

RABBI ISAAC ELCHANAN THEOLOGICAL SEMINARY
SEXUAL MISCONDUCT POLICY & PROCEDURES FOR STUDENTS

1) GENERAL

All members of the RIETS community are expected to maintain the highest ethical standards of conduct and integrity. RIETS will not tolerate, and accordingly prohibits, any form of sexual misconduct, including sexual assault, dating violence, domestic violence, and stalking. Persons who engage in sexual misconduct in violation of this Policy will face serious disciplinary sanctions (including suspension, expulsion and termination of employment, as applicable).

This Policy sets forth RIETS' process and procedures for responding to claims of sexual misconduct involving RIETS students. This Policy is intended to protect all RIETS students, whether part-time or full-time, and applies to such students regardless of sex, race, national origin, disability, sexual orientation, gender identity, or other protected status. This Policy applies to conduct that occurs on RIETS' premises and/or at RIETS-sponsored and affiliated activities and events (whether on RIETS' premises or at other locations), including, but not limited to, service learning programs and internships, and to all forms/uses of technology.

Unless otherwise specified, a reference to "days" means calendar days.

For information about this Policy, please contact the Dean of RIETS:

Rabbi Menachem Penner

Max and Marion Grill Dean of Rabbi Isaac Elchanan Theological Seminary and Undergraduate Torah Studies

Telephone: (646) 592-4455

Email: penner@yu.edu

Questions also may be directed to the Office of the General Counsel/(646) 592-4400.

This Policy was drafted to comply with Article 129B of the New York Education Law. Nothing contained herein shall be interpreted or construed as approving any act, action, or conduct which is in violation of Torah values or Halacha, and no such implication should be made.

2) DEFINITIONS

- **Sexual Assault** - Sexual Assault is any nonconsensual sexual act prohibited by law, including when the victim lacks capacity to consent. Sexual assault includes:
 - *Non-Consensual Sexual Contact*: Any intentional sexual touching, however slight and with any object or body part, that is without affirmative consent (as defined below) and/or by threat, intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. This includes intentional contact with breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner.
 - *Rape*: 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, forcibly or without affirmative consent or where the victim is incapable of affirmative consent due to mental or physical incapacity. *Statutory rape* is non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- **Affirmative Consent ("Consent")** - Affirmative Consent is defined as a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.

Silence or lack of resistance, in and of itself, does not demonstrate consent. This definition does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act;
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol;
- Consent may be initially given but withdrawn at any time;
- Consent cannot be given when a person is incapacitated (as hereafter described);
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm; and
- When consent is withdrawn or can no longer be given, sexual activity must stop.

Children under 17 years of age cannot legally consent under New York State Law to having sex or sexual contact with an adult (i.e., someone who is 17 years of age or older).

Incapacitation: 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.

Evaluating incapacitation requires an assessment of an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and
- Level of consciousness.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a knowing, reasonable decision about whether to engage in sexual activity is in violation of this Policy.

Alcohol and Other Drugs: In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's ability to provide affirmative consent, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one's responsibility to obtain affirmative consent.

See **Appendix C** for the Student Alcohol and Drug Use Amnesty Policy.

- **Stalking** - Stalking refers to engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety or the safety of others, or to suffer substantial emotional distress (i.e., significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling). Such a course of conduct means two or more acts, including, but not limited to, any actions directed at another person, whether done directly, indirectly or through others, via the telephone, electronic devices or any other means of communication, to follow, monitor, observe, surveil, threaten, or communicate to or about a person or interfere with the person's property. Stalking may include contact through a third party.

Examples of conduct that may constitute prohibited stalking include, but are not limited to: unwelcome/unwanted communications of any type, including face-to-face, telephone calls, voice messages, e-mail, text messages, postings, written letters or notes and unwanted gifts; use of threatening words or conduct; pursuing or following; observing and/or surveillance; trespassing or vandalism; entering or remaining on or near a person's property, residence, classroom, place of employment or any other location where the person is present; interfering with or damaging a person's property, including pets; and engaging in other unwelcome contact.

- **Dating Violence** - Dating violence is violence committed by a person who is or has been in a romantic or intimate relationship with the victim. Identification of a dating partner, and the existence of a social relationship of a romantic or intimate nature constituting a dating relationship, shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence** - Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, by a person similarly situated to a spouse of the victim, or by any other person against an adult or youth victim who is protected from that person's acts.

Examples of conduct that may constitute, whether alone or in combination, domestic violence include, but are not limited to: a pattern of name-calling, insults, put-downs; keeping or limiting a person from contacting family or friends; withholding money, food or other necessities; stopping a person from getting or keeping a job, getting to class, or staying in school; actual or threatened physical harm; sexual abuse/assault ("*sexual violence*"); stalking; possessiveness or extreme jealousy; intimidation; physical assault or threats thereof; and emotional isolation/manipulation.

