



ANTI-HARASSMENT AND ANTI-DISCRIMINATION POLICY

Approved by the Board of Directors July 18, 2023

Purpose and Goals

Team New York Aquatics Inc.'s mission is to serve the social and physical wellbeing of the lesbian, gay, bisexual, transgender, queer, gender non-conforming, and allied ("LGBTQ+") community in the greater New York City area by providing opportunities for LGBTQ+ athletes of all abilities and skill levels to achieve their own goals in aquatic sports through the organization of amateur aquatic practices and competitions in a safe environment characterized by mutual understanding and support.

Team New York Aquatics Inc. ("TNYA" or "the Team") and its board of directors ("the Board") are committed to maintaining an athletic environment free from harassment and discrimination. Sexual harassment is a form of discrimination that subjects any person to inferior conditions in TNYA activities due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but TNYA recognizes that discrimination can be related to or affected by other identities beyond gender.

Under the New York State Human Rights Law, it is illegal to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or status as a victim of domestic violence. In addition, the [SafeSport Code for the U.S. Olympic and Paralympic Movement](#) ("the SafeSport Code") promulgated by the U.S. Center for SafeSport ("SafeSport") pursuant to the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, directly applies to TNYA members who participate in water polo, diving, or artistic swimming by virtue of their membership in one or more of the National Governing Bodies for those sports and to the remaining members of TNYA by virtue of their membership in TNYA. US Masters Swimming has not directly adopted the SafeSport Code, but sets forth [some analogous requirements in Article 402 of its Rulebook](#) ("the USMS Rulebook").

Our different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact their experience with gender discrimination in the athletic environment. While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same. The purpose of this policy is to teach all covered individuals to recognize discrimination, including discrimination due to an individual's intersecting identities, and provide the tools to take action when it occurs. All employees, managers, supervisors, and members are required to work and participate in TNYA activities in a manner designed to prevent sexual harassment and discrimination in the athletic

environment. This policy is one component of TNYA's commitment to a discrimination-free athletic environment.

Goals of this Policy:

Sexual harassment and discrimination are against the law. After reading this policy, covered individuals will understand their right to an athletic environment free from harassment. Employees and covered individuals will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after taking action. The policy will also explain the investigation process into any claims of harassment. Employees and covered individuals are encouraged to report sexual harassment or discrimination by filing a complaint internally with TNYA through our Athletic Safety Officers, as discussed below. Employees and covered individuals can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws. To file an employment complaint with the New York State Division of Human Rights, please visit <https://dhr.ny.gov/complaint>. To file a complaint with the United States Equal Employment Opportunity Commission, please visit <https://www.eeoc.gov/filing-charge-discrimination>.

Sexual Harassment and Discrimination Prevention Policy

1. Definitions.

- a. **Covered Individuals:** TNYA's policy applies to all members of the Team, as well as Team employees, applicants for employment, and interns, whether paid or unpaid. The policy also applies to additional covered individuals. It applies to anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to TNYA. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with TNYA. In addition, it includes any participant in TNYA events, even if they are not a TNYA member. For the remainder of this policy, we will use the term "covered individual" to refer to these individuals who are not direct employees of TNYA.
- b. **Team leadership.** For convenience, all TNYA directors, officers, key persons (as that term is defined in New York Not-for-Profit Corporation Law § 102[a][21]), committee chairs, coaches, and employees with supervisory responsibilities over other employees or members, are referred to throughout as "TNYA leaders," while any one of these persons is a "TNYA leader."¹

¹ "Key person" means any person, other than a director or officer, whether or not an employee of the corporation, who (i) has responsibilities, or exercises powers or influence over the corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the corporation, or a segment of the corporation that represents a substantial portion of the activities, assets, income or expenses of the corporation; or (iii) alone or with others controls or determines a substantial portion of the corporation's capital expenditures or operating budget.

