

A proposed policy on Sexual Misconduct and procedures for responding to complaints is provided here for comment. The proposal benefitted from extensive consultation last semester with a wide array of faculty, students, and staff. The proposed policy would be an umbrella for related policies that cover sexual misconduct (including sexual harassment, sexual violence, relationship violence, stalking, and consensual romantic and sexual relationships in the workplace and educational settings). The proposed policy also would centralize in a single office oversight of the investigation and resolution of all complaints of sexual misconduct against any member of the Penn community. That office would be overseen by an administrator in the newly created position of Associate Vice President for Equity and Title IX Officer. In addition, the guidance issued last spring by the Provost on Consensual Sexual Relationships Between Faculty and Students would be formalized as a policy that covered consensual romantic and sexual relationships between members of the community in unequal positions of authority or responsibility.

The U.S. Department of Education issued proposed regulations under Title IX of the Education Amendments of 1972 in November 2018. When final regulations are issued, they will be reviewed and any necessary revisions will be made. In the meantime, the advice that we overwhelmingly and enthusiastically received was that centralizing the intake and investigation of complaints of sexual misconduct should be accomplished as soon as a search can be completed.

We welcome additional comments and suggestions regarding these proposed policies which should be sent, no later than *February 22, 2019*, to Joann Mitchell at [joannm@upenn.edu](mailto:joannm@upenn.edu) or Office of the President, 100 College Hall/6380.

—Amy Gutmann, *President*  
—Wendell Pritchett, *Provost*

## University of Pennsylvania Sexual Misconduct Policy, Resources and Complaint Procedures

The mission of the University of Pennsylvania is to offer a world class education to our students, train future leaders, expand and advance research and knowledge, serve our community and society both at home and abroad, and provide the most expert and outstanding health care for our patients. To create and sustain a campus climate in which members of the University community are able to thrive and achieve their full potential, the University has established a wide range of policies, educational programs, resources, support, and reporting systems to respond to complaints of sexual misconduct made against students, postdoctoral fellows or other trainees, faculty, and staff. Sexual harassment, sexual violence, and other forms of sexual misconduct will not be tolerated. The University's policies, resources, and complaint procedures include the following:

- I. Sexual Harassment Policy
- II. Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings
- III. Sexual Violence, Relationship Violence and Stalking Policy
- IV. Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct
- V. Procedures for Resolving Complaints of Sexual Misconduct Against Faculty
- VI. Procedures for Resolving Complaints of Sexual Misconduct Against Staff

As detailed in these policies and procedures, in all cases, where a member of the community, or other person, wishes to initiate a complaint against a member of the community (student, faculty, or staff) for sexual misconduct, the complaint should be brought to the Associate Vice President for Equity and Title IX Officer ("AVP"). The AVP will be responsible for determining the appropriate procedures to be followed and will be charged with overseeing the process.

Not every act that might be offensive to an individual or a group necessarily will be considered harassment and/or a violation of the University's standards of conduct. In determining whether an act violates University policy, 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.

### Complaints Against Faculty

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, including romantic or sexual relationships in the educational setting or workplace, sexual violence, relationship violence, or stalking against a faculty member, instructor, postdoctoral fellow or other trainee, or teaching assistant. The complaint should be made to the AVP who will meet with the complainant, determine the appropriate process under University policy for investigation, and oversee

that process. If a determination is made that the complaint involves a violation of the Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Faculty. If a determination is made that the complaint involves a violation of the Sexual Harassment Policy (other than sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), coordinating with the Dean of the applicable School as appropriate. In either case, for Standing Faculty, the Procedure Governing Sanctions Taken Against Members of the Faculty, *Handbook for Faculty and Academic Administrators*, Part II.E.16, will be followed where applicable.

### Complaints Against Staff

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, including romantic or sexual relationships in the educational setting or workplace, sexual violence, relationship violence, or stalking against a staff member. The complaint should be made to the AVP who will meet with the complainant and coordinate with the Office of Staff and Labor Relations in the Division of Human Resources, as appropriate. If a determination is made that the complaint involves a violation of the Sexual Harassment Policy (other than sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), coordinating with the Dean or Vice President of the applicable administrative Division or School. If a determination is made that the complaint involves a violation of the Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Staff or the applicable collective bargaining agreement.

### Complaints Against Enrolled Students

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, including romantic or sexual relationships in the educational setting or workplace, sexual violence, relationship violence, or stalking against an enrolled student. The complaint should be directed to the AVP who will oversee the investigative and resolution process(es). If a determination is made that the complaint involves a violation of the Sexual Harassment Policy (other than sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), coordinating with the Dean of the applicable School. If a determination is made that the complaint involves a violation of the Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct.

The University has resource offices available to provide information, education and support as outlined in the policies and procedures below.

## I. Sexual Harassment Policy

### A. Definitions

For the purposes of University policy, the term “sexual harassment”<sup>1</sup> refers to any unwanted conduct that is based on an individual’s sex, sexual orientation, gender identity, 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 members of its community. Accordingly, as noted in the University’s *Handbook for Faculty and Academic Administrators*, *Human Resources Policy Manual*, *Pennbook* and other publications, persons engaged in such harassment are subject to the full range of internal disciplinary actions, including separation from the institution. 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.

Not every act that might be offensive to an individual or a group necessarily will be considered harassment and/or a violation of the University’s standards 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.

### B. Resources

Schools, Centers and administrative Divisions 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, Center, Division, or at the University level. These resources include the following:

#### 1. 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 support members of the University community 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*, including its *Sexual Trauma Treatment Outreach and Prevention* team also known as STTOP (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 University Chaplain* (resource for students, staff, faculty or visitors)
- *Office of the Ombuds* (resource for students, staff or faculty)
- *Penn Violence Prevention* (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)

<sup>1</sup> The terms “harassment” and “sexual harassment” are used throughout and are defined as a matter of University policy, and are not necessarily identical or limited to the uses of the term in external sources, including governmental guidelines, laws, regulations or legal decisions. 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. This Sexual Harassment Policy and the Sexual Violence, Relationship Violence and Stalking Policy are sometimes referred to together as the “Sexual Misconduct Policies.”

### 2. Informal and Formal Mechanisms for Complaint Resolution

If both parties agree and the AVP deems it to be an appropriate instance for an informal resolution of a complaint, the AVP will meet with the parties individually, and others as appropriate, in an effort to resolve the complaint. When informal resolution is not chosen, one of the parties is not satisfied with the results, or the proposed resolution is not appropriate, the formal mechanisms described below should be used.

#### Complaints Against Faculty

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, including romantic or sexual relationships in the educational setting or workplace, sexual violence, relationship violence, or stalking against a faculty member, instructor, postdoctoral fellow or other trainee, or teaching assistant. The complaint should be made to the AVP who will meet with the complainant, determine the appropriate process under University policy for investigation, and oversee that process. If a determination is made that the complaint involves a violation of the Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Faculty. If a determination is made that the complaint involves a violation of the Sexual Harassment Policy (other than sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), coordinating with the Dean of the applicable School as appropriate. In either case, for Standing Faculty, the Procedure Governing Sanctions Taken Against Members of the Faculty, *Handbook for Faculty and Academic Administrators*, Part II.E.16, will be followed where applicable.

#### Complaints Against Staff

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, including romantic or sexual relationships in the educational setting or workplace, sexual violence, relationship violence, or stalking against a staff member. The complaint should be made to the AVP who will meet with the complainant and coordinate with the Office of Staff and Labor Relations in the Division of Human Resources, as appropriate. If a determination is made that the complaint involves a violation of the Sexual Harassment Policy (other than sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), coordinating with the Dean or Vice President of the applicable administrative Division or School. If a determination is made that the complaint involves a violation of the Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Staff or the applicable collective bargaining agreement.

#### Complaints Against Enrolled Students

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, including romantic or sexual relationships in the educational setting or workplace, sexual violence, relationship violence, or stalking against an enrolled student. The complaint should be directed to the AVP who will oversee the investigative and resolution process(es). If a determination is made that the complaint involves a violation of the Sexual Harassment Policy (other than sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), coordinating with the Dean of the applicable School. If a determination is made that the complaint involves a violation of the Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct.

Members of the University community who would like assistance with making a formal complaint may contact any of the confidential resources identified above. As further set forth below, all formal complaints involving Sexual Misconduct should be initiated by contacting the Associate Vice President for Equity and Title IX Officer (“AVP”) who will be responsible for deciding which investigative process to pursue.

### C. 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.

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1. University resource offices will provide to the community information on available informal and formal resolution resources and resources for support and information for complainants and respondents.

2. Deans, Vice Presidents, Center Directors, and heads of departments should distribute this policy to faculty and staff and are encouraged to discuss the policy and issues of sexual harassment at meetings with faculty, staff, and students.

3. Training programs for faculty, postdoctoral fellows and other trainees, staff, and students who work in the College Houses, and those 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, includ-

ing information about how and where to contact University-wide resource offices available to advise, counsel and assist in the informal and formal resolution of sexual harassment complaints. 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.

#### **D. 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, intimidate, threaten or otherwise engage in retaliation are subject to disciplinary action, up to and including termination of their employment or expulsion from the University.

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## **II. Consensual Romantic and Sexual Relations in the Workplace and Educational Setting**

### **A. Faculty and Students and Academic Settings**

The relationship between faculty member<sup>2</sup> and student is central to the academic mission of the University. No non-academic or personal ties should be allowed to interfere with the integrity of the faculty-student relationship. Consensual sexual relations between faculty and student can adversely affect the academic enterprise, distorting judgments, or appearing to do so to others, and providing incentives or disincentives for student-faculty contact that are inappropriate.

For these reasons, any sexual relations or dating relationships between a faculty member and an undergraduate student enrolled at the University are prohibited. The prohibition extends to all academic advisors and program directors, including those based in the College Houses and other University-owned or administered housing. The prohibition also extends to graduate, professional, or undergraduate student assistants, but, in their case, only with respect to those undergraduate students over whom they have academic responsibility.<sup>3</sup>

Although consensual sexual relations or dating relationships between faculty and graduate or professional students are not categorically prohibited, the University strongly discourages all sexual relations or dating relationships between faculty and graduate or professional students. Further, sexual relations or dating relationships between a faculty member and a graduate or professional student during the period of the faculty/student relationship are prohibited. The prohibition extends to sexual relations or dating between a graduate or professional student and other students for whom they have some supervisory academic responsibility, between department chairs and students in that department, and between graduate group chairs and students in that graduate group. Likewise, sexual relations and dating relationships are prohibited between a graduate or professional student and academic advisors, program directors, and all others who have any supervisory responsibility for that student.