3) BYSTANDER INTERVENTION

RIETS expects all members of the RIETS community to take reasonable and prudent actions to prevent or stop an act of sexual misconduct, and provide assistance if an act has occurred. Taking action or providing assistance may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

If someone suspects a friend, acquaintance, or stranger may be in a high risk situation for becoming a victim, is being victimized, or has been victimized, it is important to decide as a bystander whether there is a safe and reasonable way to intervene effectively.

Do's:

- Remind friends that affirmative consent is required and it is the difference between sex and sexual assault and that someone can be too intoxicated to consent.
- Take the initiative to help friends who aren't thinking clearly from becoming targets of violence (or) take steps to stop a friend who chooses to use violence.
- When possible, prevent an intoxicated friend/person from going to a private location with an acquaintance or friend.
- Contact the Security Department or another person of authority who can assist.

Don'ts:

- Let friends engage in activities, such as excessive alcohol/drug consumption, that impedes judgement and that therefore could lead to actions, including sexual advances, that are unwelcome and/or endanger the rights, safety, and well-being of others.
- Let friends walk/run alone in secluded areas or at night.
- Leave a friend or acquaintance alone at a party.
- Leave residence hall doors unlocked.
- Let friends drink to the point of impairment.
- Place yourself in a vulnerable situation where you are unable to voice consent.

4) COMPLAINT REPORTING PROCEDURES & GUIDELINES

Complaints may be reported by the victim or by anyone else who has knowledge of sexual misconduct in violation of this Policy. Anyone who wishes to initiate a complaint may do so by contacting any of the following:

- 1) The Dean of RIETS:

Rabbi Menachem Penner

Max and Marion Grill Dean of Rabbi Isaac Elchanan Theological Seminary and Undergraduate Torah Studies

(646) 592-4455 - penner@yu.edu

- 2) Security Department

<http://yu.edu/safety-security/>

Wilf Campus Security Department – (212) 960-5221 – security@yu.edu

- 3) Office of the General Counsel

<http://yu.edu/ogc/>

(646) 592-4400

There is no time limit on when a complaint can be made to RIETS, however, RIETS' ability to investigate and respond may be affected by any time delay in reporting. Therefore, RIETS strongly encourages the prompt filing of any complaints. Prompt reporting will serve to enhance RIETS' ability to investigate effectively and to preserve important evidence for future proceedings, including, for example, legal and disciplinary proceedings.

Students have the right (i) to make a report to RIETS' Security Department, local law enforcement and/or State Police or choose not to report; (ii) to report the incident to RIETS; (iii) to be protected by RIETS from retaliation for reporting an incident; and (iv) to receive assistance and resources from RIETS.

In the case of an anonymous report, such complaint will be investigated to the extent possible, however, all anonymous reporters should be aware that reporting anonymously may affect RIETS' ability to investigate and respond effectively.

No RIETS employee may discourage an individual from reporting misconduct covered by this Policy. Any RIETS employee with any knowledge, whether from firsthand observation, having been confided in or having heard about it in some other fashion, of sexual misconduct in violation of this Policy ***must*** report the incident to the Dean of RIETS, the Security Department, or the Office of the General Counsel, even if the actual victim of such sexual misconduct is not interested in filing a formal complaint. Certain RIETS employees who are serving in a privileged professional capacity as defined by applicable New York State Law (such as a professional mental-health counselor or a rabbi in his role as a spiritual advisor) are not so obligated to report. No RIETS employee is authorized to investigate or resolve a suspected violation of this Policy without the involvement of the Dean of RIETS and the Office of the General Counsel.

See **Section 15** for information regarding confidential support services. See **Appendix C** for the Student Alcohol and Drug Use Amnesty Policy.

Filing Complaints with Law Enforcement

Anyone who has been the victim of sexual violence, stalking, domestic violence, dating violence, or any other crime may (but is not required to) initiate a complaint with the local police department as well as with RIETS. Should an individual decide to file a complaint with the police, RIETS will support such individual in doing so. Regardless of whether such person wants to make a complaint to either RIETS or the local police, he/she should promptly seek medical attention both to address his/her own health and to preserve potential evidence should he/she later decide to file charges or obtain a protective order. RIETS can help guide a victim through the process of obtaining a judicial order of protection and/or RIETS-issued "no contact" order.

RIETS' system and the police/legal system work independently from one another. Because the standards for finding a violation of criminal law are different from the standards in this Policy, criminal investigations or reports are not determinative of whether or not misconduct under this Policy has occurred. RIETS will cooperate with police investigations, but will not delay its investigation of a complaint in the absence of extenuating circumstances and will conduct its investigation simultaneously with any police/legal system investigation.

