

**THE JEWISH THEOLOGICAL SEMINARY (JTS)**  
**NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY**

(Revised September 2021)

**PART I: JTS NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY..... 3**

I.	INTRODUCTION AND NOTICE OF NON-DISCRIMINATION .....	3
II.	TITLE IX COORDINATOR .....	4
III.	SCOPE OF POLICY .....	4
IV.	JURISDICTION.....	5
V.	DEFINITIONS.....	5
VI.	SEXUAL HARASSMENT .....	12
VII.	PROHIBITION AGAINST RETALIATION .....	16
VIII.	DISABILITY DISCRIMINATION AND ACCOMMODATIONS.....	17
IX.	PROHIBITION ON CONSENSUAL RELATIONSHIPS .....	18
X.	SEXUAL MISCONDUCT EDUCATION, TRAINING, AND PREVENTION .....	19
XI.	IMMEDIATE RESOURCES (SEXUAL MISCONDUCT).....	19
XII.	OPTIONS FOR REPORTING INCIDENTS OF PROHIBITED CONDUCT.....	21
XIII.	STUDENT ALCOHOL AND DRUG USE AMNESTY .....	29
XIV.	SUPPORTIVE MEASURES, EMERGENCY REMOVALS, AND NO-CONTACT ORDERS .....	29
XV.	RECORDKEEPING .....	31
XVI.	AMENDMENTS AND DESIGNATION .....	31
XVII.	INVESTIGATIONS, GRIEVANCE PROCESSES, AND APPEALS, GENERALLY .....	32

**PART II: PROCESS A GRIEVANCE PROCESS—ADDRESSING ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT .....37**

I.	FORMAL COMPLAINTS.....	37
II.	INITIAL NOTICE OF ALLEGATIONS .....	38
III.	INFORMAL GRIEVANCE PROCESS.....	39
IV.	INVESTIGATION OF FORMAL COMPLAINTS .....	39
V.	THE HEARING .....	41
VI.	DETERMINATIONS REGARDING RESPONSIBILITY.....	43

**PART III: PROCESS B GRIEVANCE PROCESS—ADDRESSING ALL OTHER ALLEGATIONS OF PROHIBITED CONDUCT ..... 44**

I.	COMPLAINTS.....	44
II.	INFORMAL GRIEVANCE PROCESS.....	45

III. FORMAL GRIEVANCE PROCESS ..... 45

**APPENDIX A: NEW YORK STATE STUDENTS' BILL OF RIGHTS ..... 48**

**APPENDIX B: EMPLOYEE COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT..... 49**

## **PART I: JTS NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY**

### **I. INTRODUCTION AND NOTICE OF NON-DISCRIMINATION**

The Jewish Theological Seminary (“JTS”) seeks to maintain a workplace and educational environment that is free from discrimination, harassment, and retaliation. Pursuant to Title IX of the Education Amendments of 1972 and its implementing regulations (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act of 2013 (“VAWA”), Title VI of the Civil Rights Act of 1964 (“Title VI”), Title VII of the Civil Rights Act of 1964 (“Title VII”), Article 129-B of the New York State Education Law (“Article 129-B”), the New York State Human Rights Law, the New York City Human Rights Law, the Americans with Disabilities Act, as amended in 2008, (the “ADA”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and all other applicable law, JTS is committed to equal treatment and opportunity for the members of its community and to maintaining an environment that is free of discrimination, harassment, and retaliation.

Discrimination, harassment, or retaliation based on race, color, national origin, alienage or citizenship status, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, marital status, caregiver status, sexual and reproductive health decisions, pregnancy, predisposing genetic characteristics, uniformed service or military status, any lawful source of income, domestic violence victim status, criminal conviction, or any other legally prohibited status, is prohibited in JTS educational programs and activities, including admissions and employment, and will not be tolerated. Collectively, “prohibited conduct.”

JTS has established this Non-Discrimination and Anti-Harassment Policy (the “Policy”) to promptly and equitably address allegations of discrimination, harassment, and retaliation on the basis of a protected class. This Policy: (i) defines prohibited conduct; (ii) sets forth available resources and reporting options; and (iii) describes JTS policies and procedures.

In compliance with Title IX, JTS does not discriminate on the basis of sex in its education program or activity that it operates, including in admissions and employment. JTS is required by Title IX not to discriminate in such a manner. Under Title IX, discrimination on the basis of sex includes sexual harassment as defined in Section VI of Part I of this Policy. Any inquiries about the application of Title IX, and related issues of prohibited conduct may be referred to the JTS Title IX Coordinator through the methods listed below, the U.S. Department of Education’s Assistant Secretary for Civil Rights, or both.

Diana Torres-Petrilli  
JTS Title IX Coordinator  
ADA/Section 504 Compliance Officer  
3080 Broadway  
Brush Hall, Room 412  
New York, NY 10027  
Telephone: 212-678-8011  
Email: [dipetrilli@jtsa.edu](mailto:dipetrilli@jtsa.edu)

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Telephone: 1-800-421-3481  
Fax: 202-453-6012; TDD: 1-800-877-8339  
Email: [ocr@ed.gov](mailto:ocr@ed.gov)

## **II. TITLE IX COORDINATOR**

The Title IX Coordinator is responsible for, among other things: (i) application of this Policy; (ii) coordinating JTS's responses and actions associated with the receipt, investigation, and adjudication of prohibited conduct allegations under this Policy, and; (iii) the implementation of supportive measures provided to the Parties upon notice of alleged prohibited conduct. Any member of the JTS community who believes that they have been a victim of prohibited conduct is encouraged to immediately report it to the JTS Title IX Coordinator.

The Title IX Coordinator is free from bias and conflicts of interest to oversee the implementation of this Policy. Concerns involving bias or conflict of interest by the Title IX Coordinator may be reported to Keath Blatt at [keblatt@JTSA.EDU](mailto:keblatt@JTSA.EDU). Any concerns of bias or a potential conflict of interest by any other individual involved in the processes set forth in this Policy should be reported to the Title IX Coordinator.

## **III. SCOPE OF POLICY**

This Policy is effective as of August 14, 2020 and governs all reports, complaints, and formal complaints of prohibited conduct. Reports or complaints made prior to the effective date will be reviewed under the prior JTS Student Gender-Based Misconduct Policy and the JTS Harassment Prevention Policy for Employees.

The fundamental objective of this Policy is to prohibit all forms of discrimination and harassment (as defined in Sections V and VII) in both employment and access to educational opportunities.

This Policy governs all reports, complaints, and formal complaints of prohibited conduct under this Policy and involving members of the JTS community. In this Policy, the "JTS community" includes JTS's students, student organizations, employees, including faculty, administrators, and staff, prospective students and employees, contractors, subcontractors, vendors, or third parties such as visitors, guests, or volunteers, as well as other parties affiliated with JTS by reason of employment or education and within JTS's control.

Discrimination, harassment, or retaliation may occur between members of the same or different sex, or any combination of members of the JTS community. This Policy applies regardless of an individual's race, color, national origin, alienage or citizenship status, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, marital status, caregiver status, sexual and reproductive health decisions, pregnancy, predisposing genetic characteristics, uniformed service or military status, any lawful source of income, domestic violence victim status, criminal conviction, or any other status protected by law.

Allegations of a violation of this Policy are addressed under "Process A" or "Process B" as determined by the JTS Title IX Coordinator, and as set forth herein. Process A only applies to qualifying allegations of sexual harassment under Title IX ("Title IX sexual harassment"), including sexual assault, dating violence, domestic violence, and stalking. Process B applies to all other forms of prohibited conduct, including sexual misconduct that the Title IX Coordinator determines does not fall within Process A. Both Processes A and B contain an informal process.

#### **IV. JURISDICTION**

This Policy applies to conduct that occurs during JTS's education programs and activities, and therefore covers all of the operations of JTS,<sup>1</sup> such as academics, extracurricular activities, and may also include computer and internet networks, digital platforms, and computer hardware or software owned by, operated by, or used in the operations of JTS. This Policy covers conduct that occurs on-campus, in JTS provided housing, and any other property owned or controlled by JTS, as well as off-campus at programs and activities sponsored by JTS, including study abroad.<sup>2</sup> Any online postings or other electronic communication will be in violation of this Policy the same as any other verbal, written, or physical conduct addressed in this Policy. Irrespective of where the conduct took place, JTS will assess all reports, complaints, and formal complaints to determine whether the conduct took place during its education program or activity or has a continuing effect on campus or in an off-campus sponsored program or activity.

Members of the JTS community are subject to this Policy. When the Respondent is not a member of the JTS community or the Respondent's identity is not known, the Title IX Coordinator will nonetheless provide appropriate resources and support options to the Complainant, and/or assist the Complainant in contacting local or campus law enforcement if the allegations include conduct that is criminal and the Complainant wishes to file a report with the police. JTS may also prohibit individuals from JTS programs or activities in order to protect the Complainant or its community.

#### **V. DEFINITIONS**

For purposes of this Policy, the following definitions apply:

Actual Knowledge: notice of Title IX sexual harassment or allegations of Title IX sexual harassment to the JTS Title IX Coordinator or any JTS official who has authority to institute corrective measures on behalf of JTS, also known as any Official with Authority as defined below. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The mere ability or obligation to report Title IX sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of JTS. This standard is not met when the only person with actual knowledge is the Respondent.

Advisor: an individual who may be, but is not required to be, an attorney, that is selected by each Party to accompany the Party to any related meeting or proceeding, to advise the Party, and to conduct cross-examination for the Party at the hearing in Process A, if any. If a Party does not select an advisor and a hearing under Process A is required based on allegations of Title IX sexual harassment, JTS will appoint an advisor for purposes of conducting cross-examination.

Affirmative Consent: 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

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<sup>1</sup> For the purposes of Title IX sexual harassment (34 CFR §§ 106.30, 106.44 and 106.45), "education program or activity" includes locations, events, or circumstances over which JTS exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and any building owned or controlled by a student organization that is officially recognized by JTS.

<sup>2</sup> Conduct that is prohibited by Article 129-B that is not covered by Title IX sexual harassment is addressed under Process B of this Policy. To the extent applicable, students maintain the rights set forth in the Students' Bill of Rights during resolution of a complaint under Process A or Process B. N.Y. Educ. Law § 6440(6). A copy of the Students' Bill of Rights is attached hereto as Appendix A.

create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. The following principles are guidance for the JTS community:

- 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 and can no longer be given, sexual activity must stop.

Bystander: a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of this Policy, JTS rules, or other JTS policies.

Coercion: unreasonable pressure to engage in sexual activity.

Complainant: refers to an individual who is alleged to be the victim of conduct that could constitute prohibited conduct under this Policy.

Complaint: a Process B document filed by a Complainant or signed by the Title IX Coordinator alleging prohibited conduct under this Policy, other than Title IX sexual harassment, against a Respondent and requesting that JTS investigate the allegation of prohibited conduct. A complaint initiates Process B of this Policy.

Confidentiality: may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.

Covered Non-Employees: include: (i) applicants for employment; (ii) interns, whether paid or unpaid; (iii) individuals who are (or are employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to JTS; and (iv) individuals commonly referred to as independent contractors, "gig" workers, and temporary workers, including, but not limited to, individuals providing equipment repair, cleaning services, or any other services provided pursuant to a contract with JTS.

Dating Violence: as defined by VAWA at 34 U.S.C. § 12291(a)(10), means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on a consideration of the

following factors: (i) the length of the relationship, (ii) the type of the relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

Day: means a business day.

