Office of Sexual Misconduct Prevention and Response Investigation
Procedures for Non-Title IX Sexual Misconduct

**How to File a Complaint.** Anyone may file a report with respect to an alleged incident of sexual and gender-based harassment (including quid pro quo sexual harassment), gender-based discrimination or harassment, sexual misconduct, sexual assault, dating violence, domestic violence, or stalking (as defined in AD91) in person, electronically, or via phone, by contacting the Office of Sexual Misconduct Prevention and Response (“OSMPR”) or the Title IX Office; however, the below procedures do not apply to reports filed that are determined to meet the University’s obligations under Title IX.

The University addresses reports of alleged sexual harassment and related misconduct pursuant to its policies AD85 (for Title IX sexual harassment and related misconduct) and AD91 (for non-Title IX sexual and gender-based harassment and related misconduct). Reports of alleged sexual and gender-based harassment and/or related misconduct will ordinarily be reviewed by the University’s Title IX Coordinator, who will make an initial assessment to determine whether the alleged conduct falls under Title IX (AD85) or not (AD91). Reports of alleged sexual harassment or related misconduct which do not meet the definition of Prohibited Conduct or the jurisdictional requirements under Title IX, and which involve student Respondents, will be dismissed by the Title IX Coordinator and instead investigated by OSMPR pursuant to these procedures. Upon completion of OSMPR’s investigation, Penn State’s Office of Student Conduct (OSC) will ordinarily receive the investigation report, initiate and manage a conduct process, and impose sanctions if appropriate.

Reports made to OSMPR of conduct which meets or may meet the definition of Prohibited Conduct under AD85 will be routed to the University’s Title IX Coordinator for handling pursuant to AD85, which delineates the University’s Title IX obligations.
PROCEDURES

I. Initial Assessment

After receiving a report, the Director of OSMPR or their designee (hereinafter “Director” shall include the Director of OSMPR and their designee) will make an initial assessment of the reported information and respond to any immediate concerns raised by the report.

As part of the initial assessment, the Director will assess whether the alleged misbehavior is student-related and whether it constitutes sexual harassment (including quid pro quo sexual harassment), sexual assault, dating violence, domestic violence, or stalking as defined by AD91 or should be addressed by another office (e.g., Title IX, Office of Student Conduct, Affirmative Action Office, Human Resources, or other University officials as appropriate); assess the Complainant’s safety and well-being and offer the University’s support and assistance; assess potential threats to the community; assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident; ascertain the ages of the Complainant and Respondent, if known, and, if either of the parties was a minor (under 18) at the time the alleged misconduct was reported, contact the appropriate child protective service agency; and, work with the Office of Student Conduct (OSC) to implement interim actions as appropriate and necessary (e.g., interim suspension from

There are also confidential reporting locations. As such, reporting to these locations will not initiate the procedures articulated in this document:

**Gender Equity Center**
814-863-2027
204 Boucke Building, University Park
The Center provides counseling and assistance with needs such as classroom accommodations, rescheduling exams, trauma drop from the University, and alternative housing.

**Counseling and Psychological Services (CAPS)**
814-863-0395
501 Student Health Center, University Park
CAPS provides counseling, support groups, and crisis intervention.

**In addition, reports can be made to the Penn State Hotline, and may be anonymous. Non-anonymous reports, however, are not confidential.**
1-800-560-1637
Contact the Penn State Hotline 24 hours a day, 7 days a week to be connected with confidential support services at your campus. Your report can be made anonymously and without fear of retaliation.
the University, prohibiting contact with the other party, restriction from activities or campus locations). The Director will also assess the report for Clery reporting purposes and coordinate with University Police as appropriate. As part of this initial assessment process, the Director will also ensure that the Complainant receives a written explanation of all available resources and options, including the following:

- encouragement to report the behavior to the appropriate law enforcement agency;
- support and assistance available through University resources (e.g., residential accommodations, academic accommodations, etc.) regardless of whether the Complainant chooses to participate in the University process, a law enforcement investigation, or both;
- the Complainant’s right to seek medical treatment and information about preserving potentially key forensic and other evidence;
- the Complainant’s right to seek protective measures;
- the University’s prohibition against retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation pursuant to University Policy AD67; and,
- the Complainant’s opportunity to meet with the Director to discuss resources, rights, and options.

