, Dating Violence, and Other Sexual Misconduct)

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(October 25, 2021)

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# NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY & COMPLAINT PROCEDURES

(including Title IX Sexual Harassment, Sexual Abuse/Assault, Stalking, Dating Violence, Domestic Violence, and Other Sexual Misconduct)

## I. POLICY STATEMENT

Yeshiva University is committed to maintaining an academic, work and living environment in which all individuals are treated with respect and dignity. Everyone at the University has the right to work and learn in an environment that promotes equal opportunities for all. Thus, this Policy prohibits discriminatory practices, harassment and sexual misconduct of any kind. Where discrimination,

complaining individual is not the intended target of the sexual harassment. A sexually harassing hostile work environment may include 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. Conduct that does not constitute a Title IX violation may still be a violation of the University's Other Sexual Misconduct Policy.

2. Quid Pro Quo Harassment

Quid Pro Quo Harassment occurs when a University employee either explicitly or implicitly conditions the provision of an aid, benefit, or service of the University of an individual's participation in unwelcome sexual conduct. Conduct that does not meet the level of a Title IX violation may still be a violation of the University's Other Sexual Misconduct Policy.

3. Sexual Assault

electronic social media communications, computer graphics or programs when sexual content is not relevant to any academic purpose; non-verbal behaviors of a sexually degrading or offensive nature, such as gesturing, or leering; unwanted touching, hugging, or brushing against an individual's body; requests, demands or persistent pressure for sexual favors, particularly when accompanied by an offer of rewards or threats of retaliation concerning work, grades, promotions, tenure or any other academic or University-related decision; and sexual abuse/assault ("*sexual violence*"). In addition, sexual harassment may include hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as (i) interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job; (ii) sabotaging an individual's work; or (iii) bullying, yelling, or name-calling. Sex stereotyping may also constitute sexual harassment. Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

Sexual harassment constitutes employee misconduct and is a form of workplace discrimination. Sexual harassment also may consist of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, and which interfere with the recipient's job performance. Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment. The University will enforce sanctions, up to and including termination of employment, against any employee who engages in an act of sexual harassment, and against any managerial or supervisory personnel who knowingly allow such behavior to continue.

## Other Sexual Misconduct

In addition to Title IX Sexual Harassment, the University prohibits a broader range of misconduct under its prohibition against Other Sexual Misconduct. This captures any unwelcome or unwanted sexual advances, reque

b. Submission to or rejection of such conduct is used as the basis for a decision regarding an employment, academic, or other University-related activity affecting such individual; or

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or participation in a University program, department or extra-curricular activity (even if, in the case of a University employee or non-employee working at the University, the complaining individual is not the intended target of the sexual harassment); or

d. Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working, learning, studying, or school environment (even if, in the case of a University employee or non-employee working at the University, the complaining individual is not the intended target of the sexual harassment). A sexually harassing hostile work environment consists of 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.

You do not need todetermine whether conduct falls under any of these definitions prior to speaking with the Title IX k] TJ ET Q q 0.00000912 0 612 792 re W* n BT /F9 12 Tf 1 0 0 1 1294(l27

involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Evaluating incapacitation requi

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(646) 592-4615 / joe.bednarsh@yu.edu

Undergraduate Office of Student Life (http://yu.edu/osl)
Beren Campus – (646) 592-4125 / Wilf Campus – (212) 960-5411

Cardozo Office of Student Services and Advising (http://cardozo.yu.edu/ossa)
(212) 790-0429

Undergraduate Office of University Housing and Residence Life
Beren Campus - (646) 592-4163 - http://yu.edu/student-life/housing/women/
Wilf Campus – (646) 592-4215 - http://yu.edu/student-life/housing/men/

If any of these aforementioned people, other than the Title

## Filing Complaints with Law Enforcement

Anyone who has been the victim of sexual violence, stalking, domestic violence, dating violence, or any

harassment (e.g., referral for any member of the University community who is concerned because of behavior that he/she perceives as discrimination or harassment). If a complainant wishes to pursue an informal resolution to a complaint, a Panel Member can provide a non-adversarial setting in which the problem can be addressed as appropriate, including confidential counseling. In the course of such action, the Panel Member may also assist by clarifying misunderstandings, and helping to assure that conflicts do not recur. Also, when appropriate and acceptable to both parties, certain complaints may be suitable for referral to mediation in order to explore the possibilities of a resolution.

