

## ADMINISTRATIVE POLICIES

**AD85 Title IX Sexual Harassment****Policy Status:** Active**Subject Matter Expert:** Amber Grove, [814-867-5088](tel:814-867-5088), [alg6440@psu.edu](mailto:alg6440@psu.edu)**Policy Steward:** Senior Vice President and Chief of Staff

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Effective August 14, 2020 the University implemented the policy and procedural requirements described below to address complaints of sexual harassment as defined under the 2020 Title IX implementing regulations. This policy applies equally to both parties, whether the party is a University student, faculty, staff member or other individual participating or seeking to participate in a University education program or activity, though application of the procedures may vary based on the status/role of the parties involved. Parties to a matter are encouraged to contact the Title IX Coordinator directly with any questions or concerns regarding the application of these procedures or rights contained herein.

**PURPOSE**

To establish The Pennsylvania State University's ("Penn State" or the "University") policy prohibiting sexual harassment and misconduct, including, but not limited to, acts of sexual violence, sexual harassment, domestic violence, dating violence and stalking, in accordance with Title IX of the Education Amendments of 1972 ("Title IX"). This Policy references other University policies which may be implicated in University disciplinary procedures related to conduct that falls outside the scope of this Policy, including addressing other discriminatory conduct based on sex.

## **I. NON-DISCRIMINATION STATEMENT**

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

## **II. POLICY STATEMENT**

Conduct prohibited by this Policy may also violate Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964, as well as other applicable federal and state laws. It is the responsibility of the University's Title IX Coordinator to ensure that the University meets its obligations under Title IX. Title IX is a civil rights law that prohibits discrimination on the basis of sex in public and private educational institutions that receive Federal funds. Because Penn State is a recipient of Federal funds, the University must fully comply with the provisions of Title IX and its regulations.

The University will provide regular training for all University employees related to issues covered under this Policy. All University employees will be required to complete Title IX training within the first 30 days of employment at the University. In addition, all University employees will be required to complete an annual Compliance Training as a reminder of reporting requirements and procedures. The University will publish training materials on <https://titleix.psu.edu/> which are up to date and reflect the latest training provided to Title IX personnel.

## **III. APPLICABILITY**

All students, faculty, staff, affiliates, and other individuals participating or attempting to participate in University programs and activities are subject to this Policy. This Policy applies to conduct which occurs within the United States, either on Penn State property or off campus in a Penn State-sanctioned education program or activity.

## **IV. FREE EXPRESSION AND ACADEMIC FREEDOM**

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

## **V. AMNESTY FOR STUDENTS**

The University strongly encourages students to report incidents that may violate Title IX. A student who makes a report to the University or other appropriate authority (e.g., law enforcement) about experiencing sexual misconduct, or is reporting the experience of another, will typically not be subject to student conduct action related to their own possession or consumption of alcohol or other drugs in connection with the reported incident. As appropriate, involved students may be required to complete an educational intervention to address concerns about the student's substance use; any associated fees will be waived. See the Penn State Responsible Action Protocols for further information.

## **VI. RETALIATION PROHIBITED AND CORRECTIVE ACTION**

This Policy prohibits intimidation, threats, coercion, and discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Pursuant to Penn State Policy AD67 and this Policy, Retaliation is, in itself, a violation of this Policy and the law, and is a serious separate offense. See Penn State Policy AD67. Complaints alleging Retaliation for exercising rights pursuant to or engaging in the process set forth in this Policy shall be handled in accordance with the grievance procedures set forth herein.

Furthermore, the Title IX Coordinator will ensure that prompt corrective action is taken if either party experiences retaliation or if the complainant is subjected to further violations or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant or other members of the University community. The Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as overseeing the implementation of trainings and disseminating informational materials.

## **VII. FALSE REPORTS**

Willfully making a false report of Title IX Prohibited Conduct, or providing false information in the course of a grievance process, is a violation of University Policy and is a serious offense. Any person who willfully makes or participates in making a false or frivolous report under this Policy, or providing false information, may be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

## **VIII. PRIVACY AND DISCLOSURE**

To provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the Title IX process is not open to the general public. Accordingly, documents prepared as part of a grievance process, including in anticipation of hearings (including email correspondence, the Formal Complaint, the Notice of Allegations and Investigation, the investigative report, the notices of hearing, and any prehearing submissions referenced below), as well as documents, testimony, or other information introduced at any hearings, may not be disclosed outside of the grievance process, except as may be required or authorized by law or legal proceedings. In particular, in order to respect the reasonable privacy of all participants, no party, Advisor, or witness may record Title IX hearing(s) or disclose any recording of the hearing(s) or any portion thereof. A recording of the hearing will be created and maintained by the University. Any violation of these confidentiality requirements may result in sanctions.

Neither party will be required to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the re-disclosure of information related to the final outcome of the grievance process or appeal process.

## **IX. TITLE IX TERMS AND DEFINITIONS**

### **a. Advisor**

An individual who has agreed to serve as an informal provider of support and advice for a Complainant or Respondent. Both parties may select an individual of their choice to serve as their Advisor. Both parties have the right to have their Advisor present during any grievance proceeding or any related meeting, who may be, but need not be, an attorney. The University will appoint an Advisor for parties who have not selected their own. The role of the Advisor is to assist and guide the party during all related University Title IX proceedings. The Advisor, upon a party's request may (1) accompany the party in any related meeting/proceeding, (2) advise the party in the preparation and presentation of sharing of information, (3) conduct cross-examination in Title IX hearings on behalf of the party they represent, and (4) advise the party in the preparation of any appeals. The Advisor shall not perform any function in the process other than advising the party and may not make a presentation or represent the party, other than at the Title IX hearing. If, at any point, an Advisor becomes disruptive or fails to follow the rules for participation as set forth in this Policy, or other rules of decorum provided by the University, the University reserves the absolute and non-appealable right to remove the Advisor from the proceeding, and, if appropriate, any future meetings/proceedings. If a

party's Advisor is removed, that party may choose another Advisor or otherwise will have one appointed for them by the University. For additional information on the role of an Advisor, see Section XIII of this Policy.

#### **b. Complainant**

A Complainant is an individual who is alleged to be the victim of conduct that could constitute Title IX Prohibited Conduct. A Complainant who files a Formal Complaint must be participating in, or attempting to participate in, the education program or activity of the University when the alleged Prohibited Conduct occurred.

#### **c. Confidential Employee**

(1) a University employee whose communications are privileged or confidential under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) a University employee whom the University has designated as a Confidential Resource for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing these services; or

(3) a University employee who is conducting an Institutional Review Board-approved human-subject research study designed to gather information about sex discrimination - but the employee's confidential status is only with respect to information received while conducting the study.

#### **d. Confidential Resources**

Students or employees who wish that details of an incident be kept confidential, or do not know if they want to or are ready to report an incident to the University and/or law enforcement may speak with a Confidential Resource, including Confidential Employees.

These individuals are on-campus and are available for students or employees to discuss incidents and issues related to Prohibited Conduct, as defined herein, on a confidential basis. The student or employee will be able to confidentially discuss their situation, and receive information, assistance, and resources, while still retaining control of their decision to report an incident to the University and/or law enforcement. Reporting to a Confidential Resource means that assistance can be received without placing the University on notice of a specific incident. Confidential Resources will not disclose information about incidents of Prohibited Conduct to anyone, including law enforcement or the Title IX Coordinator, except in very limited circumstances.