RIETS' first and foremost concern for anyone who has been the victim of an incident of sexual violence, stalking, domestic violence, dating violence, or any other crime is their physical safety. Thus, if anyone who has been a victim of such unlawful behavior is feeling physically unsafe, he/she should immediately call the Security Department, the local police precinct or 911 for assistance.

Security Department

Wilf Campus Security Department - (212) 960-5221
24-Hour Hotline: 212.960.5200 (in-house Ext. 200)
1-888-YU SAFETY (1-888-987-2389)

Police Precinct

Wilf Campus - 34th Precinct (212) 927-9711

In addition, if such person is in need of **immediate medical treatment**, he/she should go to the nearest hospital emergency room, or call 911 or Hatzalah Volunteer Ambulance Corps at (212) 230-1000. There are many sources of support available to victims in these circumstances, including The NYC Alliance Against Sexual Assault (on-line at www.svfreenyc.org), which has compiled numerous resources available to victims, and the SOVRI (Support for Orthodox Victims of Rape and Incest) Hotline at Beth Israel

Medical Center, (888) 613-1613. The latter is a confidential (no caller-ID is used) hotline that may be called anonymously for information and support. (For additional resources, see **Section 15**.)

RIETS will respond to all reported complaints promptly, thoroughly, fairly and impartially. The alleged victim and the respondent also will be afforded the rights set forth in this Policy.

5) INTERIM PROTECTIVE MEASURES AND ACCOMMODATIONS

RIETS may take reasonable and prudent interim protective measures and accommodations to protect the alleged victim, the reporter (if different than the alleged victim), the respondent (i.e., the person against whom a report has been filed), and all third party witnesses pending resolution of the complaint. Interim measures may include restrictions on contact (RIETS-issued “no contact” orders), bans from areas of campus, facilities or activities, and changes to academic, living or working situations (including transferring to a different class, moving to a different room or residence hall, and changing work schedules). Intentional and/or continued violations of a RIETS-issued “no contact” order is a violation of this Policy and may result in additional misconduct charges and additional disciplinary sanctions including suspension, expulsion or termination of employment (as applicable). RIETS also will consider the safety of the RIETS community when making decisions regarding appropriate interim measures. All parties to a complaint will be informed of any interim measures taken by RIETS, but RIETS will otherwise endeavor to maintain as confidential such measures to the extent that maintaining them would not impair the ability of RIETS to provide the measures.

6) INVESTIGATION OF REPORTED INCIDENTS

Complaints of sexual misconduct will be overseen by the Dean of RIETS (or his designee).

Upon receipt of a complaint or upon receiving information which RIETS determines on its own warrants further investigation (even if no complaint is filed or even if a complaint is filed and later withdrawn), a fair and impartial investigation will commence in accordance with the procedures set forth in this Policy. RIETS will inform the respondent in writing of the allegations made against him/her and will schedule a time for the respondent to meet with the investigator selected by RIETS in its discretion. Depending on the nature of the allegations, the investigation may include interviews with the complainant and respondent, interviews of witnesses, collection of documentation (including email and other communications relevant to the complaint), a review of documents or any other steps deemed important by the investigator in order to thoroughly and fairly conduct the investigation.

The alleged victim and respondent will be given an equal opportunity to present relevant witnesses and other evidence as part of the investigation. The alleged victim and respondent may have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any RIETS meeting/proceeding. The party shall promptly notify the Dean of RIETS (or his designee) if he/she intends to use an advisor/support person, and identify such advisor/support person. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise actively participate in the meeting/proceeding. The advisor/support person may be asked to leave the meeting/proceeding if he/she deviates from his/her role. The advisor/support person will be subject to the same confidentiality expectations applicable to others in attendance at the meeting/proceeding.

In addition, both parties will be given periodic updates by the Dean of RIETS (or his designee). For a more detailed explanation of the investigative process, as well as the adjudication process, see **Appendix A**, Resolution Process.

RIETS expects all members of the RIETS community to cooperate with investigations. However, in no event will an alleged victim or respondent be compelled to participate in the investigation.

7) REQUEST BY COMPLAINANT NOT TO PURSUE INVESTIGATION

A complainant may decide after filing a complaint that he/she does not want to have RIETS pursue an investigation. Complainants and others should understand that compliance with such a request may limit RIETS' ability to take action in response to the complaint. In such a situation, RIETS will evaluate the request in the context of RIETS' responsibilities and will consider several factors, including the seriousness of the alleged misconduct, the complainant's age, whether a weapon or force was involved, the parties involved, whether there have been other complaints of misconduct against the respondent, and the applicability of laws mandating an investigation or other action. See **Section 15** for information regarding confidential support services.

