# Pre-8/14/20 Policy
Office of Sexual Misconduct Prevention & Response

## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PURPOSE</td>
<td>2</td>
</tr>
<tr>
<td>POLICY STATEMENT</td>
<td>2</td>
</tr>
<tr>
<td>CONDUCT THAT IS PROHIBITED BY THIS POLICY (“Prohibited Conduct”)</td>
<td>2</td>
</tr>
<tr>
<td>CONSENSUAL RELATIONSHIPS</td>
<td>5</td>
</tr>
<tr>
<td>RESOURCES AND REPORTING</td>
<td>5</td>
</tr>
<tr>
<td>MANDATORY REPORTING</td>
<td>5</td>
</tr>
<tr>
<td>ANONYMOUS REPORTING</td>
<td>7</td>
</tr>
<tr>
<td>CONFIDENTIAL REPORTING</td>
<td>7</td>
</tr>
<tr>
<td>ADDITIONAL INFORMATION ON REPORTING</td>
<td>7</td>
</tr>
<tr>
<td>ADDITIONAL SERVICES FOR VICTIMS</td>
<td>8</td>
</tr>
<tr>
<td>ADDRESSING COMPLAINTS OF SEX AND/OR GENDER-BASED HARASSMENT, AND SEXUAL MISCONDUCT</td>
<td>8</td>
</tr>
<tr>
<td>SANCTIONS</td>
<td>8</td>
</tr>
<tr>
<td>AMNESTY FOR STUDENT DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS</td>
<td>9</td>
</tr>
<tr>
<td>FREE EXPRESSION AND ACADEMIC FREEDOM</td>
<td>9</td>
</tr>
<tr>
<td>EXTERNAL COMPLAINTS</td>
<td>9</td>
</tr>
<tr>
<td>FURTHER INFORMATION</td>
<td>9</td>
</tr>
<tr>
<td>REPORT RESPONSE PROCESS</td>
<td>10</td>
</tr>
<tr>
<td>I. Initial Assessment</td>
<td>10</td>
</tr>
<tr>
<td>II. University Action Following Initial Assessment</td>
<td>11</td>
</tr>
<tr>
<td>III. Review Panel</td>
<td>12</td>
</tr>
<tr>
<td>IV. Formal Resolution</td>
<td>14</td>
</tr>
<tr>
<td>Office of Student Conduct Protocols</td>
<td>20</td>
</tr>
</tbody>
</table>
PURPOSE

To establish the University's policy prohibiting sex and/or gender-based harassment and misconduct, as well as to define types of misconduct that must be reported. This policy is a companion to University Policy AD91, Discrimination and Harassment and Related Inappropriate Conduct.

POLICY STATEMENT

The University is committed to equal access to programs, facilities, admission and employment for all persons. It is the policy of the University to maintain an environment free of harassment and free of discrimination against any person because of age, race, color, ancestry, national origin, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, gender expression, genetic information or political ideas. Discriminatory conduct and harassment, as well as sexual misconduct and relationship violence, violates the dignity of individuals, impedes the realization of the University’s educational mission, and will not be tolerated. Gender-based and sexual harassment, including sexual violence, are forms of gender discrimination in that they deny or limit an individual’s ability to participate in or benefit from University programs or activities.

This policy shall not be construed to restrict academic freedom at the University, nor shall it be construed to restrict constitutionally protected expression.

Conduct prohibited by this policy may also violate Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964, as well as other applicable federal and state laws. Chris Harris is the Title IX Coordinator. Deputy Title IX Coordinators include Charmelle Green, Senior Associate Athletic Director of Intercollegiate Athletics and Kim Lantz Yoder, Equity Officer, Penn State College of Medicine. Additional information about how to contact these individuals, or to otherwise pursue or report a violation of this Policy, is set forth below.

Pursuant to this policy and Title IX of the Education Amendments of 1972, the University will identify Responsible and Confidential Employees on a regular, ongoing basis, and notify these individuals of their obligations to report (or not report) potential violations.

The University will provide regular, mandatory training for all University employees related to issues covered under this Policy. All University employees will be required to complete Title IX training within the first 30 days of employment at the University. In addition, all University employees will be required to complete an Annual Compliance Training as a reminder of reporting requirements and procedures on a yearly basis.