#### **\*Limits to Confidentiality**

1. Life-threatening risk - If the reporting person poses a life-threatening risk to themselves or others, responsible individuals may need to be notified, for their protection.
2. Child abuse reporting - Pennsylvania law (Act 31, 2014) requires that the following types of child abuse (depending on the nature and date of abuse) be reported to PA Child Protective Services (and Penn State) if there is reasonable cause to suspect that a child (a person who is currently less than 18 years of age) has been the victim of child abuse:
  - a. If you are less than 18 years of age and disclose that you are the victim of child abuse.
  - b. If you disclose that an identifiable child has been the victim of child abuse. A report may be required even if we do not meet with the child.
  - c. If you disclose that you abused a child when you were 14 years of age or older. A report may be required even if the victim is no longer in danger.
3. Clery Act – If the information being shared occurred in a Clery Act location and is a Clery Act offense (rape, fondling, incest, statutory rape, dating violence, domestic violence, and stalking), a Campus Security report must be filed with the Clery office.

However, this does not include personally identifiable information.

4. Court Order or Search Warrant - Information may be required to be disclosed as a result of a court order or search warrant in connection with judicial proceedings.

5. As otherwise required or permitted by law, or consistent with the professional ethical obligations of the person receiving the disclosure.

**Confidential Resources can be found here:** <https://universityethics.psu.edu/our-expertise/title-ix/t9-resources/confidential>.

#### **e. Consent**

Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent must be informed, freely given and mutual. If intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes incapacitation due to alcohol or drug consumption (voluntary or involuntary), or being asleep or unconscious, where the respondent knew or reasonably should have known that the person was incapacitated. Inducement of incapacitation of another with the intent to affect the ability of an individual to consent or refuse to consent to sexual contact almost always, if not always, negates consent. Silence, in and of itself, cannot be interpreted as consent. Further, intoxication, even to the point of incapacitation, is not an excuse for failure to obtain consent or understand whether consent was given.

Consent can be given by words or actions, as long as those words or actions consist of an affirmative, unambiguous, conscious decision by each participant to engage in mutually agreed-upon sexual activity. Consent can be limited, meaning consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent is revocable, meaning consent can be withdrawn at any time. Thus, consent must be ongoing throughout a sexual encounter. Whether a person has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

#### **f. Days**

Days refer to business days, excluding weekends and those days which are designated as holidays by the official University calendar or by action of the University President or Provost, unless otherwise specified herein.

#### **g. Education Program or Activity**

Education Program or Activity includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

#### **h. Emergency Removal**

The University may remove a Respondent from the University's education program or activity on an emergency basis. See Section X(b) below for further information on the process related to Student Respondents and Employee Respondents.

#### **i. Formal Complaint**

A document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct (as defined herein) against a Respondent and requesting that the University investigate the allegation of Prohibited Conduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the University's programs or activities. A Formal Complaint filed by a Complainant may be a document or electronic submission (such as by e-mail or through an online portal) but must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint.

#### **j. Hearing Panel**

The mixed-gender, three (3)-person panel who are members of the University's Title IX Hearing Board (i.e., trained Title IX hearing officers) charged with adjudicating alleged violations of this Policy. Only individuals who have participated in Title IX Hearing Panel

training conducted by Penn State or comparable in-depth panel training will be permitted to serve on Title IX Hearing Panels. Students are not permitted to serve on Title IX Hearing Panels.

#### **k. Notice Triggering the University's Response Obligation**

Notice to the Title IX Coordinator, or to an official with authority to institute corrective measures on the University's behalf, triggers the University's response obligations under this Policy. The University has designated the following employees as officials with authority to institute corrective measures for sexual harassment/discrimination: the Title IX Coordinator, Deputy Title IX Coordinators, and staff within the Office of Sexual Misconduct Prevention & Response, the Office of Equal Opportunity and Access, the Office of Student Accountability & Conflict Response, and Human Resources.

#### **Mandatory Reporters**

The University has designated specific employees as mandatory reporters under this policy. Notice made to the University employees listed in this section does not trigger the University's Response Obligation. Individuals employed by the University who hold a title of, or equivalent to, President, Provost, Vice Provost, Associate or Assistant Vice Provost, Chancellor, Vice President, Associate or Assistant Vice President, Dean, Associate or Assistant Dean, Department Head, Division Head, Program Head/Chair, Director, Manager, Coach or Assistant Coach, and full-time supervisors (as defined herein) are required to report suspected prohibited behavior under this policy to the Title IX Coordinator.

#### **I. Party**

Means a Complainant or Respondent.

#### **m. Prohibited Conduct**

1. Sexual harassment under Title IX ("Prohibited Conduct") means conduct on the basis of sex that satisfies one or more of the following:
  - a. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity. Such conduct may include, but is not limited to, unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature, sexual exploitation (including dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual contact or sexual activity), sexual coercion, the touching of an unwilling person's intimate parts, and forcing an unwilling person to touch another's intimate parts.
  - b. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct ("Quid Pro Quo Harassment"). Whether or not the individual submits is not an element of the offense.
2. Sexual Assault, Dating Violence, Domestic Violence, or Stalking:
  - a. Sexual Assault: An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual Assault includes sexual contact or intercourse with an individual without that individual's consent, including sexual contact or intercourse against an individual's will or in a circumstance in which an individual is incapable of consenting to the contact or intercourse. This includes:
    - i. Nonconsensual Sexual Contact. Intentional sexual touching, however slight, with any object or part of one's body of another's private areas without consent. Sexual Contact includes: (1) intentional contact with the breasts, buttock, groin, or genitals; (2) touching another with any of these body parts; (3) making another touch you or themselves with or on any of these body parts; (4) any other intentional bodily contact in a sexual manner; or (5) the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation; the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. (i.e., criminal sexual contact, previously referred to as fondling). This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
    - ii. Nonconsensual Sexual Intercourse. Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal.

- b. Dating Violence. The term “dating violence” means violence committed by a person:
  - i. who is or has been in a social relationship of a romantic or intimate nature with the victim; and,
  - ii. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. the length of the relationship;
    - b. the type of relationship; and,
    - c. the frequency of interaction between the persons involved in the relationship.
  - iii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
- c. Domestic Violence. The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a person who:
  - i. is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the University, or a person similarly situated to a spouse of the victim;
  - ii. Is cohabitating, or has cohabitated with the victim as a spouse or intimate partner;
  - iii. shares a child in common with the victim; or
  - iv. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction
- d. Stalking. The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - i. fear for the person’s safety or the safety of others; or
  - ii. suffer substantial emotional distress.

**n. Relevant**

Related to the allegations under investigation as part of the grievance procedures under this policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged incident(s) occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged incident(s) occurred

**o. Remedies**

Remedies are provided to a Complainant where a determination of responsibility for Prohibited Conduct has been made against the Respondent, following a grievance process that complies with this Policy. Remedies must be designed to restore or preserve access to the University’s Education Program or Activity. Remedies may include disciplinary sanctions or other actions against a Respondent, such as individualized Supportive Measures as defined below; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

The Title IX Coordinator is responsible for ensuring effective implementation of any Remedies.