8) DOCUMENTATION OF INVESTIGATIONS

The Dean of RIETS will maintain records of all complaints, investigations, findings (including the basis for those findings), hearings (if applicable), and appeals, and, promptly following the final resolution of a complaint, the Dean of RIETS will provide a copy of these records to the Office of the General Counsel. All of these records will be kept on file in accordance with RIETS' records and retention policy (but in any event for at least five years from final resolution of the complaint). The Dean of RIETS (or his designee) will simultaneously notify the parties as soon as practicable of the final outcome of the investigation in writing (including referral to the hearing officer where applicable) and also will notify them of any sanctions to be imposed (including actions RIETS will take to eliminate the hostile environment and prevent recurrence). (See **Appendix A**, Resolution Process). In addition, if someone other than the Dean of RIETS engaged in the investigation, the Dean of RIETS will be kept apprised of the progress of the investigation and the ultimate results, and the Dean of RIETS will maintain records of the results. The Dean of RIETS also will inform the Registrar if any transcript notations are required. (See **Appendix A**, Resolution Process). In any situation in which the designated authority has a conflict of interest or is otherwise not available to act (e.g., there is a vacancy in the office), the Office of the President (in conjunction with the Office of the General Counsel) will be consulted for appropriate action.

9) CONFIDENTIALITY DURING AN INVESTIGATION

Information gathered during the investigation process will be handled by RIETS with due diligence and care. Discreet inquiry, corrective counseling, and trust will be stressed by RIETS in dealing with all complaints. Records and information concerning complaints will be kept confidential to the greatest extent possible, and RIETS will comply with all applicable laws in maintaining the confidentiality of the investigation. However, subject to applicable laws, RIETS cannot guarantee complete confidentiality. For example, consistent with law, information regarding violations of this Policy may be shared among RIETS personnel as appropriate and necessary.

Complainant Request for Confidentiality

RIETS will attempt to comply with all requests from a complainant that his/her name or identity not be revealed to the respondent and witnesses. However, RIETS is not able to guarantee confidentiality because doing so may limit RIETS' ability to investigate the allegations and to afford the respondent a fair opportunity to respond to the allegations. Requests for confidentiality should be made to the Dean of RIETS (or his designee), and he will evaluate any such requests in consultation with the Office of the General Counsel. If possible, the Dean of RIETS (or his designee) will make an effort to notify the complainant before disclosing the complainant's identity to the respondent. In all instances, RIETS will endeavor to maintain the complainant's and respondent's privacy and reveal the parties' identities only to those individuals who need to know it in order for an investigation to commence or continue (as applicable) and the matter to be adjudicated.

Even RIETS offices and employees who cannot guarantee confidentiality will maintain the complainant's privacy to the greatest extent possible. The information the complainant provides

to a non-confidential resource will be relayed only as necessary for RIETS to investigate and/or seek a resolution.

10) RETALIATION

This Policy prohibits retaliation against any individual who filed and/or participated in the investigation of a complaint, even if the complaint is unsubstantiated. Retaliation includes threats, intimidation, reprisals, harassment, and/or any other adverse action threatened (expressed or implied) or taken against anyone who reports a violation or suspected violation of this Policy or who participates in an investigation of a complaint. Retaliation may take place in person, over the telephone or through electronic or social media means. Regardless of how it manifests itself, retaliation is prohibited. Anyone who either observes or becomes aware of such retaliatory behavior is strongly encouraged to report it to the Dean of RIETS, and all RIETS employees are under a business duty to do so. The Dean of RIETS will review the facts and recommend the appropriate disciplinary action, up to and including suspension, expulsion or termination of employment (as applicable). Violations of this prohibition will be addressed through the procedures outlined in this Policy and/or other RIETS disciplinary procedures, as RIETS deems appropriate.

11) KNOWING FALSE CLAIMS OR INFORMATION

RIETS considers any allegation of sexual misconduct a serious matter and encourages individuals to report all incidents to RIETS. All good faith reports will be treated seriously. Notwithstanding Section 10, any individual who *knowingly* files a false claim, or who *knowingly* provides false information during an investigation or proceeding, may be subject to appropriate disciplinary action, up to and including suspension, expulsion or termination of employment (as applicable).

12) TIME LIMITS

RIETS will exercise due diligence in complying with the stated time limits set forth in this Policy. However, stated time limits may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance. Any party may request an extension of any deadline by submitting a written request to the Dean of RIETS detailing the reason for such request and the amount of additional time requested. The Dean of RIETS has the discretion to grant or deny any such request.

