

Proposed revisions of Penn's current policies on Sexual Violence, Relationship Violence and Stalking and Sexual Harassment appear below. The proposed changes will apply to faculty, staff, students and visitors to campus. These changes will assure continued compliance with Title IX, the Campus Sexual Violence Elimination (SaVE) Act and the Clery Act. We welcome additional comments and suggestions regarding these proposed policies which should be sent no later than May 27, 2016 to Joann Mitchell, joannm@upenn.edu or Office of the President, rm. 100 College Hall/6380.

—Amy Gutmann, President

—Vincent Price, Provost

Sexual Violence, Relationship Violence and Stalking Policy

I. Introduction

This policy, which prohibits behaviors that are more generally addressed by the University's Sexual Harassment Policy, applies to faculty, students, staff and visitors to the University campus and facilities. All forms of sexual violence, relationship violence and stalking and attempts to commit such acts are considered to be serious misconduct and may result in disciplinary action up to and including expulsion or termination of employment. In addition, such acts may violate federal, state and local laws, and perpetrators of such acts may be subject to criminal prosecution.

II. Definitions

Sexual violence, relationship violence and stalking in any form, including sexual assault and rape, are prohibited by University policy. Important definitions appear below.

Sexual violence includes a range of behaviors in which an act of a sexual nature is taken against another individual without that person's consent or when the individual is unable to consent. There are various types of sexual violence, including but not limited to sexual assault and rape (defined below).

Sexual assault (including but not limited to rape) is defined as having committed any of the following acts:

- Any physical sexual contact that involves the use or threat of force or violence or any other form of coercion or intimidation;
- Any physical sexual contact with a person who is unable to consent due to incapacity or mental or physical impairment. "Incapacity" or "impairment" includes but is not limited to being under the influence of alcohol or drugs or being too young to consent.

Rape is defined as sexual assault involving an act of penetration and includes acquaintance rape (assailant and victim know each other).

Non-forcible sex acts include unlawful sex acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent as defined by Pennsylvania law.

Consent is an affirmative decision to engage in mutually agreed upon sexual activity and is given by clear words or actions. Consent may not be inferred from silence, passivity or lack of resistance alone. Furthermore, consent to one form of sexual activity does not imply consent to other forms of sexual activity and the existence of a current or previous dating, marital or sexual relationship is not sufficient to constitute consent to additional sexual activity. Assent shall not constitute consent if it is given by a person who, because of youth, disability, intoxication or other condition, is unable to lawfully give his or her consent.

Relationship Violence, also commonly known as dating violence, is defined as an act or a pattern of abuse committed by a person involved in a social, sexual or romantic relationship, past or present, with the victim. Relationship violence can encompass a broad range of behaviors that may include physical violence, sexual violence, emotional violence and economic violence.

Domestic Violence is defined as abuse committed against an adult who is a spouse or former spouse, cohabitant or someone with whom the abuser has a child, has an existing dating or engagement relationship or has had a former dating or engagement relationship.

Stalking means engaging in a course of conduct directed at specific person(s) that would cause a reasonable person to (a) fear for his or her safety or the safety of others, or (b) suffer substantial emotional distress.

In determining whether the alleged conduct violates this policy, consideration will be given to the totality of the circumstances, including the nature of the conduct and the context in which the alleged incident occurred.

III. Resources

A. Confidential Resources for Information, Counseling and Support

Resource offices are available to assist members of the Penn community and visitors to the campus who have been, or know someone who has been, the victim of sexual violence, relationship violence or stalking. The staff of these offices are available to provide counseling and support, as well as information about and assistance with making a complaint.