CONDUCT THAT IS PROHIBITED BY THIS POLICY (“Prohibited Conduct”)

a. Sexual harassment is defined as follows:
1. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program, activity, or employment. OR

2. When an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct. OR

3. The conduct rises to the level of sexual assault, as defined in the Clery Act. This can include any sexual act directed against another person, without the consent of the victims, including instances where the victim is incapable of giving consent. It can also include the following:

   i. *Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

   ii. *Incest* - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

   iii. *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent.

   iv. *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, without the consent of the victim.

b. Gender-Based Harassment is behavior consisting of physical or verbal conduct based on gender, sexual orientation, gender-stereotyping, perceived gender, or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe or pervasive such that it substantially interferes with an individual’s employment, education or ability to participate in or benefit from University programs, activities or opportunities and would detrimentally affect a reasonable person under the same circumstances. Gender-Based Harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or slurs. Whether the alleged conduct constitutes prohibited Gender-Based Harassment depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs and the status of the individuals involved.

(Note: Policy AD91 defines Sex and/or Gender-based Discrimination as conduct of any nature that denies an individual the opportunity to participate in or benefit from a University program or activity, or otherwise adversely affects a term or condition of an individual’s employment, education, or living environment, because of the individual’s sex, sexual orientation, pregnancy, pregnancy-related condition, gender, perceived gender, or gender identity. Conduct that may constitute Sex and/or Gender-based Discrimination but does not fall within the conduct defined in Policy AD85 is excluded from the definition of Prohibited Conduct in Policy AD85 and is addressed in Policy AD91).
c. Sexual Misconduct is a form of sexual harassment and refers to sexual offenses including but not limited to rape, sexual assault, sexual battery, sexual exploitation, sexual coercion and any other forms of nonconsensual sexual activity. Sexual misconduct can be committed by strangers, acquaintances and family members, as well as casual and long-term dating partners.

Sexual assault occurs when a person engages in sexual intercourse or deviate sexual intercourse with a complainant without the victim’s consent, and includes rape, fondling, incest, or statutory rape (as defined above). Sexual assault also includes, but is not limited to, attempted or unwanted sexual activity, such as sexual touching and fondling. This includes the touching of an unwilling person’s intimate parts (defined as genitalia, groin, breast or buttock, or clothing covering them), or forcing an unwilling person to touch another’s intimate parts.

Sexual exploitation includes, but is not limited to: prostituting another person; non-consensual visual or audio recording of sexual activity; non-consensual display or distribution of photos, images or information of an individual’s sexual activity or intimate body parts; non-consensual voyeurism; coercing someone against their will to engage in sexual activity, or; knowingly transmitting sexually transmitted disease (STD) without disclosing STD status.

Consent must be informed, freely given and mutual. If coercion, intimidation, threats or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious, where the respondent knew or reasonably should have known that the person was incapacitated. Inducement of incapacitation of another with the intent to affect the ability of an individual to consent or refuse to consent to sexual contact almost always, if not always, negates consent. Silence does not necessarily constitute consent. Whether a person has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

d. Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others, or to suffer substantial emotional distress. Stalking may include repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method.

e. Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be based on the reporting party’s statement and with consideration of the length and type of relationship and the frequency of interaction between the persons involved in the relationship. Dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse. However, it is important to recognize that emotional, verbal, and economic abuse are part of the web of dating violence and can exist without the presence of physical abuse.

Domestic Violence includes crimes of violence committed against a victim by: (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child; (iii) a person who is or has cohabitated with the victim as a spouse; (iv) a person similarly
situated to a spouse of the victim; or (v) any other person (adult or child) against whom the victim is protected under Pennsylvania’s domestic and family violence laws. It is important to recognize that emotional, verbal, and economic abuse are part of the web of domestic violence and can exist without the presence of physical abuse.

f. Retaliation, as defined in University Policy AD67, is also prohibited by this policy and may subject the individual who retaliates in violation of this or other University policy to discipline or sanctions.

In addition to the above, in the case of off-campus Prohibited Conduct that did not occur in the context of a University program or activity, the University will consider the effects of such off-campus conduct when evaluating whether there is a hostile environment on campus and/or in an off-campus education program or activity.

CONSENSUAL RELATIONSHIPS

While not expressly prohibited, romantic and/or sexual relationships between faculty and students, staff and students or supervisors and subordinate employees are strongly discouraged. Such relationships have the potential for adverse consequences, including the filing of charges of sexual harassment. Given the fundamentally asymmetric nature of the relationship where one party has the power to give grades, thesis advice, evaluations, recommendations, promotions, salary increases or performance evaluations, the consensual nature of the relationship is inherently suspect.