- c. **National Governing Bodies.** U.S. Masters Swimming Inc., USA Water Polo Inc., U.S. Artistic Swimming Inc., U.S.A. Diving Inc. are the National Governing Bodies, or “NGBs.”
 - d. **The Athletic Environment:** TNYA is a primarily volunteer organization with no physical office that operates exclusively out of facilities it does not own. Accordingly, the application of this policy depends not necessarily on the location in which covered individuals are situated, but whether those individuals are within the scope of TNYA operations, which we refer to as “the athletic environment.” The athletic environment is a term of art that aims to encompass all spaces, real and virtual, in which TNYA operates for the times TNYA uses them. The athletic environment includes any facility TNYA employs to conduct any activity, as well as all adjacent facilities necessary or convenient to the use or access of the facility TNYA employs, from the moment the first person arrives with the ultimate purpose of engaging in a TNYA activity until the last person leaves having engaged in or attempted to engage in that activity. It includes any social spaces in which a TNYA activity occurs. It includes activities of other organizations in which TNYA, or persons who are identified as being members of TNYA, participates. It includes online media used in the course of team business. It may also include places of accommodation when those accommodations are being used in connection with a TNYA activity. A non-exhaustive list of places and times that are part of the athletic environment follows:
 - i. The John Jay, Brooklyn Armory, and Seahorse Fitness swimming pools and the surrounding facilities (like locker rooms, entrances, adjacent rooms and corridors) from when the first person arrives for practice until the last person leaves;
 - ii. The analogous aquatic facilities used for IGLA, the Gay Games, and TNYA’s swim camp;
 - iii. Any bars or restaurants to which TNYA members go before or after a TNYA practice as part of a team brunch or happy hour;
 - iv. Group houses with two or more members rented for the purposes of taking part in Swim Camp or IGLA or the Gay Games;
 - v. Any bars or restaurants to which TNYA members go before or after practice or competition at Swim Camp or IGLA or the Gay Games;
 - vi. Videoconference or live Board meetings or meetings of any TNYA committee or working group;
 - vii. Emails, texts, social media, or instant messages that are either associated with TNYA or are being employed for TNYA business or in connection with TNYA business.
2. Sexual harassment is unacceptable. Any employee or covered individual who engages in sexual harassment, discrimination, or retaliation will be subject to action, including appropriate discipline for members, TNYA leaders, or employees. In New York, harassment does not need to be severe or pervasive to be illegal. Employees and covered individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as harassment can happen in different degrees, potential

discipline for engaging in sexual harassment will depend on the degree of harassment and might include education and counseling. It may lead to suspension from participation in Team activities, expulsion from the Team, or (for employees or contractors) termination when appropriate.

3. Retaliation is prohibited. Any employee or covered individual that reports an incident of sexual harassment or discrimination, provides information, or otherwise assists in any investigation of a sexual harassment or discrimination complaint is protected from retaliation. No one should fear reporting sexual harassment if they believe it has occurred. So long as a person reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee or TNYA leader who retaliates against anyone involved in a sexual harassment or discrimination investigation will face disciplinary action, up to and including dismissal from their position, termination (if an employee or contractor) or expulsion from the Team. All covered individuals in the athletic environment who believe they have been subject to such retaliation should inform a Athletic Safety Officer or TNYA leader. All employees and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as explained below in the section on [Legal Protections](#).
4. Discrimination of any kind, including sexual harassment, is a violation of our policies, is unlawful, and may subject TNYA to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and TNYA leaders who fail to report or act on harassment may be liable for aiding and abetting such behavior. Employees and covered individuals at every level who engage in harassment or discrimination, including TNYA leaders who engage in harassment or discrimination or who allow such behavior to continue, will be penalized for such misconduct.
5. In addition to discrimination and harassment forbidden by the terms of this Policy, employees and covered individuals are forbidden from engaging in any of the behaviors prohibited by [Part IX of the U.S. Center for SafeSport Code for the U.S. Olympic and Paralympic Movement](#) (whether or not within the athletic environment). For the avoidance of doubt, TNYA has elected to add the substantive obligations set forth in Part IX of the SafeSport Code to this Policy, without regard to whether other parts of those policies would by their terms or the terms of any other contract bind TNYA, employees, or covered individuals. Violation of the provisions of Part IX of the SafeSport Code shall be deemed to be a violation of this Policy and investigated and disciplined by TNYA in the same manner as any other violation of this Policy even if this Policy would not otherwise cover that conduct. Such investigation and discipline shall be in addition to any disciplinary procedures that may be invoked by any of the NGBs or SafeSport.
6. TNYA will conduct a prompt and thorough investigation that is fair to all parties. An investigation will happen whenever a TNYA leader receives a complaint about

discrimination or sexual harassment, or when a TNYA leader otherwise knows of possible discrimination or sexual harassment occurring. TNYA will keep the investigation confidential to the extent possible. If an investigation ends with the finding that discrimination or sexual harassment occurred, TNYA will act as described in this Policy and the TNYA bylaws. In addition to any required discipline, TNYA will also take steps to ensure a safe athletic environment for the employee or covered individual(s) who experienced the discrimination or harassment. All members, employees, and TNYA leaders are required to cooperate with any internal investigation of discrimination or sexual harassment.²