Deliberately Indifferent: as defined in 34 C.F.R. § 106.44(a), an institution is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances. Once JTS has actual knowledge of Title IX sexual harassment in its education program or activity against a person in the United States, JTS will respond promptly in a manner that is not deliberately indifferent.

Disciplinary Sanction: an action imposed by JTS on a Respondent where a determination of responsibility has been made and the Respondent has been found to have violated this Policy.

Discrimination: occurs when, on the basis of a protected status, an individual or group is excluded from participation in, or denied the benefits of any JTS program or activity. It is adverse treatment of any individual based on the individual's actual or perceived membership in a protected class or category of persons to whom they belong, rather than on the basis of their individual merit. If the acts of a member of the JTS community deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of an individual on the basis of that individual's actual or perceived membership in a protected class, that member of the JTS community is in violation of this Policy.

Discriminatory Harassment: is unwelcome verbal or physical conduct toward, or differential treatment of, an individual because of their membership or perceived membership in any legally protected class. JTS does not tolerate any discriminatory harassment of any student, employee, visitor or guest.<sup>3</sup> Some examples of harassment include, but are not limited to:

- Epithets, derogatory comments, slurs or name-calling, racial or ethnic slurs, threats, offensive jokes;
- Offensive or degrading remarks, verbal abuse, or other hostile behavior such as insulting, teasing, mocking, degrading, or ridiculing another person or group based on a protected class;
- Hostile actions taken against an individual because of a protected characteristic, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name calling.
- Derogatory or offensive posters, cartoons or drawings, displaying offensive pictures, writings, symbols or objects based on a protected class;
- Making negative comments about an individual's personal religious beliefs, or trying to convert them to a certain religious ideology;
- Offensively talking about negative racial, ethnic, or religious stereotypes;
- Making derogatory age-related comments;
- Making an offensive reference to an individual's mental or physical disability;
- Assault or other inappropriate physical contact.

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<sup>3</sup> JTS reserves the right to address harassment and offensive conduct that may not create a hostile environment, or that is of a general nature and is not based on a protected status under JTS policy.

Domestic Violence: as defined by VAWA at 34 U.S.C. § 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Education Program or Activity: for purposes of 34 C.F.R. §§ 106.30 and 106.45, includes locations, events or circumstances over which JTS exercised substantial control over both the Respondent and the context in which the alleged Title IX sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by JTS.

Final Determination: a determination is a finding by JTS based upon a preponderance of the evidence, regarding whether the Respondent is responsible for the alleged conduct and whether the alleged conduct constitutes a violation of this Policy. A determination indicates whether disciplinary sanctions, if any, are to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to JTS’s education program or activity are to be provided to the Complainant. A “final” determination means the written determination containing the information required in 34 C.F.R. § 106.45(b)(7), as modified by any appeal by the Parties. A determination becomes a final determination on the date that JTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Force: the use of physical violence and/or imposing on someone physically to engage in sexual activity. Force can also include threats, intimidation, or coercion used to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity.

Formal Complaint: a Process A document filed by a Complainant (meaning a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) or signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that JTS investigate the allegation of Title IX sexual harassment. A formal complaint initiates Process A of this Policy. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of JTS.

Grievance Process: refers to the formal and informal grievance processes set forth as “Process A” and “Process B.”

Hearing Officer: refers to an individual(s) who presides over the hearing conducted during the formal grievance processes of Process A and Process B of this Policy and issues a determination as to Policy violation(s).

Intimidation: implied threats that reasonably cause another individual to fear for that individual’s safety or well-being.

Investigator: an individual(s) appointed by the Title IX Coordinator or their designee to investigate the allegations of prohibited conduct. Investigators are also charged with creating an investigative report that fairly summarizes relevant evidence.

**Mandated Reporter:** an employee of JTS who must share their knowledge of conduct prohibited by this Policy with the Title IX Coordinator. A mandated reporter who receives knowledge of Title IX sexual harassment does not constitute actual knowledge to JTS, unless the Title IX Coordinator or any Official with Authority receive notice of the same.

**No-Contact Order:** a directive prohibiting contact between and among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party. Continued intentional contact would be a violation of JTS policy subject to additional conduct charges.

**Official with Authority:** an employee of JTS who has the authority to implement corrective action on behalf of JTS. JTS's Officials with Authority include the Provost, the Chancellor, the Executive Vice Chancellor, and the Deans.

**Party or Parties:** Complainants and Respondents are sometimes referred to as Parties, collectively (a "Party" is someone directly involved in a proceeding). Others, such as witnesses and advisors, are not considered Parties.

**Preponderance of the Evidence:** the standard to determinate responsibility under this Policy. This means that it is more likely than not that a violation of this Policy occurred.

**Privacy:** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate JTS officials.

**Process A:** the grievance processes defined above and detailed below. Process A only applies to conduct that constitutes Title IX sexual harassment.

**Process B:** the grievance processes defined above and detailed below. Process B applies to all prohibited conduct under this Policy that does not constitute Title IX sexual harassment.

**Prohibited Conduct:** includes all conduct that is in violation of and prohibited by this Policy, including discrimination, harassment, and retaliation on the basis of an actual or perceived protected status. Prohibited conduct will be investigated and adjudicated pursuant to the applicable procedures set forth herein.

**Remedies:** are actions taken by JTS in favor of a Complainant and/or the JTS community after a determination of responsibility has been made through Process A or Process B. Remedies are designed to restore or preserve equal access to JTS's education program or activity. Remedies may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening Respondent.

**Report:** is a report made to the Title IX Coordinator that is verbal or written, by any person, alleging prohibited conduct. Such a report can be made at any time in person, by mail, by phone, or by electronic mail. A report is not the same as a complaint or a formal complaint and will not initiate either the grievance processes (Process A or Process B).

**Reporting Individual:** any individual who reports an alleged violation of this Policy to the Title IX Coordinator. This may or may not be the same as the Complainant, a witness, or a bystander.

Respondent: refers to an individual who has been alleged to be the perpetrator of conduct that could constitute conduct prohibited by this Policy.

Retaliation: has various definitions under applicable laws. See Section VII of Part I of this Policy.

Sex: encompasses sex, gender, sexual orientation, gender identity, and gender expression.

Sex Discrimination: involves treating someone unfavorably because of that person's actual or perceived sex. It occurs when, on the basis of sex, gender, sexual orientation, gender identity, including transgender status and/or gender expression, an individual or group is excluded from participation in, or denied the benefits of, any JTS program or activity, including admissions and employment.

Sex/Gender-Based Harassment: unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassing conduct does not need to be based on anything sexual or of a sexual nature.

Sexual Activity: includes any "sexual act" or "sexual contact."

- A "sexual act" means (a) contact between the penis and vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight of the anal or genital opening of another by hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- "Sexual contact" means the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

Sexual Assault: as defined in 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation ("FBI"). These offenses are defined<sup>4</sup> as follows:

- Sex Offenses:<sup>5</sup> include any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - Rape – Completed [SRS Definition]: penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes either

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<sup>4</sup> The definitions herein are from the most recent Uniform Crime Reporting Program National Incident-Based Reporting System (the "NIBRS") User Manual, dated May 7, 2020, with the exception of Rape, which, in accordance with the Clery Act, is defined pursuant to the FBI's Uniform Crime Reporting Program Summary Reporting System (the "SRS"), dated June 20, 2013. Once the SRS is retired, the NIBRS definition of rape shall be used.

<sup>5</sup> Under the NIBRS User Manual dated 2011, available [here](#), this definition was used to describe "Sex Offenses, Forcible." The following acts were classified as "Sex Offenses, Forcible": Forcible Rape (Except Statutory Rape), Forcible Sodomy, Sexual Assault with An Object, and Forcible Fondling.

gender of victim or offender. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

- Rape (except statutory rape) [NIBRS Definition – to be used only when the SRS is retired<sup>6</sup>]: the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- Sodomy: oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- Sexual Assault with an Object: to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.
- Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- Sex Offenses:<sup>7</sup> are also unlawful sexual intercourse:
  - Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Statutory Rape: sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.

Sexual Exploitation: the abuse or non-consensual use of another person’s sexuality or nudity without their consent, for the Respondent’s own advantage or benefit, or for the benefit or advantage of anyone other than the individual being exploited. Specific conduct that constitutes sexual exploitation could constitute Title IX sexual harassment if it meets the definition under Title IX. Examples of sexual exploitation include, without limitation:

- Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person thus compromising that person’s ability to give affirmative consent (e.g. administering alcohol or drugs to another person for the purpose of making that person vulnerable to non-consensual sexual activity);
- Causing the prostitution of another person;

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<sup>6</sup> It is anticipated that the FBI will retire the SRS on January 1, 2021.

<sup>7</sup>Under the NIBRS User Manual dated 2011, available [here](#), the definition of “(except prostitution offenses) unlawful, nonforcible sexual intercourse” was used to describe “Sex Offenses, Nonforcible.” The following acts were classified as “Sex Offenses, Nonforcible”: Incest, Statutory Rape. Moreover, please note that under the most recent NIBRS (2020), failure to register as a sex offender is also considered a sex offense and is defined as failing to register or keep current a registration as required by state and federal laws.

- Voyeurism (such as non-consensual observations, watching or taking pictures, videos or audio recordings of another person engaging in sexual activity, in a state of undress, or in a place and time where such person has a reasonable expectation of privacy, such as a bathroom, shower, or changing room, each without the affirmative consent of all parties);
- Transmitting intimate or sexual utterances, sounds or images of another person in a state of undress or of a sexual nature;
- Disseminating, streaming, or posting sexual activity of any form on social media or any other public forum without permission from the individual reflected in the same;
- Exceeding the boundaries of consent with another individual such as by allowing third parties to observe you engaging in sexual acts with another individual;
- Exposing one's genitals to another person without affirmative consent;
- Distributing intimate or sexual information about another person; and/or
- Knowingly exposing or transmitting a sexually transmitted infection or virus, including but not limited to HIV, to another person without the other person's knowledge.

Sexual Harassment: has various definitions under applicable laws. See Section VI of Part I.

Sexual Misconduct: is a broad term that encompasses a wide range of prohibited behaviors and a term used to refer to any form of sex/gender-based discrimination, sex/gender-based harassment, all forms of sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and any other form of non-consensual sexual activity prohibited by this Policy.

Stalking: as defined by VAWA at 34 U.S.C. § 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

Supportive Measures: non-disciplinary and non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties before or after the filing of a complaint or formal complaint or where no complaint or formal complaint has been filed. Such measures are designed to restore or preserve equal access to JTS's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or JTS's educational environment, or deter prohibited conduct. Supportive measures can include various forms of services as set forth in Section XIV of Part I.

Title IX Coordinator: is the Title IX Coordinator and/or their designee. The Title IX Coordinator may delegate certain responsibilities under this Policy to designees, who will be appropriately trained.

## **VI. SEXUAL HARASSMENT**

Sexual harassment is an unlawful form of discrimination. Sexual harassment may be committed by any individual upon another, regardless of that individual's sex, sexual orientation, gender identity, or gender expression. The term "sexual harassment" has various definitions under applicable laws and by various bodies, including the U.S. Department of Education, the U.S. Equal Employment Opportunity Commission ("EEOC"), and New York State. Reports and formal complaints of sexual harassment that constitute Title IX sexual harassment are addressed under

Process A of this Policy.<sup>8</sup> Reports and complaints of conduct that do not constitute Title IX sexual harassment, as well as conduct that may constitute Title VII or NYSHRL sexual harassment are addressed under Process B of this Policy. Note, however, that conduct can meet more than one of these definitions.