<sup>2</sup> For purposes of this policy, "faculty" includes (but is not limited to) standing faculty, clinical faculty, associated faculty, and academic support staff, as well as clinical or lab supervisors, postdoctoral fellows, house staff, residents, graduate and undergraduate teaching assistants, and any other person providing instruction, academic advising, or academic oversight of an enrolled student in any school, course, or program, including summer and off-campus programs, irrespective of geographical location.

<sup>3</sup> Academic responsibility" includes (but is not limited to) teaching, grading, mentoring, advising, or evaluating research or other academic activity, participating in decisions regarding funding or other resources, clinical supervision, and recommending for admissions, employment, fellowships, or awards. In this context, students include graduate and professional school students, postdoctoral scholars, and clinical residents or fellows.

### **B. Workplace and Other Settings**

Those entrusted with responsibility for the supervising, evaluating, advising, or mentoring of other members of the Penn community are in inherently unequal positions. Faculty, staff, and others should not evaluate or supervise those with whom they have a familial, romantic or sexual relationship because of the potential for conflict of interest, or the appearance of favoritism, exploitation or bias. As is the case for faculty, sexual or romantic relationships between staff members and undergraduate students are prohibited. Although consensual sexual relations or dating relationships between staff and graduate or professional students, are not categorically prohibited, the University strongly discourages all sexual relations or dating relationships between staff and graduate or professional students.

Consensual sexual or romantic relationships between those employed by the University as faculty or staff are not in general prohibited by this policy. However, relationships between employees in which one has direct or indirect authority over the other are potentially problematic, including relationships between supervisors and their direct and indirect reports, between senior faculty and junior faculty, and managers and those who report to them (directly or indirectly). If such a relationship develops or exists as a result of a change in employment status, the person in the position of greater authority or power must recuse him/herself to ensure that he/she does not exercise any supervisory or evaluative function over the other person in the relationship. Where such recusal is required, the recusing party must also notify his/her supervisor, department chair, dean or manager, so that person can ensure adequate alternative supervisory or evaluative arrangements are put in place. Such notification is always required where recusal is required. This obligation to recuse and notify exists for past as well as for current relationships. Failure to disclose the relationship in a timely fashion will itself be considered a violation of policy.

It is understood that sexual or romantic relationships may be private and the University treats such information sensitively and (to the extent practicable) confidentially. The University has the option to take any action necessary to ensure compliance with the spirit of this policy, including transferring either or both employees to minimize disruption of operations.

#### **Mechanisms for Complaint Resolution**

The process for responding to complaints alleging a violation of this policy should contact the Associate Vice President for Equity and Title IX Officer ("AVP"). The applicable informal and formal complaint resolution policies set forth in the University's Sexual Harassment Policy will be used to determine whether there has been a policy violation. Similarly, the confidential resources listed in the Sexual Harassment Policy are available to assist and support the parties to the complaint and any witnesses.

### III. Sexual Violence, Relationship Violence and Stalking Policy

#### A. Introduction

This policy, which prohibits behaviors that are more generally addressed by the University's Sexual Harassment Policy, applies to faculty, post-doctoral fellows and other trainees, 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.

#### B. 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" include but are 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 fear for his or her safety, the safety of others, or to 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.

#### C. Resources

##### 1. 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 the resources listed below generally will be held in confidence, consistent with the University's obligation to ad-

dress 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 AVP 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 AVP or to the Division of Public Safety for the purpose of crime statistics reporting under the Clery Act. (For additional information regarding reporting in compliance with the Clery Act, see the Clery Act & Crime Reporting page at <https://www.publicsafety.upenn.edu/clery/>)

- *African-American Resource Center* (resource for students, staff or faculty)
- *Counseling and Psychological Services*, including its *Sexual Trauma Treatment Outreach and Prevention team* also known as STTOP (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 University Chaplain* (resource for students, staff, faculty or visitors)
- *Office of the Ombuds* (resource for students, staff or faculty)
- *Penn Violence Prevention* (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)

##### 2. Informal and Formal Complaint Resolution Resources

If both parties agree and the AVP deems it to be an appropriate instance for an informal resolution of a complaint, the AVP will meet with the parties individually, and others as appropriate, to attempt to resolve the complaint. When informal resolution is not chosen, or one of the parties is not satisfied with the results, or the proposed resolution is not appropriate, the formal mechanisms described below should be used.

A formal complaint of sexual misconduct against any member of the Penn community should be initiated by contacting the AVP. Formal complaints will be handled in accordance with the applicable procedures as set forth below:

- A formal complaint against a University faculty member, instructor, post-doctoral fellow or other trainee, instructional staff, or teaching assistant should be initiated by contacting the AVP. The complaint will be handled consistent with the *Procedures for Resolving Complaints of Sexual Misconduct Against Faculty*.
- A formal complaint against any enrolled student at the University should be initiated by contacting the AVP. The complaint will be handled consistent with the *Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct*.
- A formal complaint against a University staff member should be initiated by contacting the AVP. The complaint will be handled consistent with the *Procedures for Resolving Complaints of Sexual Misconduct Against Staff* or the applicable collective bargaining agreement.

#### D. Reporting and Monitoring

The University is committed to ensuring that members of the University community who share information regarding incidents of sexual violence receive 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 AVP should be advised when incidents of sexual violence are reported to any of the University's resource offices (except those identified as confidential resources), Division of Human Resources (as well as Human Resources staff in the Schools and Centers), Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP), and Division of

Recreation and Intercollegiate Athletics (DRIA).

When an incident of sexual violence is reported to the AVP, he or she 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.

Members of the University community who have crime statistics reporting obligations under the Clery Act are obligated to report the matter to the Division of Public Safety, in addition to the AVP. For additional information about Clery Act reporting or to make a report, refer to the Clery Act & Crime Reporting page at <https://www.publicsafety.upenn.edu/clery/>

#### **E. 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; and
- To be notified of options to change academic, living or work arrangements.

#### **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 are subject to disciplinary action up to and including termination of their employment or expulsion from the University.

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## **IV. Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct <sup>4</sup>**

### **A. Introduction**

The University of Pennsylvania is committed to providing a safe and healthy environment, free of gender-based misconduct, to all members of our community and visitors to our community. As such, sexual harassment, sexual assault, sexual violence, relationship violence, and stalking will not be tolerated. In order to ensure the creation of a climate where students are able to thrive and achieve their full potential, the University has developed a wide range of policies, educational programs, broad-based resources, support, and reporting systems. This amendment to the Student Disciplinary Charter supplements these other policies and initiatives, addressing the process by which complaints against an enrolled University student for a violation of the Sexual Misconduct Policy (which includes its Sexual Harassment and Sexual Violence, Relationship Violence, and Stalking Policy (“Sexual Violence Policy”)) will be adjudicated and resolved.

### **B. Confidentiality**

Confidentiality is of critical importance in ensuring that these sensitive matters are handled appropriately. The University has an obligation to respond to violations of its Sexual Misconduct Policy as fairly and expeditiously as possible when a complaint is received. University staff and faculty may share information with others who have a legitimate need to know in order to fairly and effectively address complaints, but the information should be considered confidential and should be protected to the extent possible consistent with legal obligations. Such administrators may include, for example those in, the Office of the Vice Provost for University Life, the Office of the Associate Vice President and Title IX Officer (AVP), the Division of Public Safety, the Office of General Counsel, Counseling and Psychological Services, Student Health Service, and academic advising offices.

### **C. Reporting Complaints of Violation of Sexual Misconduct**

#### **1. Office of the Associate Vice President for Equity and Title IX Officer (AVP).**

The Office of the AVP will be responsible for managing all complaints made against University students for violations of its Sexual Misconduct Policy (including sexual harassment and sexual violence). Complaints should be lodged with the AVP who will assign the complaint to a trained investigator (IO) who will work under the AVP’s direction and supervision.

Complaints must either be presented in writing or based upon information provided by the complainant to the IO who will then memorialize the allegations in writing and have the allegations confirmed by the complainant. Complainants may include University students or others both within and outside the community alleging a violation against a University enrolled student.

#### **2. Office of the District Attorney and Office for Civil Rights**

Complainants may also choose to file a report with the District Attorney, the Office for Civil Rights of the U.S. Department of Education, or other external agencies. The University processes and the legal system work independently of one another and the University has its own interest in, and responsibility for, ensuring the enforcement of its Sexual Misconduct Policy.<sup>5</sup> Therefore, the University will not unilaterally defer its processes pending the outcome of any criminal process, nor will the outcome of any legal process be determinative of the University result. The University will, however, comply with reasonable requests by law enforcement for cooperation, and will upon reasonable request temporarily suspend its fact-finding process in a sexual misconduct investigation so as not to impede the law enforcement process.

#### **3. Support, Counseling and Advice**

In making a decision about how to proceed with a complaint, complainants may seek support, counseling, and advice from other offices on campus, including the Special Services Department in the Division of Public Safety, the Penn Violence Prevention, the Office of the University Chaplain, the Penn Women’s Center, Counseling and Psychological Services, the Office of the Ombuds, African-American Resource Center or the Lesbian Gay Bisexual and Transgender Center. A list of these offices is provided in Section E below. Should a complainant decide to proceed with an on campus disciplinary process against an enrolled University student, the Office of the AVP will be the single place to initiate the process.<sup>6</sup>

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<sup>4</sup> This procedure amends and supersedes the Charter of the University of Pennsylvania Student Disciplinary System with respect to violations of the University policy on Sexual Violence, Relationship Violence, and Stalking as those terms are defined in that policy (“Sexual Violence Policy”). It applies to each of the 12 schools, notwithstanding the existence of separate procedures that individual schools may have adopted for violations of laws or policies other than the University Sexual Violence Policy. If a complaint involves allegations of violations of the Sexual Violence Policy as well as other University policies, the matter can either be fully resolved using this process, or divided into two separate proceedings, as appropriate in any particular case.

<sup>5</sup> The University recognizes that should it be proceeding in cases where criminal charges are pending, however, the respondents may choose not to participate in the disciplinary process in order to protect their Fifth Amendment rights. Such decision will not be used as evidence against any respondent and the Hearing Panel will be instructed not to draw any adverse inference from the failure to participate.

<sup>6</sup> While the IO assigned by the AVP will be responsible for managing the complaint investigation and resolution process, the IO will work with other appropriate University offices, including the Vice Provost for University Life, to determine if interim measures are appropriate before a final resolution is reached.

