



Sexual Assault Policy

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The health and safety of every student at the Academy for Jewish Religion is of utmost importance. An area of increasing concern for colleges and universities throughout the country is sexual assaults upon students and staff. The following information is intended to help you reduce the likelihood of rape or sexual assault, as well as give you some suggestions on what to do if you are the victim of an assault. If you have any questions concerning this material, please contact the Executive Vice President/Academic Dean or the Rabbi-in-Residence.

The integrity of the student-teacher relationship is the foundation of the educational mission of the Academy. This relationship vests considerable trust in the teacher, who, in turn, bears authority and accountability as a mentor, educator and evaluator. The unequal institutional power inherent in this relationship heightens the vulnerability of the student, as well as the potential for coercion.

“Sexual activity” shall have the same meaning as “sexual act” and “sexual contact”. If you are in doubt about the exact definitions, please see the Executive Vice President/Academic Dean or Rabbi-in-Residence.

Individuals must obtain affirmative consent prior to engaging in any form of 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 expression, or gender expression.

Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated, 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 unable 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.

Consent must be knowing, voluntary and mutual. Voluntary consent means that consent under coercion such as a threat of violence is not consent. Mutual means that all parties must consent.

The Academy for Jewish Religion recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Academy for Jewish Religion strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to the Executive Vice President/Academic Dean or the Rabbi-in-Residence. A bystander acting in good faith or an individual acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the Executive Vice President/Academic Dean, Rabbi-in-Residence, or another official, or to law enforcement, will not be subject to the Academy'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.

Confidentiality

If an individual discloses an incident to an Academy's Title IX Coordinator, or his/her deputy, who is responsible for responding to or reporting domestic violence, dating violence, stalking, or sexual assault, but wishes to maintain confidentiality, or does not consent to the Academy's request to initiate an investigation, the Title IX Coordinator will weigh the request against the Academy's obligation to provide a safe, non-discriminatory environment for all members of its community.

Academy officers and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

The Academy may anonymously disclose information on relevant confidential hotlines provided by New York state agencies and not-for-profit entities; information in an anonymized manner regarding institutional crime reporting such as reports of certain crimes that are required to be included in the Academy's annual security report pursuant to the Clery Act; information that the Academy is obligated to issue timely warnings of crimes enumerated in the Clery Act, that represent a serious or continuing threat to students and employees, when the warning itself could potentially identify the reporting individual, and other reports mandated by law.

When the Academy determines that an investigation is required, it will notify those individuals and take immediate action as necessary to protect and assist them. The Academy will attempt to seek consent from those individuals prior to conducting an

investigation. Declining to consent to an investigation *shall be honored* unless the Academy determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of its community. Honoring such a request may limit the Academy's ability to meaningfully investigate and pursue a conduct action against an accused individual.

Procedures in the Event of a Violation of the Sexual Activity Policy

Every "reporting person" (which shall include without limitation, a victim, survivor, complainant, claimant, or witness with victim status) who reports a violation of the Academy's Sexual Activity Policy has the right to:

- a. Notify local law enforcement, and/or state police;
- b. Have emergency access to the Title IX Coordinator or deputy, who will provide information regarding options to proceed and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible. The Title IX Coordinator will explain that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. The Title IX Coordinator will also explain whether he or she is authorized to offer to a reporting person confidentiality or privacy, and will disclose other reporting options;
- c. Disclose confidentially the incident to Academy representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for the reporting person;
- d. Disclose confidentially the incident and obtain services from the state or local government;
- e. File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate Academy representatives for information and assistance. Reports shall be investigated in accordance with the Academy's policy and reporting person's identity shall remain private at all times if he or she wishes to maintain privacy;
- g. Disclose, if the accused is an employee of the Academy, the incident to the Academy's Executive Vice President/Academic Dean or Rabbi-in-Residence or the right to request that a confidential or private employee assist in such reporting;
- h. Receive assistance from appropriate Academy representatives in initiating legal proceedings in family court or civil court; and
- i. Withdraw a complaint or involvement from the institution process at any time.

At the first instance of disclosure, he or she will be told:

"You have the right to make a report to local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."

The Academy will provide reporting individuals with information about intervention, mental health and counseling resources, and medical services. In addition, the Academy will provide information on sexually transmitted infections, sexual assault forensic examinations, and resources, which are available through the New York state office of victim services. Links are at the end of this document.