**a. Title IX Sexual Harassment**

Under Title IX, specifically 34 C.F.R. § 106.30, “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. A JTS employee conditioning the provision of an aid, benefit, or service of JTS on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to JTS’s education program or activity;<sup>9</sup> or
3. Sexual assault, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence, as defined in 34 U.S.C. § 12291(a)(10), domestic violence, as defined in 34 U.S.C. § 12291(a)(8), or stalking as defined in 34 U.S.C. § 12291(a)(30). Definitions for these terms are also provided in Section V of Part I above.

To fall under Title IX, the sexual harassment must have occurred during JTS’s education program or activity against a person in the U.S. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of JTS.

**b. Title VII Sexual Harassment**

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, *or* offensive working environment.

**c. NYSHRL Sexual Harassment (Employees Only)<sup>10</sup>**

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<sup>8</sup> Conduct that constitutes sex discrimination, including under Title IX, and which does not constitute Title IX sexual harassment, is addressed under Process B of this Policy.

<sup>9</sup> Categories 1 and 3 do not require elements of severity, pervasiveness, or objective offensiveness. Severity, pervasiveness, and objective offensiveness must be evaluated in light of the known circumstances and depend on the facts of each situation but must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.

<sup>10</sup> The NYSHRL applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, and persons conducting business, regardless of immigration status, with JTS; all must follow and uphold this Policy. Any employee or individual covered by this Policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action.

NYSHRL 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. NYSHRL sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. NYSHRL sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is 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. NYSHRL sexual harassment also consists 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, which interfere with the recipient's job performance.

NYSHRL 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. Any employee who feels harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

NYSHRL sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Unlawful NYSHRL sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

#### Examples of NYSHRL Sexual Harassment

The following describes some of the types of acts that may be unlawful NYSHRL sexual harassment and that are strictly prohibited:

- 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;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual 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 detriments;
- Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- 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 or discriminatory displays or publications anywhere in the workplace, 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 workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

Preventing sexual harassment is everyone's responsibility. JTS cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Title IX Coordinator. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Title IX Coordinator.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy as Appendix B, and all employees are encouraged to use this complaint form.<sup>11</sup> Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf. Employees, paid or unpaid interns or non-employees who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the Title IX Coordinator. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough,

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<sup>11</sup> This form is attached as Appendix B below.

commenced immediately and completed as soon as possible. All persons involved, including Complainants, witnesses, and Respondents will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. JTS will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this Policy. NYSHRL sexual harassment claims will be handled as outlined below and in accordance with Process B.

## **VII. PROHIBITION AGAINST RETALIATION**

JTS will not tolerate any form of retaliation as defined herein. Unless the form of retaliation constitutes Title IX sexual harassment, which would be addressed under Process A, all reports and complaints alleging retaliation under this Policy or the laws covered by this Policy should be addressed under Process B. The following constitutes "retaliation":

### **a. Title IX Retaliation<sup>12</sup>**

JTS will not tolerate any intimidating, threatening, coercing, or discriminating behavior against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report, complaint, or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Title IX sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination or a report or formal complaint of Title IX sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this subsection of the Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation under this subsection of the Policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.

### **b. Title VII Retaliation**

In accordance with Title VII, JTS will not discriminate against any of its employees or applicants for employment because of the employee's or applicant's opposition to any practice made an unlawful employment practice by Title VII, or because the employee or applicant made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VII.

### **c. NYSHRL Retaliation (Employees Only)**

No employee covered by this Policy shall be subject to adverse action because the employee reports an incident of NYSHRL sexual harassment, provides information, or otherwise assists in any investigation of a NYSHRL sexual harassment complaint. JTS will not tolerate such NYSHRL retaliation against anyone who, in good faith, reports or provides information about suspected

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<sup>12</sup> Complaints alleging retaliation may be filed according to the grievance processes for sex discrimination required to be adopted under 34 C.F.R. § 106.8(c), which is Process B under this Policy.

NYSHRL sexual harassment. Any employee of JTS who retaliates against anyone involved in a NYSHRL sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such NYSHRL retaliation should inform a supervisor, manager, or the Title IX Coordinator. All employees, paid or unpaid interns or non-employees who believe they have been a target of such NYSHRL retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Under the NYSHRL, unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a NYSHRL sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

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

- Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the NYSHRL or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee 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. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

## **VIII. DISABILITY DISCRIMINATION AND ACCOMMODATIONS**

In accordance with the ADA, Section 504, as well as applicable state and local laws, JTS prohibits discrimination against qualified persons with disabilities. Thus, no otherwise qualified individual with a disability, shall, solely by reason of their disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination during any JTS program or activity. A student, employee, or applicant for employment or admission for enrollment who may wish to request a reasonable accommodation should consult with their respective Dean for information.

### **a. Students**

JTS strives to provide students with disabilities with reasonable accommodations to ensure equal access to its programs and related services, including but not limited to, admission requirements, academic programs and activities, housing, and non-academic services, unless such accommodations would fundamentally alter the nature of JTS’s programs.

Further JTS will take reasonable steps to ensure that no individual with a disability is excluded, denied services, segregated, or treated differently because of the absence of auxiliary aids and services, unless such steps would fundamentally alter the nature of JTS’s programs or would

result in an undue burden to JTS. Auxiliary aids and services include (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.

**b. Employees (Including Applicants for Employment)**

A reasonable accommodation of employees may include modifications or adjustments that would enable a qualified employee with a disability to perform the essential functions and requisites of the position or enjoy the benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities. JTS will provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee in order for the employee to be able to perform the job without causing JTS undue hardship. In the employment context, a reasonable accommodation includes making existing facilities used by employees readily accessible to and usable by individuals with disabilities as well as job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities, unless the accommodation would cause an undue hardship to JTS's business, such that it would cause significant difficult or expense to JTS.<sup>13</sup>

**c. Process for Requesting an Accommodation**

Qualified students and employees with disabilities may submit a request for an accommodation with the respective Deans. Please note that, in accordance with applicable law, JTS may require that the individual provide medical documentation confirming that the individual has a disability and needs a reasonable accommodation. Before making a determination regarding a reasonable accommodation to be provided to a student or employee, will engage in a cooperative dialogue with the individual. A "cooperative dialogue" is the process by which JTS and an individual entitled to a reasonable accommodation engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for JTS.

**IX. PROHIBITION ON CONSENSUAL RELATIONSHIPS**

JTS is committed to creating an environment in which learning can take place in an atmosphere of professionalism and mutual respect. JTS prohibits sexual or romantic relationships between and among individuals (students and employees, including faculty and staff) who are in positions of unequal authority or power, as well as where there is a potential for a conflict of interest, favoritism, and/or exploitation of power. These relationships include instructor-to-student; supervisor-to-subordinate; or any other relationship between two individuals where one individual has the authority to make or influence decisions which directly or indirectly impact the other individual's employment or educational experiences or advancement, scholarship or financial support, grades, extracurricular or athletic team participation, recommendations, wage

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<sup>13</sup> Please note that while JTS will provide a reasonable accommodation, it need not necessarily agree to the accommodation requested by the employee; if JTS reasonably believes that the employee's disability can be accommodated in a manner different from that which was requested by the employee, JTS may make that decision.

status, or promotion at JTS, regardless of consent. A staff member or faculty member's relations with students shall be limited to those that are consistent with and necessary to the performance of the staff member or faculty member's duties as a JTS employee. If anyone is promoted into a position that results in a conflict with this Policy restricting consensual relationships, this information must be reported to the Title IX Coordinator immediately.

The fact that the relationship may have been consensual shall not be a defense to a violation of this Policy prohibition. Policy violations will be processed in accordance with the report, complaint, and grievance processes set forth in Process B of this Policy.

## **X. SEXUAL MISCONDUCT EDUCATION, TRAINING, AND PREVENTION**

The Title IX Coordinator oversees compliance with prevention, education, and training relating to sexual misconduct and violations of this Policy. The frequency and types of training will be determined each year by the Title IX Coordinator. All students and employees of JTS will be fully informed of this Policy, reporting obligations, the disciplinary procedures, and education in prevention and intervention. All individuals involved in the investigation, hearing, appeal, and informal processes will receive training in accordance with federal, state, and local law.

JTS provides educational and training programs for students, faculty, and staff regarding sexual misconduct. Examples of these programs include:

- Annual mandatory new student orientation;
- Annual mandatory training for all employees;
- Mandatory training for new employees;
- Mandatory training for leaders of student organizations and student-athletes;
- Training for residence staff;
- Information and brochures from the Office of Student Life; and
- Online training programs.

For information about JTS's sexual misconduct prevention, training and awareness programming please contact the Title IX Coordinator.

## **XI. IMMEDIATE RESOURCES (SEXUAL MISCONDUCT)**

There are a number of on-campus and off-campus resources available to offer assistance after an incident of sexual misconduct. JTS encourages all individuals affected by sexual misconduct to seek immediate assistance. Seeking assistance promptly may be important to ensure an individual's physical safety or to obtain medical care, emotional support, or other support; it may also be necessary to preserve evidence.

### **a. Resources for Immediate Assistance**

- 911 or JTS Security (212) 678-8888
- Columbia University's Sexual Violence Response & Rape Crisis/Anti-Violence Support Center is available to all JTS students at no cost. They have trained staff and volunteers available 24 hours a day, seven days a week, to accompany individuals to the emergency room, NYPD, or campus departments. Advocates provide information about reporting

options and offer support. Contact Sexual Violence Response (SVR) at (212) 854-HELP (4357) for 24/7/365 support. [www.health.columbia.edu/svr](http://www.health.columbia.edu/svr)[FSD(P1)]

- Crime Victims Treatment Center [www.cvtcnyc.org/](http://www.cvtcnyc.org/), Mount Sinai St. Luke's Emergency Department 1111 Amsterdam Avenue (113th Street).

The Emergency Departments of Mount Sinai St. Luke's, Mount Sinai Roosevelt and the Lenox Hill HealthPlex have a Sexual Assault Response Team that includes a Sexual Assault Forensic Examiner and a Volunteer Rape Crisis Advocate. These individuals are specially trained to provide preventative treatment for STDs and possible HIV exposure, emergency contraception, and a full medical exam.

At Mount Sinai St. Luke's, Mount Sinai Roosevelt, and the Lenox Hill HealthPlex, treatment for sexual assault is provided *free of charge*.

- The New York City Police Department at 911 can help with criminal sexual misconduct. You can also call the Special Victims Division directly at (646) 610-7272.
- St. Luke's Crime Victims Treatment Center (CVTC) Advocates and services can be reached by calling (212) 523-4728.
- Reports of criminal sexual misconduct may also be directed to the NYPD's sex crimes hotline at (212) 267-RAPE or the Manhattan District Attorney's hotline at (212) 335-9373.

*Important:* To preserve evidence, it is recommended that you do not shower, bathe, brush your teeth, change your clothing, or drink liquids before going to the hospital or the police after experiencing an act of sexual misconduct. More information about evidence preservation is available below.

Seeking medical attention will not require an individual to file a complaint or press criminal charges. It is important to note that failure to preserve evidence does not preclude you from reporting an incident to JTS or the police.

### **b. Counseling Resources at JTS, Columbia, and Barnard**

The following confidential resources are available for counseling support for students:

- JTS Counseling Center, (212) 280-6161, [counseling@jtsa.edu](mailto:counseling@jtsa.edu)
- Counseling & Psychological Services at Columbia, (212) 854-2878
- Furman Counseling Center at Barnard College (*for LC Double Degree students*): (212) 854-2092

### **c. Additional Off-campus Resources**

SurvJustice: <http://www.survjustice.org/legal.html>. This national resource provides legal assistance to individuals in campus, criminal and civil legal systems.