#### 4. Timeframe for Submitting a Complaint

The University does not limit the timeframe for filing a report of a violation of the Sexual Misconduct Policy. Reports may be filed at any time, although the University's ability to investigate or take any action may be limited by the passage of time or the matriculation status of the alleged respondent.

#### 5. Complainant Request for Confidentiality

The University is required by Title IX to weigh the complainant's request for confidentiality/privacy with the University's commitment to provide a reasonably safe and nondiscriminatory environment. In situations where a complainant requests confidentiality, the University's ability to investigate and respond to the allegations may be limited. The IO will notify the complainant if the University cannot, in unusual cases, maintain the complainant's confidentiality/privacy. The complainant's and respondent's identities will only be revealed to those individuals who need to know their names in order to investigate or adjudicate the complaint or provide interim measures. If the University becomes aware of a pattern of behavior by one or more respondents, the University will take appropriate action in an attempt to protect the University community.

### D. Investigation and Resolution of Complaints

#### 1. Timely Resolution

Where possible, the process of resolving complaints, exclusive of any appeal, should be completed within 60 business days of the filing of the written complaint. The appeal should be completed, where possible, within 30 business days of the filing of the appeal.

In the event that a Hearing Panel is convened, the complainant and the respondent will both be provided with a copy of the decision of the Panel and given 10 business days to file an appeal.

#### 2. Rights and Protections for Complainant and Respondent

(a) The complainant and respondent have the right to a process that is fundamentally fair, and free of bias or prejudice.

(b) The complainant and respondent have the right to be treated with respect, dignity, sensitivity, and fairness throughout the entire process. They are both entitled to seek support from the University and to be informed about the process both before the process is initiated and throughout the process as it unfolds.

(c) Both parties have the right to participate in the process, or to refrain from participation. The failure to participate will not be used as evidence against either party, but also will not prevent the process from proceeding unless the complainant withdraws the complaint and the University determines to abide by that request or the respondent withdraws from the University.

(d) Both parties may have a lawyer or other advisor present when being interviewed by the Investigative Team and the Hearing Panel, but the lawyer or other advisor will not be permitted to present statements, seek the production of evidence, or question any witnesses.

(e) Evidence of prior sexual conduct by the complainant or respondent with other partners will not ordinarily be considered in the process, and any evidence of a prior sexual relationship between the parties will not be determinative of the issue of consent.

(f) If there is credible evidence of a pattern of violations of the Sexual Misconduct Policy, that evidence may be considered by the Hearing Panel if there is a finding of responsibility and a sanction is being determined.

(g) While the process is underway, the Vice Provost for University Life (VPUL) will work with the complainant and respondent, ensuring support is provided to both parties. VPUL will also be responsible for implementing interim measures to protect the parties, or any of the witnesses, consistent with principles of fairness, including implementing measures regarding housing, academic accommodations and scheduling changes, no contact orders, and any other appropriate actions to protect the parties or any of the witnesses.

#### 3. Preliminary Determination

Upon receiving a complaint, the IO will make a preliminary determination as to whether the complaint falls within the purview of a Sexual Misconduct Policy and whether, on its face, there appears to be a sufficient basis to conduct a full investigation. In making this determination, the IO may interview the complainant and the respondent (after advising the respondent of the allegations in writing) and conduct whatever preliminary investigation the IO deems necessary to determine if the actions alleged in the complaint would, if true, constitute a violation of the University's Sexual Violence Policy and there is a reasonable basis for investigating the charges. If the IO concludes there is insufficient basis to proceed, the matter will be concluded, and the parties so advised.

#### 4. Investigation

If the IO makes the determination that there is a sufficient basis to proceed, the IO will issue a Statement of Charge Letter, based on the complaint and any preliminary investigation conducted. The Charge Letter will be provided to the complainant and the respondent. The respondent will be provided the opportunity to respond in writing to the Charge, and any response will be shared with the complainant.

The IO will lead a thorough and fair investigation, assisted by one or more co-investigators who may come from the School of the complainant or respondent or from elsewhere in the University (the "Investigative Team"). The co-investigator(s) will be University administrators or faculty members appropriately trained to investigate and handle sexual misconduct cases who are selected for individual cases by the IO. The investigation will include interviews of the complainant and respondent, interviews of witnesses, and review of documentation, physical evidence, and any other relevant evidence.

Prior to interviews, the complainant, the respondent, and any relevant witnesses will be informed by the IO that statements they make during the process may be admissible in concurrent or subsequent civil or criminal court proceedings, and will accordingly also be informed of their rights as outlined in Section D.2(c) above. They will also be reminded of the consequences of making false statements to the IO under the Code of Student Conduct and the Charter of the University of Pennsylvania Student Disciplinary System. The complainant and respondent may have their advisors<sup>7</sup> and/or outside counsel present for their interviews, but the advisors or outside counsel will not be permitted to participate in the interview other than to provide advice to the student, and they may be excluded from the interview for disruptive behavior.

In conducting the investigation, the Investigative Team may, as appropriate, also consult with other campus officials including but not limited to administrators in the relevant School, Division of Public Safety, the AVP and Title IX Officer, Chief Diversity Officer, or the Vice Provost for University Life. The Investigative Team may also consult with the Office of General Counsel, who may determine in particular cases to engage outside counsel to assist the University throughout this process. The Investigative Team may engage forensic and other experts, as needed.

#### 5. Investigative Report

At the conclusion of the investigation, the Investigative Team will prepare a draft factual investigative report, including assessments of credibility, a recommended finding as to responsibility, and recommended sanctions, if appropriate. In making the responsibility determination, the Investigative team will use a "preponderance of the evidence" standard. In other words, to find a student responsible for violating the Sexual Misconduct Policy, the Investigative Team must be convinced that it is more likely than not that a violation of the Sexual Misconduct Policy has occurred.

##### (a) Opportunity for Review and Comment

The draft investigative report will be provided to both the complainant and respondent for review and comment, under strict instructions that the draft report is confidential, and not to be shared with anyone other than their families and advisors, who must be members of the University community and/or outside counsel, as described above. Sharing of the report by either party, their families, advisors or outside counsel with any additional persons is strictly prohibited. The complainant and respondent will also be provided the opportunity to review the underlying evidence and witness statements with their advisors, but they will not be provided copies. The complainant and the respondent will be given the opportunity to respond to and comment on the draft investigative report in writing.

##### (b) Final Report

As a result of the response and comments received, the Investigative Team may conduct a further investigation and/or amend the draft report, if the Team determines either action to be warranted. The Investigative Team will prepare a final investigative report, incorporating any changes they believe are appropriate, and then share it with the complainant and the respondent. The complainant and respondent may submit formal objections or comments to the final report, which will become part of the final report of the matter.

<sup>7</sup>The University will provide a list of advisors from the Penn community to complainants and respondents. Advisors will be trained by the University to support both complainants and respondents in this process. The parties need not select an advisor from this list. The parties may select any Penn faculty or staff member to advise them. The parties may also retain outside counsel in addition to, or instead of, using an advisor. The role of the outside counsel, however, will be limited to an advisory role and will not be permitted to have an active role in the proceedings.

## 6. Resolution Without a Hearing

The matter may be resolved at this stage if both parties agree to the recommendations of the Investigative Team with respect to responsibility and, if applicable, sanctions, or if the parties otherwise reach a mutually acceptable resolution. The University, however, will not compel either the complainant or the respondent to engage in face-to-face mediation or to accept the recommendations of the Investigative Team.

## 7. Hearing Panel

If the matter is not resolved at this stage in a mutually acceptable manner, either party may request a hearing before a Hearing Panel (Panel) within 10 business days of transmission of the final report.

### (a) Panel Membership

The Panel will be comprised of three (3) faculty members and the Disciplinary Hearing Officer (DHO), who will be a non-voting member. The DHO will make all decisions about the organization of the Panel, including decisions regarding the admissibility of evidence, witnesses to appear before the Panel, or any additional decisions regarding the administration of the hearing process.<sup>8</sup>

Membership of the Panel, including the DHO, will observe the following guidelines:

i. Members will be selected from a pool of faculty who have agreed to serve for a term of one or more years.

ii. Only mixed-gender panels that have training and experience in handling complaints involving sexual misconduct will hear sexual misconduct cases.

iii. Faculty comprising the Panel should be from academic departments in which neither of the parties is enrolled in a course of study, and no faculty member should serve on the Panel who has a mentoring relationship or other personal relationship with either of the parties.

iv. Faculty asked to serve should recuse themselves or be dismissed if they have any personal ties to either of the parties or to individuals with whom the parties are closely associated, or if they have prior personal knowledge of the alleged incident of sexual misconduct.

v. The University will train members of the pool to fulfill their responsibilities as adjudicators according to the procedures and policies outlined here and to ensure compliance with Title IX and other applicable state and federal guidelines. In addition, the Panel will be provided with "just in time" training on adjudicating sexual misconduct cases.

vi. The IO may not serve on the Panel; however, the IO may be interviewed by the Panel regarding the investigation and may assist the DHO as needed in organizational and administrative matters related to the Panel.

vii. The complainant and respondent will be notified of the membership of the Panel in advance of the Hearing. Any challenges for cause against individual Panel members must be made promptly so as not to delay the conduct of the Hearing and will be given serious consideration by the DHO to ensure impartiality of the proceedings.

viii. All proceedings must be kept strictly confidential among the parties, witnesses and members of the panel. All individuals involved in such hearings must agree to such conditions of confidentiality.

### (b) Hearing Procedures

Hearings must be prompt, fair, and impartial, affording the complainant's allegations and the respondent's defenses all due consideration and protecting the rights of both parties. The Panel will review the Investigative Team's final report, including any response, objections, or comments provided by the complainant or respondent. The Panel will also carefully review the evidentiary record, including witness statements, documents, and physical evidence.

### Hearing Panel Interviews

i. The Panel will interview separately the IO (and co-investigator(s) if the Panel so chooses), the complainant, and the respondent. The Panel will, whenever possible, provide the complainant and respondent with 10 days advance notice of the Hearing. If reasonably possible, interviews will be conducted on one day, but if such scheduling would require an unreasonably long day, or if such scheduling would unreasonably delay the proceeding, the hearing may be scheduled over multiple days.