**p. Respondent**

A Respondent is an individual who has been alleged to be the perpetrator of conduct that could constitute Title IX Prohibited Conduct.

**q. Retaliation**

Retaliation means any adverse action taken by a member of the University faculty, staff, or student body against any individual on the basis of a complaint made by such individual, or on the basis of such individual’s participation in an investigation, hearing, or inquiry by the University, or participation in a court proceeding relating to suspected Prohibited Conduct at the University. Retaliation shall include, but not be limited to, harassment, discrimination, threats of physical harm, job termination, punitive work schedule or research assignments, decrease in pay or responsibilities, or negative impact on academic progress. See Penn State Policy AD67.

**r. Supervisor / Supervisory Authority**

A University employee having authority, in the interest of the University, to hire, transfer, suspend, terminate, lay off, recall, promote, discharge, assign, reward or discipline.

#### **s. Supportive Measures**

Supportive Measures are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or to deter Prohibited Conduct.

#### **t. Time Periods**

The University will make every reasonable effort to resolve complaints in reasonably prompt timeframes. Stated timelines are not binding and create no rights for the parties. The University can extend the deadlines at its discretion, with good cause.

There is no time limit on a Complainant's decision to bring a report or file a Formal Complaint, but at the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's education program or activity at the time they were subjected to the alleged conduct that could constitute sex discrimination under Title IX.

## **X. REPORTING**

The Title IX Coordinator is the individual designated by the University to coordinate its efforts to comply with Title IX responsibilities.

Any person may report sex discrimination, including sexual harassment (whether or not the individual reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

#### **Title IX Coordinator**

Amber Grove, Acting Title IX Coordinator

227 West Beaver Avenue, Suite 212

State College, PA 16801

[titleix@psu.edu](mailto:titleix@psu.edu)

#### **Deputy Title IX Coordinators**

The Title IX Coordinator may delegate responsibility for handling a report to a Deputy Title IX Coordinator, as appropriate, or may refer the matter to another office or individual in the event the matter reported falls outside of the scope of this Policy. In this Policy, where the term "Title IX Coordinator" is used, it shall be construed to include the Title IX Coordinator's designee, where assigned. The following offices manage the University's response protocol to reports of sexual harassment:

#### **Title IX Matters Involving Student Respondents**

Office of Sexual Misconduct Reporting & Response

120 Boucke Building

University Park, PA 16802

(814) 867-0099

## **Title IX Matters Involving Employees (faculty and staff) or Third-Party Respondents**

Office of Equal Opportunity and Access

328 Boucke Building

University Park, PA 16802

(814) 863-0471

### **Reports to Law Enforcement**

If you are in immediate danger, or if you believe there could be an ongoing threat to you or the community, please call 911. For conduct that could also constitute a crime under Pennsylvania law, a Complainant is encouraged—but not required—to contact the police by dialing 911 or the local police agency in the jurisdiction in which the alleged incident occurred. Contacting law enforcement to make a report allows for forensic evidence to be collected, including a SART exam if needed, which may be helpful if a decision is made to pursue criminal charges.

University officials will assist you in contacting local law enforcement authorities, if you request assistance. If you believe that there is an ongoing threat to your safety from a particular individual, you may request an emergency Protection from Abuse Order (PFA) or Sexual Violence Protection Order (SVPO). If the alleged incident occurred on the Penn State campus (and the alleged incident is not ongoing), individuals may contact Penn State University Police and Public Safety at its non-emergency telephone number (814) 863-1111.

#### **a. Supportive Measures**

Throughout the processes and procedures outlined in this Policy, the Complainant(s) and Respondent(s) shall be offered appropriate Supportive Measures and protection from retaliation. See Penn State Policy AD67. The Complainant(s) shall also be informed by the Title IX Coordinator or their designee how to make a Formal Complaint to the University under Title IX, and/or a criminal report, and how to file a complaint with the appropriate state or federal agency.

Supportive Measures are designed to restore or preserve equal access to the University's education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Upon notice that any person has allegedly experienced actions that could constitute Title IX Prohibited Conduct, the Title IX Coordinator or their designee will respond promptly by offering Supportive Measures and an explanation of the Complainant's option to file a Formal Complaint that will initiate a formal investigation.

The party is not required to file a Formal Complaint to receive Supportive Measures. The provision of Supportive Measures will not be conditioned on the Complainant's participation in any formal investigation, whether the investigation is initiated by a Formal Complaint made by the Complainant or by the Title IX Coordinator. Additionally, the Complainant may report the alleged conduct solely for the purposes of receiving Supportive Measures and may choose to file a Formal Complaint at a later date, if at all.

Supportive Measures are not designed or permitted to be punitive or disciplinary measures (sanctions) imposed against a Respondent. The Respondent is presumed to be not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process. Both a Complainant and a Respondent may have good-faith bases for requesting Supportive Measures. The University will consider the request of either party for Supportive Measures and implement them where it is deemed reasonable and appropriate.

Supportive Measures may include emotional support and counseling with a Confidential Resource, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of

certain areas of the campus, no-contact directives, emergency removal and other similar measures. The University must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

#### **b. Emergency Removal / Individualized Safety and Risk Analysis**

The University may remove a Respondent from the University's education program or activity on an emergency basis, but only after undertaking an individualized safety and risk analysis, and only if such analysis determines that there is an immediate threat to the health or safety of any student, employee or other individual arising from the allegations of Prohibited Conduct (including the Respondent themselves). This assessment may take place at any time following the receipt of a report. In matters that involve student Respondents, the Senior Director of the Office of Student Accountability & Conflict Response, or their designee, will complete the individualized safety and risk assessment. If the Senior Director or designee reasonably believes that such a threat is posed, an interim suspension, or other interim action, may be assigned. In the case of such removal the University will provide the student Respondent with notice and an opportunity to challenge the decision immediately following the removal. See the Interim Action section of the Penn State Student Code of Conduct.

For matters involving employee Respondents, the Title IX Coordinator, in consultation with the employee's Supervisor and other relevant University officials, will determine whether administrative leave (with or without pay) is appropriate, without needing to meet the emergency removal standards.

These provisions may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### **c. Informal Report**

Notice to a Title IX Coordinator or to an official with authority to institute corrective measures on the University's behalf triggers the University's response obligations.

Upon receipt of notice of an allegation of Prohibited Conduct (which may come from any individual), the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. A Complainant's wishes with respect to whether the University investigates should be respected unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

#### **d. Formal Complaint**

A Formal Complaint alleges Prohibited Conduct against a Respondent and requests that the University investigate the allegation. There is no deadline for a Complainant to file a Formal Complaint alleging Prohibited Conduct and requesting that the University invoke the formal investigatory process; however, the Complainant must be participating or attempting to participate in the University's education program or activity at the time the Formal Complaint is filed. The passage of time may impact the University's ability to gather information related to the incident.