Legal Momentum: <https://www.legalmomentum.org>. The website provides detailed publications and resources regarding sexual, interpersonal, and domestic violence. The website has assembled toolkits for finding lawyers, sexual harassment laws, stalking, and how to file complaints.

NYSCASA: <http://nyscasa.org/get-help>, 1-800-942-6906. NYSCASA is a nonprofit organization dedicated to providing emotional support, technical assistance, and resources through rape crisis centers and a 24/7 crisis hotline.

NYSCADV: <http://www.nyscadv.org>. NYSCADV works to ensure the provision of effective and appropriate services through community outreach, training, technical assistance, and policy development.

- The New York State Domestic Violence 24-Hour Hotline [English & español/ multi-language accessibility]: [1-800-942-6906](tel:1-800-942-6906) | The National Domestic Violence 24-Hour Hotline: [1-800-799-7233](tel:1-800-799-7233) or [1-800-787-3224](tel:1-800-787-3224) (TTY).

Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>. Pandora's Project aims to provide an inclusive online forum for victims of rape and sexual abuse, with focused resources on LGBTQI. This resource is not meant to take the place of a crisis hotline.

GLBTQ Domestic Violence Project: <http://www.glbtdvp.org>, 1-800-832-1901. This national resource supports GLBTQ victims through a 24-Hour domestic violence hotline, emergency safe home, legal services, crisis intervention and safety planning, housing and employment advocacy, sexual assault case management, and ongoing supportive services.

RAINN: <https://www.rainn.org/get-help>. RAINN is the nation's largest anti-sexual violence organization and operates the National Sexual Assault Hotline in partnership with many local rape crisis centers across the country. National Sexual Assault Hotline: [1-800-621-HOPE\(4673\)](tel:1-800-621-HOPE(4673)). The National Sexual Assault Hotline is operated by RAINN and provides 24/7 support for victims of sexual violence

Safe Horizons: <http://www.safehorizon.org>, 1.800.621.HOPE(4673). Safe Horizon takes action by providing practical services like a new lock, 24-hour hotlines, safe shelter, and food as well as supportive services like mental health counseling.

National Teen Dating Abuse Helpline: 1-866-331-8453

Stalking Resource Center: 1-202-467-8700

National Crime Victim Center: <http://www.ncvc.org> 1-800-FYI-CALL (8:30am – 8:30pm).

NYC Family Justice Center – Manhattan: <http://www.nyc.gov/html/ocdv/html/help/fjc.shtml>  
212-602-2800 | 80 Centre St New York, NY 10013

New York State Office of Victims Services: 1-800-247-8035 | <https://ovs.ny.gov/>.

Together Against Sexual Violence: <http://www.notalone.gov>.

## **XII. OPTIONS FOR REPORTING INCIDENTS OF PROHIBITED CONDUCT**

JTS encourages individuals who experience, witness or become aware of alleged prohibited conduct to report the incident to the JTS Title IX Coordinator. JTS will assist individuals in contacting law enforcement, if desired. JTS also provides individuals the opportunity to

confidentially discuss alleged incidents with a trained professional on campus. For more information on how to file a complaint of prohibited conduct or formal complaint of Title IX sexual harassment please see Section I of Part II for formal complaints (Process A) and Section I of Part III for complaints (Process B).

**a. Law Enforcement Notification and Orders of Protection**

JTS encourages any individual who has been the victim of a crime to report it to law enforcement. JTS representatives are available to assist the Complainant in contacting law enforcement officials and filing a criminal report. A Complainant is not required to report to law enforcement in order to pursue a complaint under JTS's policy. The JTS process operates separately from the police and criminal justice system. JTS will investigate alleged violations of this Policy regardless of whether an individual chooses to file a report with the police or to pursue charges. The decision not to report to police or pursue charges will not be considered in JTS's investigation.

Any internal JTS process will run concurrently with a criminal investigation and proceeding, except for temporary delays as requested by external entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days, except when law enforcement specifically requests and justifies a longer delay. Not all sexual misconduct under this Policy is a crime<sup>14</sup> and the standard applied in criminal cases (beyond a reasonable doubt) is different than JTS's standard (preponderance of evidence) under this Policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the District Attorney.

JTS representatives are also available to: (i) assist students in initiating legal proceedings in family or civil court and (ii) to assist students in acquiring a New York State court order of protection. If an order of protection is granted, the Parties have the right to receive a copy of the order when JTS receives it. The Parties will also have the opportunity to have JTS explain the order, the consequences for violating the order, and answer any questions about the order. If the Party against whom the order is made violates the order of protection, the protected Party may receive assistance from JTS in calling local law enforcement to inform them of the violation.

**b. JTS Notification**

JTS will promptly and equitably respond to all reports of prohibited conduct made to the Title IX Coordinator, as identified above with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects. Reports of prohibited conduct may be made using any of the following options:

- Any individual (whether or not the person reporting is the person alleged to be the victim of prohibited conduct) may report incidents of prohibited conduct to the Title IX Coordinator at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed herein.
- Individuals may report anonymously using the methods stated above.<sup>15</sup>

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<sup>14</sup> Penal codes and definitions vary by state and federal law. These definitions may also differ from the definitions of violations in this Policy. New York Penal law Article 130 addresses sex offenses and can be accessed at <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>.

<sup>15</sup> To the extent possible, JTS will investigate anonymous reports in order to determine what actions it may be able to take, including to provide supportive measures. However, JTS's ability to respond to the report

Any incident of prohibited conduct reported to a JTS mandated reporter must be reported to the Title IX Coordinator. JTS will confidentially maintain the identities of reporting individuals, Complainants, individuals who have been reported to be perpetrators of prohibited conduct, including Respondents, and witnesses, except as may be permitted by the Family Educational Rights and Privacy Act (“FERPA”) and its implementing regulations, as required by law, or as necessary to conduct proceedings under this Policy. To the extent possible, information reported to the Title IX Coordinator will be shared only with individuals responsible for handling JTS’s response to the report. The Title IX Coordinator will not share information with law enforcement without the Complainant’s consent, except as required by law, the information involves suspected abuse of a minor under the age of 18, or the incident poses a safety risk to the JTS community.

Upon receiving a report, complaint, or formal complaint of an alleged violation of this Policy, the Title IX Coordinator will commence an initial assessment within 5 to 7 business days:

- The Title IX Coordinator will contact and provide the Complainant with a written explanation of their rights and options to proceed with respect to their report of prohibited conduct (if sexual misconduct), offer immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; and referrals for medical treatment at local hospitals, existing counseling and legal assistance, and trauma centers), and other services available both within JTS and in the community.
- A reporting individual will have emergency access to the Title IX Coordinator who is properly trained. The Title IX Coordinator will provide the reporting individual with information regarding their options to proceed, and other important information about their rights under JTS policy and the law. Such information includes, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing 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 they are authorized to offer the reporting individual confidentiality or privacy, and will inform the reporting individual of other reporting options.<sup>16</sup>
- The Title IX Coordinator will determine whether the scope of the allegations fall within the jurisdiction of this Policy.
- The Title IX Coordinator will promptly make supportive measures available to the Parties upon receipt of a report, complaint, or formal complaint. The Title IX Coordinator will discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a complaint or formal complaint, and explain to the Complainant the process for filing a complaint or formal complaint.<sup>17</sup> At the time that supportive measures are offered, JTS will inform the Complainant, in writing, that they may file a complaint or formal complaint with JTS either at that time or in the future, if they have not done so already.

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may be limited, including JTS’s ability to provide supportive measures if the Parties’ identities are unknown. Additionally, a known Complainant cannot remain anonymous during the formal grievance process set forth in Process A regardless of whether the Complainant or the Title IX Coordinator files the formal complaint. If a report is filed anonymously and the Complainant is not identified, the Title IX Coordinator may still proceed with filing a formal complaint, should circumstances warrant. However, like with reports, JTS’s ability to respond to a formal complaint will be limited.

<sup>16</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. See Section V of Part I.

<sup>17</sup> For a period of seven (7) years, JTS will maintain a record of any supportive measures provided to the Parties. This documentation is further explained in Section XV of Part I of this Policy.

- The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers a supportive response, an informal option, if applicable, or an investigation, and formal grievance processes set forth in Process A or Process B, if applicable.
- The Title IX Coordinator determines the applicability of a grievance process under Process A and if the complaint does not fall within the scope of Process A, assess which processes may apply to the complaint (e.g., Process B). If the allegations fall within the scope of Process A, then the Title IX Coordinator will inform the Complainant of the option to file a formal complaint as well as the process for doing so. If the Complainant decides to file a formal complaint, please see Section I of Part II of this Policy.
- If the Complainant wishes to proceed with either process, if applicable, or JTS believes it is otherwise necessary, the Title IX Coordinator will ascertain the name of the Respondent, the date, location, and nature of the alleged prohibited conduct, and in a timely fashion, will notify the Respondent of the allegations and supportive measures available to the Respondent. If a formal complaint is filed, the Title IX Coordinator will provide initial notice to the Parties as further described in Section II of Part II of this Policy. The grievance processes outlined in this Policy will be followed before any discipline is imposed on the Respondent.

### **c. Confidentiality**

JTS employees have varying levels of responsibility to maintain confidentiality. However, even JTS offices and employees who cannot guarantee confidentiality will maintain an individual's privacy to the greatest extent possible. The information provided to non-confidential resources will be relayed only as necessary to the Title IX Coordinator for purposes of investigation and adjudication, and the provision of available supportive measures.

#### **i. Counselors**

Professional, licensed counselors and pastoral counselors (rabbis or other ordained clergy) whose official responsibilities include providing mental-health counseling to JTS students, including those who act in that role under the supervision of a licensed counselor, are not required to report any information about an incident of sexual misconduct to the Title IX Coordinator without the individual's consent.

JTS Counseling Center  
 3080 Broadway,  
 Brush Hall, Room 404  
 New York, NY 10027  
 Phone: 212-280-6161  
 Email: [counseling@jtsa.edu](mailto:counseling@jtsa.edu)  
 Website: <http://www.jtsa.edu/Counseling-Center>

JTS students have access to the Columbia Health Services including counseling and psychological services. Health care professionals are not required to report identifying information concerning a possible violation of this Policy to the Title IX Coordinator. For more information, please go to <https://health.columbia.edu/medical-services>. List College students in the Double Degree program with Barnard have access to the Furman Counseling Center at Barnard College: 212-854-2092.

## ii. Mandated Reporters

A “mandated reporter” is a JTS employee who is obligated by this Policy to share their knowledge of sexual misconduct with the Title IX Coordinator.<sup>18</sup> The following JTS employees are mandated reporters:

- Faculty;
- Resident life staff, including RAs;
- Student Affairs staff;
- Deans and all Associate and Assistant Deans;
- Chancellor and all Vice Chancellors
- Provost and Associate Provost;
- Chief Human Resources Officer;
- Chief of Security; and
- All other managers, supervisors, and security personnel.

Even mandated reporters who cannot guarantee confidentiality will maintain the privacy of an individual reporting sexual misconduct to the greatest extent possible.