The Panel may seek additional evidence from the IO and interview key

witnesses on whom the IO relied in drawing his or her conclusions, as well as request additional evidence from the IO to clarify the evidentiary record, provided that it can do so without unreasonably delaying the process. In the event that a new witness comes forward during the Hearing who was not originally interviewed by the IO, or new evidence is discovered after the IO has issued his or her report, the DHO may allow that witness to testify or admit the evidence to the hearing, but only if the DHO judges the new witness or evidence to be highly relevant to an accurate and fair determination of the outcome.

ii. The Hearing will be held in private, and only the Panel may conduct interviews. Only the person interviewed (and that person's advisor or outside counsel, as applicable) will be present at the Hearing during interviews. The complainant or respondent (and their advisor or outside counsel, as applicable) will be able to view testimony from separate rooms, upon request, via closed-circuit television or similar video transmission.

iii. Subject to the Rights and Protections set forth in Section D.2 above, the Panel has wide latitude when questioning the complainant, the respondent, and any witnesses in order to determine the accuracy of the final report.

iv. The complainant and respondent may propose witnesses and provide specific questions in advance that they believe important to ask of other parties or witnesses. The DHO, in consultation with the Panel, will determine the relevance as well as the appropriateness of witnesses and questions, and may accordingly place restrictions on, include, or exclude witnesses or other information.

v. When the Panel is conducting the interview of the complainant and respondent, each student may bring an advisor or outside counsel with them to provide advice and support, but the advisor or outside counsel will not be permitted to participate in the interview other than to provide advice to the student and may be excluded from the interview by the DHO for disruptive behavior.

vi. The interviews by the Panel will be recorded (audio only). No observers will be permitted to make any audio or video recordings.

### (c) Hearing Panel Decision

After the Hearing concludes, the Panel will immediately deliberate in private to decide whether a preponderance of the evidence shows that the respondent is responsible for a violation of the University's Sexual Misconduct Policy. Preponderance of the evidence means that the Panel must be convinced based on the evidence that it is more likely than not that a violation has occurred in order to find a student is responsible for a violation of the policy. A finding of responsibility requires a majority vote of the members of the Panel.

i. If the respondent is found responsible, the Panel will also determine the appropriate sanction, by majority vote, based upon the facts of the case and University precedent, with a presumption in favor of the sanction recommended by the IO.

ii. The Panel will arrive at its conclusion as expeditiously as possible and will promptly advise both the complainant and the respondent in writing of its decision with respect to responsibility and, if applicable, sanctions. In keeping with guidelines for timely resolution as provided in Section D1 above, the written decision will be provided as soon after the conclusion of the proceeding as is possible.

iii. Decisions made by the Panel are considered final, subject only to appeal as outlined below.

### (d) Appeal of Hearing Panel Decision

The Panel decision is subject to appeal by either party in writing to a Disciplinary Appellate Officer (DAO), a faculty member with exclusive jurisdiction to decide appeals. In keeping with guidelines for timely resolution as provided in Section D1 above, appeals should be submitted within 10 business days after the decision of the Panel. Letters of appeal should specifically state whether the objection is to the judgment of responsibility, the sanction, or both, and explain in detail the grounds for appeal.

i. The DAO will review the report of the Investigative Team and supporting evidence, the audio record from the Panel Hearing in the discretion of the Appellate Officer, and any other material the DAO deems relevant, in addition to the decision of the Panel in order to ensure that the process was consistent with University policy and that the result was not arbitrary or capricious.

ii. After considering the appeal, the DAO will promptly issue his or her decision in writing and will provide copies to the DHO, the Provost, the Senior Vice President for Institutional Affairs and Chief Diversity Officer, the complainant, respondent(s) and other appropriate parties.

<sup>8</sup> In carrying out these responsibilities, the DHO may consult with the IO, the Office of General Counsel and other appropriate office such as the Office of Student Conduct and the Senior Vice President for Institutional Affairs and Chief Diversity Officer. University officers thus consulted will respect the confidentiality conditions of the proceedings.

## E. Resource Offices

### 1. Confidential Resources

The following can be contacted for support, counseling, and advice:

#### Special Services Department, Division of Public Safety

24-hour Helpline: (215) 898-6600

4040 Chestnut Street

<http://www.publicsafety.upenn.edu/special-services/>

#### Counseling & Psychological Services (CAPS)

Main Number: (215) 898-7021

After-hours emergency number: (215) 349-5490

3624 Market Street, 1st Floor, West

<http://www.vpul.upenn.edu/caps/>

#### Sexual Trauma Treatment, Outreach and Prevention (CAPS)

<http://www.vpul.upenn.edu/caps/sttop.php>

#### Penn Women's Center (PWC)

Main Numbers: (215) 898-8611 and (215) 898-6500

3643 Locust Walk

<http://www.vpul.upenn.edu/pwcc/>

#### Student Health Service (SHS)

Main Number: (215) 746-3535

Suite 100, 3535 Market Street

<http://www.upenn.edu/shs/>

#### Lesbian Gay Bisexual Transgender Center

Main number: (215) 898-5044

3907 Spruce Street

<https://www.vpul.upenn.edu/lgbtc/>

#### African-American Resource Center

Main number: (215) 898-0104

3643 Locust Walk

<http://www.upenn.edu/aarc/>

#### Office of the Ombuds

(215) 898-8261

113 Duhring Wing, 236 S. 34th Street

<http://www.upenn.edu/ombuds/>

#### Office of the University Chaplain

Main Number: (215) 898-8456

240 Houston Hall, 3417 Spruce Street

<http://www.upenn.edu/chaplain/>

#### Penn Violence Prevention

Main number: (215) 898-6081

VPUL, 3539 Locust Walk

<https://secure.www.upenn.edu/vpul/pvp/gethelp.php>

### 2. Official Reporting Offices for Sexual Misconduct Complaints

If reports of sexual misconduct are made with or come to the attention of the following offices, they must ensure that appropriate action is taken, including notifying the University's AVP and Title IX Officer:

#### Office of Affirmative Action and Equal Opportunity Programs

(215) 898-6993

Suite 421, Franklin Building

<http://www.upenn.edu/affirm-action/index.html>

#### Student Intervention Services, VPUL

(215) 898-6081

(215) 768-6527 Nights/Weekends

3611 Locust Walk

<https://www.vpul.upenn.edu/intervention.php>

#### Office of Student Conduct

(215) 898-5651

Suite 400, 3440 Market Street

<https://www.osc.upenn.edu/>

#### Office of Staff and Labor Relations, Division of Human Resources

(215) 898-6093

Suite 600, Franklin Building

<https://www.hr.upenn.edu/workplace-issues/staff-labor-relations>

### F. Investigative Office for Sexual Misconduct Complaints

The official office for reporting, initiating a formal complaint, and investigation of violations of the Sexual Misconduct Policies, including violations of the Sexual Harassment or Sexual Violence Policies, is the Office of the Associate Vice President for Equity and Title IX Officer. The contact information for that Office is:

#### Associate Vice President for Equity and Title IX Officer (TBA)

(Address)

(Phone)

(website)



## V. Procedures for Resolving Complaints of Sexual Misconduct Against Faculty

### A. Introduction

The University of Pennsylvania is committed to providing a safe and healthy environment, free of gender-based misconduct, to all members of our community and visitors to our community. As such, sexual assault, sexual violence, relationship violence and stalking will not be tolerated. In order to ensure the creation of a climate where members of the community are able to thrive and achieve their full potential, the University has developed a wide range of policies, educational programs, broad-based resources, support and reporting systems. These procedures supplement these other policies and initiatives, addressing the process by which complaints against a University faculty member for a violation of the Sexual Misconduct Policy (which includes the Sexual Harassment Policy and Sexual Violence, Relationship Violence and Stalking Policy (“Sexual Violence Policy”)) will be adjudicated and resolved.

### B. Confidentiality

Confidentiality is of critical importance in ensuring that these sensitive matters are handled appropriately. The University has an obligation to respond to violations of its Sexual Misconduct Policy as fairly and expeditiously as possible when a complaint is received. University staff and faculty may share information with others who have a legitimate need to know in order to fairly and effectively address complaints, but the information should be considered confidential and should be protected to the extent possible consistent with legal obligations. Such administrators may include, for example those in, the Office of the Vice Provost for University Life, the Office of the Associate Vice President for Equity and Title IX Officer (AVP), the Division of Public Safety, the Office of General Counsel, Counseling and Psychological Services, Student Health, and academic advising offices.

### C. Reporting Complaints of Violation of the Sexual Misconduct Policy

#### 1. Office of the Associate Vice President for Equity and Title IX Officer

The Office of the Associate Vice President for Equity and Title IX Officer (AVP) will be responsible for overseeing all complaints made against a University faculty member, instructor, post-doctoral fellow or trainee, or teaching assistant (“faculty member”) for violations of the Sexual Misconduct Policy (including the Sexual Harassment and Sexual Violence Policies). Complaints should be lodged with the AVP who will ensure that complaints are investigated by a trained Investigative Officer (IO), who will select a co-investigator to form the Investigative Team. The Investigative Team will consult with the appropriate Dean, or in any case for which the Dean has an actual or appearance of a conflict of interest or is implicated in the complaint, the Vice Provost for Faculty.

Complaints must either be presented in writing or based on information provided by the complainant or another individual making the report who will then memorialize the allegations in writing and ask the complainant to confirm them. Complainants may include University students, staff, or faculty members, as well as others both within and outside the University community, alleging a violation against a University faculty member.

##### (a) Sexual Harassment

If the AVP determines that the complaint involves a possible violation of the Sexual Harassment Policy, and not the Sexual Violence Relationship Violence or Stalking Policy, the complaint will be investigated by an IO.<sup>9</sup> The facts, conclusions, and recommendations reached by the IO will be reported to the Dean of the applicable school who may seek an informal resolution, if appropriate, or initiate the University’s Procedure Governing Sanctions Taken Against Members of the Faculty. (*Faculty Handbook* II.E.16).

##### (b) Sexual Violence, Relationship Violence, and Stalking

If the AVP determines that the complaint involves a possible violation of the Sexual Violence Policy, the procedures outlined below in Section D of this policy will apply.

<sup>9</sup> The decision as to whether a complaint involves sexual violence is determined by the AVP.

<sup>10</sup> The University recognizes that in the event criminal charges are pending, a respondent may choose not to participate in the process described in these procedures in order to protect his or her Fifth Amendment rights. Such decision will not be used as evidence against any respondent and the Hearing Panel will be instructed not to draw any adverse inference from the failure to participate.

#### 2. Office of the District Attorney and Office for Civil Rights

Complainants may also choose to file a report with the District Attorney, the Office for Civil Rights of the U.S. Department of Education, or other external agencies. The University’s processes and the legal system are independent of one another, and the University has its own interest in, and responsibility for, the enforcement of its Sexual Violence Policy.<sup>10</sup> Therefore, the University will not unilaterally defer its processes pending the outcome of a criminal process, nor will the outcome of any legal process be determinative of the University result. The University will, however, comply with reasonable requests by law enforcement for cooperation, and may suspend its fact-finding process in a sexual misconduct investigation so as not to impede the law enforcement process.