A Formal Complaint must be signed and must include a description of the alleged Prohibited Conduct, including the name or names of persons allegedly responsible for the alleged misconduct, the time, date and location of the alleged misconduct, if known, and the names of any potential witnesses, if known. The Formal Complaint can be submitted in person, by mail, or online via email or by using the University's online reporting form: <https://titleix.psu.edu/>. The signature on the Formal Complaint can be electronic (i.e., an email signature containing the first and last name of the Complainant). The signature can be on a written document submitted in person to the Title IX Coordinator. In some circumstances, such as where there are aggravating factors such as those delineated in Section X(d)(ii)(b) of this Policy, it is the Title IX Coordinator who will file the Formal Complaint.

Cross-complaints or counterclaims are permissible when the allegations made in the cross-complaint are made in good faith. Such complaints made with retaliatory intent will not be permitted. The University is obligated to ensure that university process is not used for retaliatory purposes and will therefore use an initial assessment to assess whether the cross-complaint is made in good faith. Generally, cross-complaints will be resolved through the same process as the underlying obligation and must be memorialized through the above-described Formal Complaint process.

## **i. Initial Assessment.**

The Title IX Coordinator shall make an initial assessment as to whether the Formal Complaint on its face alleges an act of Prohibited Conduct and whether the Prohibited Conduct is covered by this Policy. If not, Title IX requires that the University dismiss the matter as described below. If such a determination is reached, the Complainant will receive an explanation in writing, including information regarding the appeal process, referrals to other appropriate administrative units, University officials, or resources to assist the Complainant. A required dismissal under Title IX does not mean that the University cannot or will not review and respond to the alleged behavior under other applicable federal regulations or University policies. These include Title VII and relevant University policies such as the Student Code of Conduct and the University's Discrimination, Harassment, and Related Inappropriate Conduct Policy (Penn State Policy AD91). In those cases, the Title IX Coordinator will refer the matter to the appropriate office for management.

In the event of dismissal for purposes of this Policy, mandatory or discretionary, the Title IX Coordinator may refer the matter to the appropriate office for consideration under another University Policy. This may take place prior to investigation, after investigation, or at any other time prior to adjudication. Matters will be referred as follows:

1. Matters in which the Respondent is a student will be referred to the Office of Student Accountability & Conflict Response.
2. Matters in which the Respondent is an employee (faculty and staff) or third party will be referred to the Office of Equal Opportunity and Access.

## **ii. Dismissal Prior to Investigation**

### **a. Mandatory**

If the initial assessment determines that the conduct alleged in the Formal Complaint would not constitute Prohibited Conduct even if true, did not occur in the University's Education Program or Activity, or did not occur against a person in the United States, then the University must dismiss the Formal Complaint with regard to that conduct for purposes of this Policy as required by Title IX.

**i. Written Notice of Dismissal before Investigation.** Upon dismissal, the University shall promptly send written notice of the dismissal, rationale, and information regarding the appeal process simultaneously to the parties.

### **b. Discretionary**

The Complainant may request a dismissal of the Formal Complaint. The Complainant must notify the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or any allegation(s) therein. Upon receipt and review of the request for dismissal, the Title IX Coordinator may dismiss the Formal Complaint. A Complainant may re-file the complaint at a later date and request a continuation of the formal investigation process or voluntarily agree to an informal resolution process.

Under certain circumstances, the Title IX Coordinator may determine that a Complainant's request for a dismissal cannot be granted because of the presence of aggravating factors. In those circumstances, the University may choose to proceed with the investigation despite the request by the Complainant(s) for a dismissal of the Formal Complaint. If such a decision is made, the Complainant(s) will be notified in writing regarding the reason(s) for the decision. Aggravating factors include, but are not limited to:

- the nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- the respective ages and roles of the Complainant and Respondent;
- the role of drugs and/or alcohol in the incident;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional harassment or violence;
- whether there have been other reports of misconduct or other verified misconduct by the Respondent;
- whether the report reveals a pattern of related misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- whether the University possesses other means to obtain relevant evidence;

- fairness considerations for both the Complainant and the Respondent;
- the University's obligation to provide a safe and non-discriminatory environment; and,
- any other available and relevant information.

A Formal Complaint also may be dismissed if the Respondent is no longer enrolled at or employed by the University, or if there are specific circumstances that prevent the University from gathering evidence necessary to make a determination or carry out the grievance process (for example, the identities of the people involved are not known). In all cases, the Title IX Coordinator will notify the parties in writing regarding any dismissal, including the reason(s) for the dismissal and the parties' right to appeal.

### iii. Appeal from Dismissal

If a Formal Complaint is dismissed, both parties will have the equal right to appeal consistent with the procedures outlined in Section XVI of this Policy.

## **XI. VOLUNTARY INFORMAL RESOLUTION**

Voluntary informal resolution, either Informal Response or Adaptable Resolution, may be appropriate when the University determines that it is consistent with the University's obligations under the law, institutional policies, and institutional values to end the misconduct, prevent the misconduct from happening again, and address or remedy its effects.

At any time after a Formal Complaint has been submitted, but before a final determination regarding responsibility has been made, the parties may enter a voluntary, informal resolution process, as permitted by the University. A Complaint must be filed before an informal resolution can be considered. If the parties agree to participate in an informal resolution process, it is the University's responsibility to ensure that the matter is resolved within a reasonably prompt timeframe. While the University cannot compel a party to participate in an informal resolution process, the University may offer informal resolution as an alternative when discussing process options. Informal resolution is not permitted in matters involving allegations of sexual harassment by an employee Respondent against a student Complainant.

Any informal resolution agreement will be in writing and represent the final resolution of the case. Failure to adhere to the terms of the resolution agreement may constitute a separate violation of University policy and/or result in the reopening of the existing Title IX matter.

The voluntary informal resolution process will be managed by the Office of Equal Opportunity and Access (OEOA) for employee and third party-related matters and by the Office of Sexual Misconduct Reporting and Response (OSMRR) and/or the Office of Student Accountability & Conflict Response for student-related matters.

### i. Informal Response

Informal response is an alternative to the formal investigation and adjudication process and may include participation in educational modules and restorative practices, among other options. Restorative practices can include, but are not limited to, mediation, shuttle diplomacy, and circles. There may be no determination of responsibility nor imposition of disciplinary sanctions resulting from this informal resolution type.

Should a Complainant request to resolve an allegation in this way, and should the University deem Informal Response to be appropriate, the university will send notice to the Respondent that explain the allegations, the terms of the proposed agreement, and the parties' rights related to voluntary informal resolution under Title IX. Should the Respondent agree to the Informal Response and comply with the resolution agreement, the matter will be considered resolved.

### ii. Adaptable Resolution

Either party may request to pause the formal resolution process to pursue an adaptable resolution at any time after the Notice of Allegations and Investigation and before the hearing. Adaptable resolutions may include, but are not limited to mutual agreement, mediation, and shuttle diplomacy. There may be a determination and imposition of disciplinary sanctions resulting from this informal resolution type.

Upon request of a party, and should the University Adaptable Resolution to be appropriate, the university will send simultaneous notice to the parties explaining the terms of the proposed agreement and the parties' rights related to voluntary informal resolution under Title IX.