When the Director decides to initiate an investigation, impose protective measures or take other action that impacts the Respondent (e.g., administrative directive or interim suspension), the Director will also ensure that the Respondent is notified and receives written information on available resources and options. The Director will ensure that a Respondent is informed of the following:

- the nature of the investigation, including a concise summary of the conduct at issue and the portion(s) of the Student Code of Conduct the behavior allegedly violates;
- support and assistance available through University resources;
- the University’s prohibition against retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation pursuant to University Policy AD67; and,
- the Respondent’s opportunity to meet with an OSMPR a staff member to discuss resources, rights, and options.

II. University Action Following Initial Assessment

Upon completion of an initial assessment, the Director will determine the course of action, which may include:

**Formal Resolution:** includes (a) an investigation completed by a trained and impartial investigator; (b) a review of the investigation by a case manager in OSC to determine if, based on the information presented in the investigative packet, it is reasonable to believe that a violation occurred; (c) if necessary, a hearing before a specially trained University Hearing Authority, such as the University Conduct Board or an Administrative Hearing Officer to determine, by a preponderance of the evidence, whether a violation or violations of the Code occurred; (d) the imposition of sanctions and other appropriate remedies if there has been a finding of a Student Code of Conduct violation; and, (e) the opportunity
to challenge the outcome of the investigation or any sanction through an appeal, on specified grounds.

- **Informal Resolution**: does not include an investigation or conduct action against a Respondent, but may include imposing appropriate and reasonable remedies, including counseling, education and/or training, as agreed to by the parties. Informal resolutions may also be appropriate as an additional measure during sanctioning (i.e., after a formal resolution), or after a sanction has been completed and a Respondent is returning to the University community; or

- Alternative or additional remedies as appropriate and not limited to the official resolution process. These may include, but are not limited to, training and other educational measures or resources for members of the University community.

The Director’s course of action following an initial assessment will be guided by:
(1) whether the Complainant wishes to pursue formal resolution or requests anonymity, requests that an investigation not be pursued, and/or requests that no conduct action be taken; (2) the availability of information or evidence suggesting that a Code violation may have occurred; and (3) any obligation on the part of the University to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent, and address the effects of the reported misconduct.

**A. WHERE THE COMPLAINANT WISHES TO PURSUE FORMAL RESOLUTION**

After an initial assessment, when the Complainant files a Complaint and requests an investigation and the University has conduct authority over the alleged Respondent, the Director will initiate a formal resolution process. If the reports of misconduct are against a third party (i.e., not a member of the University community), the University’s actions are limited because of jurisdiction. Although the University’s ability to take direct action against a third party may be limited, the University will still take steps to provide the Complainant appropriate immediate support and assistance available through University resources and resources available from entities outside the University.

**B. WHERE THE COMPLAINANT REQUESTS THE MATTER BE RESOLVED THROUGH INFORMAL RESOLUTION**

A Complainant may request to the Director that the reported matter be resolved through an informal resolution process. In these instances, the Director will review the matter to determine whether such a process is appropriate under the circumstances and to determine whether any additional action by the University is appropriate. If the matter is determined, in the Director’s discretion, to be appropriate for informal resolution, the matter will transition to an informal resolution process.

**C. WHERE THE COMPLAINANT DOES NOT RESPOND TO THE DIRECTOR’S OUTREACH OR REQUESTS ONE OR MORE OF THE FOLLOWING: (I) ANONYMITY; (II) THAT AN INVESTIGATION NOT BE PURSued; AND/OR, (III) THAT NO CONDUCT ACTION BE TAKEN**

There may be cases in which a Complainant does not respond to outreach attempts. In these instances, before taking any further investigative steps, the Director will evaluate all available
information about the report gathered during the initial assessment as well as consult as appropriate with other University departments to determine the appropriate next steps. Also, a Complainant may request that their name or other personally-identifiable information not be shared with a Respondent, that no investigation be pursued, and/or that no action be taken. These matters will also be considered by the Director, along with the Complainant’s requests.

III. Director’s Review

The Director will consider a Complainant’s request for anonymity, that an investigation not be pursued, and/or that no action be taken. They will also consider the Complainant has not responded to contacts by the Director and will balance any Complainant’s request or lack of responsiveness against the following factors to determine appropriate next steps:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- the respective ages and roles of the Complainant and Respondent;
- the role of drugs and/or alcohol in the incident;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of violence;
- whether there have been other reports of misconduct (verified or not) by the Respondent;
- whether the report reveals a pattern of related misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- the Complainant’s reasons for not wanting to pursue an investigation or conduct action, and the impact that moving forward nonetheless could have on the Complainant;
- whether the University possesses other means to obtain relevant evidence;
- fairness considerations for both the Complainant and the Respondent;
- the University’s obligation to provide a safe and non-discriminatory environment; and
any other available and relevant information.