13) EDUCATION/TRAINING

This Policy shall be disseminated widely to the RIETS community through publications, websites, student orientations, and other appropriate channels of communication. RIETS also shall provide training programs to promote awareness and a safe and respectful RIETS environment.

14) RE-EVALUATION

RIETS reserves the right to modify and/or amend any or all of the terms and/or procedures outlined herein at any time, in its sole discretion. In the event RIETS determines that circumstances warrant modification or amendment of this Policy, timely notice of the same will be communicated to all affected parties.

15) SUPPORT RESOURCES (Confidential and Non-Confidential Support)

Confidential Resources affiliated with RIETS

A report made to the following resources will not trigger an investigation by RIETS:

- Rabbi Dr. Alex Mondrow
Mental Health Counselor
Cell: (516) 476-0743
alexander.mondrow@yu.edu
- Yeshiva University Counseling Centers - <http://www.yu.edu/student-life/counseling/>

Beren/Cardozo Campus Counseling Center
205 Lexington Avenue, 4th Floor
(646) 592-4210
counseling@yu.edu

Wilf Campus Counseling Center
500 West 185th Street, FH 520
(646) 592-4200
counseling@yu.edu

These counselors can offer advice and support on a confidential basis as the victim begins to make choices regarding how to proceed post-assault.

Confidential Resources not affiliated with RIETS

There are many outside sources of support available to victims. Reporting to one of these resources will not trigger an investigation by RIETS.

- **SOVRI (Support for Orthodox Victims of Rape and Incest)** Hotline at Beth Israel Medical Center, (888) 613-1613. This is a confidential (no caller-ID is used) hotline that may be called anonymously for information and support.

Other Resources not affiliated with RIETS

- **The NYC Alliance Against Sexual Assault** (on-line at www.svfreenyc.org) has compiled numerous resources available to victims.
- **Manhattan Family Justice Center can provide a wide range of services and support. The Manhattan location is at 80 Centre Street, New York, NY 10013; Phone: (212) 602-2800; <http://www.nyc.gov/html/ocdv/html/help/fjc.shtml>**
- **Family Court Volunteer Lawyer Program** (part of the New York State Access to Justice Program)
900 Sheridan Avenue
Bronx, NY 10451
Phone: (718) 618-2150
Hotline: (718) 618-2150
- **Safe Horizon (NYC)**
2 Lafayette Street, 3rd Floor
New York, NY 10007
Phone: (212) 227-3000

<http://www.safehorizon.org/>
help@safehorizon.org
Hotline: (866) 689-4357

Immigration & Visa Assistance Services for Victims of Sexual & Interpersonal Violence

- **U.S. Citizenship and Immigration Services (USCIS)**
<http://www.uscis.gov/citizenship/learners/find-help-your-community>
USCIS Find Legal Services Webpage
<http://www.uscis.gov/avoid-scams/find-legal-services>
- **Board of Immigration Appeals (BIA)** (Listing of attorneys by state who provide immigration services either for free or for little cost)
<http://www.justice.gov/eoir/probono/states.htm>
- **American Immigration Lawyers Association (AILA)**
Immigration Lawyer Referral Service
<http://www.aialawyer.org/>
- **American Bar Association (ABA)**
(Information on finding legal services by state)
<http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>

Sexual Assault Forensic Examinations (SAFE)

Yeshiva University has a Memorandum of Understanding (MOU) with **Mount Sinai Beth Israel - Petrie Division** (Manhattan) located at First Avenue at 16th Street, New York, NY 10003 (main phone: (212) 420-2000) regarding services to sexual assault victims. The Petrie Division has a Sexual Assault Forensic Examiner Program, and is a designated SAFE Center of Excellence. Emergency care and support is available 24 hours/7 days a week, and a Victim Service Program social worker or volunteer advocate is on call at all times.

Dated: June 2017

Appendix A

Resolution Process

Following a determination to pursue a resolution of a complaint:

- 1) The Dean of RIETS (or his designee) will provide all parties involved with a copy of these procedures.
- 2) The Dean of RIETS (or his designee) will request the complainant to provide to the Dean of RIETS, within 5 days after the Dean of RIETS's request and preferably in writing, a description of all facts that bear on the allegations; specifically, the details surrounding the accusation, names of possible witnesses, and the nature and description of possible evidence. The complainant is expected to share with the Dean of RIETS, or other appropriate investigative entity as designated by RIETS, any relevant supplemental information that subsequently becomes available.
- 3) The Dean of RIETS (or his designee) will promptly inform the respondent in writing (and send a copy to the complainant) of the allegations (including the date, time, location, nature of the alleged misconduct, factual allegations and reference to specific code violations and sanctions that may be imposed) and ask the respondent to respond to them within 5 days after such notice. Such response should include all facts that bear on the allegations, including the names of possible witnesses and the nature and description of possible evidence. The respondent is expected to share with the Dean of RIETS, or other appropriate investigative entity as designated by RIETS, any relevant supplemental information that subsequently becomes available. The Dean of RIETS will inform the complainant of any defenses that the respondent may provide. The Dean of RIETS (or his/her designee) may ask to meet with the parties separately to discuss the allegations.
- 4) The Dean of RIETS will promptly notify the Office of the General Counsel of the existence of a complaint.
- 5) The Dean of RIETS (or other designated investigator) will fully, fairly and impartially investigate the complaint, and each party equally will have the opportunity to present witnesses and other evidence to the investigator. Each party will also be afforded similar and timely access to information that may be provided by RIETS to the other party and that will be used to adjudicate the complaint.
- 6) Both parties will be advised by the Dean of RIETS (or his designee) that reasonable efforts will be made by RIETS to protect the privacy of the parties, and to maintain confidentiality to the extent possible and as is consistent with investigative needs and applicable laws. (See **Section 9**).
- 7) The Dean of RIETS will explore possible interim protective measures and accommodations with both parties.
- 8) The Dean of RIETS (or other designated investigator) will endeavor, as promptly as feasible, to interview all relevant parties and review all evidence, including witnesses and evidence identified by the parties.
- 9) The Dean of RIETS (or his designee) will provide the complainant and the respondent with periodic status updates.
- 10) The Dean of RIETS (or other designated investigator) will seek to conclude the investigation as promptly as practicable, and in any event generally within 30 days after receipt of the respondent's statement regarding the allegations, and generally within 40 days after receipt of the formal complaint. The facts and circumstances of each case may make it necessary to extend the resolution timeline. (See **Section 12**).

- 11) The Dean of RIETS (or other designated investigator) will compile a neutral investigation report, and will simultaneously inform the parties of the conclusion of the investigation. Both parties will have an opportunity to review the investigation report in person, in the presence of a RIETS official at a location determined by RIETS. The complainant and respondent may respond to the report, either verbally or in writing.
- 12) The Dean of RIETS will then decide (in his discretion as he feels appropriate, and in consultation with the Office of the General Counsel) if (i) the individual who handled the investigation and compiled the report (which may be the Dean of RIETS or other designated investigator) should make the finding as to whether this Policy has been violated and determine appropriate sanctions, or (ii) a hearing officer should convene a hearing and make the finding as to whether this Policy has been violated and determine appropriate sanctions. (It is expected that the hearing process referred to in option (ii) will only be used in very limited circumstances as the Dean of RIETS, in consultation with the Office of the General Counsel, will determine as appropriate in his discretion.) In all cases, a finding of a violation of this Policy will be based on a preponderance of evidence (i.e., that it is more likely than not that the sexual misconduct occurred).
- 13) If The Dean of RIETS (or other designated investigator) is selected to make the finding and determine sanctions as provided above, then he should do so promptly (and generally within 5 days) after the conclusion of the investigation. The Dean of RIETS will simultaneously notify the parties as soon as practicable of the finding. At this point, the parties may submit an impact statement for the Dean of RIETS's (or other designated investigator's) consideration during the sanction stage. Impact statements should be submitted within 3 days of notice of the finding. In deciding an appropriate disciplinary action, the Dean of RIETS (or other designated investigator) may consider the respondent's past violations of University policy, as well as the nature and severity of the violation(s), the impact statements of the parties, and any mitigating circumstances. The Dean of RIETS (or other designated investigator) will decide the appropriate disciplinary actions generally within 10 days of the finding. The Dean of RIETS will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, and the right to appeal (as provided below).
- 14) If a hearing officer is selected to make the finding and determine sanctions as provided above, then a hearing officer will be selected by the Dean of RIETS (in consultation with the Office of the General Counsel) depending on the nature of the case and the parties involved. The hearing officer may be the Dean of RIETS, another RIETS employee, or an outside individual, but may not be the person who handled the investigation. The process will then be as follows:
 - i. The hearing officer will schedule a hearing as soon as possible after the conclusion of the investigation (and generally within 5 days), and the Dean of RIETS will simultaneously notify the parties as soon as practicable of the date, time and place of the hearing.
 - ii. Prior to the hearing, the hearing officer will review the investigation report, as well as any responses to the investigation report submitted by the complainant or respondent.
 - iii. At the hearing, the hearing officer may question the parties in order to assist him/her in deciding whether or not the charges are supported by a preponderance of the evidence. The hearing officer may ask that witnesses attend the hearing, so that he/she may ask witnesses questions in person. The parties are encouraged to attend the hearing, so that they are given a full opportunity to explain their positions. If a party is uncomfortable appearing in the same location with the other party, arrangements can be made so that one or both parties may participate in the hearing live by conference call or video conference.