Should both parties' wish to pursue the proposed Adaptable Resolution, they must:

- Provide voluntary written consent acknowledging that they are willingly entering into an informal resolution process.
- Agree, in writing, that all sanctions or other conditions designed to address the behavior will be applied by: (a) the Respondent's immediate Supervisor and/or the Associate Vice President for Equal Opportunity and Access, or designee, in consultation with the Title IX Coordinator for all employee-respondent and third-party matters, or (b) the Senior Director of the Office of Student Accountability & Conflict Response, or designee, in consultation with the Title IX Coordinator for all student-respondent matters.
- Acknowledge, in writing, that they are aware of their right to withdraw from the informal resolution process and resume the formal resolution process at any time before finalizing the resolution.

## **ACCEPTANCE OF RESPONSIBILITY OFFER**

The University will determine in each case if it is appropriate to provide an Acceptance of Responsibility Offer after considering the following:

- The nature of the alleged misconduct, including the behavior's severity, persistency, and/or pervasiveness.
- Whether the currently available information, if proven true, would be sufficient to determine an appropriate action plan.
- Whether the Respondent has acknowledged, or has indicated they would acknowledge, the violation occurred.

When determined to be appropriate, the Respondent will be given an Acceptance of Responsibility Offer during or following an Informational Meeting. Should the Respondent express interest, the Respondent and Complainant will be given the opportunity to submit a

written statement for consideration during the development of an appropriate action plan. (See Section XIII(f) for more information on Consideration Statements.) Following that opportunity, the Respondent will receive the proposed action plan and be given the opportunity to accept or deny the offer.

If the Respondent accepts responsibility, the Respondent will be deemed "in violation," and the relevant sanctioning authority will impose the offered Action Plan. The Complainant will be provided with notice that the Respondent has accepted responsibility. While the finding of a violation(s) will be considered final, either party may appeal all or some of the Action Plan on the bases listed in Section XVI.

Expressing interest in accepting responsibility will not result in adverse inference against the Respondent should the Respondent reject the offer. If the Respondent does not accept responsibility, the case will proceed through the Formal Investigation and Adjudication Process. Should the Respondent later wish to accept responsibility during that formal process, the University must assess the available information to determine whether that is appropriate and if so, determine or revise an action plan (or, if applicable, re-offer an original proposed action plan).

## **XIII. INVESTIGATION OF FORMAL COMPLAINT**

The University must conduct an adequate, reliable, objective, and impartial investigation of all Formal Complaints. This means that the University is committed to providing both parties with appropriate and adequate notice at all phases of the process and an equal opportunity to provide information to the investigator(s) during the investigatory process and review documents gathered as part of the investigation. Each party will be provided with an equal opportunity to review and respond to such information. In all cases, the Respondent is presumed to be not responsible for the alleged conduct unless and until a determination is made of responsibility at the conclusion of the grievance process.

During the investigative process, the University investigator(s) will gather and review all relevant evidence, taking into consideration both the inculpatory (incriminating) and exculpatory (information that demonstrates no wrongdoing) aspects of that information

prior to rendering a final decision. While the parties are encouraged to provide all pertinent information to the investigators, the burden of gathering evidence remains at all times on the University. Such information may include the names of potential witnesses and documentary evidence such as emails, text messages or other similar electronic communications. The information may also include, in some cases, medical, psychological, or other treatment records, provided that the party provides the investigator with written consent to consider and include the treatment records in the investigation. If the party provides the investigator with written consent, the treatment documents will become part of the evidentiary file, which both parties have the right to review.

The University will take reasonable steps to gather initial facts and evidence by providing both parties with an opportunity to meet with the investigator. The investigator may request additional interviews with a party or parties based on information gathered during the investigation. During every interview, the Complainant and Respondent will have opportunities to provide the investigator with their recollection of the alleged incident(s), the names of witnesses and copies of documents. Providing information to the investigator, whether

submitted verbally or by the submission of documents, or both, is voluntary for all parties. The University cannot compel a party or witness to answer any questions during the interview or submit documents or otherwise make any statements; however, the parties are encouraged to provide relevant information to the investigator. A party or witness's decision not to participate in the investigation, in whole or in part, will be documented in the investigative report.

The University will seek to complete the investigation and any additional necessary processes within a prompt and reasonable amount of time, typically not to exceed 120 days. This timeline is not binding and creates no rights for the parties. The University can extend deadlines at its discretion. If temporary delays occur, the Complainant and Respondent will be notified in writing regarding the reason(s) for the delay. The parties will be notified, in writing, when the investigation resumes, if there was a temporary pause.

The University may, in its discretion, consolidate Formal Complaints where the allegations arise out of the same facts. The University will investigate the allegations in any Formal Complaint not subject to dismissal. The Title IX Coordinator will designate an individual (who will not be the Title IX Coordinator) to conduct an investigation of a Formal Complaint, when a decision is made not to dismiss such complaint and when informal resolution is not appropriate or both parties do not give voluntary, informed, written consent to informal resolution in accordance with the processes above. The burden of gathering evidence and the burden of proof is on the University.

Both parties have the right to have their Advisor present during any grievance proceeding or any related meeting, who may be, but need not be, an attorney. An Advisor should not be selected with the actual or effective purpose of disrupting or attempting to disrupt the Title IX grievance process, or of causing emotional distress to any party. Parties may consult with their Advisors quietly or in writing during any meetings, but the Advisor may not speak on behalf of the advisee or directly participate otherwise in the proceedings, other than at the Title IX hearing. Delays in the conduct process will not normally be allowed due to scheduling conflicts with Advisors.

## **A. Investigation Process**

### **i. Notice of Allegations and Investigation**

Both parties will simultaneously receive written notification of the allegations and notice that the University has initiated a formal investigation. The "Notice of Allegations and Investigation" will include:

1. A reasonably detailed description of the alleged behavior including the names of relevant parties, description of the alleged offending behavior(s) and the date, time, and locations of the incident(s), if known. It will also include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
2. A statement regarding the standard of evidence to be used in considering the facts and evidence. A "preponderance of the evidence" standard means that it is more likely than not, based upon the totality of all relevant evidence and reasonable inferences from the evidence, that the Respondent engaged in the Prohibited Conduct.

3. A statement apprising the party of their opportunity to present relevant facts and witnesses. In all formal investigations, both parties will have an equal opportunity to present information to the investigator, including the names of witnesses and other relevant information.
4. A description of the University's investigative procedures and a list of the parties' rights, including the right to inspect and review all evidence obtained by the investigator(s) (including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility), and the right for each party to have an Advisor of their choice present at any grievance proceeding or any related meeting.
5. The range of possible sanctions and remedies.
6. The bases for appeal and procedures associated with the appeal process.
7. Information regarding Supportive Measures available to both Complainants and Respondents.
8. A statement regarding the University Policy prohibiting Retaliation (See Penn State Policy AD67).
9. A statement regarding the University's requirement for all parties that they will not make false statements or knowingly submit false information as prohibited by University rules and regulations.

Within five days of receipt of the Notice of Allegations and Investigation, both parties shall provide the Title IX Coordinator (or designee) written notice of their Advisor's name and contact information.

#### **ii. Amended Notice**

If, during the course of the investigation, the University acquires information previously unknown or unavailable to the investigator at the time of the original notice (e.g. names of previously unknown relevant parties, dates of incident(s), the times or locations of incident(s), or additional allegations of misconduct involving the Respondent), the University will revise the Notice of Allegations and Investigation to include this information and simultaneously provide the parties with an amended copy of the notice.