The Panel consists of members of the University community, designated by the President from time to time. These appointments will be guided by considerations of continuity, experience and sensitivity to the concerns presented. A list of the present members can be found at: http://yu.edu/hr/harass-panel/.

### Informal Resolution of Complaints Involving Title IX Sexual Harassment

For reports of Title IX Sexual Harassment, the University cannot offer informal resolution unless a formal complaint is filed.

At any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The University must first provide the parties with written notice disclosing the allegations, the requirements of the informal resolution process (including under what circumstances it precludes parties from resuming a formal complaint on the same allegations – and the fact that, at any time prior to agreeing to a resolution, any party can withdraw from informal resolution and resume the process as a formal complaint), and any consequences resulting from participating in an informal resolution process, including that records will be maintained or could be shared.

The University cannot require parties to participate in an informal resolution process – and must obtain the parties' voluntary written consent to informally resolve complaints of Title IX Sexual Harassment.

The Title IX Coordinator has discretion to refuse a request for informal resolution where the allegations are so severe or complex as to render the informal resolution process an inappropriate mechanism for resolution.

### Informal Resolution of Complaints Not Involving Title IX Sexual Harassment

For Other Sexual Misconduct and other complaints not involving Title IX Sexual Harassment, the informal resolution process is available to resolve incidents that may not be so serious that the University

## XVI. RETALIATION

This Policy prohibits retaliation against any individual who reports or complains of sexual harassment or other discrimination and/or participates in the investigation of a complaint or resolution of an incident, including those who testify or assist in any proceeding related to a complaint or incident, even if the

Contact DHR at (888) 392-

Appendix A

## Informal Resolution

## I. INFORMAL RESOLUTION OF MATTERS INVOLVING TITLE IX SEXUAL HARASSMENT

For reports of Title IX Sexual Harassment, the University cannot offer informal resolution unless a formal complaint is filed. At any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. To do so, the University must first provide the parties with written notice disclosing the allegations, the requirements of the informal resolution process (including under what circumstances it precludes parties from resuming a formal complaint on the same allegations – and the fact that, at any time prior to agreeing to a resolution, any party can withdraw from informal resolution and resume the process as a formal complaint) (see Appendix B

Where the parties reach mutual agreement through the informal resolution process – and the University determines that the agreement is acceptable –

If applicable, where a Panel Member is unable or unwilling to undertake the review of a complaint, for example because of a conflict of interest, the Title IX Coordinator or Deputy Title IX Coordinator will select another Panel Member.

In addition, at the reasonable request of a party to the complaint (for example, because of a conflict of interest), the Title IX Coordinator or Deputy Title IX Coordinator will select another Panel Member or mediator (as applicable). Where acceptable to both parties, the Panel Member(s) involved may request that an additional Panel Member(s) and/or the Title IX Coordinator or Deputy Title IX Coordinator be present for the discussions.

Informal Resolution is not available in cases of alleged sexual assault, stalking, domestic violence, or dating violenceor to resolve allegations that an employee sexually harassed a student

## THE INVESTIGATION

An investigator (who may be, but is not required to be, the Title IX Coordinator or a Deputy Title IX Coordinator) will promptly, fully, fairly and impartially investigate the complaint, and each party will have equitable opportunities to present witnesses, and review and present information and relevant inculpatory and exculpatory evidence.

The Investigator will seek to conclude the investigation as soon as practicable after receipt of the formal complaint. The Investigator will provide the parties with periodic status updates.

The Investigator is responsible for gathering information sufficient to reach a determination about the respondent's responsibility. The Investigator will review all information gathered or provided by the parties and will determine the appropriateness, relevance and probative value of the information developed or received during the investigation. Information about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The University will not restrict the parties from discussing the allegations or from gathering and presenting relevant evidence.

The Investigator will provide each party and any relevant witness with written notice of a request that they participate in an investigatory interview. The Investigator will provide sufficient notice of the date, time, location, participants, and purpose of any meeting to allow each party to prepare.