The Director will make a determination regarding the appropriate manner of resolution. The University will seek resolution consistent with the Complainant’s request, if possible, based upon the facts and circumstances, while also protecting the health and safety of the parties involved and the University community.

A. DETERMINATION TO NOT PROCEED WITH AN INFORMAL OR FORMAL PROCESS

When the Director agrees, that an informal or formal process not be initiated, either after a Complainant’s request or if Complainant is nonresponsive, the University may nevertheless take other appropriate steps to address the reported misconduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedies to the Complainant, providing targeted training and prevention programs, and/or providing or imposing other remedies. The Complainant may at any time change their mind and decide they wish to pursue informal or formal resolution. The Director also may request that a report be re-opened and pursued if any new or additional information becomes available.

B. DETERMINATION THAT A COMPLAINANT'S REQUEST(S) CANNOT BE HONORED

In those instances when the Director determines that the University must proceed with an informal or formal process despite the Complainant’s request that it not occur, the Director will notify the Complainant that the University intends do so, but that the Complainant is not required to participate.

The University’s ability to fully investigate and respond to a report may be limited if the Complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps, if available, to limit the effects of the alleged misconduct and prevent its recurrence. Those steps may be taken as part of an informal resolution.

IV. Formal Resolution

If a determination is made to pursue a formal resolution, the University will initiate a reliable, objective, and impartial investigation and resolution process. Complaints will be investigated and managed by internal or external investigators who have been appropriately trained on issues related to sexual harassment, including quid pro quo sexual harassment, gender-based discrimination or harassment, sexual misconduct, sexual assault, dating violence, domestic violence, stalking, and victimization, as well as how to conduct investigations and the decision-making process that affords both the Complainant and Respondent a full and fair opportunity to be heard, to submit information and other evidence, and to identify witnesses.

A formal resolution typically begins when:
• a Complaint has been filed and the Complainant subsequently requests, with no
deadline, an investigation of the alleged misconduct; or

• after receiving a Complaint, the Director has determined, based on the totality of the
circumstances and the information available, that the formal resolution process is
appropriate.

A. INVESTIGATION

An investigation will afford both the Complainant and Respondent a full and fair opportunity to
be heard, to submit information and other evidence, and to identify witnesses. During an
investigation, the investigator typically will meet separately with the Complainant, Respondent
and pertinent witnesses; offer the parties the opportunity to submit and/or identify related and
relevant information or evidence; and gather other relevant information or evidence, including
documents, photographs, communications between the parties, medical records (subject to the
consent of the applicable person) and other records as appropriate and to the extent possible,
understanding that the investigator does not have subpoena power.

Following each interview, the interviewed person will be provided with a draft summary of their
interview and an opportunity to comment on the summary to ensure its accuracy and
completeness. Corrections and revisions will be made as appropriate.

In addition, the Complainant or Respondent may provide the investigator other supporting
materials relevant to the matter at any time during the investigation. The investigator may
impose time and page limits on written documents and information presented by either person as
part of the investigation.

1. Role of Investigator. When a formal resolution process is initiated, the Director will
designate an investigator. The investigator will typically be a member of OSMPR,
although the investigator may be any appropriately trained individual from inside or
outside the University, as designated by the Director. The investigator must be impartial,
free of any actual conflict of interest, and have specific and relevant training and
experience. The Director’s determination in that regard is final.

A Complainant or Respondent who has concerns that the assigned investigator cannot
conduct a fair and unbiased review, may report those concerns to the Director who will
assess the circumstances and determine whether a different investigator should be
assigned to the matter.

Investigators do not function as advocates for Complainants or Respondents.
Investigators can, however, identify campus support and other resources for
Complainants and Respondents and refer them to other offices such as the Gender Equity
Center, Counseling and Psychological Services, or Student Care and Advocacy, to
coordinate services for students upon request.

investigator, the Respondent will be informed in writing of the initiation of the investigation. The Complainant will similarly be notified, in writing, unless the Complainant has requested that the University not contact them. The written information will include the identities of the parties, if known, a concise summary of the alleged misconduct at issue, the date and location of the alleged misconduct, if known, and the section(s) of the Student Code of Conduct potentially violated. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional prohibited conduct under the Student Code of Conduct, AD91, or other relevant policies such as AD85.