If the University acquires information that suggests that additional Title IX Prohibited Conduct may have occurred, in addition to the alleged Title IX Prohibited Conduct raised in the initial complaint, the University may investigate the additional allegations concurrently with the initial allegation. All parties will be provided with a reasonable amount of time to respond to the new allegations, including the right to present relevant information to the investigator.

#### **iii. Preliminary Investigative Report**

At the conclusion of the initial investigation, the investigator will draft a preliminary Investigative report that includes all evidence gathered that is directly related to the allegations in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and all inculpatory and exculpatory evidence. The investigator will transfer the preliminary investigative report to the Title IX Coordinator, who will review the report within five (5) days of receipt. The investigator will then send the preliminary Investigative report to each party and their Advisors in an electronic format other than email, such as a secure file-sharing platform of the University's choosing. The parties will have ten (10) days to submit a written response. The parties and their Advisors will not be permitted to download, copy, photograph or take other measures designed to retain copies of the preliminary Investigative report.

At the conclusion of the review period, the University will remove the parties' electronic access to the preliminary Investigative report. If the University is unable to provide the parties access to the materials due to extraordinary and unforeseen circumstances, the investigator will provide the parties with a hard copy of the evidence in person or, if the distance between the parties and the investigator prohibits such delivery, a copy will be sent to the parties using registered mail requiring the recipient's signature. Parties who receive a hard copy of the preliminary Investigative report by registered mail will be required to return the copy to the investigator at the conclusion of the review period by using registered mail requiring a signature by the recipient.

The investigator will consider the parties' responses to the preliminary Investigative report and, if warranted, shall conduct additional investigation based thereon. The parties recognize that such additional information may cause the timelines for the completion of the investigation and grievance process to be extended.

#### **iv. Final Investigative Report**

The investigator, after reviewing and considering the parties' responses to the preliminary Investigative report and conducting any additional investigation needed, will complete a final Investigative report that fairly summarizes the relevant evidence. The parties will have five (5) days to review any additions to the report and provide one (1) final written response if they choose to do so before the Investigative report is submitted to the Title IX Coordinator.

Within five (5) days of receipt of the final Investigative report, the Title IX Coordinator will make a determination that: (1) the University will convene a hearing before an impartial fact-finding Hearing Panel who will hear testimony from the parties and relevant witnesses, review the relevant evidence, and make a determination as to responsibility OR (2) the matter will be dismissed because the investigation revealed facts that either: (a) require a dismissal under Title IX (e.g., the conduct alleged would not constitute Title IX Prohibited Conduct, even if true, did not occur in the University's Education Program or Activity, or did not occur in the United States); or, (b) allow for a dismissal (e.g., if the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, the Respondent is no longer enrolled or employed by the University, or specific circumstances prevent the investigator from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein). If a determination is made to dismiss the Formal Complaint, the parties may exercise their right to appeal using one or more of the bases for appeal set forth below. In the absence of a dismissal, the matter will be forwarded to the appropriate University Hearing Panel for disposition.

The investigator will send to each party and their Advisors the final Investigative report (including the Title IX Coordinator's determination) for their inspection and review using a secure file-sharing platform of the University's choice.

The parties and their Advisors will not be permitted to download, copy, photograph or take other measures designed to retain copies of the final investigative report. If the University is unable to provide the parties access to the materials due to extraordinary and unforeseen circumstances, a hard copy of the evidence will be provided to the parties in person or, if the distance between the parties and the investigator prohibits such delivery, a copy will be sent to the parties using registered mail requiring the recipient's signature. The same restrictions regarding copying, photographing or otherwise making attempts to retain a copy of the preliminary investigative report apply to the final Investigative report. Parties who receive a hard copy of the final Investigative report by registered mail will be required to return the copy to the investigator at the conclusion of the review period by using registered mail requiring a signature by the recipient.

## **XIV. FORMAL HEARING PROCESS**

**a. Receipt of Final Investigative Report.** Within five (5) days of receipt of the final Investigative report, the Title IX Coordinator or their designee will select the members of the Title IX Hearing Panel and will provide a copy of the final Investigative report to the members of the Hearing Panel. Promptly after selection of the Hearing Panel members, the Title IX Coordinator or their designee will provide concurrent written notice to the parties of the date, time and location of the hearing and the identities of the Hearing Panel members.

**b. Pre-hearing Meeting.** To promote a fair and expeditious hearing, the parties and their advisors may attend a pre-hearing conference with the Title IX Coordinator or designee. The pre-hearing conference assures that the parties and their advisors understand the hearing process and allows for significant issues to be addressed in advance of the hearing. Pre-hearing meetings should occur no less than five (5) days prior to the date of the hearing.

**c. Responsibilities of Hearing Panel & Parties.**

### **Responsibilities of the Hearing Panel:**

The Hearing Panel is required to objectively evaluate all relevant evidence both inculpatory and exculpatory, and to independently reach a determination regarding responsibility. The University may provide an attorney from its Office of General Counsel, or outside counsel, to advise the Hearing Panel. They must also:

i. Ensure that only relevant cross-examination questions must be answered by a party or witness before the party or witness answers. The Hearing Panel may exclude questions that are irrelevant or duplicative.

ii. Ensure that the hearing process is administered in a fair and impartial manner and that all participants observe basic standards of decorum and that all questions are asked and answered in a respectful, non-argumentative, and non-abusive way. The Hearing Panel will be responsible

for ensuring that all parties and witnesses are protected from answering questions designed to be harassing, intimidating, or abusive.

iii. Render a decision using a preponderance of the evidence standard using the facts as presented through careful examination of the final investigative report, witness testimony, including cross-examination, and the review of all relevant evidence.

**Responsibilities of the Parties at the Hearing (Complainant and Respondent):**

i. Truthfully answer questions posed by the Hearing Panel.

ii. Truthfully answer relevant questions posed by the other party via their Advisor.

iii. Attend the hearing in its entirety, being present for all witness testimony.

iv. Adhere to basic standards of decorum by answering questions posed by the Hearing Panel or a party's Advisor in a respectful, non-argumentative, and non-abusive way.

**d. General Rules for the Hearing**

1. Technical rules of process and evidence, such as those applied in criminal or civil court, are not used in these proceedings. Evidence permitted at the live hearing is limited to only that which is relevant to the allegations in the Formal Complaint. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Evidence not previously provided in advance of the hearing may be accepted for consideration at the discretion of the Hearing Panel.

2. Per Title IX requirements for live cross-examination, parties have the right to cross-examine any witness, including the investigator, and present both fact and expert witnesses. Only Advisors can conduct cross-examination on behalf of a party; there is no right of self-representation, however, the party should be an active participant in informing the questions posed by their Advisor.

3. Cross-examination is designed to allow a party to challenge the consistency, accuracy, memory and credibility of the opposing party or witness. Cross-examination must be relevant, respectful, and conducted in a non-abusive way. The University retains discretion under Title IX to apply rules of decorum at a live hearing that require participants (including parties, witnesses, and Advisors) to refrain from engaging in abusive, aggressive, or disruptive behavior. Failure to adhere to the rules outlined by the Hearing Panel may result in a decision to cease the hearing and reconvene once the disruptive behavior has been addressed.