#### 3. Support, Counseling and Advice

In making a decision about whether to file a sexual violence complaint, complainants may seek support, counseling and advice from other offices on campus. A list of these offices is provided in Section E below. Should the complainant determine to proceed with an on-campus complaint investigation and resolution process against a University faculty member, the Office of the AVP will be the single place to initiate the process.<sup>11</sup>

#### 4. Timeframe for Submitting a Complaint

The University does not limit the timeframe for filing a sexual misconduct complaint. Reports may be filed at any time, although the University’s ability to investigate or take action may be limited by the passage of time, changes in the employment relationship of the alleged respondent at the time the report is made, or other circumstances.

#### 5. Complainant Request for Confidentiality

The University is required by Title IX to weigh the complainant’s request for confidentiality/privacy with the University’s commitment to provide a reasonably safe and nondiscriminatory environment. In situations where a complainant requests confidentiality, the University’s ability to investigate and respond to the allegations may be limited. The IO will notify the complainant if the University cannot, in unusual cases, maintain the complainant’s confidentiality/privacy. The complainant’s and respondent’s identities will only be revealed to those individuals who need to know their names in order to investigate or adjudicate the complaint or provide interim measures. If the University becomes aware of behavior or a pattern of behavior by one or more respondents, the University will take appropriate action in an attempt to protect the University community.

### D. Investigation and Resolution of Complaints of Sexual Violence

#### 1. Timely Resolution

The process of resolving complaints, not including any appeal, should be completed, where practicable, within 60 business days of the filing of the written complaint. The appeal should be completed, where practicable, within 30 business days of the filing of the appeal. In the event that a Hearing Panel is convened, the complainant and the respondent will both be provided with a copy of the decision of the Panel and given 10 business days from the date of the transmittal of the Hearing Panel’s decision to file an appeal.

#### 2. Rights and Protections for Complainant and Respondent

(a) The complainant and respondent have the right to a process that is fundamentally fair, and free of bias or prejudice.

(b) The complainant and respondent have the right to be treated with respect, dignity, sensitivity and fairness throughout the entire process. They are both entitled to seek support from the University and to be informed about the process both before the process is initiated and throughout the process as it unfolds.

(c) Both parties have the right to participate in the process, or to refrain from participation. The failure to participate will not be used as evidence against either party, but also will not prevent the process from proceeding unless the complainant determines to withdraw the complaint and the University determines to abide by that request.

(d) Both parties may have an advisor, who may be their lawyer, present when being interviewed by the Investigative Team and the Hearing Panel, but the lawyer or other advisor will not be permitted to present statements,

<sup>11</sup> While the IO will be responsible for managing the complaint investigation and resolution process, as described below, he or she will work with other appropriate University offices, including the Vice Provost for University Life and the Vice Provost for Faculty, to determine if interim measures are appropriate before a final resolution is reached.

seek the production of evidence, or question any witnesses. Advisors must be a member of the University community, unless the advisor is serving as legal counsel to one of the parties.

(e) Evidence of prior sexual conduct by the complainant or respondent with other partners will not ordinarily be considered in the process, and any evidence of a prior sexual relationship between the parties will not be determinative of the issue of consent.

(f) If there is credible evidence of a pattern of violations of the Sexual Misconduct Policy, evidence that helps to establish such a pattern may be considered by the Hearing Panel.

(g) While the process is underway, appropriate interim measures will be taken to protect the parties. If both the complainant and the respondent are faculty members, the Dean(s) of the school(s) to which the faculty members have appointments—or the Dean(s)' designee(s)—would work with the complainant and respondent, ensuring support is provided to both sides, and implementing interim measures to protect the parties, consistent with principles of fairness. In the event that the complainant is a staff member or a student, the Dean of the school to which the respondent has an appointment—or the Dean's designee—will work with Human Resources (for staff members) and the Vice Provost for University Life (for students) to implement interim measures.

### 3. Preliminary Determination

Upon receiving a complaint, the AVP will make a preliminary determination as to whether the complaint on its face appears to be a sufficient basis to conduct a full investigation. In making this determination, the AVP may interview the complainant and the respondent (after advising the respondent of the allegations in writing) and conduct whatever preliminary investigation the AVP deems necessary to determine if the actions alleged in the complaint would, if true, constitute a violation of the University's Sexual Violence Policy and there is a reasonable basis for investigating the charges. If the AVP concludes there is insufficient basis to proceed, the matter will be concluded, and the parties so advised.

### 4. Investigation

If the AVP makes the determination that there is a sufficient basis to proceed, an IO will be assigned to conduct the investigation. The IO will issue a Statement of Charge Letter, based on the complaint and any preliminary investigation conducted. The Charge Letter will be provided to the complainant and the respondent. The respondent will be provided the opportunity to respond in writing to the Charge, and any response will be shared with the complainant. The Dean of each school to which the respondent faculty member has an appointment will also receive a copy of the Charge Letter.

The IO will lead a thorough and impartial investigation, assisted by one or more co-investigators who may come from the School of the complainant or respondent or from elsewhere in the University (the "Investigative Team"). Co-investigator(s) will be University staff or faculty members appropriately trained to investigate and handle sexual misconduct cases who will be selected for individual cases by the IO. The investigation will include interviews of the complainant and respondent, interviews of witnesses as well as review of documentation, physical evidence and any other relevant evidence.

Prior to interviews, the complainant, the respondent and any relevant witnesses will be informed by the IO that statements they make during the process may be admissible in concurrent or subsequent civil or criminal court proceedings. Accordingly, the parties and witnesses will be informed of their rights as outlined in Section D2 above. The parties will be advised of the seriousness of the proceeding and the expectation that the information they provide is both accurate and complete. Any false or misleading statements may subject the party making such statements to proceedings under the applicable University policy, handbook, code and/or charter. The complainant and respondent may have their advisors<sup>12</sup> and/

<sup>12</sup> The University will provide a list of advisors from the Penn community to complainants and respondents. Advisors will be offered training by the University to support both complainants and respondents in this process. The parties need not select an advisor from this list. The parties may select any Penn faculty or staff member to advise them, but they will not have an active role in the proceedings. The parties may also retain outside counsel in addition to, or instead of, using an advisor. Only one advisor (either a lawyer or a member of Penn's faculty or staff) may be present during the hearing and related proceedings. The role of the outside counsel, however, will be limited to an advisory role and he or she will not be permitted to have an active role in the proceedings.

or outside counsel present for their interviews, but the advisors or outside counsel will not be permitted to participate in the interview other than to provide advice to the person they have accompanied, and they may be excluded from the interview for disruptive behavior.

In conducting the investigation, the Investigative Team may, as appropriate, also consult with other campus officials including but not limited to administrators in the relevant School(s), the Division of Public Safety, the AVP, the Senior Vice President for Institutional Affairs and Chief Diversity Officer, the Vice Provost for Faculty or the Vice Provost for University Life. The Investigative Team may also consult with the Office of General Counsel, which may determine in particular cases to engage outside counsel to assist the University throughout this process. The Investigative Team may engage forensic and other experts, as needed.

### 5. Investigative Report<sup>13</sup>

At the conclusion of the investigation, the Investigative Team will prepare a draft factual investigative report, including assessments of credibility, a recommended finding as to responsibility, and recommended sanctions, if appropriate. In making the responsibility determination, the Investigative Team must be convinced that there is substantial evidence that a violation of the Sexual Misconduct Policy has occurred.

#### (a) Opportunity for Review and Comment

The draft investigative report will be provided to both the complainant and respondent for their prompt review and comment, under strict instructions that the draft report is confidential, and not to be shared with anyone other than their families and advisors, who must be members of the University community and/or outside counsel, as described above. Sharing of the draft report by either party, their families, advisors or outside counsel with any additional persons will be strictly prohibited. The complainant and respondent will also be provided the opportunity to review the underlying evidence and witness statements with their advisors, but they will not be provided with nor permitted to make copies.

#### (b) Final Report

As a result of the response and comments received, the Investigative Team may conduct a further investigation and/or amend the draft report, if the Team determines either action to be warranted. A final investigative report will be prepared, incorporating any changes, and shared with the complainant and the respondent. The complainant and respondent may submit formal objections or comments to the final report, which will become part of the final report of the matter.

### 6. Resolution Without a Hearing

The matter may be resolved at this stage if both parties agree to the recommendations of the Investigative Team with respect to responsibility and, if applicable, sanctions, or if the parties otherwise reach a mutually acceptable resolution. The University, however, will not compel either the complainant or the respondent to engage in face-to-face mediation or to accept the recommendations of the Investigative Team.

### 7. Hearing Panel

If the matter is not resolved at this stage in a mutually acceptable manner, either party may request a hearing before a Hearing Panel (Panel) within 10 business days of transmission of the final report.

#### (a) Panel Membership

The Panel will be comprised of three (3) faculty members and the Designated Hearing Officer (DHO), who will be a non-voting member. The DHO will make all decisions about the organization of the Panel, including decisions regarding the admissibility of evidence, witnesses to appear before the panel, or any additional decisions regarding the administration of the hearing process.<sup>14</sup>

Membership of the Panel, including the DHO, will observe the following guidelines:

- i. Members will be selected from a pool of faculty who have agreed to serve for a term of one or more years.
- ii. Only Panels that have training in handling complaints involving sex-

<sup>13</sup> The parties will be advised, and acknowledge, that the Investigative Report, Exhibits and Drafts are confidential to be used by their and their families and advisors in connection with these proceedings.