7. All employees and covered individuals are encouraged to report any harassment or behaviors that violate this policy. All employees and covered individuals will have access to a complaint form to report harassment and file complaints. Use of this form is not required. For anyone who would rather make a complaint verbally, or by email, these complaints will be treated with equal priority. An employee or covered individual who prefers not to report harassment to an Athletic Safety Officer or TNYA leader may instead report harassment to the U.S. Center for SafeSport, appropriate accrediting body, the New York State Division of Human Rights, and/or the United States Equal Employment Opportunity Commission. Complaints may be made to both TNYA and a government agency or any of the foregoing organizations.

All TNYA leaders are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Athletic Safety Officers (in addition to any obligations they may have under law or NGB policy as mandatory reporters).

8. Agreement to be bound by this policy is a condition of membership in TNYA, participation in any TNYA activity, employment with TNYA, or of doing business with TNYA as a coach, contractor, or employee. It applies to all employees and covered individuals, such as contractors, subcontractors, vendors, consultants, or anyone providing services in the athletic environment, and all must follow and uphold this policy. This policy must be provided to all members and employees in person or digitally through email upon hiring or joining and will be posted prominently on the TNYA website. It will be recirculated to the entire membership in a standalone email once each year.

² Pursuant to the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 and various agreements entered into by several of the NGBs of which TNYA is an affiliate, the U.S. Center for SafeSport has the power to exercise jurisdiction over the investigation into certain forms of misconduct to the exclusion of national governing bodies and their affiliates, including TNYA. To the extent consistent with TNYA's duties as a matter of state and federal law, TNYA will accordingly suspend investigations as required by the SafeSport Code when directed to do so by SafeSport.

What Is Sexual Harassment?

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe athletic environment.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment, membership in TNYA, or participation in TNYA activities in the athletic environment. Harassment does not need to be severe or pervasive to be illegal. It can be any harassing behavior that rises above petty slights or trivial inconveniences. Every instance of harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior. However, the New York Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is a violation of TNYA's policy. The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior on a person is what counts. Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature when:

- The purpose or effect of this behavior unreasonably interferes with an individual's work performance or participation in TNYA activities or creates an intimidating, hostile or offensive athletic environment. The impacted person does not need to be the intended target of the sexual harassment;
- Employment or continued membership or participation in some or all TNYA activities depends implicitly or explicitly on accepting such unwelcome behavior; or

- Decisions regarding an individual's employment, membership or participation in TNYA activities are based on an individual's acceptance to or rejection of such behavior. For employees, such decisions can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions. For members, such decisions might include who may go to one or more swim meets or practices in which participation is limited.

There are two main types of sexual harassment:

- Behaviors that contribute to a **hostile athletic environment** include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee or covered individual finds offensive or objectionable, causes an employee or covered individual discomfort or humiliation, or interferes with the employee's or covered individual's job performance or participation in TNYA activities.
- Sexual harassment also occurs when a person in authority tries to trade job or TNYA-related benefits for sexual favors. This can include hiring, promotion, selection for particular competitions, continued employment or any other terms, conditions, or privileges of membership in TNYA. This is also called **quid pro quo** harassment.

Any employee or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be discrimination and is covered by this policy.

Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited. **This list is just a sample of behaviors and should not be considered exhaustive.** Any employee who believes they have experienced sexual harassment, even if it does not appear on this list, should feel encouraged to report it:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body; or
 - Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
- Unwanted sexual comments, advances, or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits, or the target's role in the Team (if a member);