The information shared with these resources generally will be held in confidence, consistent with the University's obligation to address complaints of sexual violence, unless the person sharing the information gives his or her consent to the disclosure of that information. Confidential resources are not obligated to share identifying information with the Title IX Coordinator when an incident of sexual violence is shared with that resource. However, the commitment to confidentiality does not preclude the sharing of information among University administrators as appropriate to keep members of the University community safe. In addition, confidential resources may submit non-identifying information about incidents of sexual violence to the Title IX Coordinator or to the Division of Public Safety for purpose of crime statistics reporting under the Clery Act. (For additional information regarding Clery Act reporting, see the Clery Act & Crime Reporting page on the Division of Public Safety website at <https://www.publicsafety.upenn.edu/clery/>)

- African-American Resource Center (resource for students, staff or faculty)
- Counseling and Psychological Services (resource for students)
- Employee Assistance Program, Behavioral Health, School of Medicine (resource for staff or faculty)
- Lesbian Gay Bisexual Transgender Center (resource for students, staff or faculty)
- Office of the Chaplain (resource for students, staff, faculty or visitors)
- Office of the Ombudsman (resource for students, staff or faculty)
- Office of Sexual Violence Prevention and Education (resource for students)
- Penn Women's Center (resource for students, staff or faculty)
- Special Services Department, Division of Public Safety (resource for students, staff, faculty or visitors)
- Student Health Service (resource for students)

B. Additional Resources for Information, Counseling and Support and Informal Complaint Resolution

There are other resources available to the University community for information, counseling and support. These resources are also available to assist in the resolution of complaints, as are the confidential resources listed above. Please note that these resources are not confidential. Unlike the confidential resources, these resources are obligated to notify the Title IX Coordinator when an incident of sexual violence is shared with that resource person and to provide sufficient information so that the University can take appropriate action. (For a full discussion of reporting obligations, see the Reporting and Monitoring section below.)

- College Houses & Academic Services (resource for students)
- Dean's Offices and Department Chairs (resource for students or faculty)
- Division of Human Resources, Office of Staff and Labor Relations (resource for staff)
- Office of Affirmative Action and Equal Opportunity Programs (resource for faculty, students, staff or visitors)
- Office of the Vice Provost for Faculty (resource for faculty)
- Student Intervention Services (resource for students)

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Sexual Violence, Relationship Violence and Stalking Policy

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C. Formal Complaint Resolution Resources

A formal complaint against a member of the University's faculty or instructional staff should be initiated by contacting the Office of the Sexual Violence Investigative Officer. The complaint will be handled consistent with the *Procedures for Resolving Complaints Against Faculty of Sexual Assault, Sexual Violence, Relationship Violence and Stalking*.

A formal complaint against an enrolled University student should be initiated by contacting the Office of the Sexual Violence Investigative Officer. The complaint will be handled consistent with the *Student Disciplinary Procedures for Resolving Complaints of Sexual Assault, Sexual Violence, Relationship Violence and Stalking*.

A formal complaint against a University staff member should be initiated by contacting the Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP). The complaint will be handled consistent with that office's complaint resolution procedures.

IV. Reporting and Monitoring

The University is committed to ensuring that members of the University community who share information regarding incidents of sexual violence get the information, counseling and support that they need and are aware of the process for making a formal complaint. The University is also committed to monitoring reports and complaints of sexual violence so that any patterns or systemic problems revealed by such reports and complaints can be addressed.

Consistent with these commitments, the University has determined that the Title IX Coordinator must be advised when incidents of sexual violence are reported to the Office of the Sexual Violence Investigative Officer, to any of the resources listed above (except for resources identified as confidential resources), to any member of the faculty or to any University staff member in a leadership or supervisory position or who has significant responsibility for the welfare, guidance or advising of students or staff, including the President, Provost, Vice Presidents, Vice Provosts, Deans, Vice Deans, Associate Deans, Assistant Deans and Academic Advisors, as well as appropriate staff in the following offices: College Houses and Academic Services (CHAS), Division of Public Safety (DPS), Division of the Vice Provost for University Life (VPUL), Division of Human Resources (as well as Human Resources staff in the Schools/Centers), Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP), Graduate Student Center (GSC), Division of Recreation and Intercollegiate Athletics (DRIA) and student life and academic services units in the University's schools and centers.