<sup>14</sup> In carrying out these responsibilities, the DHO may consult with the IO, the Office of General Counsel and other appropriate offices such as the Vice Provost for Faculty and the Senior Vice President for Institutional Affairs and Chief Diversity Officer. University officers thus consulted will respect the confidentiality conditions of the proceedings.

ual misconduct will hear sexual misconduct cases.

iii. Faculty appearing on a Panel may not share an academic department affiliation with either of the parties (e.g., has a faculty appointment or is enrolled in a course of study), nor may any faculty member serve on the Panel who has a professional, academic or personal relationship with either of the parties. Faculty asked to serve must recuse themselves or be dismissed if they have any personal ties to either of the parties or to individuals with whom the parties are closely associated. Faculty with personal knowledge of the alleged incident of sexual misconduct also must recuse themselves or be dismissed.

iv. The University will train members of the pool to fulfill their responsibilities as adjudicators according to the procedures and policies outlined here and to ensure compliance with Title IX and other applicable state and federal guidelines. In addition, the Panel will be provided with “just in time” training on adjudicating sexual violence cases, unless the Panel members have recently been trained.

v. No member of the Investigative Team may serve on the Panel; however, any such individual may be interviewed by the Panel regarding the investigation and may assist the DHO as needed in organizational and administrative matters related to the Panel.

vi. The complainant and respondent will be notified of the membership of the Panel in advance of the Hearing. Any challenges for cause against individual Panel members must be made promptly so as not to delay the conduct of the Hearing and will be given serious consideration by the DHO to ensure impartiality of the proceedings.

vii. All proceedings must be kept strictly confidential among the parties, witnesses and members of the Panel. All individuals involved in such hearings must agree to such conditions of confidentiality.

#### **(b) Hearing Procedures**

Hearings must be prompt, fair and impartial, affording the complainant’s allegations and the respondent’s defenses all due consideration and protecting the rights of both parties. The Panel will review the Investigative Team’s final report, including any responses, objections or comments provided by the complainant and/or respondent. The Panel will also carefully review the evidentiary record, including witness statements, documents and physical evidence.

#### **Hearing Panel Interviews**

The Panel will interview separately the IO (and co-investigator(s) if the Panel so chooses), the complainant and the respondent. The Panel will, whenever possible, provide the complainant and respondent with 10 days advance notice of the Hearing. If reasonably possible, interviews will be conducted on one day, but if such scheduling would require an unreasonably long day, or if such scheduling would unreasonably delay the proceeding, the Hearing may be scheduled over multiple days.

The Panel may seek additional evidence from the IO and interview key witnesses on whom the IO relied in drawing his or her conclusions, as well as request additional evidence from the IO to clarify the evidentiary record, provided that it can do so without unreasonably delaying the process. In the event that a new witness comes forward during the Hearing who was not originally interviewed by the IO, or new evidence is discovered after the IO has issued his or her report, the DHO may allow that witness to be interviewed or admit the evidence to the hearing, but only if the DHO judges the new witness or evidence to be relevant to an accurate and fair determination of the outcome.

i. The Hearing will be held in private, and only the Panel may conduct interviews. Only the person interviewed (and in the case of the parties, that person’s advisor or outside counsel) will be present at the Hearing. The complainant or respondent (and their advisor or outside counsel, as applicable) will be able to view interviews from separate rooms, upon request, via closed-circuit television or similar video transmission.

ii. Subject to the protections set forth in Section D2 above, the Panel has wide latitude when questioning the complainant, the respondent and any witnesses in order to determine the accuracy of the report.

iii. The complainant and respondent may propose witnesses and provide specific questions in advance that they believe important to ask of other parties or witnesses. The parties also may submit questions during the Hearing that they wish to have asked. The DHO, in consultation with the Panel, will determine the relevance as well as the appropriateness of witnesses and questions, and may accordingly place restrictions on, include or exclude witnesses or other information.

iv. When the Panel is conducting the interview of the complainant and respondent, each may bring an advisor or outside counsel with them to provide advice and support, but the advisor or outside counsel will not be permitted to participate in the interview other than to provide advice to the complainant or respondent and may be excluded from the inter-

view by the DHO for disruptive behavior.

v. The interviews by the Panel will be recorded (audio only). No observers will be permitted to make any audio or video recordings.

#### **(c) Hearing Panel Decision**

After the Hearing concludes, the Panel will immediately deliberate in private to decide whether, by clear and convincing evidence, the respondent has violated the University’s Sexual Violence Policy. Clear and convincing evidence means that the Panel must find that substantial evidence has been presented, that the faculty member is responsible for a violation of the Policy. A finding of responsibility requires a majority vote of the members of the Panel.

i. If the respondent is found responsible, the Panel will also recommend an appropriate sanction, by majority vote, based upon the facts of the case and University precedent, with a presumption in favor of the sanction recommended by the IO.

ii. The Panel will arrive at its conclusion as expeditiously as possible and will promptly advise both the complainant and the respondent in writing of its decision with respect to responsibility and, if applicable, recommended sanctions. In keeping with guidelines for timely resolution as provided in Section D1 above, the written decision will be provided as soon after the conclusion of the proceeding as is possible.

### **8. Sanctions**

After a final decision has been rendered by the Panel, the matter is presented to the Dean of the School in which the respondent has a primary appointment for procedures related to sanctions, if applicable. The Dean is provided the final investigative report, along with the Panel’s decision and the appellate decision (if any).

(a) If the respondent is a member of the Standing Faculty, the Dean will follow the procedures described in the Faculty Handbook’s section regarding Procedure Governing Sanctions Taken Against Members of the Faculty (Section II.E.16), as appropriate, to determine what, if any, sanction should be imposed against the respondent based on the determination rendered by the Investigative Team, and if applicable, the Panel, and following the Dean’s consultation with the Vice Provost for Faculty.

(b) If the respondent is a member of the Associated Faculty, the Dean will consider the determination rendered by the Investigative Team, as well as the Panel and consult with the Vice Provost for Faculty before implementing an appropriate sanction.

The matter will be referred to the Provost to determine the appropriate sanction in the event that the Dean is the respondent or if referral to the Dean would create an actual or apparent conflict of interest.

### **E. Resource Offices**

#### **1. Confidential Resources**

The following is a list of confidential resources that can be contacted for support, counseling and advice. 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. 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.

#### **Special Services Department, Division of Public Safety**

24-hour Helpline: (215) 898-6600

4040 Chestnut Street

<http://www.publicsafety.upenn.edu/special-services/>

#### **Penn Women’s Center**

(215) 898-8611

3643 Locust Walk

<http://www.vpul.upenn.edu/pwcc/>

#### **Lesbian Gay Bisexual Transgender Center**

(215) 898-5044

3907 Spruce Street

<http://www.vpul.upenn.edu/lgbtc/>

#### **African-American Resource Center**

(215) 898-0104

3643 Locust Walk

<http://www.upenn.edu/aarc>

*(continued on next page)*

**Office of the University Chaplain**

(215) 898-8456  
240 Houston Hall, 3417 Spruce Street  
<http://www.upenn.edu/chaplain>

**Office of the Ombuds**

(215) 898-8261  
113 Duhring Wing, 236 S. 34th Street  
<http://www.upenn.edu/ombuds/>

**Employee Assistance Program, Health Advocate**

(866) 799-2329  
<https://www.hr.upenn.edu/PennHR/wellness-worklife/counseling-and-employee-assistance-program>

**Penn Violence Prevention**

(215) 898-6081  
VPUL, 3539 Locust Walk  
<https://secure.www.upenn.edu/vpull/pvp/gethelp.php>

**2. Official Reporting Offices for Sexual Misconduct Complaints**

If reports of sexual misconduct are made with or come to the attention of the following offices, they must ensure that appropriate action is taken, including notifying the University's AVP and Title IX Officer:

**Office of Affirmative Action and Equal Opportunity Programs**

(215) 898-6993  
Suite 421, Franklin Building  
<http://www.upenn.edu/affirm-action/index.html>

**Student Intervention Services, VPUL**

(215) 898-6081  
(215) 768-6527 Nights/Weekends  
3611 Locust Walk  
<https://www.vpul.upenn.edu/intervention.php>

**Office of Student Conduct**

(215) 898-5651  
Suite 400, 3440 Market Street  
<https://www.osc.upenn.edu/>

**Office of Staff and Labor Relations, Division of Human Resources**

(215) 898-6093  
Suite 600, Franklin Building  
<https://www.hr.upenn.edu/workplace-issues/staff-labor-relations>

**3. Investigative Office for all Sexual Misconduct Complaints**

The official office for reporting, initiating a formal complaint, and investigation of violations of the Sexual Misconduct Policies, including violations of the Sexual Harassment or Sexual Violence Policies, is the Office of the Associate Vice President for Equity and Title IX Officer. The contact information for that Office is:

**Associate Vice President for Equity and Title IX Officer (TBA)**

(Address)  
(Phone)  
(website)

## VI. Procedures for Resolving Complaints of Sexual Misconduct Against Staff

### A. Introduction

The University of Pennsylvania is committed to providing a safe and healthy environment, free of gender-based misconduct, to all members of our community and visitors to our community. As such, sexual harassment, sexual assault, sexual violence, relationship violence, and stalking will not be tolerated. In order to ensure the creation of a climate where members of the community are able to thrive and achieve their full potential, the University has developed a wide range of policies, educational programs, broad-based resources, support, and reporting systems. These procedures supplement these other policies and initiatives, addressing the process by which complaints against a University staff member for a violation of its Sexual Misconduct Policy (which includes its Sexual Harassment Policy and Sexual Violence, Relationship Violence and Stalking Policy (“Sexual Violence Policy”)) will be investigated and resolved.

### B. Confidentiality

Confidentiality is of critical importance in ensuring that these sensitive matters are handled appropriately. The University has an obligation to respond to violations of its Sexual Misconduct Policy as fairly and expeditiously as possible when a complaint is received. University staff and faculty may share information with others who have a legitimate need to know in order to fairly and effectively address complaints, but the information should be considered confidential and should be protected to the extent possible consistent with legal obligations. Such administrators may include, for example those in, the Office of the Vice Provost for University Life, the Office of the Associate Vice President and Title IX Officer (AVP), the Division of Public Safety, the Office of General Counsel, Counseling and Psychological Services, Student Health, and academic advising offices.

### C. Reporting Complaints of Sexual Misconduct

#### 1. Office of the Associate Vice President and Title IX Officer

The Office of the Associate Vice President and Title IX Officer (AVP) will be responsible for ensuring that all complaints made against a University staff member alleging a violation of the University’s Sexual Misconduct Policy (which includes the Sexual Harassment or Sexual Violence Policies) are handled appropriately. All AVP responsibilities as described in these procedures will be performed directly by the AVP or by his or her designee.

Complaints must either be presented in writing or based upon information provided by the complainant or another individual making the report to the AVP who will then memorialize the allegations in writing and ask the complainant to confirm the allegations. Complaints may be made by University students, staff, or faculty members, as well as others both within and outside the University community, alleging a violation of the Sexual Misconduct Policy by a University staff member.