- This can include sexual advances/pressure placed on a service industry employee by customers or clients, especially those industries where hospitality and tips are essential to the customer/employee relationship;
 - Subtle or obvious pressure for unwelcome sexual activities; or
 - Repeated requests for dates or romantic gestures, including gift-giving.
- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees or covered individuals are working remotely can create a similarly hostile work environment.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
 - Remarks regarding a person's gender expression, such as wearing a garment typically associated with a different gender identity; or
 - Asking a person to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- Sexual or discriminatory displays or publications anywhere in the athletic environment, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones and sharing such displays while in the athletic environment;
 - This also extends to the virtual or remote athletic environment and can include having such materials visible in the background of one's home during a virtual meeting.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
 - Interfering with, destroying, or damaging a person's property, or otherwise interfering with the individual's ability to perform their job or participate in TNYA activities;
 - Sabotaging an individual's work or participation in TNYA activities;
 - Bullying, yelling, or name-calling;
 - Intentional misuse of an individual's preferred pronouns; or
 - Creating different expectations for individuals based on their perceived identities:
 - Dress codes that place more emphasis on women's attire;
 - Leaving parents/caregivers out of meetings.

Who Can be a Target of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in the policy. **Harassers can be anyone in the athletic environment.** A supervisor, a supervisee, a coworker, or a fellow member can all be harassers. Anyone else in the athletic environment can also be harassers including an independent contractor, contract worker, vendor, client, customer, patient, constituent, or visitor.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

Where Can Sexual Harassment Occur?

As described above, the athletic environment extends beyond physical precincts; it follows that unlawful sexual harassment is not limited to the physical athletic environment itself. It can occur while employees or covered individuals are traveling to or from TNYA practices or meets, or participating in social events after or before those events. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

Sexual harassment can occur when employees or covered individuals are participating in TNYA activities or TNYA business remotely from home as well. Any behaviors outlined above that leave an employee or covered individual feeling uncomfortable, humiliated, or unable to participate in TNYA activities constitute harassment even if the employee or covered individual is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

Retaliation

Retaliation is unlawful and is any action by a TNYA leader that punishes an individual upon learning of a harassment claim, that seeks to discourage a covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward. These actions need not be TNYA-related or occur in the athletic

environment to constitute unlawful retaliation. For example, threats of physical violence outside of TNYA activities or work hours or disparaging someone on social media would be covered as retaliation under this policy.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files or private information concerning that person held by the Team;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee or a covered individual as “difficult” and excluding them from TNYA activities, committees, meetings, or projects to avoid “drama”;
- Undermining an individual’s immigration status; or
- Reducing work or volunteering responsibilities, passing over for a promotion, or otherwise altering TNYA activities or resources to make them less accessible or convenient for that person.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
- Reported that another employee or covered individual has been sexually harassed or discriminated against; or
- Encouraged a fellow employee or covered individual to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. The retaliation provision is not intended, however, to protect persons making intentionally false charges of harassment.

Reporting Sexual Harassment

Everyone must work toward preventing sexual harassment, but leadership matters. TNYA leaders have a special responsibility to make sure employees and covered individuals feel safe when participating in TNYA activities and that the athletic environment are free from harassment and discrimination. Any employee or covered individual is encouraged to report harassing or discriminatory behavior to an Athletic Safety Officer. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to an Athletic Safety Officer.

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached to this policy if an employee would like to use it, but the complaint form is not required. Persons who are reporting sexual harassment on behalf of other employees or covered individuals may use the complaint form and should note that it is on another employee's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another employee or covered individual is also acceptable.

Employees and covered individuals who believe they have been a target of sexual harassment may at any time seek assistance in additional available forums, as explained below in the section on [Legal Protections](#).

Supervisory Responsibilities

Supervisors and managers have a responsibility to prevent sexual harassment and discrimination. All TNYA leaders who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to an Athletic Safety Officer. TNYA leaders should not be passive and wait for an employee or covered individual to make a claim of harassment. If they observe such behavior, they must act.

TNYA leaders can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. TNYA leaders can also be disciplined for failing to report suspected sexual harassment or allowing sexual harassment to continue after they know about it.

TNYA leaders will also be subject to discipline for engaging in any retaliation.

In addition to TNYA leaders' obligation to report suspected sexual harassment, TNYA leaders must report to the U.S. Center for SafeSport any actual or reasonably suspected Sexual Misconduct or Child Abuse (as those terms are defined in the SafeSport Code) to the Center, and, as appropriate, to law enforcement.

While TNYA leaders have a responsibility to report harassment and discrimination, TNYA leaders must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. TNYA leaders must accommodate the needs of individuals who have experienced harassment to ensure the athletic environment is safe, supportive, and free from retaliation for them during and after any investigation.