Prior to completing the final investigative report, the Investigator will provide the parties with equal opportunity to inspect and review any evidence directly related to the allegations that was obtained from any party or witness during the investigation. (This includes evidence that the Investigator will not rely

## THE LIVE HEARING

Upon receipt of the final investigative report from the Investigator, the Title IX Coordinator or Deputy Title IX Coordinator will identify a decision-maker to conduct a live hearing after which the decision-maker will render a determination regarding the respondent's responsibility based on a ó esponsibiMd ʻ } Msɛ

the disciplinary process the following notation will be placed on his/her transcript: “withdrew with conduct charges pending.”

be afforded similar and timely access to information that may be provided by the University to the other party and that will be used to adjudicate the complaint.

7) Both parties will be advised by the Title IX Coordinator or Deputy Title IX Coordinator (or his/her designee) that reasonable efforts will be made by the University to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws (see Section XVI).

8) The Title IX Coordinator or Deputy Title IX Coordinator will explore possible supportive measures with both parties.

9) The Title IX Coordinator or Deputy Title IX Coordinator (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.

10) The Title IX Coordinator or Deputy Title IX Coordinator (or his/her designee) will provide the complainant and the respondent with periodic status updates.

11) The Title IX Coordinator or Deputy Title IX Coordinator (or other designated investigator) will seek to conclude the investigation as promptly as practicable (see Section XIX).

12) The Title IX Coordinator or Deputy Title IX Coordinator (or other designated investigator) will compile a neutral investigation report, and will simultaneously inform the parties of the conclusion of the investigation. Both parties will have an opportunity to review the investigation report in person, in the presence of a University official at a location selected by the University. The complainant and respondent may respond to the report, either verbally or in writing.

13) The Title IX Coordinator or Deputy Title IX Coordinator will then decide (in his/her discretion as he/she feels appropriate,

of the parties, and any mitigating circumstances. The Title IX Coordinator or Deputy Title IX Coordinator (or other designated investigator or person) will decide the appropriate disciplinary actions. The Title IX Coordinator or Deputy Title IX Coordinator will simultaneously notify

the hearing officer may consider the respondent's past violations of University policy, as well as the nature and severity of the violation(s), the impact statements of the parties, and any mitigating circumstances.

vi. The Title IX Coordinator or Deputy Title IX Coordinator will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, and the right to appeal (as provided below).

16) The University expects all cases involving a finding of sexual violence, stalking, domestic violence and dating violence to involve consideration of suspension or expulsion for students, and termination of employment for employees. Other sanctions that may be imposed include a warning, disciplinary probation, restriction from employment by the University, removal from University housing, removal from courses or activities, loss of privileges, no contact, exclusion from areas of the campus and facilities, removal or non-renewal

of responsibility either in whole or in part, and/or alter the sanctions, depending on the circumstances. The matter can also be referred back for further investigation or consideration if appropriate.

vi. The Appeal Panel will issue its determination as soon as practicable from the date of the submission of all appeal documents by both parties. The Title IX Coordinator or Deputy Title IX Coordinator will simultaneously notify the parties as soon as practicable of the decision.

vii. Appeal decisions are final.

viii. If there is no appeal, the Title IX Coordinator or Deputy Title IX Coordinator also will simultaneously notify the parties that the initial decision is final because the time for an appeal has expired.

18) Notwithstanding the foregoing, to the extent permitted by law, (i) findings and recommendations concerning represented employees will be subject to the provisions of the appropriate collective bargaining agreement, and (ii) findings and recommendations that involve suspension or termination of faculty members will be subject to the provisions of the appropriate faculty handbook/policy.

19) The University will endeavor to fully resolve all formal complaints as soon as practicable (or, in the case of a faculty complaint, such time period as may be required by the applicable faculty handbook/policy) after receipt of the formal complaint.

20) Transcript Notations. Students suspended or expelled for committing an act of sexual assault, stalking, domestic violence, dating violence, or a "violent crime," as defined by the Clery Act,6 will have a notation placed on their transcript as follows: "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." The University will consider requests to remove transcript notations. Requests for removal of a transcript notation should be sent to the Title IX Coordinator. A transcript notation will not be removed prior to one year after conclusion of the suspension. If a finding of responsibility is vacated for any reason, a corresponding transcript notation will be removed.

9) The Title IX Coordinator or Deputy Title IX Coordinator (or his/her designee) will provide the complainant and the respondent with periodic status updates.