#### 2. Office of the District Attorney and Office for Civil Rights

Complainants may also choose to file a report with the District Attorney, the Office for Civil Rights of the U.S. Department of Education, or other external agencies. The University’s processes and the legal system work independently of one another, and the University has its own interest in, and responsibility for, the enforcement of its Sexual Violence Policy.<sup>15</sup> Therefore, the University will not unilaterally defer its processes pending the outcome of a criminal process, nor will the outcome of any legal process be determinative of the University result. The University will, however, comply with reasonable requests by law enforcement for cooperation, and may temporarily suspend its fact-finding process in a sexual assault investigation so as not to impede the law enforcement process.

#### 3. Support, Counseling and Advice

In making a decision about whether to file a complaint, complainants may seek support, counseling, and advice from other offices on campus. A list of these offices is provided in Section III below. Should the complainant determine to proceed with an on-campus complaint investigation and resolution process against a University staff member, the Office of the AVP will be the single place to initiate the process.<sup>16</sup>

<sup>15</sup> The University recognizes that should it be proceeding in cases where criminal charges are pending, the respondents may choose not to participate in the process described in these procedures in order to protect their Fifth Amendment rights. Such decision will not be used as evidence against any respondent and the Hearing Panel will be instructed not to draw any adverse inference from the failure to participate.

#### 4. Timeframe for Submitting a Complaint

The University does not limit the timeframe for filing a report of a violation of the Sexual Misconduct Policy. Reports may be filed at any time, although the University’s ability to investigate or take action may be limited by the passage of time, or by changes in the employment relationship of the alleged respondent at the time the report is made.

#### 5. Complainant Request for Confidentiality

The University is required by Title IX to weigh the complainant’s request for confidentiality/privacy with the University’s commitment to provide a reasonably safe and nondiscriminatory environment. In situations where a complainant requests confidentiality, the University’s ability to investigate and respond to the allegations may be limited. The AVP will notify the complainant if the University cannot, in unusual cases, maintain the complainant’s confidentiality/privacy. The complainant’s and respondent’s identities will only be revealed to those individuals who need to know their names in order to investigate or adjudicate the complaint or provide interim measures. If the University becomes aware of behavior or a pattern of behavior by one or more respondents, the University will take appropriate action in an attempt to protect the University community.

### D. Investigation and Resolution of Complaints

The Office of the Associate Vice President for Equity and Title IX Officer (AVP) is responsible for overseeing the informal or formal resolution of all complaints made against a University staff member for a violation of the University’s Sexual Misconduct Policy. Complaints should be lodged with the AVP who will ensure that complaints are investigated by a trained Investigative Officer (IO), who will select a co-investigator to form the Investigative Team. The Investigative Team will consult with the Dean of the School or Vice President of the Division in which the respondent works, or the Vice President for Human Resources in any case for which the Dean or Vice President has an actual or the appearance of a conflict of interest or is implicated in the complaint.

Complaints must either be presented in writing or based on information provided by the complainant or another individual making the report who will then memorialize the allegations in writing and ask the complainant to confirm them. Complainants may include University students, staff or faculty member, as well as others both within and outside the University community, alleging a violation of the University’s Sexual Misconduct Policy by a University staff member.

#### 1. Timely Resolution

The process of resolving complaints, exclusive of any appeal, should be completed, unless there are special circumstances, within 60 business days of the filing of the written complaint. The appeal should be completed, absent special circumstances, within 30 business days of the filing of the appeal.

The complainant and the respondent will both be provided with a copy of the investigative team’s decision and given 10 business days from the date of the transmittal of that decision to file an appeal.

#### 2. Rights and Protections for Complainant and Respondent

(a) The complainant and respondent have the right to a process that is fundamentally fair, and free of bias or prejudice.

(b) The complainant and respondent have the right to be treated with respect, dignity, sensitivity, and fairness throughout the entire process. They are both entitled to seek support from the University and to be informed about the process both before the process is initiated and throughout the process as it unfolds.

(c) Both parties have the right to participate in the process, or to refrain from participation. The failure to participate will not be used as evidence against either party, but also will not prevent the process from proceeding unless the complainant determines to withdraw the complaint and the University decides to abide by that request.

(d) Both parties may have an advisor present when being interviewed by the Investigative Team, but the advisor will not be permitted to present statements, seek the production of evidence, or question any witnesses. Advisors must be members of the University community.

<sup>16</sup> While the Investigative Officer will be responsible for managing the complaint investigation and resolution process, as described below, the AVP will work with other appropriate University offices, including the Office of Affirmative Action and Equal Opportunity Programs and Division of Human Resources, to determine if interim measures are appropriate before a final resolution is reached.

(e) Evidence of prior sexual conduct by the complainant or respondent with other partners will not be considered in the process, and any evidence of a prior sexual relationship between the parties will not be determinative of the issue of consent. If there is credible evidence of a pattern of violations of the Sexual Misconduct Policy, evidence that helps to establish such a pattern may be considered.

(f) While the process is underway, appropriate interim measures will be taken to protect the parties. The Office of Staff and Labor Relations in the Division of Human Resources (or another appropriate office), in consultation with the respondent's supervisor, will implement interim measure to protect the parties consistent with principles of fairness. The Office of Staff and Labor Relations in the Division of Human Resources (or other appropriate office) will work with the complainant and respondent to ensure that both parties have access to support and assistance during the process.

## **Sexual Harassment**

If the AVP determines that the complaint involves a possible violation of the Sexual Harassment Policy, and not the Sexual Violence Relationship Violence or Stalking Policy, the complaint will be investigated by an IO, working with the appropriate Dean or Vice President, or in the event of an actual or perceived conflict of interest, the Vice President for Human Resources. The facts, conclusions, and recommendations reached by the IO will be reported to the appropriate Vice President or Dean. In the event of a finding of responsibility for a violation of the Sexual Misconduct Policy, appropriate disciplinary action will be taken.

Any disciplinary action taken against a staff person is subject to appeal by either party in writing to the Vice President for Human Resources (or his or her designee) and the Dean of the School or Vice President of the Division in which the respondent works, who jointly have exclusive jurisdiction to decide appeals.

i. Appeals should be submitted within 10 business days of transmission of the decision of the Investigative Team. Letters of appeal should specifically state whether the objection is to the judgment of a violation of University policy, the recommended sanction, or both, and explain in detail the grounds for appeal.

ii. The Vice President for Human Resources (or his or her designee) and the Dean or Vice President of the School or Division will review the report of the Investigative Team to ensure that the process was consistent with University policy and that the decision was not arbitrary or capricious. Any supporting evidence, and any other relevant materials may also be reviewed by the Vice President for Human Resources (or his or her designee) and the Dean or Vice President of the relevant School or Division at their discretion.

iii. After considering the appeal, the Vice President for Human Resources (or his or her designee) and the relevant Dean or Vice President (or his or her designee) will promptly notify the parties in writing as to whether the Investigative Team's decision will be upheld or modified. The decision of the relevant Dean or Vice President and the Vice President for Human Resources will be final.

## **Sexual Violence, Relationship Violence, and Stalking**

If the AVP determines that the complaint involves a possible violation of the Sexual Violence Policy, the procedures set forth below will apply.

### **1. Preliminary Determination**

Upon receiving a complaint, the AVP will make a preliminary determination as to whether the complaint falls within the purview of the Sexual Misconduct Policy and whether, on its face, there appears to be a sufficient basis to conduct a full investigation. In making this determination, the AVP may interview the complainant and the respondent (after advising the respondent of the allegations in writing) and conduct whatever preliminary investigation the AVP deems necessary to determine if the actions alleged in the complaint would, if true, constitute a violation of the University's Sexual Misconduct Policy (including the Sexual Harassment or Sexual Violence Policies) and there is a reasonable basis for investigating the charges. If the AVP concludes there is insufficient basis to proceed, the matter will be concluded, and the parties so advised.

### **2. Investigation**

If the AVP makes the determination that there is a sufficient basis to proceed, a Statement of Charge Letter will be issued, based on the complaint and any preliminary investigation conducted. The Charge Letter will be provided to the complainant and the respondent. The respondent

will be provided the opportunity to respond in writing to the Charge, and any response will be shared with the complainant. The Dean or Vice President of the Division in which the respondent is employed will also receive a copy of the Charge Letter.

The AVP will appoint an Investigative Officer (IO) to lead a thorough and impartial investigation, assisted by one or more co-investigators who may come from the School or Center of one of the parties or from elsewhere in the University (the "Investigative Team"). The co-investigator(s) will be University staff or faculty members appropriately trained to investigate and handle sexual misconduct cases who will be selected for individual cases by the IO. The investigation will include interviews of the complainant and respondent, interviews of witnesses, and review of documentation, physical evidence, and any other relevant evidence.

Prior to interviews, the complainant, the respondent, and any relevant witnesses will be informed by the IO that statements they make during the process may be admissible in concurrent or subsequent civil or criminal court proceedings and will accordingly also be informed of their rights as outlined in Section B above. The parties will be advised of the seriousness of the proceeding and the expectation that the information they provide is both accurate and complete. Any false or misleading statements may subject the party making such statements to proceedings under the applicable University policy, handbook, code and/or charter. The complainant and respondent may have their advisors<sup>17</sup> and/or outside counsel present for their interviews, but the advisors or outside counsel will not be permitted to participate in the interview other than to provide advice to the person they have accompanied, and they may be excluded from the interview for disruptive behavior.

In conducting the investigation, the Investigative Team may, as appropriate, also consult with other campus officials including but not limited to administrators in the relevant Division(s), School(s), Public Safety, the AVP and Title IX Officer, the Senior Vice President for Institutional Affairs and Chief Diversity Officer, or the Vice President for Human Resources. The Investigative Team may also consult with the Office of General Counsel, who may determine in particular cases to engage outside counsel to assist the University throughout this process. The Investigative Team may engage forensic and other experts, as needed.

### **3. Investigative Report**

At the conclusion of the investigation, the Investigative Team will prepare a draft report, including assessments of credibility, a finding as to whether there has been a violation of University policy, and, if applicable, recommended disciplinary action. In making a determination regarding responsibility, the Investigative team will use a "clear and convincing evidence" standard. In other words, to find a staff member responsible for violating the Sexual Harassment Policy or Sexual Violence Policy, the Investigative Team must be convinced that it is substantially more likely than not that a violation of the Sexual Misconduct Policy has occurred.

#### **(a) Opportunity for Review and Comment**

The draft investigative report will be provided to both the complainant and respondent for their prompt review and comment, under strict instructions that the draft report is confidential, and not to be shared with anyone other than their families and advisors, who must be members of the University community and/or outside counsel, as described above. Sharing of the report by either party, their families, advisors or outside counsel with any additional persons will be strictly prohibited and may subject a party who violates this rule to disciplinary action. The complainant and respondent will also be provided the opportunity to review the underlying evidence and witness statements with their advisors, but they will not be provided or permitted to make copies.