3. Assumption of Good Faith Reporting. The University presumes that Complaints are filed in good faith. A finding that the behavior at issue does not constitute a violation of the Student Code of Conduct or that there is insufficient evidence to conclude that the incident occurred as reported, does not mean that the report was made in bad faith. The University encourages all individuals who have experienced or witnessed behavior they believe violates the Student Code of Conduct to report the matter so that it may be addressed, without fear of consequences from the University even if their good faith report cannot be substantiated or the behavior does not constitute a violation of the Code. Bad faith reports, however, may subject the reporting party and any other individuals who may be complicit in the bad faith report to conduct action.

Presumption of Non-Responsibility and Standard of Proof. The investigation is a neutral, fact-gathering process. The Respondent is presumed to be not responsible for the alleged conduct until a determination is made at the conclusion of the formal resolution process. The formal resolution process, including a University hearing, may provide for sufficient basis, by a preponderance of the evidence, to find that the Respondent violated the Student Code of Conduct. A preponderance of the evidence means that it is more likely than not, based upon the totality of all relevant evidence and reasonable inferences from the evidence, that the Respondent violated the Student Code of Conduct.

4. Active Participation by the Parties and Witnesses is Voluntary. Complainants, Respondents, or witnesses may choose to participate or decline to participate in the formal resolution process; however, even if a Complainant or Respondent declines to participate, the University, at its discretion, may continue to investigate the report and issue findings based on available information. Further, the University may mandate a meeting with the parties, although the parties may choose to not share any information or respond to questions.

5. Expectation of Complainant, Respondent, and Witnesses in an Investigation. The Complainant, Respondent, witnesses and others sharing information with the investigator are expected to provide truthful information in any investigative or conduct proceeding. Failure to provide truthful information to a school official is, in and of itself, a violation of the Student Code of Conduct.

6. Acceptance of Responsibility. The Respondent may, at any time, elect to resolve the formal resolution process by accepting responsibility for the violations alleged, in which case the matter will be referred to OSC, which will determine appropriate sanctions through its normal, non-hearing process. The Respondent may not later contest their
acceptance of responsibility.

7. **Advisors.** Throughout the process, a Complainant, Respondent or witness may have an advisor of their choice. A party shall not select an advisor with the actual or effective purpose of disrupting or attempting to disrupt the proceedings or causing emotional distress to the other party or parties. The advisor, upon a party’s request may: (1) accompany the party in any grievance proceeding or related meeting; (2) advise the party in the preparation, presentation, and/or sharing of information; and, (3) advise the party in the preparation of any appeals or sanction reviews. The advisor shall not perform any function in the process other than advising the party as described, and may not make a presentation or represent the party during any interview or other process. The parties must ask and respond to questions on their own behalf, without interruptions or presentations by their advisor. Parties may consult with their own advisors quietly or in writing during a session, or outside during breaks, but the advisor may not speak on behalf of the advisee or directly participate otherwise in the proceeding. Delays in the process will not normally be allowed due to scheduling conflicts with advisors. If, at any point in the process, an advisor becomes disruptive or fails to follow the rules for participation as set forth in this document, the University reserves the absolute and non-appealable right to remove the advisor from the proceeding, and, if appropriate, any future meetings/proceedings.

8. **Evidence.** The investigator is responsible for gathering relevant evidence to the extent reasonably possible. To this end, the parties and witnesses are asked and encouraged to identify other witnesses and provide relevant information, such as documents, communications, text messages, social media postings, photographs, and other evidence. Both parties are encouraged to provide all relevant information as promptly as possible to facilitate a timely resolution. If appropriate, the parties are encouraged to provide necessary releases to allow the investigator to gather additional relevant information.

In general, a person’s medical and counseling records are confidential and not accessible to the investigator unless that person voluntarily chooses to share those records with the investigator, in which case that person must provide a written consent form. The investigator will review all information identified or provided by the parties and will, in their sole discretion, assess the appropriateness, relevance, and probative value of the information developed or received during the investigation.

In addition to the investigative report, either party will be able to present any evidence not included in the packet to the OSC case manager or hearing authority for their review, should a hearing be convened.

The investigator may, in their sole discretion, consult experts who have no connection to the reported incident when expertise on a specific topic or submitted evidence is needed to gain a fuller understanding of the relevance or value of the evidence or the issue at hand. The investigator is not obligated to consult any expert at the request of a party.

9. **Prior or Subsequent Behavior of the Respondent or Complainant.** Prior or
subsequent behavior of either party will never be used to prove character, but may be considered for other purposes, such as determining pattern, knowledge, intent, or reasons for taking an action. For example, evidence of a pattern of related behaviors by the Respondent, either before or after the incident in question may be deemed relevant and included in the investigative packet. Prior bad faith reports made by the Complainant may also be deemed to be relevant.