Even when both parties have consented to the relationship, there may be perceptions of conflicts of interest or unfair treatment of others. Such perceptions undermine the atmosphere of trust essential to the educational process or the employment relationship. Accordingly, the person in the position of supervision or academic responsibility must promptly report the relationship to his or her immediate supervisor. Once the consensual relationship is reported, the immediate supervisor is responsible for eliminating or mitigating the conflict of interest to the fullest feasible extent and ensuring that fair and objective processes are in place for decisions relative to grading, thesis advice, evaluations, recommendations, promotions, salary increases, or performance evaluations. The new supervisory or academic arrangement should be documented.

RESOURCES AND REPORTING

In situations involving danger to persons or property, individuals are strongly encouraged to first report the incident to the applicable police or public safety department.

MANDATORY REPORTING

All Responsible Employees, as defined by this policy, are required to report Prohibited Conduct to the Title IX Coordinator as set forth below.

a. Confidential Employee – A University employee who is exempt from reporting to the Title IX Coordinator incidents of gender-based harassment, sexual violence, sexual harassment,
or any other sexual misconduct in a way that identifies the victim. This includes professional and pastoral counselors and non-professional counselors or advocates. The University designates confidential employees and those individuals are notified of their designation.

1. Professional and pastoral counselors- includes licensed mental health counselors, pastors, priests, or any other pastoral counselor whose official responsibilities include providing mental health counseling to the campus community. It also includes individuals who are supervised by these people.

2. Non-professional counselors or advocates- includes individuals who are not professional or pastoral counselors, but work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, or health centers, including front desk staff and students, social workers, doctors, medical staff, or any other person with a professional license requiring confidentiality.

Employees who are designated as Confidential Employees are not required to report any information they learn about an incident involving Prohibited Conduct in a way that identifies the victim. Some Confidential Employees, such as non-professional counselors or advocates, may be required to report aggregate data only.

For more information, including locations where a list of Confidential Employees may be found, please visit the SHARE website.

b. Responsible Employee – All Penn State employees who are not Confidential Employees. Responsible Employees are required to report incidents of possible Prohibited Conduct to the Title IX Coordinator, using one of the methods identified below:

1. Fill out the form on the Title IX website
2. Contact the Title IX Coordinator directly, via telephone or email

Chris Harris, Title IX Coordinator

328 Boucke Building, University Park, PA 16802

Phone: (814) 863-0471

Email: cjh41@psu.edu or titleix@psu.edu

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., “Take Back the Night,” candlelight vigils, protests, or other public forums in which individuals may disclose incidents of Prohibited Conduct, collectively “Public Awareness Events”); or (2) during an individual’s participation as a subject in an Institutional Review Board (“IRB”)–approved human subjects research protocol. The University may provide information about individuals’ rights under Title IX and about available University and Community resources and support at Public Awareness Events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all student subjects of IRB research.
In addition to the requirement for Responsible Employees to notify the Title IX Coordinator of incidents of Prohibited Conduct, any individual may also report Prohibited Conduct under this policy to the Title IX Coordinator or to the other offices listed in the table below, as follows:

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<thead>
<tr>
<th>For Conduct Committed by</th>
<th>Report To</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Students or Student Organizations</td>
<td>Karen Feldbaum, Interim Senior Director, Office of Student Conduct and Deputy Title IX Coordinator</td>
<td>(814) 863-0342 <a href="mailto:kxf6@psu.edu">kxf6@psu.edu</a></td>
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<tr>
<td>Employees or third-parties</td>
<td>Suzanne Adair, Associate Vice President for Affirmative Action</td>
<td>(814) 863-0471 <a href="mailto:sca917@psu.edu">sca917@psu.edu</a></td>
</tr>
<tr>
<td>Students, employees, or third-parties at the Penn State College of Medicine</td>
<td>Kim Lantz Yoder, Equity Officer and Deputy Title IX Coordinator</td>
<td>(717) 531-0003, ext. 28335 <a href="mailto:kyoder1@psu.edu">kyoder1@psu.edu</a></td>
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</tbody>
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**ANONYMOUS REPORTING**

Anyone may make an anonymous report of Prohibited Conduct by contacting the Ethics and Compliance Hotline at 1-800-560-1637.