The rabbis on the faculty and in the administration at JTS are considered mandated reporters. The exception to the obligation to report identifying information concerning possible sexual misconduct is applicable *in certain limited circumstances*. Conversations regarding allegations of sexual misconduct may *only* be kept confidential by a rabbi when they are acting as a “pastoral counselor,” at JTS meaning the rabbi is (1) associated with a religious denomination, (2) is recognized as someone who provides confidential counseling, and (3) is functioning within the scope of that recognition during the confidential communication, such as when an individual is seeking spiritual or moral guidance or counseling from the rabbi. Generally, the faculty and administration of JTS, *even if they are rabbis*, are *not* acting in their capacity as pastoral counselors when interacting or communicating with JTS students and employees, unless such interaction is clearly outside the scope of their duties as members of the faculty or administration, and the fact that counseling was being sought was made clear from the outset of interaction or conversation. Thus, these individuals *are required to report any possible violation of this Policy* to the Title IX Coordinator.

## iii. When a Complainant Does Not Wish to Proceed

If a Complainant wants a report to remain confidential, such that the Complainant’s identity will not be disclosed to the Respondent and chooses not to file a complaint or formal complaint, the Complainant may nonetheless receive supportive measures. A Complainant may also report the alleged incident for the purpose of receiving supportive measures, and later decide to file a complaint or formal complaint. A third party’s report will not trigger an investigation or grievance processes, unless the Complainant files or the Title IX Coordinator signs a complaint or formal complaint.

JTS will seek consent from Complainants prior to conducting an investigation. A Complainant’s decline to consent to proceed may be honored, unless the Title IX Coordinator determines in good

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<sup>18</sup> Providing information of Title IX sexual harassment to a mandated reporter does not provide actual knowledge to JTS under Title IX. JTS has actual knowledge when the Title IX Coordinator or any Official with Authority, as defined herein, has notice of Title IX sexual harassment.

faith, that failure to investigate and adjudicate does not adequately mitigate a potential risk of harm to the Complainant or ensure the safety of other members of the JTS community, adequately mitigate a potential risk of harm to the Complainant or other members of the community, or comply with state or federal law. Honoring such a request may limit JTS's ability to meaningfully investigate and pursue conduct action against a Respondent. Factors used to determine whether to honor such a request include but are not limited to:

- Whether the Respondent has a history of violent behavior, a pattern of misconduct or is a repeat offender;
- Whether the incident represent escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon, violence, or force;
- Whether the Complainant is a minor; and
- Whether JTS possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

The Title IX Coordinator has ultimate discretion to determine whether JTS will proceed when the Complainant requests otherwise. The Title IX Coordinator may sign a complaint or formal complaint to initiate a grievance process upon completion of a good faith determination. If the Title IX Coordinator signs the complaint or formal complaint, they do not become the Complainant.

A Complainant may withdraw a report, complaint, or formal complaint from JTS at any time. However, JTS may still have an obligation to investigate and/or take action. JTS may also be compelled to act on alleged employee conduct regardless of the Complainant's wishes.

#### iv. FERPA

FERPA permits institutions to share information with parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either parent's prior year federal income tax return. Generally, JTS will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual or Complainant.

#### **d. Time for Reporting**

There is no time limit for reporting prohibited conduct. Nevertheless, any member of the JTS community who believes that they have been a victim of prohibited conduct is encouraged to report it immediately. If the Respondent is no longer enrolled or employed at JTS or significant time has passed since the incident, JTS's ability to investigate and respond may be greatly limited.

Under no circumstances will JTS allow an impending graduation to compromise its resolution of a complaint or formal complaint. The conferral of a degree may, therefore, be withheld, if necessary, until proper resolution of any charges, provided that an opportunity will be scheduled for the earliest practicable date that can accommodate the Parties and their witnesses.

**e. Clery Reporting and Federal Timely Warnings**

Pursuant to the Clery Act, JTS will make reports of certain crimes in JTS's Annual Security Report in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual, including a Complainant. This report is available on the JTS website. JTS will issue timely warnings of crimes enumerated in the Clery Act that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual or Complainant. A reporting individual or Complainant will not be identified in a timely warning.

**f. Bad Faith Reporting**

Submitting a false report of prohibited conduct or providing false or misleading information in bad faith in connection with an incident of discrimination, harassment, or retaliation is prohibited and subject to disciplinary action, up to and including dismissal from JTS. Such bad faith reporting may constitute retaliation in violation of this Policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate.

**g. Public Awareness and Advocacy Events**

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public events, JTS is not obligated to begin an investigation or process based on such information, unless a report, complaint, or formal complaint is filed with the Title IX Coordinator because the Complainant clearly indicates that they desire a report to be made or seek a specific response from JTS. JTS will use the information provided at such an event to inform its efforts for additional education and prevention efforts.

**h. External Reporting Options**

i. Office of Civil Rights Notification

Individuals may also report sexual misconduct to the U.S. Department of Education's Office for Civil Rights (OCR) at <https://www2.ed.gov/about/offices/list/ocr/index.html>.<sup>19</sup>

ii. Legal Protections and External Remedies for Employees

Sexual harassment is not only prohibited by JTS, but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal processes at JTS, employees and covered non-employees, as defined herein, may also choose to pursue legal remedies with the following governmental agencies. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

iii. New York State Human Rights Law

The NYSHRL, codified as N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State with regard to sexual harassment, and protects employees and covered non-

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<sup>19</sup> Please see the contact information for the OCR in Section I of Part I of this Policy.

employees regardless of immigration status. A complaint alleging violation of the NYSHRL may be filed either with the Division of Human Rights (“DHR”) or in New York State Supreme Court.

Complaints with DHR may be filed any time within three years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the NYSHRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a NYSHRL complaint in state court. Complaining internally to JTS does not extend your time to file with DHR or in court. The three years are counted from 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 are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary 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](http://www.dhr.ny.gov). Contact DHR at (888) 392-3644 or visit [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

#### iv. Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (“EEOC”) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e *et seq.*). An individual can file a complaint with the EEOC anytime within 300 days from the 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, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining Parties. Federal courts may award remedies if discrimination is found to have occurred.

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 (1-800-669-6820 (TTY)) or visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

#### v. Local Protections and the Local Police Department

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, employees who work in New York City may file complaints of sexual

harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the New York Police Department at 646-610-5000 (non-emergency) or 212-267-RAPE (sex crimes report line).

### **XIII. STUDENT ALCOHOL AND DRUG USE AMNESTY**

The health and safety of every student at JTS is of utmost importance. JTS 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. JTS strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to JTS officials or law enforcement will not be subject to JTS'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.

### **XIV. SUPPORTIVE MEASURES, EMERGENCY REMOVALS, AND NO-CONTACT ORDERS**

#### **a. Supportive Measures**

Supportive measures are non-disciplinary and non-punitive, individualized services to a Party, which are designed to restore or preserve equal access to JTS's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or JTS's educational environment, or deter prohibited conduct under this Policy. Supportive measures can range from referral to supportive services such as counseling or medical services to class/housing/office modifications, withdrawals, leaves of absence, and no-contact orders.

Provided it has notice or it is otherwise aware of prohibited conduct, before or after a complaint or formal complaint is filed, or where no complaint or formal complaint has been filed, JTS (through the Title IX Coordinator) will provide supportive measures to the Parties, as appropriate and reasonably available without fee or charge to the Parties. When offering supportive measures, the Title IX Coordinator will inform the Complainant, in writing, that they may file a complaint or formal complaint at any time.

JTS will maintain as confidential any supportive measures provided to the Parties, to the extent that maintaining such confidentially would not impair the ability of JTS to provide the supportive measures. The Title IX Coordinator will work with the Complainant to determine their requests for supportive measures and confirm that such requests are considered.

The determination of appropriate supportive measures must be based on the facts and circumstances of that situation. Supportive measures include but are not limited to:

- Establishing restrictions on contact (no-contact orders) between the Parties;
- Providing counseling or academic support services;
- Modifications to work or class schedules;
- Altering arrangements to work, housing, living, transportation, or other applicable situations including changes in residence hall assignments or office locations;
- Referral to counseling, medical, and/or other healthcare services;
- Providing course-related adjustments such as extensions of deadlines;
- Providing leaves of absence;
- Providing housing/campus escort services;
- Providing increased security and monitoring of certain areas of the campus; and
- Other similar measures.

JTS will review the facts and circumstances of each case and will implement measures in a way that does not unreasonably burden the other Party. Upon written request and in accordance with JTS's policies, a student may seek prompt review of the need for/terms of supportive measures to the extent the relevant supportive measure has a direct impact on them. This request should include the basis for the request and any supporting evidence. A student may also ask for review of a request for additional supportive measures and submit evidence in support of the request. Such requests should be submitted in writing to the Title IX Coordinator. The other Party will have the right to respond to the request for review to the extent the relevant supportive measure has a direct impact on them.

#### **b. Emergency Removals**

If the Title IX Coordinator, in consultation with other JTS administrators, based on an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any individual justifies removal, including an interim suspension, then JTS will remove such Respondent from its education program or activity on an emergency basis. In determining whether an interim suspension is appropriate based on allegations of prohibited conduct, JTS will consider, *inter alia*, the following factors:

- Whether there have been other prohibited reports, complaints, or formal complaints about the same Respondent;
- Whether the incident involves a weapon or violence;
- Whether the Respondent has a history of arrests or disciplinary records;
- Whether the incident represents an escalation in and unlawful conduct on behalf of the Respondent from previously noted behavior; and
- Whether there is an increased risk that the Respondent will commit additional acts of violence.

JTS will provide the Respondent with written notice and an opportunity to challenge JTS's decision immediately following the removal. The Parties may request a review of the need for, and terms of, an emergency removal, reasonable under the circumstances, including potential modification, and may submit evidence in support of their request to the Title IX Coordinator. Upon receipt of such a request, the Title IX Coordinator will inform the other Party of the request and allow the other Party to respond in writing and submit evidence relevant to the request.

The Title IX Coordinator has sole discretion under this Policy to implement or stay an emergency removal and to determine the conditions and duration, if the emergency removal is to end before

a determination is made by the Hearing Officer(s). Violation of an emergency removal under this Policy will be grounds for discipline including but not limited to expulsion/termination from JTS.

JTS may also place a non-student employee Respondent on administrative leave at its discretion and/or in accordance with federal and state laws.

### **c. No-Contact Orders**

All no-contact orders will be mutual – i.e. neither Party involved will be permitted to contact the other Party -- unless JTS determines, in its discretion and after a fact-specific analysis, that a non-mutual order is appropriate. The Title IX Coordinator will issue any no-contact order in writing, specifying the terms of the no-contact order, including the Parties' responsibilities.

The Parties may request a review of the need for, and terms of, the no-contact order, including potential modification, and may submit evidence in support of their request. Any such requests should be submitted to the Title IX Coordinator. The Title IX Coordinator will notify the other Party and conduct a prompt review in response to such request.

If the Parties observe each other in a public space, it shall be the responsibility of the Respondent to leave the area immediately without contacting the Complainant, if the written no-contact order was issued as a result of the Respondent's continued intentional contact with the Complainant in violation of JTS's policies and procedures. Violations of a no-contact order under this Policy will be grounds for discipline, including but not limited to expulsion/ termination from JTS.

## **XV. RECORDKEEPING**

For a period of seven (7) years, JTS will maintain records generated in connection with prohibited conduct reports, investigations, hearings, grievance processes, informal processes, appeals, and the audio, audiovisual recording, or transcript (in connection with Process A), as well as any determinations regarding responsibility including any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant. All materials used to train (in connection with Process A) the Title IX Coordinator and their designees, Investigators, Hearing Officers, and any individual who facilitates informal processes will also be maintained for at least seven (7) years.

For a period of seven (7) years, JTS will also maintain records of any responses, including supportive measures, that JTS took in response to a report, complaint, or formal complaint of prohibited conduct. In each instance, JTS must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to JTS's education program or activity. If JTS does not provide a Complainant with supportive measures, JTS must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit JTS in the future from providing additional explanations or detailing additional measures taken.

