



Yeshiva Ohr Elchonon Chabad

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TITLE IX POLICY

Yeshiva Ohr Elchonon Chabad (hereafter called “Yeshiva”) is committed to maintaining an environment where all students are granted equal access to education based on the federal Title IX of the Education Amendments of 1972, and subsequent revisions. The latest regulatory update, which was published as a Final Rule in the Federal Register on May 19, 2020 is effective on August 14, 2020.

The Yeshiva will adhere to a strict policy with regard to sexual violence, which includes any form of sexual assault, domestic violence, dating violence, stalking or any other form of sexual misconduct. The Yeshiva has developed a policy to promptly and effectively respond to any incident of sexual violence or sexual misconduct in accordance with the Title IX Final Rule and California State Law.

The Yeshiva considers its obligation to address all incidents of sexual misconduct, violence and offensive or inappropriate demeanor that take place in the school’s educational program or activity as a serious responsibility.

Behaviors under the following three categories will be addressed in this policy:

- Quid pro quo harassment by a school’s employee
- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
- Instance of sexual assault (as defined in the Clery Act), including dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VA WA)

The Yeshiva has designated Rabbi Mendel Spalter as the Title IX coordinator. Rabbi Mendel Spalter will be responsible to ensure that the formal complaint and grievance process is carried out in accordance with the protocols set forth in this policy. The key principles throughout this policy are to ensure the safety and privacy of all parties.

A student who is the victim of sexual misconduct or anyone who has witnessed sexual misconduct may report the incident to the Title IX Coordinator. Nonconfidential responsible employees are required to report any incident of sexual misconduct to the Title IX coordinator, regardless of whether or not an official report is made by the victim. All students, faculty, staff, and applicants for admission and employment are formally notified below of the Title IX Coordinator’s name and contact information, which is also available on the institution’s website www.yoec.edu.

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| NAME OF TITLE IX COORDINATOR: | Rabbi Mendel Spalter |
| WORK ADDRESS OF TITLE IX COORDINATOR: | 7215 Waring Avenue Los Angeles CA 90046 |
| EMAIL ADDRESS OF TITLE IX COORDINATOR: | mspalter@yoec.edu |
| CELL PHONE NUMBER OF TITLE IX COORDINATOR: | 323-578-8616 |
| WORK PHONE NUMBER OF TITLE IX COORDINATOR: | 323-937-3763 ext. 123 |

The Grievance Process

The Grievance Process is a set of protocols which the Yeshiva will follow when responding to any complaint of sexual violence or harassment. This process is designed to provide for a prompt and equitable resolution of sexual harassment complaints filed by a student against an employee or another student. The following are the key participants of the grievance process.

- Complainant – *individual who is alleged to be the victim of conduct that could constitute sexual harassment*
- Respondent – *an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment*
- Title IX coordinator – *Institutional employee who receives the initial complaint and oversees that the grievance process is carried out*
- Investigator(s) – *Institutional employee(s) who investigates the claim and produces evidence*
- Advisors – *third parties who represent Complainant or Respondent in a live hearing*
- Decision-maker(s) aka hearing officer(s) – *Institutional employee(s) who reviews evidence, listens to the arguments of the advisors at a live hearing and decides if the respondent is innocent or guilty*

All Title IX personnel, including Title IX coordinators, investigators, and decision-makers must be free from conflict of interest or bias for or against either party. All personnel will receive training on:

- The definition of sexual harassment as per the current Federal Rules,
- The scope of activities covered (i.e. the school's education programs, activities and campus facilities),
- Trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process,
- Best practices for assessment of a sexual harassment or sexual violence complaint,
- How to conduct an investigation and grievance including hearings, appeals, and informal resolution processes,
- Best practices for questioning of the complainant, respondent, and witnesses,
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and
- Implicit bias and racial inequities, both broadly and in school disciplinary processes.

To begin the grievance process, a document known as a Formal Complaint, which alleges an incident of sexual harassment must be filed by the complainant and signed by the Title IX coordinator. Formal Complaints must be filed in writing, and may be submitted by mail, email or in person, using the information listed above.

A student may report sexual harassment by a third party following the same procedures. The Yeshiva will respond to those reports to address or prevent a hostile educational environment or to ensure students' access to education.

The Title IX coordinator will assess each report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct. The outreach will include all of the following information:

- The information that the Yeshiva has received a report that the student may have been a victim of sexual harassment.
- Retaliation for filing a complaint or participating in a complaint process, or both is prohibited.
- Counseling resources within the institution and the community, as listed below.
- Where a crime may have occurred, the student has the right, but not the obligation, to report the matter to law enforcement.
- The institution's investigation procedures established as described below.
- Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable.