Bystander Intervention

Any employee or covered individual witnessing harassment as a bystander is encouraged to report it. A TNYA leader that is a bystander to harassment is **required** to report it. There are five

standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the athletic environment. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

Complaints and Investigations of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information, or knowledge of suspected sexual harassment will be prompt, thorough, and started and completed as soon as possible. The investigation will be kept confidential to the extent possible. All individuals involved, including those making a harassment claim, witnesses, and alleged harassers deserve a fair and impartial investigation.

Any employee, member, or TNYA leader may be required to cooperate as needed in an investigation of suspected sexual harassment. TNYA will take disciplinary action against anyone engaging in retaliation against employees or covered individuals who file complaints, support another's complaint, or participate in harassment investigations.

TNYA recognizes that participating in a harassment investigation can be uncomfortable and has the potential to retraumatize those involved. Athletic Safety Officers receiving claims and leading investigations must handle complaints and questions with sensitivity toward those participating.

While the process may vary from case to case, investigations will be done in accordance with the following steps. Upon receipt of a complaint, the Athletic Safety Officers:

1. Must conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment), as appropriate, or, for interim actions that would serve to bar an individual from participation in TNYA activities, recommend to

the Board that such interim actions be taken. If complaint is verbal, request that the individual completes the complaint form in writing. If the person reporting prefers not to fill out the form, the Athletic Safety Officers will prepare a complaint form or equivalent documentation based on the verbal reporting;

2. Must take steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails or phone records that may be relevant to the investigation. The Board will consider and implement appropriate document request, review, and preservation measures, including for electronic communications;
3. Must seek to interview all parties involved, including any relevant witnesses;
4. Must create a written documentation of the investigation (such as a letter, memo or email) and transmit the same to the Board of Directors (excluding any directors with an identified conflict of interest). The documentation must contain at least the following:
 - a. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - b. A list of names of those interviewed, along with a detailed summary of their statements;
 - c. A timeline of events;
 - d. A summary of any prior relevant incidents disclosed in the investigation, reported or unreported; and
 - e. A recommendation to the Board for final resolution of the complaint, together with any corrective action(s).
5. Must keep the written documentation and associated documents in a secure and confidential location;
6. Must promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions authorized by the Board; and
7. Must inform the individual(s) who reported of the right to file a complaint or charge externally as outlined in the next section.
8. Must ensure that the investigation does not conflict with any parallel investigations undertaken by federal, state, or local government, an NGB, or the U.S. Center for SafeSport.

In the event that a complaint is made to a TNYA leader, the director must refer the complaint to the Athletic Safety Officer for execution of the above investigation protocol.

Appointment of Athletic Safety Officers and Temporary Athletic Safety Officers

Standing Athletic Safety Officer Appointments

The Board shall appoint one or more members of TNYA (who need not be directors) to serve as Athletic Safety Officer(s). The Athletic Safety Officer(s) shall serve as the primary point of contact for any member or participant in TNYA activities who believe TNYA's welfare policies have been breached and, unless prevented by a conflict of interest, conduct an initial investigation into such allegations and report the same to the board. To prevent an initial investigator standing in judgment over a review of their own work, an Athletic Safety Officer who is a director shall be recused from deliberations or voting on their recommendations.

The Athletic Safety Officers shall also have general responsibility to review TNYA activities and operations to identify potential risks to member health and safety and advise the board on prudent measures that may be taken to ameliorate such risks and have primary responsibility for educating members in their duties under the welfare policies and analogous policies of the NGBs. The Board shall take due care to consult and involve the Athletic Safety Officers in the planning of TNYA events to allow the Athletic Safety Officer(s) to fulfill these functions.

Conflicts of Interest and Temporary Athletic Safety Officers

If a complaint is such that one or more Athletic Safety Officers has a conflict of interest, the complaint must be referred to a Athletic Safety Officer who is not so conflicted.

If all Athletic Safety Officers have a conflict of interest with respect to that complaint, the complaint must be referred to the first person on the below list that does not have a conflict of interest with respect to the complaint; that person shall serve as Temporary Athletic Safety Officer for the purpose of investigation of that complaint only:

1. A Co-Chair;
2. The Coaching Coordinator;
3. The Treasurer;
4. The Secretary;
5. Any other director;
6. A Head Coach;
7. Another coach.