- iv. With respect to allegations regarding sexual assault, stalking, domestic violence or dating violence, the parties may have a personal advisor/support person present during the hearing. (See **Section 6**).
 - v. Generally within 5 days of the hearing, the hearing officer will issue a written decision on whether a violation has occurred. The Dean of RIETS will simultaneously notify the parties as soon as practicable of the decision. At this point, the parties may submit an impact statement for the hearing officer's consideration during the sanction stage. Impact statements should be submitted within 3 days of the hearing officer's determination. In deciding an appropriate disciplinary action, the hearing officer may consider the respondent's past violations of RIETS policy, as well as the nature and severity of the violation(s), the impact statements of the parties, and any mitigating circumstances. The hearing officer will decide the appropriate disciplinary actions generally within 10 days of the hearing.
 - vi. The Dean of RIETS will simultaneously notify the parties as soon as practicable of the sanctions to be imposed, and the right to appeal (as provided below).
- 15) RIETS expects all cases involving a finding of sexual violence, stalking, domestic violence and dating violence to involve consideration of suspension or expulsion for students, and termination of employment for employees. Other sanctions that may be imposed include a warning, disciplinary probation, restriction from employment by RIETS, removal from RIETS housing, removal from courses or activities, loss of privileges, no contact, exclusion from areas of the campus and facilities, removal or non-renewal of scholarships, a notation on the respondent's official RIETS transcript, community service, restitution, and a fine. In addition, the respondent may also be required to undergo an assessment and treatment by a therapist or counselor, attend an intervention treatment program and/or issue a letter of apology.

16) **Appeal Process.**

- i. In all cases, there are three possible grounds for appeal:
 - An alleged material violation of the established procedures in this Policy;
 - Evidence is now available that could not have been obtained at the time of the determination/initial hearing; or
 - The sanction is excessive, inconsistent or insufficient with the nature of the offense.
- ii. Either party may appeal the decision of the Dean of RIETS (or other designated investigator) or hearing officer, as applicable, (based on the grounds described above) to an **Appeal Panel** (of two or more persons, or as otherwise may be required by applicable law, rule or regulation) selected by the Dean of RIETS (in consultation with the Office of the General Counsel) depending on the nature of the case and the parties involved. The Dean of RIETS (or other designated investigator) or hearing officer, as applicable, may not serve on the Appeal Panel. A request for an appeal must consist of a plain, concise, and complete written statement outlining the grounds for the appeal. The appeal request must be submitted to the Dean of RIETS within 5 days of the date of the final determination letter.
- iii. Upon receipt of the appeal, the Dean of RIETS will provide the other party with notice of the appeal and the opportunity to respond in writing. The other party's response to the appeal must be submitted within 5 days from receipt of notice of the appeal. In the event

- that both parties initially appeal the decision, each party will be provided notice and a copy of the other party's appeal.
- iv. The appeal will be conducted in a fair and impartial manner. The appeal is not a re-hearing of the underlying matter. The Appeal Panel will review the written investigation report, decisions and all supporting documents, and also may consult with both parties.
 - v. The Appeal Panel (by majority vote of panelists, or by unanimous decision if less than 3 panelists) can affirm the original determination of responsibility, alter the determination of responsibility either in whole or in part, and/or alter the sanctions, depending on the circumstances. The matter can also be referred back for further investigation or consideration if appropriate.
 - vi. The Appeal Panel will issue its determination generally within 5 days from the date of the submission of all appeal documents by both parties. The Dean of RIETS will simultaneously notify the parties as soon as practicable of the decision.
 - vii. Appeal decisions are final.
 - viii. If there is no appeal, the Dean of RIETS also will simultaneously notify the parties that the initial decision is final because the time for an appeal has expired.
- 17) Notwithstanding the foregoing, to the extent permitted by law, (i) findings and recommendations concerning represented employees will be subject to the provisions of the appropriate collective bargaining agreement, and (ii) findings and recommendations that involve suspension or termination of faculty members will be subject to the provisions of the appropriate faculty handbook/policy.
- 18) RIETS will endeavor to fully resolve all formal complaints generally within 60 days (or, in the case of a faculty complaint, such other time period as may otherwise be required by the applicable faculty handbook/policy) after receipt of the formal complaint. The 60 day time period may be extended depending on the nature of the allegations, the time of year, and any other unforeseen or extenuating circumstance.
- 19) **Transcript Notations.** Students suspended or expelled for committing an act of sexual assault, stalking, domestic violence, dating violence, or a "violent crime," as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "*Clery Act*"),¹ will have a notation placed on their transcript as follows: "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." RIETS will consider requests to remove transcript notations. Requests for removal of a transcript notation should be sent to the Dean of RIETS. A transcript notation will not be removed prior to one year after conclusion of the suspension. If a finding of responsibility is vacated for any reason, a corresponding transcript notation will be removed. Expulsion notations will not be removed in any case. If an accused student withdraws from RIETS while charges are pending and declines to complete the disciplinary process the following notation will be placed on his/her transcript: "withdrew with conduct charges pending."