When an incident of sexual violence is reported to the Title IX Coordinator, the Title IX Coordinator will take appropriate steps to ensure that the individual who reported the incident has been advised of the resources

available to him or her and the process for making a formal complaint. The Title IX Coordinator should be provided with sufficient information to enable the University to identify patterns. Such information includes the name of the person reporting the incident, the date, time and location of the incident, the identities of those involved in the incident and a brief description of the behavior alleged to have occurred, to the extent this information is known to the individual making the report. If there has been a request for confidentiality, this should also be shared with the Title IX Coordinator, who will consider the request. Even if absolute confidentiality cannot be granted, information will be disclosed only to those who, in the judgment of the Title IX Coordinator, have a need to know. Decisions regarding how to proceed following a report of sexual violence to the Title IX Coordinator will be made on a case-by-case basis. A report to the Title IX Coordinator will not necessarily result in a formal complaint to the Sexual Violence Investigative Officer (for complaints against enrolled students or faculty) or to the Office of Affirmative Action and Equal Opportunity Programs (for complaints against staff).

For those members of the University community who have crime statistics reporting obligations under the Clery Act, notifying the Title IX Coordinator regarding an incident of sexual violence does not replace the obligation to report the matter to the Division of Public Safety. For additional information about Clery Act reporting or to make a report, refer to the Clery Act & Crime Reporting page on the Division of Public Safety website at <https://www.publicsafety.upenn.edu/clery/>

V. Rights of Complainants and Respondents

Persons who make a complaint and those who are responding to complaints have the following rights:

- The option to notify law enforcement;
- The option to have another member of the University community present during interviews that are part of a University-initiated investigation;
- To be notified of counseling and support services available;
- To be notified of options to change academic, living or work arrangements.

VI. Policy Against Retaliation

University policy expressly prohibits retaliation against faculty, staff or students who in good faith make reports of violations of this policy. In addition, knowingly and intentionally making a false report of a violation of this policy is prohibited. Members of the Penn community who take adverse action against someone who reports a violation of this policy, intimidates, threatens or otherwise engages in retaliation is subject to disciplinary action, up to and including termination of their employment or expulsion from the University.

[Ed. Note: This For Comment Supplement continues with the Sexual Harassment Policy, which appears on page III following the Council Supplement and the May AT PENN calendar]

Sexual Harassment Policy

I. Purposes

The University of Pennsylvania's commitment to freedom of thought, discourse and speech are founded on trust and respect among members of the University community. It is the responsibility of each member of the Penn community to respect the personal dignity and worth of others.

The University has established policies on behaviors that interfere with its mission. The University's *Equal Opportunity and Affirmative Action Policy* prohibits discrimination on the basis of race, color, sex, sexual orientation, gender identity, religion, creed, national or ethnic origin, citizenship status, age, disability, veteran status or any other legally protected class or status. Policies and regulations implementing this commitment also include the *Statement on Academic Freedom and Responsibility*, the *Guidelines on Open Expression* and the *Code of Academic Integrity*.

The University has also adopted the following policy concerning sexual harassment.¹ Sexual harassment in any context is unacceptable and is a matter of particular concern to an academic community in which students, faculty and staff must rely on strong bonds of intellectual trust and dependence. Sexual harassment is not tolerated at Penn.²

II. Definitions

For the purposes of University policy, the term "sexual harassment" refers to any unwanted conduct that is based on an individual's sex, sexual orientation, gender identity and/or gender expression and that:

1. Involves a stated or implicit threat to the individual's academic or employment status;
2. Has the purpose or effect of interfering with the individual's academic or work performance; and/or
3. Creates an intimidating or offensive academic, living or work environment.

The University regards such behavior as a violation of the standards of conduct required of all persons associated with the institution. Accordingly, those engaging in such conduct will be subject to the full range of internal institutional disciplinary actions, including separation from the University. The same range of disciplinary actions will be applied in the event of retaliation against an individual who in good faith makes an allegation of sexual harassment, who cooperates in an investigation into such allegations or who opposes any act of sexual harassment as defined in this Policy.

As noted in the *Handbook for Faculty and Academic Administrators*, the *Human Resources Policy Manual*, the *Pennbook* and other University publications, persons engaged in such harassment or retaliation within the University setting are subject to the full range of internal institutional disciplinary actions, including separation from the institution.

Not every act that might be offensive to an individual or a group necessarily will be considered as harassment and/or a violation of the University's standard of conduct. In determining whether an act constitutes harassment, the totality of the circumstances surrounding the conduct must be carefully reviewed. Due consideration must be given to the protection of individual rights, freedom of speech, academic freedom and open expression.