For more information on anonymous reporting, please see the Ethics and Compliance website and the Ethics and Compliance hotline.

**CONFIDENTIAL REPORTING**

For students and employees who wish to discuss or report, in a confidential setting, sexual misconduct, gender-based harassment, and/or any other Prohibited Conduct as addressed in this policy, a listing of confidential resources is available on the Sexual Harassment and Assault Reporting and Education (SHARE) website.

**ADDITIONAL INFORMATION ON REPORTING**

In addition to the above, employees and other individuals are reminded that they may have other reporting obligations under other mandatory reporting policies.

If the apparent victim is under the age of 18 at the time of the offense and there is any potential of child abuse, University employees should also consult University Policy AD72, Reporting Suspected Child Abuse, which addresses the procedure for mandatory reporting of suspected child abuse.

Finally, certain individuals may also be Campus Security Authorities for Clery Act purposes, and must also take into account their reporting obligations as a CSA under University Policy AD74.
ADDITIONAL SERVICES FOR VICTIMS

Primary care services and/or appropriate referrals to community services will be provided to victims of sexual violence, dating violence, domestic violence and/or stalking. Information about how to best support and identify available services for students and/or employees at all University campuses and locations may be accessed at the Affirmative Action Office website. Confidential and non-confidential resources are available and listed on the websites.

ADDRESSING COMPLAINTS OF SEX AND/OR GENDER-BASED HARASSMENT, AND SEXUAL MISCONDUCT

Once the University receives clear notice, prompt and equitable corrective measures will be taken to stop sexual or gender-based harassment or misconduct, to prevent its recurrence, and to remedy its effects. The Title IX Procedures Document, available at the University’s Title IX website and the Office of Student Conduct Procedures document sets forth in detail the University’s procedures for resolving complaints of sexual or gender-based harassment or misconduct (including sexual harassment, stalking, dating violence and domestic violence) and for complaints involving crimes of violence (including sexual assault, and rape) brought against students.

The Affirmative Action Office website sets forth in detail the University’s procedures for resolving complaints of discrimination and harassment (including sexual harassment) and for complaints involving crimes of violence (including sexual assault, rape, relationship violence, and stalking) brought against third parties and non-student employees of the University.

SANCTIONS

Against Students: Disciplinary sanctions for student violations of this policy will be imposed in accordance with the “Code of Conduct & Student Conduct Procedures Manual.” Sanctions range from conduct conversation, conduct warning, conduct probation, conduct suspension, and indefinite expulsion, and permanent expulsion. In addition, possible secondary administrative sanctions may include housing review, room reassignment, loss of housing, and loss of privilege. The University reserves the right to impose other sanctions in addition to those listed above in response to a specific circumstances of a case.

Against Employees: Disciplinary sanctions for employee violations of this policy, which may range from a disciplinary warning to termination from the University, will be imposed in accordance with applicable University policies. Disciplinary sanctions may include one or more of the following measures:

- Termination from the University
- Unpaid suspension
- Restrictions from all or portions of campus
- Change in working facility
- Mandated education
- Written reprimand in personnel file
• Removal from classroom teaching
• Tenure revocation
• Withhold salary increase (from one to several years)
• Removal of endowed chair
• Removal of emeritus status
• Removal of graduate school status
• Termination of research project funding
• Removal from administrative position

AMNESTY FOR STUDENT DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS

The University strongly encourages students to report incidents that may violate this policy. Therefore, students who act responsibly by reporting to the appropriate authorities information about conduct violating this policy typically will not face University disciplinary action for their own drug or alcohol possession or consumption in connection with the reported incident.

FREE EXPRESSION AND ACADEMIC FREEDOM

The University is committed to its long-standing tradition of academic freedom and free expression. The University is an institution whose members may express themselves, while protecting and respecting the rights of others to learn, to do research, and to carry out the essential functions of the University free from interference or obstruction. When addressing complaints of violations of this policy, the University will take all permissible actions to respond appropriately while respecting the rights of free expression and academic freedom. See AC64, AC47 and AD51.

EXTERNAL COMPLAINTS

The University encourages all individuals with a pertinent complaint to follow the process in this Policy. However, individuals may always choose to make a discrimination complaint directly with outside agencies, including, but not limited to, the Office for Civil Rights of the U.S. Department of Education based in Philadelphia, the U.S. Equal Employment Opportunity Commission, the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice, or the Pennsylvania Human Relations Commission, Harrisburg Regional Office. Contact information for these agencies can be found at the Affirmative Action Office website.