¹ "Violent crimes" defined by the Clery Act are murder, sexual offenses (forcible and non-forcible), robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.

Appendix B

Student Bill of Rights

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

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a 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 institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

See **Section 4** for information about filing a report, and **Section 15** for confidential reporting options.

Appendix C

Student Alcohol and Drug Use Amnesty Policy

The health and safety of every student at RIETS is of utmost importance. RIETS 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. RIETS strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to RIETS 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 a RIETS official or law enforcement will not be subject to a 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.

RIETS will provide students with the assistance needed to respond to high risk drinking and/or other drug abuse. In a crisis, students are encouraged to seek such assistance by contacting the Security Department or 911.

Security Department - <http://yu.edu/safety-security/>
Wilf Campus Security Department
2521 Amsterdam Avenue (1st Floor)
(212) 960-5221
security@yu.edu
24-Hour Hotline: 212.960.5200 (in-house Ext. 200)
1-888-YU SAFETY (1-888-987-2389)

Appendix D

A Plain Language Explanation of Distinctions between the New York State Penal Law and RIETS Disciplinary Processes

New York State Education Law Article 129-B requires that RIETS officials explain differences between RIETS processes and the criminal justice process in addressing sexual and interpersonal violence.

There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. RIETS disciplinary process seeks to determine whether an individual has violated RIETS policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated RIETS policy may be suspended, expelled or otherwise restricted from full participation in the RIETS community. This document is intended to help explain the differences between the criminal justice system and RIETS disciplinary processes.

	Criminal Justice System	RIETS Disciplinary System
Goals.	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
Governing Law.	NYS Penal Code; NYS Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	NYS Education Law Articles 129-A and 129-B. RIETS’s Sexual Misconduct Policy; Student Bill of Rights.
How to report and whether there must be action once a report is made.	Crimes involving sexual violence may be reported to the local police agency or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various RIETS employees who are designated confidential resources (e.g. a rabbi in his role as spiritual advisor) or to others who will try to ensure privacy to the extent consistent with RIETS’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Dean of RIETS or another Non-Confidential resource, the Dean of RIETS will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
Who investigates?	Police or other law enforcement officials.	Investigators employed or retained by RIETS; these individuals may work for different departments within RIETS, including, but not limited to, the

		Security Department.
Procedures.	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	RIETS policies, which generally incorporate requirements of Governing Law. Collective bargaining agreements and the faculty handbook may impact some procedures.
Standard of Evidence.	Crimes must be proven "Beyond a Reasonable Doubt."	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not).
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	RIETS offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
Privacy.	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within RIETS, the parties to the proceedings, and pursuant to law.
Who are the parties?	The prosecution/State and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	Reporting individual and accused/respondent.
Participation in the process.	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in RIETS process. However, RIETS will be limited in its ability to respond if a reporting individual does not participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the State (or the United States in federal cases).	RIETS initiates proceedings, with the reporting individual generally having an active role.
Testimony.	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	Upon conclusion of a formal investigation, a hearing may be scheduled where the hearing officer may question the parties and witnesses. The parties may not cross-examine the witnesses. RIETS permits a party to participate in the hearing live by conference call or video conference.
Role of attorneys.	Both the State and the defendant are represented by counsel; counsel may question witnesses.	The parties may have a personal advisor/support person of their choice and at their expense (who may be an attorney) present with them during any RIETS meeting/proceeding. Such advisor/support person is limited to an advisory role, and may only privately consult and advise his/her advisee. The advisor/support person may not speak for the

		advisee at the meeting/proceeding, may not question witnesses, may not make any statements during the meeting/proceeding or otherwise actively participate in the meeting/proceeding.
Mental Health and Sexual History.	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. NYS Education Law Article 129-B permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact finding phase of the disciplinary process.
Possible Results.	If a prosecution takes place, the defendant may <ul style="list-style-type: none"> • plead guilty or "no contest" • have the case dismissed by the judge (on legal grounds) • be found "guilty" or "not guilty" by a judge or jury 	If there is a formal proceeding, the respondent may be found "responsible" or "not responsible" for violations of RIETS's rules. Respondents may also accept responsibility before a finding by an adjudicator.
Sanctions.	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating RIETS policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from RIETS.

* From <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>.