- The importance of preserving evidence.
- A request for the student to meet with the Title IX coordinator to discuss options for responding to the report.
- The manner in which the institution responds to reports of sexual harassment and a description of potential disciplinary consequences.

Regardless of whether or not a complaint has been filed under the Yeshiva's grievance procedures, if the Yeshiva knows, or reasonably should know, about possible sexual harassment involving individuals subject to the Yeshiva's policies at the time, the Yeshiva will promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the Yeshiva determines that an investigation is not required. If the Yeshiva determines that the alleged conduct more likely than not occurred, it will immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects.

The Yeshiva will ensure that the persons or entities responsible for conducting investigations, finding facts, and making disciplinary decisions are neutral, and will ensure trauma-informed and impartial investigation of complaints. Student parties will be given an opportunity to identify witnesses and other evidence to assist the institution in determining whether a policy violation has occurred, and will be informed that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing.

If at any point in the grievance process, the complainant informs the Title IX coordinator in writing that he/she requests a dismissal, the complaint will be dismissed. If all parties are willing, they may meet with a mediator to try to reach an informal resolution. If all parties are satisfied with the resolution the complaint may be dismissed. If at any point either party chooses to discontinue mediation, the grievance process will continue. All parties will be notified, in writing, of a dismissal.

The Yeshiva does not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.

The Yeshiva will not require that the complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the complainant's access to education.

If the allegations in the Formal Complaint are behaviors that do not meet the definition of sexual harassment as defined by Title IX, or the allegations took place outside of the school's education program or activity, or were against a person outside of the United States, the formal complaint will be dismissed as not being in the jurisdiction of the institution, and the complainant will be referred to other resources including law enforcement and supportive resources.

A written notice will be provided to parties of the outcome of the complaint, including whether a policy violation was found to have occurred, the basis for that determination, including factual findings, and any discipline imposed. The Yeshiva will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

If the allegations are behaviors that meet the definition of sexual harassment as defined by Title IX and took place within the school's education program or activity against a person inside the United States, the Title IX coordinator will send both the complainant and respondent written notice of the complaint and its allegations.

The investigation and adjudication of alleged misconduct under this section is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for postsecondary institutions to comply with their obligations under existing law. The complainant does not have the burden

to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

If a policy violation is found to have occurred, the Yeshiva will initiate a formal investigation within 14 days of the complaint filing. The student parties will receive notice that the Yeshiva is conducting a formal investigation. The notice will include the allegations and the alleged institutional policy violations under review. The investigator(s) will be responsible to research the incident and gather evidence. Any new allegations that arise during the course of the investigation that could subject either party to new or additional sanctions will be subject to the same notice requirements.

The Yeshiva, and not the parties, will bear the primary burden of gathering evidence. To protect the privacy of all parties, and in accordance with HIPAA, the Yeshiva will not access or disclose any party's medical, psychological, or treatment records without voluntary written consent. All parties retain the right to gather evidence independently and discuss the allegations directly with the investigator(s).

The Yeshiva will afford both student parties the opportunity to each have a support person or adviser accompany the student party during any stage of the process. Student parties have the right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. An attorney may serve as a support person or advisor.

When requested by a complainant or otherwise determined to be appropriate, the Yeshiva will issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation. The Yeshiva will not issue an interim mutual no-contact directive automatically, but instead will consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made will be unilateral and only apply against the party found responsible.

Upon the issuance of a mutual no-contact directive, the Yeshiva will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the Yeshiva will provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.

If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the Yeshiva will take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant. The Yeshiva will generally grant the request. In determining whether to disclose a complainant's identity or proceed to an investigation over the objection of the complainant, the Yeshiva may consider whether any of the following apply:

(I) There are multiple or prior reports of sexual misconduct against the respondent.

(II) The respondent reportedly used a weapon, physical restraints, or engaged in battery.

(III) The respondent is a faculty or staff member with oversight of students.

(IV) There is a power imbalance between the complainant and respondent.

(V) The complainant believes that the complainant will be less safe if the complainant's name is disclosed or an investigation is conducted.

(VI) The Yeshiva is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.

If the Yeshiva determines that it can honor the student's request for confidentiality, it will still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. The Yeshiva will also take immediate steps to provide for the safety of the complainant while keeping the complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The complainant will be notified that the steps the Yeshiva will take to respond to the complaint will be limited by the request for confidentiality.