FURTHER INFORMATION

For questions, additional detail, or to request changes to this policy, please contact the Title IX Coordinator.
REPORT RESPONSE PROCESS

I. Initial Assessment

After receiving a report, the Title IX Coordinator or their designee (typically, the Director or staff members of the Office of Sexual Misconduct Prevention and Response (OSMPR); hereafter, “Title IX Coordinator”) 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 Title IX Coordinator will assess whether the alleged misbehavior is student-related and whether it constitutes sexual harassment, sexual assault, dating violence, domestic violence, or stalking, including behavior that violates Title IX, or should be addressed by another office (e.g., Office of Student Conduct, Affirmative Action Office); 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; and 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 may work with the Office of Student Conduct (OSC) to implement interim actions as appropriate and necessary (e.g., interim suspension from the University, prohibiting contact with the other party, restriction from activities or campus locations). The Title IX Coordinator will also assess the report for Clery reporting purposes and coordinate with University Police as appropriate. As part of this Initial Assessment process, the Title IX Coordinator 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; and
- the Complainant’s opportunity to meet with the Title IX Coordinator or their designee to discuss their resources, rights, and options.

Whenever the Title IX Coordinator decides to initiate an investigation, impose protective measures that impact the respondent (e.g., administrative directive or interim suspension), or take any other action that impacts a Respondent, the Title IX Coordinator will also ensure that the Respondent is notified and receives written information on available resources and options. The Title IX Coordinator 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 Code 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; and
the Respondent’s opportunity to meet with the Title IX Coordinator or their designee to discuss
their resources and options.

II. University Action Following Initial Assessment

Upon completion of an Initial Assessment, the Title IX Coordinator 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 the Office of Student Conduct
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 (i.e., University Conduct Board or Administrative Hearing Officer, hereafter
“hearing authority) 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 Code 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 action may also be appropriate as an
additional measure during sanctioning (i.e., after a formal process), or after a sanction has been
completed and a Respondent is returning to the University community; or

• Additional remedies: may include, but are not limited to, training and other educational
measures for members of the University community, as appropriate.

The Title IX Coordinator’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 Title IX
Coordinator will initiate formal resolution. If the reports of misconduct are against a third party
(i.e., not a member of the University community), the University’s actions will be limited. Even
though the University’s ability to take direct action against a particular 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 Title IX Coordinator that the reported matter be resolved through an informal resolution process. In these instances, the Title IX Coordinator will review the matter to determine its appropriateness for such a process and to determine whether any additional action needs to be taken by the University. If the matter is determined in the Title IX Coordinator’s sole discretion to be appropriate for informal resolution, the matter will transition to an informal resolution process.

C. WHERE THE COMPLAINANT DOES NOT RESPOND TO OUTREACH BY the Title IX Coordinator OR REQUESTS ONE OR MORE OF THE FOLLOWING: ANONYMITY; THAT AN INVESTIGATION NOT BE PURSUED; AND/OR THAT NO CONDUCT ACTION BE TAKEN

There may be cases in which a Complainant does not respond to outreach attempts by the Title IX Coordinator. In these instances, before taking any further investigative steps, the University will forward all available information about the report gathered during the initial assessment to a Review Panel for a recommendation on how to proceed, as further described below in Section III.

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 forwarded to the Panel for review, along with the Complainant’s requests.

III. Review Panel

The Review Panel is convened by the Title IX Coordinator and is comprised of trained faculty or staff members as determined by the Title IX Coordinator. The Review Panel will consider a Complainant’s request for anonymity, that an investigation not be pursued, and/or that no action be taken. It will also consider cases in which a Complainant has not responded to contacts by the Title IX Coordinator. The Review Panel 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 additional violence;
• whether there have been other reports of other misconduct or other verified misconduct 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 nonetheless moving forward with such actions 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 Review Panel will provide information and advice to the Title IX Coordinator such as:
• their individual and collective perspectives on whether, how, and to what extent, the University should further investigate the Complaint or pursue conduct action;
• what steps may be possible or appropriate when a Respondent or Complainant is unknown or the Complainant requests anonymity or is not participating; and
• what other measures or remedies might be considered to address any effects of the reported behavior on the campus community, if no formal action is pursued.