10) The Title IX Coordinator or Deputy Title IX Coordinator (or other designated investigator) will seek to conclude the investigation as promptly as practicable (see Section XIX).

11) The Title IX Coordinator or Deputy Title IX Coordinator (or other designated investigator) will compile a neutral investigation report and will then determine the credible evidence and make a finding as to whether this Policy has been violated. A finding of a violation of this Policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the discrimination or harassment occurred).

12) The Title IX Coordinator or Deputy Title IX Coordinator will simultaneously inform the parties of the conclusion of the investigation and the finding. The complainant and respondent may respond to such findings, either verbally or in writing, and such response will be furnished to the appropriate disciplinary authority along with the investigation's findings. Neither the complainant nor the respondent is entitled to receive a copy of the internal investigative report or any other related documents, except, in the case of any faculty complaint, as may otherwise be expressly required by any applicable faculty handbook/policy. If the University determines to furnish a document to one party, it will also simultaneously furnish a copy to the other party.

13) Findings and recommendations concerning an employee-respondent will be promptly referred to the Chief Human Resources Officer for consideration of appropriate disciplinary action. The Chief Human Resources Officer will consult with the Title IX Coordinator or Deputy Title IX Coordinator and the designated investigator (as applicable) to review the findings and recommendations, as well as any responses to such findings received from the complainant or respondent. With respect to faculty, the Chief Human Resources Officer also will consult with the Provost.

Appendix D

## Student Bill of Rights

The University is committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in University-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

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 decisi

Appendix F

## New York Crime Definitions

The Violence Against Women Act (VAWA) and its regulations require the University to include certain New York State definitions in its Annual Security Report and also require that these definitions be provided in other materials disseminated by the University. Relevant New York definitions are set forth below.

CONSENT:[7] Lack of consent results from: forcible compulsion; or incapacity to consent; or 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. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in 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. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of corrk o3(s)n9004B0QQq0.00000912 0 612 /F1 12 Tf1 0 0 1 126.62 628.42 Tm0 g0 G[(L)11(a)4(c)4(k )]TJ10.0Qq0.

being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

FORCIBLE TOUCHING: When a 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. It includes squeezing, grabbing, or pinching.

PERSISTENT SEXUAL ABUSE: When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

SEXUAL ABUSE IN THE THIRD DEGREE: When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.

SEXUAL ABUSE IN THE SECOND DEGREE: When a person 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 17 years old; or (2) less than 14 years old.

SEXUAL ABUSE IN THE FIRST DEGREE: When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less T/F1An0 g]TJETQq0.00000912 0 20(e)-5(a)-5(rs olde)4(rs0 gpeW* nBT/F1 12 Tf1 0 0 1 86.664 464.59 Tm



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| | felony charges, the final charging decision is made by a Grand Jury. | |
| Who investigates? | Police or other law enforcement officials. | Investigators employed or retained by the University; these individuals may work for different departments within the University, including, but not limited to, the Security Department, Student Affairs and Academic Affairs. |
| Procedures. | See Governing Law. Procedures established by police departments, prosecutors' offices, etc. | University policies, which generally incorporate requirements of Governing Law. Collective bargaining agreements and the faculty handbook may impact some procedures. |
| Standard of Evidence. | Crimes must be proven "Beyond a Reasonable Doubt." | A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not). |
| Confidentiality. | Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public. | The University offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved. |
| Privacy. | Criminal trials must be public. | Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the University, the parties to the proceedings, and pursuant to law. |
| Who are the parties? | The prosecution/State and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution. | Reporting individual and accused/respondent. |
| Participation in the process. | In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt. | Reporting students cannot be required to participate in the University process. However, the University will be limited in its ability to respond if a reporting individual does not participate. |
| Who initiates the proceedings? | A prosecutor, acting on behalf of the State (or the United States in federal cases). | In cases involving Title IX Sexual Harassment, the person filing the complaint initiates proceedings.<br><br>In cases involving Other Sexual Misconduct, the University initiates proceedings, with the reporting individual generally having an active role. |
| Testimony. | In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses. | Upon conclusion of a formal investigation, a hearing may be scheduled where the hearing officer may question the parties and witnesses. (In cases |

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|---|---|---|
| | | involving Title IX Sexual Harassment, a live hearing will always occur.) The University may permit a party to participate in the hearing live by video conference. |