No Contact and Protective Orders

A. Consistent with Academy policies and procedures, both the accused or respondent and the reporting individual may request and be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a "no contact order", including a potential modification thereof, and shall be allowed to submit evidence in support of his or her request.

B. Students will be assisted by Academy officials in order to obtain an order of protection or, if outside of New York state, an equivalent protective or restraining order;

C. Affected students will be given a copy of the order of protection or equivalent when it has been received by the Academy and will have an opportunity to meet or speak with an Academy representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons;

D. A student is entitled to and will be afforded an explanation of the consequences for violating such an order, including but not limited to arrest, additional conduct charges, and interim suspension;

E. A student is entitled to receive and will be afforded assistance from the Academy to call on and assist local law enforcement in effecting an arrest for violating such an order;

F. In the event that the Academy determines that the accused or respondent is a student who presents a continuing threat to the health and safety of the Academy community, the Academy may subject the accused or respondent to interim suspension pending the outcome of a judicial or conduct process consistent with New York law and the Academy's policies and procedures. Both the accused or respondent and the reporting individual shall, upon request and consistent with the Academy's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request;

G. When the accused is not a student, but is a member of the Academy community and presents a continuing threat to the health and safety of the community, the Academy may subject the accused to interim measures in accordance with applicable Employee or Faculty Handbooks, and rules and policies of the Academy.

H. The reporting individual may seek and obtain *reasonable and available* interim measures and accommodations that effect a change in academic, employment, or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, consistent with the Academy's policies and procedures. Both the accused or respondent and the reporting individual shall, upon request and consistent with the Academy's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

Student Conduct Charges and Procedures

A. Every Academy student has the right to request that student conduct charges be filed against the accused in proceedings required by New York law and pursuant to the procedures established by the Academy's rules.

B. Every Academy student has the right to a process in all student judicial or conduct cases, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the Academy's code of conduct, which shall include:

- (i) notice to a respondent describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;
- (ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from the date of such hearing and may include a transcript, recording or other appropriate record; and
- (iii) access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual must be similarly provided to a respondent and any rights provided to a respondent must be similarly provided to a reporting individual.

C. Respondents have a “right to a presumption that the respondent is ‘not responsible’ until a finding of responsibility is made pursuant to the provisions of this article.” This means that the burden of showing that a student had sexual activity or contact with another without affirmative consent as defined here is on the institution, not on the respondent to prove a negative. Note that the burden is on the institution to develop these facts, and not on the reporting individual, who may participate at the level to which he or she is comfortable. Throughout the process, appropriate officials may listen to witnesses and review available evidence to make a determination, to the best of their ability, whether it is more likely than not that a policy violation occurred.

D. Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the Academy’s code of conduct, the right:

- i. For the respondent, accused, and reporting individual to 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.
- ii. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of New York law and the Academy’s policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
- iii. To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.
- iv. To have the Academy’s judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.
- v. To review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with Academy policies and procedures.
- vi. To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the Academy disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

- vii. To receive written or electronic notice, provided in advance pursuant to the college or university policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.
- viii. To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
- ix. To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.
- x. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.
- xi. To choose whether to disclose or discuss the outcome of a conduct or judicial process.
- xii. To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

For crimes of violence, including, but not limited to sexual violence, the Academy will make a notation on the transcript of students found responsible after a conduct process that they were “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.” For the respondent who withdraws from the Academy while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.”

The Academy will publish its policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, which will provide that such notation shall not be removed prior to one year after conclusion of the suspension, and that notations for expulsion cannot be removed. If a finding of responsibility is vacated for any reason, the Academy will remove any such transcript notation.

In any proceeding brought against an institution which seeks to vacate or modify a finding that a student was responsible for violating the Academy’s rules regarding a sexual conduct violation, the name and identifying biographical information of any student shall be presumptively confidential and the Academy will not include that information in its pleadings and other papers from such proceeding, absent a waiver, or cause shown as

determined by the court. Witnesses called by the Academy will be identified only as numbered witnesses.

Links to Resources

- New York State Office of Victim Services
<https://ovs.ny.gov/help-crime-victims>
- NYSCASA - New York State Coalition Against Sexual Assault
<http://nyscasa.org/>
- New York State Police Campus Sexual Assault Victims Unit
<https://consentfirst.troopers.ny.gov/>
- Westchester Community Opportunity Program – Victims Assistance
<http://www.westcop.org/victims-assistance/>