## **XVI. AMENDMENTS AND DESIGNATION**

The most current revision of this Policy supersedes all previously issued revisions and inconsistent verbal or written policy statements. JTS reserves the right at any time to change, delete, or add to any of the provisions of this Policy. JTS may, at its discretion, designate a trained

and experienced individual(s) to act in the place of the Investigator, Hearing Officer, Appeals Panel members, and/or facilitators in this Policy. If there is such a designation, the Parties involved will be promptly informed.

## **XVII. INVESTIGATIONS, GRIEVANCE PROCESSES, AND APPEALS, GENERALLY**

The provisions in this section of the Policy apply to all investigations, the grievance processes, and all appeals under this Policy.

### **a. Choice of Forum**

Some members of the JTS community may have the option of bringing a complaint or formal complaint of prohibited conduct in more than one forum. For example, a student in a joint program with Columbia could bring a complaint or formal complaint either at Columbia or at JTS. The individual has the right to elect a forum in which to pursue their complaint or formal complaint. Depending upon the nature of the complaint or formal complaint and the Parties involved, JTS may work with the affiliated entity (in this example, Columbia) to investigate and address the complaint or formal complaint. Community members will not be permitted to pursue the same complaint or formal complaint independently at both institutions.

### **b. Standard of Evidence, Presumption of Non-Responsibility, and Burdens of Proof and Gathering Evidence**

The standard for decisions under this Policy is a preponderance of the evidence, meaning that it is more likely than not that a violation of this Policy occurred. There is a presumption that a Respondent is not responsible for the alleged prohibited conduct until a determination is made regarding responsibility. The burden of proof as well as the burden to gather evidence sufficient to reach a determination regarding responsibility rests on JTS and not the Parties.

Members of the JTS community are expected to cooperative and be honest in their interactions with JTS under this Policy. In this regard, community members are expected to acknowledge and respond to requests for information from JTS officials or their designees in a timely fashion, as well as be available for discussions with such individuals.

### **c. Promptness, Notice, and Timeframes**

JTS will promptly resolve all reports, complaints, formal complaints, investigations, and grievance processes, excluding appeal, within 60 to 90 business days of the filing of a report, complaint, or formal complaint of prohibited conduct with the Title IX Coordinator, unless JTS has good cause for any temporary delays or limited extensions. Good cause may include, but is not limited to, absence of a Party, advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. In the case of any delays past the timeframes set forth in this Policy, JTS will provide written notice to the Parties of the delay, the reasons for the delay, and the expected resolution date. The Parties may request status updates from the Title IX Coordinator at reasonable intervals.

JTS will provide clear written notice to the Parties before every interview or other meeting they are invited or expected to attend, including the date, time, location, participants, and purpose of the investigative interview, hearing, or meeting, whose participation is invited or expected,

including the Complainant and Respondent. Through the notice, JTS will provide sufficient time for the Party to prepare to participate.

**d. Advisor of Choice**

The Parties may have an advisor present during any grievance process, including the opportunity to be accompanied to any related meeting, interview, or hearing by the advisor of their choice who may advise and assist the Parties. A Party's advisor of choice may be, but is not required to be, an attorney. Each Party is permitted one advisor who must sign an advisor acknowledgement form, acknowledging to comply with JTS rules.

Throughout the process, the role of the advisor is narrow: they may attend all meetings or interviews at which the Party is entitled to be present, and may help the Party prepare for each meeting, however, the Parties should anticipate asking and responding to questions on their own account. Except for cross-examination during a hearing in Process A, as described below, advisors cannot actively participate or speak on behalf of the Parties or act as a proxy for any Party, though, as reasonably needed, they may confer privately with the Party during the proceedings. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process, as determined by the Title IX Coordinator. JTS reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the Title IX Coordinator.

**e. Conflicts of Interest, Bias, and Training**

The JTS Title IX Coordinator, Investigators, Hearing Officers, Appeal Panel members, and any person who facilitates an informal process, are trained to serve impartially and must be free from conflicts of interest and bias against Complainants or Respondents generally or an individual Complainant or Respondent. These individuals also receive training on, *inter alia*, topics set forth in Article 129-B (N.Y. Educ. Law § 6444(5)(c)(ii)) and Title IX (34 C.F.R. § 106.45 (b)(1)(iii)).

**f. Revisions and Designation of Authority**

The most current revision of this Policy (August 2020) supersedes all previously issued verbal or written policy statements regarding prohibited conduct. JTS reserves the right at any time to change, modify, delete, or add to any of the provisions of this Policy. JTS may, at its discretion, designate a trained and experienced individual(s) to act in the place of the Investigator, Hearing Officer, Appeals Panel members, and/or facilitators in this Policy. If there is such a designation, the Parties involved will be promptly informed.

**g. General Disciplinary Considerations**

JTS policies or contracts may require JTS to use additional processes before taking certain employment-related actions with respect to faculty and certain other employees. Where a person covered by such a policy or contract has allegedly engaged in conduct prohibited by this Policy, the investigation and grievance processes will proceed in accordance with the procedures set forth herein, except that the Hearing Officer(s) will not impose any discipline that would require the use of additional processes. Instead, the Hearing Officer(s) will impose all appropriate discipline that does not require the use of additional processes and then refer the matter, if appropriate, for action under the additional process. JTS's disciplinary action will be considered complete with

the Hearing Officer's imposition of discipline and referral, subject to any appeals. For information, please contact the Title IX Coordinator.

#### **h. Disciplinary Sanctions and Remedies**

There is a broad range of possible disciplinary sanctions and remedies that JTS may implement as part of a determination of responsibility. The Hearing Officer(s) may also identify additional remedies to address the effects of the conduct on the Complainant. Thus, the range of possible remedies is broad and may include supportive measures as described in Section XIV of Part I of this Policy, as well as disciplinary sanctions, as described below.

If a Complainant declined or did not take advantage of a specific service or resource previously offered, JTS may re-offer the service as applicable or necessary. The Title IX Coordinator may also consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. The Title IX Coordinator is responsible for effective implementation of any remedies.

The range of disciplinary sanctions that the Hearing Officer(s) may consider for any individual found responsible for a violation of this Policy span from a warning up to and including expulsion/termination or revocation of a student's degree. The Hearing Officer(s) may impose any of the following disciplinary sanctions that are determined to be fair and proportionate to the violation of the Policy under Process A or Process B:

- A written warning;
- Probation;
- Referral for mandatory counseling, anger management, or substance abuse treatment (typically off-campus private providers);
- Required community service;
- Changes to their class schedule;
- Restrictions on participation in extracurricular activities at JTS and/or other JTS sponsored programs;
- Reassignment of housing, office, and/or transportation;
- Removal from housing permanently or for a certain time period;
- Reassignment of campus employment or employment responsibilities;
- Restriction of use of campus facilities;
- Restriction of contact between the Complainant and Respondent;
- Termination of employment;
- Commencement of tenure revocation proceedings;
- Revocation of alumni privileges;
- Persona non grata status;
- Suspension (for a period of time ranging from a portion of a semester to four years);
- Revocation of degree; and/or
- Expulsion.

In addition, JTS reserves the right to withhold a student's diploma where a report of prohibited conduct is pending. It may also revoke any degree awarded for an individual who is found to have engaged in prohibited conduct prior to conferral of the degree.

JTS will implement disciplinary sanctions and remedies when the determination of responsibility becomes a final determination, as defined above. For students that are jointly registered with Columbia, Barnard, or another school, JTS reserves the right to advise the other school that a finding has been reached and disciplinary sanctions have been imposed.

Employees who do not comply with the terms of a disciplinary sanction will be subject to additional discipline, up to and including dismissal. The Title IX Coordinator, in conjunction with the employee's manager will be responsible for enforcing disciplinary sanctions and ensuring compliance. Students who do not comply with the terms of a disciplinary sanction will be subject to further disciplinary action under the Student Disciplinary Procedures.

**i. Transcript Notations**

In accordance with New York State law, when students are found responsible through JTS's conduct process for crime(s) that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(viii), JTS will make a notation on their transcript 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 student Respondents who withdraw from JTS while conduct charges are pending, and decline to complete the disciplinary process, JTS will make a notation on the transcript of such students that they "withdrew with conduct charges pending." Students may appeal a transcript notation to request its removal in the event of a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

**j. Appeals**

Either Party may appeal a determination regarding responsibility reached under Process A or Process B, a dismissal of a complaint or a formal complaint, or any allegations therein, on any of the following bases: (1) a procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and (3) the Title IX Coordinator, Investigator, and/or Hearing Officer(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Within 5 business days of delivery of the written determination of responsibility or of dismissal of the complaint or formal complaint or any allegations therein, either Party or both Parties may file an appeal with the Title IX Coordinator. The appeal must contain the Party's grounds for the appeal indicating why the Party requesting the appeal believes determination of responsibility, or dismissal of the complaint or formal complaint or any allegations therein, was inappropriate. The appealing Party may also submit a written statement challenging the outcome. The Title IX Coordinator will promptly notify the non-appealing Party about the appeal in writing and will implement appeal procedures equally to the Parties. Within 5 business days from the notification of the appeal, the non-appealing Party may submit a written statement in support of the outcome.

The Appeals Panel will review the appeal. The Appeals Panel shall not include the Title IX Coordinator, the Hearing Officer, or Investigator. The Appeals Panel shall be fair and impartial and will not have any conflicts of interest. The Appeals Panel will simultaneously issue a written decision to the Parties describing the result of the appeal and the rationale for the result within 15

business days of receipt of the complete record, including the Parties' written submissions. This decision is final.

## **PART II: PROCESS A GRIEVANCE PROCESS—ADDRESSING ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT**

Process A applies only to qualifying allegations of Title IX sexual harassment as defined above in Section VI of Part I. If a dismissal of a formal complaint occurs under Process A, please see Process B, if applicable. Process B may also apply to Title IX sexual harassment if the Title IX Coordinator determines that the allegations fall outside the jurisdiction of Process A. Unionized or other categorized employees are subject to the terms of their agreements or employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

Under Title IX, JTS's response to reports or formal complaints of sexual harassment must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a formal grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a Respondent.

### **I. FORMAL COMPLAINTS**

Reports of Title IX sexual harassment may be made using any of the following options as set forth in Section XII of Part I.

A formal complaint, as defined herein, may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in Section I of Part I. JTS will promptly investigate formal complaints and follow a formal grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against a Respondent with the Title IX Coordinator or if the Title IX Coordinator signs such a formal complaint. The Complainant must be participating in or attempting to participate in JTS's education program or activity at the time the formal complaint is filed alleging Title IX sexual harassment against a Respondent and requesting that JTS investigate the allegations.

If the Complainant files the formal complaint, the formal complaint must contain the Complainant's physical or digital signature or provide an indication that the Complainant is the individual filing the formal complaint. The Title IX Coordinator may also sign a formal complaint. However, where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a Party to the formal complaint.

#### **a. Dismissal of Formal Complaints**

JTS *must* dismiss a formal complaint or any allegations therein, if, at any time during the investigation or hearing, it is determined that: (1) the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in 34 C.F.R. § 106.30 even if proved; (2) the conduct did not occur in JTS's education program or activity; (3) the conduct did not occur against a person in the United States; or (4) at the time of filing a formal complaint, the Complainant was not participating in or attempting to participate in JTS's education program or activity. Such dismissal does not preclude JTS from acting under Process B of this Policy or another JTS policy. The Title IX Coordinator will determine whether a formal complaint must be dismissed in accordance with this section.