¹ The terms "harassment" and "sexual harassment" as used throughout are defined as a matter of University policy, and are not necessarily identical or limited to the uses of that term in external sources, including governmental guidelines, laws, regulations or legal decisions.

² Where sexual harassment involves sexual violence, relationship violence, domestic violence and/or stalking, refer also to the University's *Sexual Violence, Relationship Violence and Stalking Policy*.

III. Resources

Schools and centers should make known to all of their members the available resources for information, counseling and support, as well as the informal and formal procedures for resolving complaints of sexual harassment within the appropriate school or center or at the University level. These resources include the following:

A. Confidential Resources for Information, Counseling and Support

The following University resources are available to members of the University community who seek information and counseling about University policies on sexual harassment, standards of behavior, informal and formal mechanisms for resolving complaints and resources for complainants and respondents. These resource offices are also available to assist members of the University community with making an informal or formal complaint.

The resources listed below are considered confidential, which means that the information shared with these resources generally will be held in confidence, consistent with the University's obligation to address complaints of sexual harassment, unless the person sharing the information gives his or her consent to the disclosure of that information. The commitment to confidentiality does not preclude the sharing of information among responsible University administrators as needed, including to keep members of the University community safe.

- African-American Resource Center (resource for students, staff or faculty)
- Counseling and Psychological Services (resource for students)
- Employee Assistance Program (resource for staff or faculty)
- Lesbian Gay Bisexual Transgender Center (resource for students, staff or faculty)
- Office of the Chaplain (resource for students, staff, faculty or visitors)
- Office of the Ombudsman (resource for students, staff or faculty)
- Office of Sexual Violence Prevention and Education (resource for students)
- Penn Women's Center (resource for students, staff or faculty)
- Special Service Department, Division of Public Safety (resource for students, staff, faculty or visitors)
- Student Health Service (resource for students)

B. Additional Resources and Informal Mechanisms for Mediation and Resolution

There are other resources available to the University community for information, counseling and support. These resources are also available to assist in the informal resolution of complaints, as are the confidential resources listed above.

- College Houses and Academic Services (complaints regarding College House residents)
- Dean's Offices and Department Chairs (complaints regarding faculty)
- Division of Human Resources, Office of Staff and Labor Relations (complaints regarding staff)
- Office of Affirmative Action and Equal Opportunity Programs (complaints regarding faculty, staff, students or visitors)
- Office of Student Conduct (complaints regarding students)
- Office of the Vice Provost for Faculty (complaints regarding faculty)
- Student Intervention Services (resource for students)

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Sexual Harassment Policy

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C. Formal Mechanisms for Complaint Resolution

When informal resolution is not chosen, is unsatisfactory or is not appropriate, the formal mechanisms described below should be used.

Please note that these mechanisms are intended for sexual harassment complaints that do *not* involve allegations of sexual violence, domestic violence, relationship violence or stalking. Refer to the *Sexual Violence, Relationship Violence and Stalking Policy* for information about making formal complaints involving incidents of sexual violence, domestic violence, relationship violence and/or stalking.

Members of the University community who would like assistance with making a formal complaint may contact any of the confidential resources identified above.

1. A complaint of sexual harassment (excluding complaints involving sexual violence, domestic violence, relationship violence and/or stalking) against a faculty member, instructor or teaching assistant may be brought by a student, staff member, faculty member or visitor to the department chair or Dean of the faculty member. If the complaint is made to a department chair, the department chair is responsible for informing the Dean. If the Dean is the subject of the complaint, then the complaint should be made to the Provost (or his/her designee). The Dean or the Provost (or his/her designee) is then charged with taking appropriate action. If the matter is not resolved informally, the Dean or the Provost (or his/her designee) conducts an investigation. If based on the results of the investigation the Dean or Provost (or his/her designee) determines that action should be taken in response to the complaint, the Dean or Provost (or his/her designee) will determine what that action should be and the appropriate process for taking that action. For standing faculty, the procedures described in the *Procedure Governing Sanctions Taken Against Members of the Faculty, Handbook for Faculty and Academic Administrators*, part II.E.16 will be followed, if applicable.