4. Parties, through their Advisors, will ask each question one at a time and allow the Hearing Panel to determine the relevance of the question before the other party or witness is asked to answer. This process will be strictly adhered to throughout the entire hearing process. Submission of written questions for the purpose of ascertaining relevance is not permitted.

5. At the request of one or both parties, the Complainant and Respondent will be permitted to participate in the hearing in separate rooms, assisted by technology that allows each party to see, hear, and ask questions of the other party live and in real-time. Witnesses may also appear in separate rooms, but also must be clearly visible and audibly clear to the Hearing Panel, the parties, and their Advisors.

6. All witnesses will be considered the University's witnesses. Names of witnesses may be provided by either party or others who may have been involved with the case. To assist this process, those who have not met with the investigator will be requested to provide a brief statement to the Title IX Coordinator or their designee outlining the relevant information they will share at least three (3) days in advance of the hearing.

7. There shall be a single audio record of all Title IX hearings which will be available to the parties for inspection and review. The parties are not permitted to record the hearing. The recording shall be the property of the University and will be maintained with all

records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Prohibited Conduct for no fewer than seven (7) years. Accordingly, documents prepared in anticipation of the hearings (including, but not limited to, the Formal Complaint, the preliminary investigative report, the final investigative report, the notices of hearing, and any prehearing submissions) and documents, testimony, or other information introduced at the hearings may not be disclosed outside of the hearing process, except as may be required or authorized by law or legal proceeding. In particular, to respect the reasonable privacy of all participants, no party (or representative), nor any witness, may record the hearing or disclose any recording of the hearing or any portion thereof. Any violation of privacy requirements shall constitute a violation of this Policy, which may result in disciplinary action.

8. If a party or witness, with notice, does not appear before the Hearing Panel, the hearing will take place in their absence. If a party or witness appears at the hearing but refuses to answer questions posed to them by the other party's Advisor, the Hearing Panel will reach its determination using the evidence available to them. The Hearing Panel may not draw an inference as to the responsibility of the Respondent based solely on any party or witness's absence or refusal to undergo cross-examination. If a party's Advisor does not appear at the time of the hearing, the University will provide an Advisor for that party without fee or charge, to conduct cross-examination on behalf of that party. However, choosing to answer some material questions but not others, or choosing to participate in some portions of the process but not others, may be considered during determinations regarding credibility or the weight given to the evidence provided.

9. If the matter involves more than one Respondent, the Title IX Coordinator, in their discretion, may permit the hearing concerning each Respondent to be conducted either jointly or separately.

**e. Conclusion of the Hearing.** Following the conclusion of the hearing, the Hearing Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the final Investigative report, the parties' written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed a violation of this Policy. The Hearing Panel will typically submit its finding of responsibility or non-responsibility and rationale in

writing to the Title IX Coordinator within five (5) days of the hearing. Decisions made by the Hearing Panel are final pending the normal review and appeal process.

**f. Consideration Statements.** Following the conclusion of the hearing, the Title IX Coordinator or designee will instruct the parties that they may each submit a consideration statement, if they choose, to be received by the Title IX Coordinator or designee no later than two (2) days from the date of the hearing. The "consideration statement" is a written statement from a complainant or respondent describing the mitigating or aggravating factors that may help inform sanctioning. The consideration statement may not exceed five (5) pages, and under no circumstance will more than one consideration statement be permitted from either party. The consideration statements will only be reviewed in the event of a finding of responsibility that may result in sanctioning.

## **XV. SANCTIONS**

Within five (5) days of receipt of the Hearing Panel's finding, the Title IX Coordinator or their designee will review the finding and provide a copy of the finding to the appropriate sanctioning authority, if applicable, along with the parties' consideration statements, if any. The sanctioning body will assign sanctions within five (5) days of receipt of the finding and consideration statements, if any, in both student cases and employee cases.

**a. For Student Respondents.** If the Respondent is found to be responsible for the Prohibited Conduct as an outcome of the hearing, the Senior Director of the Office of Student Accountability & Conflict Response, or their designee, will assign sanctions, giving consideration to whether a sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, and any record of prior student discipline, if applicable. Sanctions may include, without limitation, formal warning, conduct probation, suspension, and expulsion. In addition, other administrative sanctions may include exclusion, housing reassignment, loss of housing, and/or loss of privileges. The University reserves the right to impose other sanctions and/or educational, reflective, and restorative outcomes in addition to the administrative sanctions listed above in response to the specific circumstances of a case. Supportive measures, including No Contact Directives, may also be continued or modified. Imposition of the appropriate remedy and/or sanction will be implemented only after all appeals have been exhausted.

**b. For Employee Respondents.** If the Respondent is found to be responsible for the Prohibited Conduct as an outcome of the hearing, the Title IX Coordinator or their designee will provide a copy of the Hearing Panel's finding to the Associate Vice President for the Office of Equal Opportunity and Access, the Respondent's immediate Supervisor, and other appropriate University officials. The Supervisor, in consultation with the relevant University officials, will determine the appropriate remedy and/or sanction to be imposed. If disciplinary action is imposed, the Supervisor will notify the Office of Equal Opportunity and Access, Human Resources, and other University officials, as appropriate, when such action has been completed (i.e., training, probation, suspension). Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, and any record of prior employee discipline, if applicable. Sanction(s) may include written warning, loss of privileges, mandatory training or education, loss of salary increase, administrative leave, recommended revocation of tenure, and/or termination of employment depending on the circumstances and severity of the violation.

Supportive measures, including No Contact directives, may also be continued or modified. Imposition of the appropriate remedy and/or sanction will be implemented only after all appeals have been exhausted.

When the Respondent is an employee subject to the terms of a collective bargaining agreement, the matter shall additionally be referred to Human Resources to ensure that any discipline and/or sanctions are imposed in accordance with the collective bargaining agreement applicable to the Respondent.

When the Respondent is a tenured or tenure-eligible faculty member, and the sanction imposed is recommended dismissal of the Respondent's employment and/or revocation of tenure, the matter shall be referred to the appropriate academic administrator to initiate dismissal pursuant to Penn State Policy AC70.

## **XVI. WRITTEN NOTICE OF OUTCOME AND SANCTIONS**

Within five (5) days of receipt of the notice of sanctions issued by the sanctioning body, the Title IX Coordinator will review the decision of the Hearing Panel and the sanctions, if applicable, and will send written notice ("Notice of Outcome") of both simultaneously to the parties. The Notice of Outcome from the Title IX Coordinator or their designee will include:

1. If the Respondent is found responsible, the specific behaviors concluded to be Title IX Prohibited Conduct.
2. Description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the Penn State Student Code of Conduct (for student-related matters) or employee handbooks and other applicable University policies (for employee-related matters).
5. Statement of, and rationale for, the result of each allegation, including a determination regarding responsibility, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to Complainant.
6. Sanctions, if applicable.
7. Procedures and bases for the Complainant and Respondent to appeal.

## **XVII. APPEAL RIGHTS OF PARTIES**

The University offers to both parties appeal rights from either: (a) a determination regarding responsibility, or (b) the University's dismissal of a Formal Complaint or any allegations therein at any stage.

For **students**, appeals must be grounded in one or more of the following rationales:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility was made has come to light that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual parties in particular, and that bias affected the outcome of the matter; and/or,
4. The sanction(s) imposed was/were outside the University's sanction range for such violations and/or not justified by the nature of the violation.