#### **(b) Final Report**

As a result of the response and comments received, the Investigative Team may conduct a further investigation and/or amend the draft report, if the Team determines either action to be warranted. A final investigative report will be prepared, incorporating any changes, and shared with the com-

<sup>17</sup> The University will provide a list of advisors from the Penn community to complainants and respondents. Advisors will be offered training by the University to support both complainants and respondents in this process. The parties need not select an advisor from this list. The parties may select any Penn faculty or staff member to advise them, but they will not have an active role in the proceedings. The parties may also retain outside counsel in addition to, or instead of, using an advisor. The role of the outside counsel, however, will be limited to an advisory role and he or she will not be permitted to have an active role in the proceedings.

plainant and the respondent. The complainant and respondent may submit formal objections or comments to the final report, which will become part of the final report of the matter. This determination shall be final unless it is modified, overturned, or otherwise set aside as a result of an appeal.

#### 4. Resolution Without a Hearing

The matter may be resolved at this stage if both parties agree to the recommendations of the Investigative Team with respect to responsibility and, if applicable, sanctions, or if the parties otherwise reach a mutually acceptable resolution. The University, however, will not compel either the complainant or the respondent to engage in face-to-face mediation or to accept the recommendations of the Investigative Team.

#### 5. Hearing Panel

If the matter is not resolved at this stage in a mutually acceptable manner, either party may request a hearing before a Hearing Panel (Panel) within 10 business days of transmission of the final report.

##### (a) Panel Membership

The Panel will be comprised of three (3) faculty members and the Designated Hearing Officer (DHO), who will be a non-voting member. The DHO will make all decisions about the organization of the Panel, including decisions regarding the admissibility of evidence, witnesses to appear before the panel, or any additional decisions regarding the administration of the hearing process.<sup>18</sup>

Membership of the Panel, including the DHO, will observe the following guidelines:

- i. Members will be selected from a pool of faculty who have agreed to serve for a term of one or more years.
- ii. Only Panels that have training in handling complaints involving sexual misconduct will hear sexual misconduct cases.
- iii. Faculty appearing on a Panel may not share an academic department affiliation with either of the parties (e.g., has a faculty appointment or is enrolled in a course of study), nor may any faculty member serve on the Panel who has a professional, academic or personal relationship with either of the parties. Faculty asked to serve must recuse themselves or be dismissed if they have any personal ties to either of the parties or to individuals with whom the parties are closely associated. Faculty with personal knowledge of the alleged incident of sexual misconduct also must recuse themselves or be dismissed.
- iv. The University will train members of the pool to fulfill their responsibilities as adjudicators according to the procedures and policies outlined here and to ensure compliance with Title IX and other applicable state and federal guidelines. In addition, the Panel will be provided with “just in time” training on adjudicating sexual violence cases, unless the Panel members have recently been trained.
- v. No member of the Investigative Team may serve on the Panel; however, any such individual may be interviewed by the Panel regarding the investigation and may assist the DHO as needed in organizational and administrative matters related to the Panel.
- vi. The complainant and respondent will be notified of the membership of the Panel in advance of the Hearing. Any challenges for cause against individual Panel members must be made promptly so as not to delay the conduct of the Hearing and will be given serious consideration by the DHO to ensure impartiality of the proceedings.
- vii. All proceedings must be kept strictly confidential among the parties, witnesses and members of the Panel. All individuals involved in such hearings must agree to such conditions of confidentiality.

##### (b) Hearing Procedures

Hearings must be prompt, fair and impartial, affording the complainant’s allegations and the respondent’s defenses all due consideration and protecting the rights of both parties. The Panel will review the Investigative Team’s final report, including any responses, objections or comments provided by the complainant and/or respondent. The Panel will also carefully review the evidentiary record, including witness statements, documents and physical evidence.

##### Hearing Panel Interviews

The Panel will interview separately the IO (and co-investigator(s) if the Panel so chooses), the complainant and the respondent. The Panel will, whenever possible, provide the complainant and respondent

with five days advance notice of the Hearing. If reasonably possible, interviews will be conducted on one day, but if such scheduling would require an unreasonably long day, or if such scheduling would unreasonably delay the proceeding, the Hearing may be scheduled over multiple days.

The Panel may seek additional evidence from the IO and interview key witnesses on whom the IO relied in drawing his or her conclusions, as well as request additional evidence from the IO to clarify the evidentiary record, provided that it can do so without unreasonably delaying the process. In the event that a new witness comes forward during the Hearing who was not originally interviewed by the IO, or new evidence is discovered after the IO has issued his or her report, the DHO may allow that witness to be interviewed or admit the evidence to the hearing, but only if the DHO judges the new witness or evidence to be relevant to an accurate and fair determination of the outcome.

- i. The Hearing will be held in private, and only the Panel may conduct interviews. Only the person interviewed (and in the case of the parties, that person’s advisor or outside counsel) will be present at the Hearing. The complainant or respondent (and their advisor or outside counsel, as applicable) will be able to view interviews from separate rooms, upon request, via closed-circuit television or similar video transmission.
- ii. Subject to the protections set forth in Section D2 above, the Panel has wide latitude when questioning the complainant, the respondent and any witnesses in order to determine the accuracy of the report.
- iii. The complainant and respondent may propose witnesses and provide specific questions in advance that they believe important to ask of other parties or witnesses. The parties also may submit questions during the Hearing that they wish to have asked. The DHO, in consultation with the Panel, will determine the relevance as well as the appropriateness of witnesses and questions, and may accordingly place restrictions on, include or exclude witnesses or other information.
- iv. When the Panel is conducting the interview of the complainant and respondent, each may bring an advisor or outside counsel with them to provide advice and support, but the advisor or outside counsel will not be permitted to participate in the interview other than to provide advice to the complainant or respondent and may be excluded from the interview by the DHO for disruptive behavior.
- v. The interviews by the Panel will be recorded (audio only). No observers will be permitted to make any audio or video recordings.

##### (c) Hearing Panel Decision

After the Hearing concludes, the Panel will immediately deliberate in private to decide whether, by clear and convincing evidence, the respondent has violated the University’s Sexual Violence Policy. Clear and convincing evidence means that the Panel must find that substantial evidence has been presented, that the staff member is responsible for a violation of the Policy. A finding of responsibility requires a majority vote of the members of the Panel.

- i. If the respondent is found responsible, the Panel will also recommend an appropriate sanction, by majority vote, based upon the facts of the case and University precedent, with a presumption in favor of the sanction recommended by the IO.
- ii. The Panel will arrive at its conclusion as expeditiously as possible and will promptly advise both the complainant and the respondent in writing of its decision with respect to responsibility and, if applicable, recommended sanctions. In keeping with guidelines for timely resolution as provided in Section A above, the written decision will be provided as soon after the conclusion of the proceeding as is possible.

#### E. Appeals

Either party may appeal the decision of the Hearing Panel by submitting a written request within 10 business days of transmission of the decision of the Hearing Panel. Letters of appeal should specifically state whether the objection is to the judgment of a violation of University policy, the recommended sanction, or both, and explain in detail the grounds for appeal.

1. The Vice President for Human Resources (or his or her designee) and the Dean or Vice President of the School or Division will review the report of the Investigative Team to ensure that the process was consistent with University policy and that the decision was not arbitrary or capricious. Any supporting evidence, and any other relevant materials may also be reviewed by the Vice President for Human Resources (or his or her designee) and the Dean or Vice President of the relevant School or Division at their discretion.

2. After considering the appeal, the Vice President for Human Resources

<sup>18</sup> In carrying out these responsibilities, the DHO may consult with the IO, the Office of General Counsel and other appropriate offices such as the Vice Provost for Faculty and the Senior Vice President for Institutional Affairs and Chief Diversity Officer. University officers thus consulted will respect the confidentiality conditions of the proceedings.

sources (or his or her designee) and the relevant Dean or Vice President (or his or her designee) will promptly notify the parties in writing as to whether the Investigative Team's decision will be upheld or modified.

## F. Resource Offices

### 1. Confidential Resources

The following is a list of confidential resources that may be contacted for support, counseling, and advice. 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. 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.

#### **Special Services Department, Division of Public Safety**

24-hour Helpline: (215) 898-6600

4040 Chestnut Street

<http://www.publicsafety.upenn.edu/special-services/>

#### **Penn Women's Center**

(215) 898-8611

3643 Locust Walk

<http://www.vpul.upenn.edu/pwc/>

#### **Lesbian Gay Bisexual Transgender Center**

(215) 898-5044

3907 Spruce Street

<https://www.vpul.upenn.edu/lgbtc/>

#### **African-American Resource Center**

(215) 898-0104

3643 Locust Walk

<http://www.upenn.edu/aarc/>

#### **Office of the University Chaplain**

(215) 898-8456

240 Houston Hall, 3417 Spruce Street

<http://www.upenn.edu/chaplain/>

#### **Office of the Ombuds**

(215) 898-8261

113 Duhring Wing, 236 S. 34th Street

<http://www.upenn.edu/ombuds/>

#### **Employee Assistance Program, Health Advocate**

(866) 799-2329

<https://www.hr.upenn.edu/PennHR/wellness-worklife/counseling-and-employee-assistance-program>

### 2. Official Reporting Offices for Complaints of Sexual Misconduct

If reports of sexual misconduct are made with or come to the attention of the following offices, they must ensure that appropriate action is taken, including notifying the University's AVP and Title IX Officer:

#### **Office of Affirmative Action and Equal Opportunity Programs**

Suite 421, Franklin Building

(215) 898-6993

<http://www.upenn.edu/affirm-action/index.html>

#### **Office of Student Conduct**

Suite 400, 3440 Market Street (215) 898-5651

<https://www.osc.upenn.edu/>

#### **Office of Staff and Labor Relations, Division of Human Resources**

Suite 600, Franklin Building

(215) 898-6093

<https://www.hr.upenn.edu/workplace-issues/staff-labor-relations>

### 3. Investigative Office for Sexual Misconduct Complaints

The official office for reporting, initiating a formal complaint, and investigation of violations of the Sexual Misconduct Policies, including violations of the Sexual Harassment or Sexual Violence Policies, is the Office of the Associate Vice President for Equity and Title IX Officer. The contact information for that Office is:

#### **Associate Vice President for Equity and Title IX Officer (TBA)**

(Address)

(Phone)

(website)