JTS *may*, in its discretion, dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing: (1) the Complainant notifies the Title IX Coordinator, in

writing, that they would like to withdraw the formal complaint or any allegations therein; (2) the Respondent is no longer enrolled in or employed by JTS; or (3) specific circumstances prevent JTS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

In the event of the dismissal of a formal complaint, the Title IX Coordinator will promptly and simultaneously send the Parties written notice of the dismissal and the reasons for such dismissal. The Parties may appeal the decision to dismiss a formal complaint or any allegations therein under the procedures for appeal set forth below. The Parties are still entitled to supportive measures, even if the formal complaint is dismissed.

### **b. Consolidation of Formal Complaints**

JTS may consolidate formal complaints regarding allegations of Title IX sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Title IX sexual harassment arise out of the same facts or circumstances.

## **II. INITIAL NOTICE OF ALLEGATIONS**

Upon receipt of a formal complaint of Title IX sexual harassment, the Title IX Coordinator will provide written notice to the Parties who are known. The notice will include:

- Notice of JTS's formal grievance process, including any informal grievance process;
- Notice of the allegations of sexual harassment potentially constituting Title IX sexual harassment, as well as sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
  - Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting Title IX sexual harassment under 34 C.F.R. § 106.30, and the date, location, and factual allegations of the alleged incident, if known;
- The specific section(s) of this Policy alleged to have been violated;
- A statement about JTS's prohibition on retaliation;
- A description of the range of possible disciplinary sanctions and remedies or a list of the possible disciplinary sanctions and remedies that JTS may implement following any determination of responsibility;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process;
- A statement that informs the Parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement informing the Parties that they may inspect and review the evidence collected in an investigation; and
- A statement informing the Parties that this Policy prohibits knowingly making false statement or knowingly submitting false information during the formal grievance process.

During the course of the investigation, JTS may investigate allegations about the Parties that are not included in the initial written notice of allegations. If this is the case, JTS will provide additional allegations to the Parties whose identities are known.

### **III. INFORMAL GRIEVANCE PROCESS**

At any time prior to reaching a determination of responsibility, JTS may offer the Parties the option to resolve the formal complaint through the informal grievance process without completing a full investigation and formal grievance process. However, JTS will only offer an informal grievance process if it determines, in its sole discretion, that such informal grievance process may be appropriate, and after JTS has obtained the Parties' voluntary, written consent to the informal grievance process. An informal grievance process may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. The Title IX Coordinator will be responsible for determining whether the informal grievance process is appropriate by assessing the totality of the circumstances including, but not limited to, the severity of the alleged Title IX sexual harassment, the Parties' wishes, and the potential risks to the JTS community. JTS will resolve an informal grievance process within 30 business days of the filing of a formal complaint of Title IX sexual harassment with the Title IX Coordinator.

The informal grievance process may not be used to resolve an allegation of Title IX sexual harassment unless a formal complaint is filed, or to resolve an allegation of Title IX sexual harassment against a JTS employee where the Complainant is a student.

In order to proceed with the informal grievance process, the Title IX Coordinator must provide the Parties with written notice disclosing: (i) the allegations; (ii) the requirements of the informal grievance process, including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal grievance process and resume the formal grievance process with respect to the formal complaint; and (iii) any consequences resulting from participating in the informal grievance process, including the records that will be maintained or could be shared.

The Title IX Coordinator will serve as the facilitator(s) of the informal grievance process and may elect to be assisted by another member of the senior staff of JTS or outside expert. The informal grievance process is designed to obtain an expedient, mutually acceptable solution, which may include an acceptance of responsibility and disciplinary sanctions by the Respondent, without the necessity of conducting a formal grievance process. The informal grievance process may result in the imposition of protective actions agreed upon by the Parties, or (with or without such agreement) based on information derived from the informal grievance process taken together with any other relevant information known to JTS at the time of the informal grievance process.

Participation in the informal grievance process is voluntary. JTS will not compel the Parties to engage in the informal grievance process and will allow the Parties to withdraw from the informal grievance process at any time and resume the investigation and formal grievance process with respect to the formal complaint.

### **IV. INVESTIGATION OF FORMAL COMPLAINTS**

The Title IX Coordinator will either conduct the investigation or appoint a trained investigator(s) to conduct the investigation (the "Investigator"). A Party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the Party's

objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator(s) at any time.

Formal complaints of Title IX sexual harassment will be investigated promptly, thoroughly, and impartially by the Investigator, and normally within 30 business days of filing a formal complaint with the Title IX coordinator.

Investigations generally include interviews with the Parties and witnesses, as well as follow up interviews, if necessary. The Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, such as documents, communications, photographs, and other evidence. Parties and witnesses are expected to provide all available relevant evidence to the Investigator during the investigation. The Parties will have the ability to discuss the allegations under investigation and gather and present relevant evidence. The Parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.

Unless the Investigator obtains a Party's voluntary, written consent, the Investigator will not access, consider, disclose or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in such capacity, and which are made or maintained in the connection with the provision of treatment to the Party. In addition, JTS will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognizable privilege, unless the person holding such privilege has waived the privilege.

At the conclusion of the investigation, the Investigator will prepare a case file, which will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which JTS does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, whether obtained from a Party or other source as part of the investigation. The Investigator will also prepare an investigative report that fairly summarizes the investigation and all relevant evidence. Prior to completion of the investigative report, the Investigator will send to each Party and Party's advisor, if any, the case file, subject to review in an electronic format or hard copy.<sup>20</sup> The Parties will have 10 business days to submit a written response. The Investigator will consider the written responses before completing the investigative report.

The Investigator will finalize the investigative report that summarizes relevant evidence and, at least 10 business days prior to the hearing, send the investigative report to each Party and the Party's advisor, if any, in an electronic format or hard copy, for their review and written response. The Parties and their advisors, if any, will be provided with the other Party's written response to the investigative report, if any, in electronic format or hard copy prior to the hearing.

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<sup>20</sup> Whether included as relevant in the investigative report or not, JTS will make all directly related evidence subject to the Parties' inspection and review available at any hearing to give each Party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

## **V. THE HEARING**

### **a. Hearing Officer**

After the investigative report is shared with the Parties, the Title IX Coordinator will assign the matter to be heard by the Hearing Officer(s) from a group of specially trained JTS personnel. The Title IX Coordinator may determine that a Hearing Officer(s) external to JTS will be assigned. The assigned Hearing Officer(s) will not participate in the process until this stage of the proceeding.

### **b. Hearing Process**

A live hearing is required as part of this process. The hearing cannot take place less than 10 business days from the conclusion of the investigation, which is when the final investigative report is provided to the Parties. The Title IX Coordinator will provide written notice of the hearing to the Parties at least 5 business days before the hearing date. The written notice will include:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.);
- The purpose of the hearing; and
- The name and contact information of the Hearing Officer(s). A Party wishing to challenge the participation of the Hearing Officer(s) must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the Hearing Officer(s) at any time.

### **c. Conduct of the Hearing**

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, JTS will provide the Parties with written notice explaining the reason for such change. JTS will create an audio or audiovisual recording, or transcript, of all live hearings under this Policy and will make it available to the Parties for inspection and review.

The Hearing Officer(s) may consider all evidence that they determine is relevant. The Hearing Officer(s) is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a Party, witness, or advisor. During the hearing, the Parties may: speak on their own behalf, including providing an opening and closing statement; be accompanied by an advisor, who may be, but is not required to be, an attorney; have an advisor cross-examine the other Party and any witnesses; and the opportunity to attend the entire hearing, except for the deliberation phase. The Hearing Officer(s) will determine the order of Parties and witnesses and answer any procedural questions. During any hearing, JTS will make all directly related evidence available for the Parties' inspection and review to give each Party an equal opportunity to refer to the evidence during the hearing.

Live hearings may be conducted with all Parties physically present in the same geographic location, or under the discretion of JTS, any or all Parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. The Parties may request that the live hearing occur in this manner.

#### **d. Cross-Examination**

During the live hearing, cross-examination will be conducted directly, orally, and in real time by the Party's advisor and never by a Party personally. At no point shall the Parties be entitled to question the other. If a Party does not have an advisor present at the live hearing, JTS will provide such Party, without fee or charge, and advisor of JTS's choice, who may be, but is not required to be an attorney, to conduct cross-examination on behalf of that Party.

At the live hearing, the Hearing Officer(s) will permit each Party's advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility of the opposing Party or any witnesses. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer(s) shall determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Hearing Officer(s) may invite explanations regarding relevance with the advisors, if they so choose. Once the Hearing Officer(s) determines the relevance of the question, the Hearing Officer(s) will allow or preclude the question.

The Hearing Officer(s) will limit or preclude any irrelevant questions. The Hearing Officer's determination that a question is not relevant is made by applying logic and common sense. The Hearing Officer(s) is not required to give a lengthy or complicated explanation; it is sufficient, for example, for a Hearing Officer(s) to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions outlined below, is duplicative, or because the question asks about a detail that is not probative of any material fact concerning the allegations.

The Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. The Parties also have the right to exclude their own prior sexual history with persons other than the other Party in the judicial or conduct process, subject to the exceptions in 34 CFR § 106.45(6)(i), which states that questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are (1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (2) 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.

If a Party or witness does not submit to cross-examination at the live hearing, the Hearing Officer(s) may rely on any statement of that Party or witness in reaching a determination of responsibility, if such statement is deemed reliable and relevant. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, social media postings, and the like. The Hearing Officer(s) shall not draw an inference about the determination regarding responsibility or credibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. If a Party's advisor of choice refuses to comply with JTS's established rules of decorum for the hearing, JTS may require the Party to use a different advisor.

**e. Impact Statements**

The Parties will be offered an opportunity to provide impact statements to the Hearing Officer(s) while they are deliberating on appropriate disciplinary sanctions, if any. The impact statement must be provided to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Officer(s) only once the Hearing Officer(s) is deliberating on appropriate disciplinary sanctions. Impact Statements cannot and will not be considered by the Hearing Officer(s) when reaching a determination of responsibility.

**VI. DETERMINATIONS REGARDING RESPONSIBILITY**

The Hearing Officer(s) will evaluate the allegations under a “preponderance of the evidence” standard. The Respondent will be found to be responsible for the alleged Title IX sexual harassment if the Hearing Officer(s) concludes, based upon careful review of all information presented, that such Title IX sexual harassment more likely than not occurred. The Hearing Officer(s) will determine any disciplinary sanctions imposed on the Respondent and the Title IX Coordinator will implement any remedies. Please see above Section XVII of Part I, which sets forth the range of possible disciplinary sanctions and remedies that may be implemented.

**a. Written Notice of Determination**

Within 7 business days from the hearing, the Hearing Officer(s) will simultaneously issue a written notice of its determination regarding responsibility to the Parties. The written notice of determination will contain the following information:

- Identification of the conduct constituting Title IX sexual harassment under this Policy as defined in 34 C.F.R. § 106.30;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including:
  - A determination regarding responsibility;
  - Any disciplinary sanctions JTS will impose on the Respondent; and
  - Whether remedies will be provided to the Complainant
- JTS’s procedures and permissible bases for the Parties to appeal; and
- When the determination becomes final.