For **employees and third parties**, appeals must be grounded in one or more of the following rationales:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility was made has come to light that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual parties in particular, and that bias affected the outcome of the matter.

Appeals must be submitted in writing to the Title IX Coordinator or their designee within five (5) business days of the date of the Notice of Outcome or Notice of Dismissal. The Title IX Coordinator or their designee shall immediately provide notice of the appeal to the non-appealing party, who has five (5) days to submit a written response to the appeal which addresses solely the ground(s) alleged for the appeal. The non-appealing party shall be limited to one and only one written response to the appeal. Upon receipt of the non-appealing party's response to the appeal, the Title IX Coordinator or their designee will submit the appeal and the non-appealing party's response to the appeal officer, who shall not be the same individual who issued the Dismissal, Finding of Responsibility, or Sanction.

The appeal officer for undergraduate students is the Associate Vice President for Undergraduate Education or their designee.

The appeal officer for graduate students is the Vice Provost for Graduate Education and Dean of the Graduate School or their designee.

The appeal officer for staff is the Vice President for Human Resources or their designee.

The appeal officer for faculty and postdoctoral scholars/fellows is the Vice Provost for Faculty Affairs or their designee.

The appeal officer's review will be based only on the written record, which shall consist of the final Investigative report, Notice of Outcome, written appeal and written appeal response (if any), as well as the recording of the hearing, and will not include meetings or discussions with the parties or Title IX personnel directly involved in the investigation. Therefore, the appealing party should include any supporting documents with their written appeal, including any alleged new evidence that was not available at the time of the hearing that may have affected the outcome. The appeal officer may consult with the Title IX Coordinator regarding matters of procedure, as appropriate.

For an appeal related to the dismissal of a Formal Complaint based on the limited grounds above, the appeal officer will decide whether to approve or reject the decision of the Title IX Coordinator. If rejected, the appeal officer will return the Formal Complaint to the Title IX Coordinator, and the complaint process shall proceed consistent with Section XIII of this Policy. If approved, the matter is closed.

For the appeal of a finding of the Title IX Hearing Panel based on the limited grounds above, the appeal officer will decide whether to approve, reject, or modify the decision and/or sanctions or to remand the case to the Hearing Panel for clarification or a completely new hearing. The appeal officer's decision will confirm and correct any identified procedural irregularities, conflicts of interest or bias, and/or ensure that any newly discovered evidence is included in their decision.

Within five (5) days of receipt of the appeal packet, the appeal officer will issue a final written decision simultaneously to both parties and the Title IX Coordinator describing the result of the appeal and the rationale for the result. The decision of the appeal officer is final.

## **XVIII. RECORD-KEEPING PROVISION**

The University will retain a full record of all complaints filed under these provisions for a period of no less than seven (7) years from the date of the initial report or Formal Complaint, whichever is earlier. This includes records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of Prohibited Conduct. The parties may request to inspect and review the records for a closed matter at any time during the retention period. The University will provide the parties with access to the records within a reasonable timeframe, not to exceed forty-five (45) days from the date of the request.

## **XIV. OCR REVIEW RIGHTS**

Although parties are encouraged to resolve their grievances related to Title IX matters by utilizing this Policy, they have the right to file a complaint directly with the U.S. Department of Education, Office for Civil Rights (OCR). Information regarding applicable timelines and procedures is available from OCR. You may call [1-800-421-3481](tel:1-800-421-3481), email [ocr@ed.gov](mailto:ocr@ed.gov), or visit the OCR website to obtain further information about filing a complaint with OCR.

## **FURTHER INFORMATION**

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

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### CROSS REFERENCES

[Office of Equal Opportunity and Access Website](#)

[Penn State Student Code of Conduct](#)

[Penn State College of Medicine Web Site](#)

[Sexual Harassment and Assault Reporting and Education \(SHARE\)](#)

[University Title IX Website](#)

[AC76](#) - Faculty Rights and Responsibilities

[AD29](#) - Statement on Intolerance,

[AD47](#) - General Standards of Professional Ethics

[AD51](#) - Use of Outdoor Areas for Expressive Activities

[AD67](#) - Disclosure of Wrongful Conduct and Protection From Retaliation

[AD72](#) - Reporting Suspected Child Abuse

[AD74](#) - Compliance With the Clery Act

[AD91](#) – Discrimination and Harassment, and Related Inappropriate Conduct

[HR01](#) - Fair Employment Practices

[HR78](#) - Staff Employee Failure to Meet Acceptable Standards of Performance

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Most Recent Changes:

- September 15, 2025 - Updated terms and definitions pursuant to Federal guidance.

Revision History (and effective dates):

- September 9, 2024 - Updated terms and definitions and clarified informal resolution options.
- January 4, 2022 - Updated name and contact information for Title IX Coordinator.
- August 19, 2022 - Editorial changes, added terms and definitions under Prohibited Conduct, name change for Office of Student Conduct to Office of Student Accountability & Conflict Response.
- May 20, 2022 - Updated list of Mandatory Reporters; added prohibited conduct under Sexual Exploitation; Editorial change regarding complaints filed by the Title IX Coordinator; Editorial change regarding referral of cases to other offices and policies upon dismissal under AD85; Updated process for review of final Investigative report; Editorial change regarding Consideration Statements; Editorial change regarding Sanctions, to include the continuation of Supportive Measures; Editorial change regarding the review of appeals. December 13, 2021 - Updated name of Title IX Coordinator.
- December 6, 2021 - Added a section on Confidential Resources; Separated "Officials with Authority" from "Mandatory Reporters"; Provided examples of Sexual Harassment under Prohibited Conduct; Defined the term "Supervisor"; Added a provision for a Pre-Hearing Meeting; Added a provision for the submission of Consideration Statements prior to the sanctioning process.
- August 30, 2021 - Edited definition of Prohibited Conduct to include discrimination based on sexual orientation and/or gender identity. Deleted prohibition against statements not subject to cross-examination.
- August 14, 2020 - Revision of University policy and procedures to comply with new Title IX regulations.
- April 22, 2019 - Edited definition of sexual harassment in item "a" under the section CONDUCT THAT IS PROHIBITED BY THIS POLICY.
- October 23, 2018 - Editorial changes to update contact information for Title IX Coordinator and Associate Vice President for Affirmative Action.
- August 13, 2018 - Editorial changes to update personnel information for the Title IX Coordinator and the Title IX Deputy Coordinators.
- June 1, 2018 - Editorial change to add gender expression to the list in the first paragraph of the policy statement.
- April 27, 2018 - Editorial changes to update broken links.
- August 17, 2017 - Personnel changes in the Title IX Coordinator and Deputy Title IX Coordinators positions.
- September 29, 2016 - Major edits to the entire policy. This policy has been re-titled and revised to address gender-based harassment and sexual harassment/sexual misconduct. Verbiage addressing general discrimination and harassment and related inappropriate conduct has been moved to new policy AD91, Discrimination and Harassment, and Related Inappropriate Conduct.
- January 27, 2014 - New Policy, replacing AD12 (Sexual Assault, Relationship and Domestic Violence, and Stalking), AD41 (Sexual Harassment) and AD42 (Statement on Nondiscrimination and Harassment).

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