If the Yeshiva determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, it will inform the complainant prior to making this disclosure or initiating the investigation. The Yeshiva will also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the Yeshiva inform the respondent that the student asked the Yeshiva not to investigate or seek discipline, the Yeshiva will honor this request.

The Yeshiva will consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the Yeshiva's policies.

The investigator or hearing officer will not consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual.

The investigator or hearing officer will not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations. Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent pursuant to the above sub-subclause, the mere fact that the complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual. Before allowing the consideration of any evidence proffered pursuant to this subdivision, the investigator or hearing officer shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause.

The Yeshiva will send written advance notice of any investigative interviews, meetings, or hearings. The Yeshiva will send the parties, and their advisors, a summary of the evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence before a formal hearing.

The Yeshiva will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

A notice in writing to parties of any extension of a time period granted in the investigation and fact-finding process that would change the prospective timeframes for the major stages of the complaint process, and the reason for that extension will be provided.

Periodic status updates on the investigation consistent with the timelines listed will be provided to the complainant and respondent.

The Yeshiva will decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, the Yeshiva may consider whether the parties

elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation.

If determined to be necessary, the Yeshiva will schedule a live hearing with the right of cross-examination. Each party's advisor may ask the other party and any witnesses all relevant, followup, and questions challenging credibility. Questions of either party or of any witness that are repetitive, irrelevant, or harassing are prohibited.

If either party does not have an advisor present at the hearing, the school will provide, without fee or charge to that party, an advisor of the school's choice who is acceptable to that party.

At the request of either party, the Yeshiva will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. The Yeshiva will create a recording, or transcript, of any live hearing for the record. The decision-maker(s) will receive proper training on any technology that will be used at the live hearing.

Any hearing shall be subject to the following rules:

1. Any cross-examination of either party or any witness shall not be conducted directly by a party.
2. Either party or any witness may request to answer the questions by video from a remote location.
3. Student parties shall have the opportunity to submit written questions to the hearing officer in advance of the hearing. At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The institution may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.
4. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

Within 14 days of conclusion of the hearing, the decision-maker(s) will issue a written determination with conclusions. The determination will employ "preponderance of the evidence" standard regarding culpability. Preponderance of the evidence standard is met if the institution determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision. It will detail findings of fact as to whether the alleged conduct occurred, and the rationale for its findings as to each allegation. It will describe any disciplinary sanctions imposed on the respondent, and whether other specific remedies will be provided to the complainant. The written determination will be sent to both parties simultaneously, along with information about how to file an appeal.

All parties will have the right to file an appeal within 10 days based on the following: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or an assertion that institutional Title IX personnel had a conflict of interest or bias that affected the outcome of the matter. The non-appealing party will have a chance to respond to the appeal.

Supportive Measures

The Yeshiva will inform the complainant and respondent of the available supportive measures, resources and referrals and assist them in accessing those resources. Some resources that provide culturally

sensitive individualized services which are reasonably available are listed below. These resources have been vetted by the Yeshiva, which has determined that they are non-punitive, non-disciplinary, and not unreasonably burdensome to the respondent; while designed to ensure equal educational access, protect safety, and/or deter sexual harassment. Student parties will receive a notice regarding these counseling resources developed and maintained by the institution for student parties in school misconduct matters involving sexual harassment. Supportive measures may be provided regardless of whether the complainant files a Formal Complaint, in the absence of an investigation, and before the respondent is found to be responsible.

Remedies

Remedies will be enforced only after the grievance process is completed, once a respondent is found to be culpable. Remedies are designed to maintain the complainant's equal access to education and may include the same individualized services described above as supportive measures. Remedies may also be punitive, disciplinary, and they may be burdensome for the respondent. Remedies will be implemented based on what is reasonable under the circumstances.

Resources

National and Regional Resources

National Domestic Violence Hotline

(800) 799-7233

<https://www.thehotline.org>

National Sexual Violence Resource Center

(800) 656-4673

<https://www.nsvrc.org/>

RAINN National Sexual Assault Hotline

(800) 656-4673

<https://www.rainn.org/>

Department of Education – Title IX

<https://sites.ed.gov/titleix/>

California Coalition Against Sexual Assault

(916) 446-2520

<https://www.valor.us/>

Additional Resources that are bilingual and culturally sensitive to the needs of the Orthodox Jewish community:

Amudim/Project Heal

(646) 517-0222

info@amudim.org

<https://amudim.org/support-for-victims/>

Agudath Israel of America

Legal guidance and resources

(212) 797-9000 Ext. 335

<https://agudah.org/>