After receiving feedback from the Review Panel, the Title IX Coordinator will make a determination regarding the appropriate manner of resolution. The University will seek resolution consistent with the Complainant’s request, if it is possible to do so, 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
Where the Review Panel recommends and the Title IX Coordinator 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 eliminate the reported misconduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures 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 may wish to pursue informal or formal resolution. The Title IX Coordinator 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 Title IX Coordinator determines that the University must proceed with an informal or formal process despite the Complainant’s request that it not occur, the Title IX Coordinator 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.
While the input from the Review Panel is valuable, in all cases, the final decision on whether, how, and to what extent the University will conduct an investigation, and whether other measures will be taken in connection with any allegation of misconduct, rests solely with the Title IX Coordinator.

IV. Formal Resolution

If a determination is made to pursue a formal resolution, the University will initiate a prompt, thorough, fair, and impartial investigation and resolution process. Complaints will be investigated and managed by internal or external investigators who have been trained on issues related to sexual harassment, gender-based discrimination or harassment, sexual misconduct, sexual assault, dating violence, domestic violence, stalking, and victimization, and on how to conduct an investigation and 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 requests, at any time, an investigation of the concern; or
• after receiving a Complaint, the Title IX Coordinator, in consultation with the Review Panel, has determined, based on the totality of the circumstances and the information available, that a formal resolution process is appropriate. While the Title IX Coordinator will identify the most effective means to formally move forward in response to a Complaint, in most instances, the review will involve an investigation.

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 the power of subpoena.

Following each interview, the interviewed person 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. 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. The University’s review will be thorough, reliable and impartial.
1. Role of Investigator. Whenever a formal resolution process is initiated, the Title IX Coordinator will designate an investigator. The investigator will typically be a member of the Office of Sexual Misconduct Prevention and Response (OSMPR), although the investigator may be any appropriately trained individual from inside or outside the University, as designated by the Title IX Coordinator. The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. The Title IX Coordinator’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 (e.g., has a personal connection with one of the parties or witnesses, etc.), may report those concerns to the Title IX Coordinator 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.

2. Notice of the Investigation. Before any interview of the Respondent by an 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 Code 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 Code.

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 Code 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 Code 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.

4. Presumption of Non-Responsibility and Standard of Proof. The investigation is a neutral, fact-gathering process. The Respondent is presumed to be not responsible. This presumption may be overcome only where the result of a University hearing is a conclusion that there is a sufficient basis, by a preponderance of the evidence, to support a finding that the Respondent violated the Code. A preponderance of the evidence means that it is more likely than not, based upon the totality of all the relevant evidence and reasonable inferences from the evidence, that the Respondent violated the Code.
5. 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 party may choose to not share any information or respond to questions.

6. 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 can be, in and of itself, a violation of the Code.

7. 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 the Office of Student Conduct, which will determine appropriate sanctions through its normal, non-hearing process. The Respondent may not later contest their acceptance of responsibility.

8. 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 meeting/proceeding, (2) advise the party in the preparation and presentation of 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. The advisee may consult with their advisor 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.

9. Evidence. The investigator, along with assistance from the Complainant, Respondent, and witnesses, is responsible for gathering relevant evidence to the extent reasonably possible. To this end, the parties will be asked to identify witnesses and provide other relevant information, such as documents, communications, text messages, social media postings, photographs, and other evidence. Both persons 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. 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.

10. 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.

11. 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, Title IX Coordinator, 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.

12. 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 Report, allow the Complainant and the Respondent to review and provide comment
to a written summary of the witness’ interviews. This summary will identify the witness by name and relationship to either/both parties and the University.

13. 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 its own 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 Code, 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.

14. Time Frame for Completion of Investigation. The investigation shall proceed as expeditiously as possible, with a goal of being completed in 120 days.

An investigation may be extended or delayed as necessary for good cause and to ensure the integrity and completeness of the investigation. Reasons for the delay may include concurrent law enforcement activity; to accommodate the availability of witnesses; to account for University breaks, official holidays and closures, illness, or scheduled absences of University personnel involved in the process; to account for case complexities including the number of witnesses and volume of information provided by the parties; to accommodate disabilities; the need for language assistance; or for other legitimate reasons.

The investigator will notify the Complainant and Respondent on a regular basis about the status of the investigation. In cases where the time frame 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.