If an Athletic Safety Officer determines that one or more directors have a conflict of interest with respect to a complaint, their report must be made to the Board excluding those directors; it shall be for the remaining unconflicted directors to adjudicate whether or not a conflict definitively exists and take appropriate action.

If all directors are conflicted, the Athletic Safety Officer shall, based on their evaluation of the relevant facts and circumstances, take whichever of the below actions seems to them the most prudent:

1. Call upon the least conflicted directors to appoint a third party to whom may be delegated the Board's responsibility to receive and review the complaint;

2. Instruct the Board to call a Special General Meeting to review the complaint and take appropriate action. The Board must comply with this instruction.
3. Refer the complaint to the appropriate government agencies.

Conflicts of Interest

A person, whether a director or Athletic Safety Officer, has a conflict of interest with respect to a given complaint under the following circumstances:

1. That person is the complainant or respondent (“a party”);
2. That person is related to a party;
3. That person is or was married to, a domestic partner of, or in a romantic relationship with a party;
4. That person has a financial interest in outcome of the dispute, or in the continued participation or otherwise of any party in TNYA activities;
5. That person is a director, at the stage of proceedings where the Board must review an Athletic Safety Officer’s recommendations, and was the Athletic Safety Officer who made the recommendations under review;
6. That person’s relationship with any party is such that a reasonable outside observer would conclude that the person cannot be objective with respect to that party.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by TNYA, but it is also prohibited by state, federal, and New York City law in a wide variety of settings and circumstances.

The internal process outlined in the policy above is one way for covered individuals to report sexual harassment. Employees and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may also seek the legal advice of an attorney.

TNYA is an aquatic team, not a law firm. In providing the below list of resources, TNYA provides only general information and not legal advice. TNYA also makes no representations as to the applicability of any part of the Human Rights Law to TNYA or its operations.

Reporting to the U.S. Center for SafeSport and/or the Metro LMSC

In addition to any rights and remedies under this policy, TNYA members are required to be members of at least one NGB and may have recourse to the internal disciplinary procedures of that or those NGBs or the U.S. Center for SafeSport. Any remedies provided by an NGB or SafeSport are in addition to those provided by TNYA or as a matter of state or federal law. In the case of all NGBs other than US Masters Swimming, most harassment complaints fall under the jurisdiction of SafeSport, the national peak body for sexual assault prevention in sport.

To report abuse or misconduct to USMS or SafeSport, see the links below.

- [U.S. Center for SafeSport \(https://uscenterforsafesport.org/report-a-concern/\)](https://uscenterforsafesport.org/report-a-concern/) is the principal body for such complaints from water polo, diving, and artistic swimming and one of the bodies that may review complaints respecting swimming. As the Center refers to the NGBs complaints it receives over which it will not exercise exclusive jurisdiction, complaints are advised to report incidents to the Center first.
- Swimming disputes wholly within the downstate New York area may be reported to the Review Chair of the Metro Local Masters Swimming Committee (<https://www.usms.org/lmsc/lmscofficers.php?LMSCID=6>).

New York State Division of Human Rights

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers and owners, lessees, proprietors, managers, superintendents, agents or employees of any place of public accommodation, resort, or amusement in New York State. It protects employees and covered individuals, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in New York State Supreme Court, New York County.

Complaints of sexual harassment filed with DHR may be submitted any time **within three years** of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to TNYA does not extend your time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring your employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Go to dhr.ny.gov/complaint for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on your computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State.

Call the DHR sexual harassment hotline at **1(800) HARASS3** for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

The United States Equal Employment Opportunity Commission

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act, 42 U.S.C. § 2000e *et seq.* An individual can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with TNYA. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Notice of Right to Sue permitting workers to file a lawsuit in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated, or believes that unlawful discrimination occurred by does not file a lawsuit.

Individuals may obtain relief in mediation, settlement or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, persons in New York City may file complaints of sexual harassment or discrimination with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

Conclusion

The policy outlined above is aimed at providing covered individuals in TNYA an understanding of their right to a discrimination and harassment free workplace. All covered individuals should feel safe in the athletic environment. Though the focus of this policy is on sexual harassment and gender discrimination, the New York State Human Rights law protects against discrimination in several protected classes including sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or domestic violence survivor status. The prevention policies outlined above should be considered applicable to all protected classes.