A member of the standing faculty, associated faculty or academic support faculty who believes she or he has been subjected to sexual harassment may file a grievance under the Faculty Grievance Procedure, *Handbook for Faculty and Academic Administrators*, part II.E.12, provided the complaint constitutes a grievance as defined in Section I of the Procedure. This procedure is administered by the Faculty Grievance Commission. The panel makes its recommendations to the Provost. In cases that involve reappointment, promotion or tenure, and in which the Provost has declined or failed to implement the recommendations of the panel to the satisfaction of the grievant, the grievant may seek to obtain a hearing before the Senate Committee on Academic Freedom and Responsibility on the actions of the Provost.

2. A complaint of sexual harassment (excluding complaints involving sexual violence, domestic violence, relationship violence and/or stalking) against a staff member may be brought by a student, staff member, faculty member or visitor to the supervisor of the person complained against, to the next level supervisor, to Human Resources (either to the Office of Staff and Labor Relations or to the Human Resources Director for the school or center) or to the Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP). If the complaint is made to a supervisor, that individual is responsible for notifying either Human Resources (either the Office of Staff and Labor Relations or the Human Resources Director for the school or center) or the Office of Affirmative Action and Equal Opportunity Programs. Either Human Resources or the Office of Affirmative Action and Equal Opportunity Programs will take responsibility for pursuing the matter. If the matter is not resolved informally, either Human Resources or the Office of Affirmative Action and Equal Opportunity Programs will conduct an investigation. If based on the results of the investigation it is determined that discipline should be issued, then appropriate action will be taken.

3. A complaint of sexual harassment (excluding complaints involving sexual violence, domestic violence, relationship violence and/or stalking) may be

brought against a student by a student, staff member, faculty member or visitor by filing a complaint with the Office of Student Conduct, which will handle the complaint pursuant to the *Charter of the Student Disciplinary System*. If the complaint relates to a graduate or professional student enrolled in a school which has established a hearing board or other decision-making body, a complaint should be filed with that body. Refer to the Office of Student Conduct website for a list of these graduate schools and programs.

4. A complaint of sexual harassment (excluding complaints involving sexual violence, domestic violence, relationship violence and/or stalking) may be brought by a visitor or guest of the University against an enrolled student, staff member or faculty member by contacting the Office of Affirmative Action and Equal Opportunity Programs, who will handle the matter or make the appropriate referral.

D. Central Reporting of Sexual Harassment

The University's decentralized system of resources is designed to encourage the reporting and resolution of complaints of sexual harassment. However, in order to enable the administration to identify any patterns or trends of sexual harassment, the Executive Director of the Office of Affirmative Action and Equal Opportunity Programs shall, on a semi-annual basis, convene a meeting of representatives from the offices and centers listed in Section A to review and report on sexual harassment across the University based upon the reports or complaints of sexual harassment that they have handled formally or informally within their areas. Confidentiality regarding the identity of the parties involved in each complaint will be maintained to the extent possible.

E. Education and Prevention

The prevention of sexual harassment and the establishment of effective procedures with due concern for all parties require a thoughtful educational program.

1. University resource offices will provide to the community information on: (a) available informal and formal resolution resources; and (b) sources of support and information for victims and respondents.

2. Deans and heads of centers and departments are encouraged to discuss this policy and issues of sexual harassment at meetings of faculty and staff.

3. Training programs for faculty, staff and students who work in the College Houses and others who assist students in crisis situations and serve in an advisory capacity to students will include training about referrals, resources and methods for handling complaints of sexual harassment.

4. Students will be provided with information about sexual harassment and available resources during new student orientations and throughout the academic year.

5. The University will publish this policy statement annually, including information about the resources available to advise, counsel and assist in the informal and formal resolution of sexual harassment complaints. Information will explain how and where to contact University-wide and school- and division-specific resources and will be posted on appropriate University websites. All members of the University community have a responsibility to aid in the prevention of sexual harassment and are encouraged to report concerns to appropriate University resources promptly.

F. Policy Against Retaliation

University policy expressly prohibits retaliation against faculty, staff or students who in good faith make reports of violations of this policy. In addition, knowingly and intentionally making a false report of a violation of this policy is prohibited. Members of the Penn community who take adverse action against someone who reports a violation of this policy, intimidates, threatens or otherwise engages in retaliation is subject to disciplinary action, up to and including termination of their employment or expulsion from the University.