15. Preliminary Investigation Report. After each party has had the opportunity to comment on their own interview summaries and to identify witnesses and other potential information, and the investigator has completed witness interviews and the gathering of evidence, the investigator will prepare a preliminary report. The preliminary report will include, as applicable, the summaries of the Complainant’s interview, Respondent’s interview, the summaries of each witness’ interview, and either a copy or written summary of any other information that the investigator, in their sole discretion, determines to be relevant to the report. The preliminary report will not contain any
findings. However, it will articulate the sections of the Code allegedly violated, the alleged behaviors, and the information gathered that relates to the same.

The Complainant and Respondent shall be given the opportunity to review the preliminary report and provide feedback in response. The Complainant and Respondent must submit any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigator within five (5) business days of the date of review. The parties may also submit questions to the investigator that they wish to be asked of the other party(ies) or witnesses.

The investigator will review any request for additional investigation after the parties review the preliminary report and may conduct such additional investigative steps as the investigator, in their sole discretion, determines are reasonable and appropriate. The investigator will review any questions submitted by the parties and will pose the questions to the intended parties, excepting any questions that are duplicative or irrelevant. The investigator will document any questions that were not asked, with accompanying rationale. The parties reserve the right to submit any questions not asked by the investigator to the University hearing authority for their review, should a hearing be convened.

In the event that new information is discovered through questioning or provided or identified by one of the parties, and is determined by the investigator to be relevant, the information will be incorporated into a new draft of the preliminary report and the parties will be provided an opportunity to review and provide feedback, specifically regarding the new information, to the investigator, before the investigator proceeds with the final report. After receiving any comments submitted by either party, or after the five (5) business day comment period has lapsed without comment, a final report will then be created, and each party will have the opportunity to review.

16. Final Investigation Report. The final report will be forwarded to the Office of Student Conduct.
1. The case will be assigned to a case manager in the Office of Student Conduct.

2. The case manager will review the Investigation Report and will typically meet with the Complainant first.

3. Both the Respondent and the Complainant may be accompanied by an advisor.

4. If the Senior Director or designee, in consultation with the Title IX Coordinator, determines that it is appropriate and necessary, either the case manager or investigator will conduct additional investigation prior to the determination of charge(s) and sanction(s).

5. If the acquired information does not reasonably support that a violation of the Code occurred, then the case will be closed without charge(s), and both parties will be notified.

6. If the acquired information reasonably supports a Code violation, the case manager will recommend charge(s) and sanction(s) that are designed to eliminate the conduct, prevent its recurrence, and remedy its effects, while supporting the University’s educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety and/or deter students from similar future behavior.

7. Both the Complainant and the Respondent may offer a brief written consideration statement to the case manager within five (5) business days of receiving notice of charges. The Complainant or Respondent’s decision whether to provide a consideration statement is completely voluntary. Information from these statements may be used to help determine appropriate sanctions.

8. The Respondent may take up to three (3) business days to decide whether to accept the charge(s) and sanction(s) or contest. Failure to respond, in writing, in the three (3) days allotted will result in the charge(s) and sanction(s) being implemented, unless the case manager approves an alternative timeframe.

9. If the Respondent accepts the charge(s) and sanction(s), the sanction(s) will be implemented. Both parties will be notified.

10. The Respondent and/or Complainant may request a sanction review when a Respondent accepts responsibility for the Code violation(s) and a sanction of Probation with a Transcript Notation or higher or a Loss of Housing was assigned or was possible given the charge(s) recommended (also see Section VI, C).

11. If the Respondent contests the charge(s) (i.e., denies responsibility for the violations), the case will be forwarded to a hearing authority along with the Investigation Report.
   - The Respondent and Complainant will be permitted to attend and participate fully in the hearing procedures (excluding deliberations).
If the Respondent and/or Complainant, with notice, do not appear before the hearing authority, the hearing will take place in their absence, and all available evidence will be reviewed by the hearing authority.

In addition, both the Complainant and Respondent may provide a consideration statement, if not already provided. The statements will only be shared with the hearing authority should it find that the Respondent is responsible for violating the Code.

Prior to the hearing, the hearing authority will typically be permitted at least five (5) business days to individually review the Investigation Report.

Following the hearing authority’s individual review of the Investigation Report and any required follow up investigation and responses, the hearing authority will convene a hearing.

If the matter involves more than one Respondent, the Senior Director of the Office of Student Conduct, in consultation with the Title IX Coordinator, in their discretion, may permit the hearing concerning each Respondent to be conducted either jointly or separately.