10. Prior Sexual Contact Between Complainant and Respondent. Prior sexual contact between a Complainant and a Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history between the parties is generally not relevant to the determination of a violation and will be considered only in limited circumstances. For example, if the question being determined is whether consent was given through mutually understandable actions (rather than words), information about prior sexual contact, in the totality of the evidence considered, may help the investigator and/or hearing authority understand the manner and nature of sexual communication between the two persons. This information may, therefore, be relevant in determining whether consent was sought and given during the incident in question.

However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act. Consent on one occasion does not, by itself, constitute consent on a subsequent occasion.

11. Pertinent witnesses. Pertinent witnesses must have observed the acts in question or have information relevant to the Complaint and cannot be participating solely to speak about an individual’s character.

Witnesses will have the opportunity to discuss the investigation process and participate in an interview. Following the interview, a witness will be provided with a draft summary of their interview so that they have the opportunity to comment on the summary and ensure its accuracy and completeness.

Where witnesses are interviewed as part of the investigation, the investigator will, as part of the preliminary investigation report, allow the Complainant and the Respondent to review and provide comment to a written summary of the witnesses’ interviews. This summary will identify the witnesses by name and relationship to either/both parties and the University.

12. Coordination with Law Enforcement. Where the University is made aware that there is a concurrent criminal investigation, the investigator will: inform any law enforcement agency that is conducting an investigation that a University investigation is also in progress; ascertain the status of the criminal investigation; and, determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

At the request of law enforcement, the University may agree to temporarily defer part or all of the investigation until after the initial evidence-gathering phase of the law enforcement investigation is complete. The investigator will communicate with the
parties, consistent with the law enforcement request and the University’s obligations, about resources and support, procedural options, anticipated timing, and the implementation of any necessary interim measures for the safety and well-being of all affected individuals.

Standards for criminal investigations are different than the standards for a violation of the Student Code of Conduct, and therefore, the University will not base its decisions solely on law enforcement reports and/or actions. Similarly, if the University determines a violation has occurred, the University will take appropriate action in accordance with applicable policies and procedures, regardless of external proceedings that may also be pending.

13. **Time Frame for Completion of Investigation.** The University will make every reasonable effort to resolve complaints in reasonably prompt timeframes. The investigation will typically not exceed 120 days; however, this timeline is not binding and creates no rights for the parties. The University can extend deadlines at its sole discretion. If temporary delays occur, the Complainant and Respondent will be notified in writing regarding the reason(s) for the delay. The parties will be notified, in writing, when the investigation resumes, if there was a temporary pause.

The investigator will notify the Complainant and Respondent on a regular basis about the status of the investigation. In cases where the timeframe will be extended, the investigator will provide written notice of the delay to both the Complainant and Respondent, and such notice will explain the reason for the delay.

14. **Preliminary Investigation Report.**

At the conclusion of the initial investigation, the investigator will draft a preliminary investigative report that includes all evidence gathered, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and all inculpatory and exculpatory evidence, and all evidence obtained as a part of the investigation that is directly related to the allegations in the formal complaint. Once the preliminary investigation report is approved by the Director the investigator will send the preliminary investigation report to each party and their advisors in an electronic format other than email, such as a secure file-sharing platform of the University’s choosing, with at least ten (10) business days for the parties to submit a written response. The parties and their advisors will not be permitted to download, copy, photograph or take other measures designed to retain copies of the evidence.

The investigator will consider the parties’ responses prior to drafting a final investigation report. At the conclusion of the review period, the investigator will remove the parties’ electronic access to the draft investigation report. If the investigator is unable to provide the parties access to the materials due to extraordinary and unforeseen circumstances, the investigator will provide the parties with a hard copy of the evidence in person or, if the distance between the parties and the investigator prohibits such delivery, a copy will be sent to the parties using registered mail requiring the recipient’s signature. Parties who receive a hard copy of the draft investigation report by registered mail will be required to return the copy to the investigator at the conclusion of the review period by using registered mail requiring a signature by the
15. **Final Investigation Report.**

The investigator, after reviewing and considering the parties’ responses to the draft investigation report, will complete the final investigation report that fairly summarizes the relevant evidence. The investigator will again provide temporary access to this report as outlined in the Preliminary Investigation Report section for the parties to review. However, no further response from the parties will be accepted unless the investigator determines it necessary. The final investigation report will be forwarded to the Office of Student Conduct after the ten business (10) days conclude.