JTS will implement disciplinary sanctions and remedies when the determination becomes final. The determination regarding responsibility becomes a final determination on the date that JTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section XVII of Part I.*

### **PART III: PROCESS B GRIEVANCE PROCESS—ADDRESSING ALL OTHER ALLEGATIONS OF PROHIBITED CONDUCT**

Process B is a prompt and equitable grievance process, which applies when the Title IX Coordinator determines that Process A does not, or when violations of this Policy that would be subject to Process A have been dismissed.<sup>21</sup> If the Title IX Coordinator determines that Process A applies, then Process A must be applied and not Process B. Process B applies to all allegations of prohibited conduct under this Policy, including allegations of sexual misconduct that do not constitute Title IX sexual harassment, as well as allegations of discrimination or harassment, such as sex/gender-based discrimination or harassment that do not qualify as Title IX sexual harassment involving students, employees, or third parties. Process B also applies to all allegations of retaliation covered by this Policy.

#### **I. COMPLAINTS**

Reports may be made using any of the following options as set forth in Section XII of Part I. A complaint is a document filed by the Complainant or signed by the Title IX Coordinator alleging prohibited conduct by a Respondent and requesting that JTS investigate the allegation(s). If a Complainant files or the Title IX Coordinator signs a complaint, JTS will initiate its complaint process, including investigation into the Complainant's allegations. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in Section I of Part I. The complaint must contain the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint. The Title IX Coordinator does not become the Complainant if they sign the complaint.

Dismissal of a complaint from the Process B grievance process does not preclude action under another provision of JTS's policies and/or handbooks. If a complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reasons therefore to the Parties. Further, JTS may consolidate complaints regarding allegations of prohibited conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of prohibited conduct arise out of the same facts or circumstances.

Upon the filing of a complaint, the Title IX Coordinator will promptly contact the Complainant and provide the Complainant a general understanding of this Policy, as well as identify the Complainant's rights and any available supportive measures, if the Title IX Coordinator had not already done so. The Title IX Coordinator will also seek to determine how the Complainant wishes to proceed.

As indicated in Section XII of Part I of this Policy, JTS will seek the Complainant's consent prior to initiating an investigation and the Complainant's decline to consent will be honored unless JTS determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Complainant or other members of the JTS community.

If the Complainant wishes to proceed with either a formal or informal grievance process, or JTS believes it is otherwise necessary, the Title IX Coordinator will notify the Respondent that a complaint has been filed and provide the date, time, location, and factual allegations concerning

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<sup>21</sup> The provisions of Article 129-B apply regardless of whether the conduct occurs on campus, off campus, or while studying abroad. N.Y. Educ. Law § 6440(6).

the alleged violation, a reference to the specific Policy provisions that have been violated, JTS's retaliation prohibition, and possible disciplinary sanctions. The Title IX Coordinator will provide the Respondent with a general understanding of this Policy, identify any available supportive measures, and inform the Respondent that they may have an advisor of their choice, who may be, but is not required to be, an attorney.

## **II. INFORMAL GRIEVANCE PROCESS**

JTS community members have the option to attempt to reach a resolution between the Parties through informal means. JTS encourages the use of a "restorative conferencing" model, in which dialogue is guided by trained facilitators, particularly where one Party (or both Parties) accepts responsibility. (Note: other forms of the informal grievance process are also available at the discretion of the Title IX Coordinator). All Parties must voluntarily agree to the use of an informal grievance process, and JTS must determine that the particular complaint is appropriate for such a process. At no time will any Party be required to participate in the informal grievance process.

If the Complainant agrees, the Title IX Coordinator can contact the Respondent to request their participation in the informal grievance process. If the Parties can reach a mutually satisfactory resolution, which may include an acceptance of responsibility and disciplinary sanctions by the Respondent, the matter will be considered final without a formal grievance process. If either Party decides that they do not want to participate in an informal grievance process at any time, the informal grievance process efforts will end. The matter will then proceed to a formal grievance process, including an investigation and hearing, in accordance with the relevant procedures set forth below.

## **III. FORMAL GRIEVANCE PROCESS**

### **a. Investigation**

Once the decision to commence a grievance process is made and the Parties have received notice, the Title IX Coordinator or designee may determine that they will conduct the investigation or utilize trained personnel who are external to JTS to conduct the interviews and/or investigation (collectively, the "Investigator"). A Party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator at any time. If the Investigator is the Title IX Coordinator, the Party may contact Keath Blatt at [keblatt@JTSA.EDU](mailto:keblatt@JTSA.EDU).

Complaints of prohibited conduct will be investigated promptly, thoroughly, and impartially by the Investigator, normally within 30 business days of filing a complaint with the Title IX Coordinator. JTS will make a good faith effort to complete investigations as promptly as possible and will communicate regularly with the Parties to update them on progress, the timing of the investigation and delay for good cause, if necessary.

The Investigator will conduct interviews of the Complainant, Respondent, and, when appropriate, third-party witnesses. The Investigator will also collect any other available evidence, such as relevant documents, including text messages, emails, social media posts, etc. If a student-

Respondent chooses not to participate or does not make themselves available to meet with the Investigator within a reasonable time, the Investigator shall be authorized to proceed with this process based on the evidence provided by other Parties. The Investigator will not make an adverse inference against the student-Respondent for choosing not to participate in the investigation, but the Investigator will make a determination based only on the evidence available. Employee-Respondents must participate in the investigation process; failure to do so will result in disciplinary action, which may include termination of employment.

The Parties will have the opportunity to provide evidence to the Investigator and/or recommend witnesses. The Investigator will have sole discretion to determine which witnesses to interview. The Parties shall have the right to exclude evidence relating to their own prior sexual history with persons other than the other Party. The Parties shall also have the right to exclude evidence relating to their own mental health diagnosis and/or treatment.

The Investigator evaluates the information received and, using a standard of preponderance of evidence, writes an investigative report or summary. The Complainant and Respondent will have an opportunity to review the investigative report, as well as review available evidence in the case file, or otherwise in possession or control of JTS, and relevant to the case. If all Parties accept the recommended resolution, the Title IX Coordinator shall be responsible for ensuring implementation of and compliance with the provisions of the grievance process and shall retain a copy of the resolution, along with written evidence of the Parties' acceptance, for an appropriate period.

If the Complainant or the Respondent is unsatisfied with the investigative report or resolution proposed by the investigator, such Party may, within 10 business days of being given the opportunity to review the investigative report and recommended resolution, submit a written request to the Investigator that the complaint be referred for a hearing.

#### **b. Hearing**

Complaints that are not resolved at the investigation stage and are not addressed by an applicable procedure in a collective bargaining agreement shall be directed to a review by a Hearing Officer(s) from a group of specially trained JTS personnel. The Title IX Coordinator may determine that a Hearing Officer(s) external to JTS will be assigned. The assigned Hearing Officer(s) will not participate in the process until this stage of the proceeding.

The Parties shall be promptly advised when the Hearing Officer(s) has been selected. If either Party has reason to believe that the Hearing Officer(s) has a conflict of interest, the Party must raise that concern to the Title IX Coordinator, in writing, and within 3 business days from receipt of notice of the Hearing Officer's identity. If the Title IX Coordinator determines that a conflict exists, the Hearing Officer(s) will be replaced.

The hearing will be conducted within 10 business days from the conclusion of the investigation. The Hearing Officer(s) will review the Investigator's report. The Hearing Officer(s) is not bound by the Investigator's report and should objectively evaluate relevant evidence. The Hearing Officer(s) will hold a hearing to include interviews with both Parties, and may, if deemed necessary, communicate with witnesses as part of the hearing process.

Both Parties may be present at the hearing and may be accompanied by their respective advisors, but neither Party (nor their respective advisors) will be permitted to cross-examine the other or

any third-party witness at any time during the hearing process. If one or both of the Parties request, arrangements will be made to allow one or both Parties to participate in the hearing remotely or to have the Parties attend the hearing separately in different rooms where the Parties can see and hear one another.

The Hearing Officer(s) also may, but is not required to, collect additional evidence and/or call additional witnesses after reviewing the Investigator's report and considering the Complainant's and Respondent's statements. The Parties will have access to any additional evidence the Hearing Officer(s) may consider prior to the issuance of any decision.

The Hearing Officer(s) has sole discretion to determine whether to call additional witnesses. The Parties have the right to exclude evidence relating to 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 hearing. The Parties also have the right to exclude evidence relating to their own mental health diagnosis and/or treatment. The Hearing Officer(s) will not consider prior allegations or findings of violations of this Policy, except in determining appropriate disciplinary sanctions where a violation is found.

#### **c. Impact Statements**

The Parties will be offered an opportunity to provide impact statements to the Hearing Officer(s) while they are deliberating on appropriate disciplinary sanctions, if any. The impact statement must be provided to the Title IX Coordinator within 2 business days of the conclusion of the hearing. The Title IX Coordinator will provide the impact statements to the Hearing Officer(s) only when the Hearing Officer(s) is deliberating on appropriate disciplinary sanctions. Impact statements cannot and will not be considered by the Hearing Officer(s) when reaching a determination of responsibility.

#### **d. Determination Regarding Responsibility**

The Hearing Officer(s) will determine whether the Respondent is responsible for violating this Policy. The standard of proof for determining whether a violation has occurred is the "preponderance of evidence" standard -- whether it is more likely than not a violation occurred.

The Hearing Officer(s) shall evaluate the evidence and shall prepare a written decision explaining the findings and the evidence supporting those findings. If the Hearing Officer(s) determines that the Respondent committed a violation of this Policy, it will determine the appropriate disciplinary sanctions and/or remedial measures. The possible disciplinary sanctions are described in greater detail in Section XVII of Part I of this Policy.

The Complainant and Respondent will simultaneously be informed, in writing, of the Hearing Officer's decision, including any disciplinary sanctions imposed and the rationale for the decision and disciplinary sanctions. The Hearing Officer(s) will endeavor to issue a decision within 10 business days of the completion of the hearing.

JTS will implement disciplinary sanctions and remedies when the determination becomes final. The determination of responsibility becomes a final determination on the date that JTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section XVII of Part I.*

## **APPENDIX A: NEW YORK STATE STUDENTS' BILL OF RIGHTS<sup>22</sup>**

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

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<sup>22</sup> To the extent applicable, students maintain the rights set forth in the Students' Bill of Rights during resolution of a complaint under Process A or Process B. N.Y. Educ. Law § 6440(6).

**APPENDIX B: EMPLOYEE COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT**

The New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for employees and covered non-employees to report in writing alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Title IX Coordinator. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, JTS is still required to follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

**For additional resources, visit:**

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>

**COMPLAINANT INFORMATION**

Name:

Department:

Home Address:

Work Phone:

Home Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email Work Home In person

**SUPERVISORY INFORMATION**

Immediate Supervisor's

Name:

Title:

Work Phone:

Department:

**COMPLAINT INFORMATION**

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Department:

Work Phone:

Relationship to you:

Supervisor Subordinate Co-Worker Other

2. Date(s) sexual harassment occurred: \_\_\_\_\_

Is the sexual harassment continuing?     Yes     No

3. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

4. Please list the name and contact information of any witnesses or individuals that may have information related to your complaint:

5. Have you previously complained or provided information (verbal or written) about sexual harassment at JTS? If yes, when and to whom did you complain or provide information?

*Employees that file with their employer might have the ability to get help or file claims with other entities including federal, state or local government agencies or in certain courts.*

6. Have you filed a claim regarding this complaint with a federal, state or local government agency?  
Yes     No

Have you instituted a legal suit or court action regarding this complaint?  
Yes     No

Have you hired an attorney with respect to this complaint?  
Yes     No

If you have retained legal counsel and would like us to work with them, please provide their contact information.

*I request that the Jewish Theological Seminary investigate this complaint of sexual harassment in a timely manner as outlined in JTS's policy and advise me of the results of the investigation.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_