At the hearing, the Investigator will provide an overview of the investigation. The Complainant and Respondent may hear/observe the Investigator’s interaction with the hearing authority in person or through remote audio or video access, if reasonably practicable.

Each party will have the option to hear/observe the other party’s and witnesses’ interactions with the hearing authority through remote audio or video access or in person, if reasonably practicable. The hearing authority may reasonably accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Respondent and/or Complainant during the hearing as determined in the sole judgment of the Senior Director (or designee) to be appropriate.

The parties may suggest questions to be posed to the other party by and through the board. Proposed questions will be submitted to the hearing authority. The rationale for not asking any proposed question will be documented.

All witnesses will be considered University witnesses. Names of witnesses not included in the investigative packet may be provided by the Respondent, Complainant and others who may have been involved with the case. Prior to the hearing, it is important that the case manager understand the role of each witness in the case. To assist this process, those who have not met with the investigator will need to provide a brief statement outlining the relevant information they will share at least two (2) business days in advance of the hearing. The University will contact witnesses regarding the date, time and location of the hearing.
The Respondent, Complainant, case manager, and hearing authority will be allowed to ask questions of the investigator and all witnesses who participate in the hearing process. Note, witness participation in this process is voluntary.

The Senior Director (or designee) and/or hearing authority may exclude witnesses if they are deemed duplicative, irrelevant, or inappropriate.

Evidence may be accepted for consideration at the discretion of the hearing authority.

Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in these proceedings.

After the portion of the hearing concludes in which all evidence has been received, the hearing authority shall determine whether the Respondent is responsible for each alleged violation of the Code. The determination shall be made using a preponderance of the evidence standard.

Should the Respondent be found responsible of violating the Code, any consideration statements will be shared with the hearing authority. Other documentation relative to sanctioning, including any prior conduct history, may also be submitted at that time.

There shall be a single recording of all UCB hearings (not including deliberations), unless the Respondent requests the hearing not be recorded and the Senior Director approves. The recording shall be the property of the University and will be maintained as outlined in Section VIII: Conduct Records. Administrative Hearings are typically not recorded.

The hearing authority will typically submit its finding of responsibility or non-responsibility, sanction(s) (if any), and rationale, in writing, to the case manager within five (5) business days.

Decisions made by a hearing authority are final pending the normal review and appeal process. Both parties will be informed, in writing, of the hearing authority’s decision and their rights to appeal as permitted in Section VI, D.

The Respondent and/or Complainant may request an appeal when suspension, indefinite expulsion or expulsion is either assigned or was possible given the Code charge(s) recommended within five (5) business days of receiving official notification of the results of the hearing. Such appeals shall be in writing and shall be delivered to the Senior Director or designee. (See Section VI, D) Each party will be given the opportunity to review and respond in writing to the other party’s appeal, should one be submitted. Any response by the opposing party must be submitted to OSC within three (3) business days of receiving the other party’s appeal. All appeal documents from each party will be considered together in one appeal process.
In addition to the Senior Director, the Title IX Coordinator or designee may appeal the decision(s) of a University hearing on behalf of the University within five (5) business days following the date that the Respondent receives official notification of the results of the hearing.

- The Respondent will be informed that an appeal is being requested.
- The Title IX Coordinator or designee may request an appeal based on the three (3) grounds listed in Section VI, D and one (1) additional ground:
  - The hearing authority misapplied or misinterpreted the University’s policies and related definitions.

When, in the case of a Senior Director or Title IX Coordinator appeal, it is determined that the hearing authority misapplied or misinterpreted the University’s policies and related definitions, the matter will be referred to a new hearing authority to be reheard with appropriate clarification or training provided by the OSC or Title IX Coordinator.

After any appeal process has concluded, both the Respondent and Complainant will be notified, in writing, of the outcome of the process.

The University’s Title IX Coordinator will also be notified and may continue to work with the parties as appropriate.

In addition, the Title IX Coordinator or designee, may appeal the decision(s) of a University hearing on behalf of the University within five (5) business days following the date that the Respondent receives official notification of the results of the hearing.

- The Respondent will be informed that an appeal is being requested.
- The Title IX Coordinator or designee may request an appeal based on the three (3) grounds listed above and one (1) additional ground:
  - The hearing authority misapplied or misinterpreted the University’s policies and related definitions.