony.

The New York Penal Code provides the following definitions with respect to Stalking:

S 120.45 Stalking in the fourth degree.

A person is guilty of stalking in the fourth degree when he or she 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.

For the purposes of subdivision two of this section, "following" shall include the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device.

Stalking in the fourth degree is a class B misdemeanor.

S 120.50 Stalking in the third degree.

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section [120.45](#) of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
2. Commits the crime of stalking in the fourth degree in violation of section [120.45](#) of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section [120.40](#) of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

S 120.55 Stalking in the second degree.

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section [120.50](#) of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section [120.50](#) of this article against any person; or
4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or

5. Commits the crime of stalking in the third degree, as defined in subdivision three of section [120.50](#) of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.  
Stalking in the second degree is a class E felony.

S 120.60 Stalking in the first degree.

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section [120.50](#) or stalking in the second degree as defined in section [120.55](#) of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or
2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section [130.25](#), [130.40](#) or [130.85](#) of this chapter, or a class D felony defined in section [130.30](#) or [130.45](#) of this chapter.

Stalking in the first degree is a class D felony.

The New York laws provide the following definitions with respect to Domestic Violence:

S 812. Procedures for family offense proceedings.

1. Jurisdiction.

\* \* \*

For purposes of this article, "members of the same family or household" shall mean the following:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons 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 have been married or have lived together at any time; and
- (e) 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 the court may consider 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".

\* \* \*

5. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be available in English and Spanish and, if necessary, shall be delivered orally and shall include but not be limited to the following statement:

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection. The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and

places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers). Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime."

The New York laws do not provide a criminal definition of Dating Violence. However, as described above, for purposes of family offense proceedings the term "member of the same family or household" includes 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 the court may consider 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.