



SHIPPENSBURG  
UNIVERSITY

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# **Shippensburg University Student Code of Conduct**

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## **I. Overview**

Shippensburg University is an academic community whose membership includes faculty, staff, students and administrators. The community exists for the pursuit of learning, the transmission of knowledge, the development of students as scholars and citizens, and ultimately, for the general well-being of society. Freedom of inquiry, speech, action, and expression is indispensable in the attainment of these goals. Students, as members of the academic community, are encouraged to engage in a sustained, critical, and independent search for knowledge.

The Office of Student Conduct & Community Standards supports this endeavor through policies that balance the freedom of the individual student with the interests of the academic community, and procedures that apply these policies in a prompt, equitable, and consistent manner.

As members of the academic community, all students are expected to abide by the standards set forth in the Student Code of Conduct. Students are also expected to uphold the core values of integrity, responsibility, and respect.

The University student conduct process attempts to teach civic principles within the context of the academic mission. The process views students as adults, and as such, expects them to be aware of applicable local, state, and federal laws, as well as all published University policies, procedures, rules and guidelines.

Violations will subject student to action through the University student conduct process. Where warranted, violations may also be referred for action through the appropriate civil or criminal court. The University may initiate an investigation and proceed with resolution within the scope of its authority, responsibility, and jurisdiction, without regard to the commencement or disposition of any civil or criminal court proceeding.

This Student Code of Conduct is intended to be consistent with any referenced University policies and will be construed to avoid inconsistency; however, to the extent that there is an irreconcilable conflict between this Student Code of Conduct and any University policy, the document with the latest approval date will control.

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## **II. Jurisdiction**

The Student Code of Conduct is issued pursuant to 22 Pa. Code Chapter 505 and Board of Governors Policy 1984-13-A and applies to all Shippensburg University students and student organizations as follows:

- When on University premises;
- When involved with off-campus programs, activities, and events related to or sponsored by the University; and
- When privately off-campus.

Alleged off-campus student code violations having, or potentially having, a direct, detrimental impact on the University's educational functions, its community members, or the local municipalities are subject to resolution through the student conduct system, regardless of any actions that may be brought in civil or criminal court systems.

The University retains conduct jurisdiction over students for any misconduct occurring while the individual is a student. This jurisdiction is not affected by leave of absence, withdraw, or graduation. If sanctioned, a hold may be placed on the student's ability to re-enroll, obtain official transcripts, and/or graduate. All sanctions must be satisfied prior to re-enrollment eligibility.

### *Areas of Review*

The Vice President of Student Affairs & Dean of Students serves as the President's designee for the general oversight of student conduct and discipline matters.. They may further delegate responsibility to various student conduct bodies and administrative staff. The President of the University has final authority in all matters related to student conduct and discipline.

The University Title IX Coordinator, with assistance of the Deputy Title IX Coordinators, coordinates compliance with Title IX and responds to reports of student conduct matters involving sexual misconduct, sexual harassment and/or sex discrimination. The Title IX Coordinator is located in the Office of Human Resources and Compliance. Matters involving sexual misconduct are addressed under the University's Sexual Misconduct Policy.

### *Communication*

University-issued electronic mail (email) is the official means of communication between the Office of Student Conduct & Community Standards and students on all matters pertaining to the student conduct process. If an individual does not have an active University email account at

the time of the communication, official communication will be directed via first-class mail to the last address on file with the Registrar's Office unless the individual and the Office of Student Conduct & Community Standards have agreed otherwise.

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### **III. Definitions**

Except as otherwise provided herein, the language contained in this document shall be construed according to ordinary common usage. Terms used include the following:

**Administrative Hearing:** A proceeding at which the Reporter(s) and the Responder make presentations to the Student Conduct Facilitator. The Student Conduct Facilitator will determine the Responder's responsibility for the violation. Administrative hearings are afforded where possible sanctions do not include suspension or expulsion. In matters where suspension or expulsion are possible sanctions, any proceedings will be held before the University Conduct Board.

**Confidential Resources:** University employees and off-campus organizations who are not required to report identifiable student information regarding an incident of sexual misconduct to the Title IX Coordinator. On-campus confidential resources are: Counselors within the University Counseling Center, the Director of the Pride & Gender Equity Center, and the members of the Campus Ministry Council.

**Consent:** (For purposes of the Prohibited Behavior Definitions relating to Sexual Misconduct) a knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood.

In order to be valid, Consent must be active, present and ongoing.

Consent is not present when it is the result of coercion, intimidation, force, or threat of harm. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity.

When determining whether consent has been provided, all the circumstances of the relationship between the parties will be considered.

*Educational Outcome:* An outcome imposed based upon a finding of responsibility for a violation of the Student Code of Conduct, including any modifications of a Student or Student Organization status or standing, and any additional assigned requirements.

*Investigator:* An individual employed or appointed by the University to conduct an investigation in a student conduct matter.

*Process Advisor:* This person serves as an adviser to a Reporter or Responder involved in the student conduct process. The role of a process advisor is for moral support, not to speak for or on behalf of a student. The process advisor may communicate only with their student and may not address the conduct officer or the conduct board. The process advisor may not be a party or witness at the hearing.

*Referral:* A written report of alleged Student Code of Conduct violations. A referral may be made by any member of the University community and may be made against any student or student organization.

*Resolution:* The adjudication of a student conduct matter.

*Reporter(s) or Reporting Party:* A person or group who initiates a student conduct referral, about themselves or others, alleging that another student or group violated provisions of the Student Code of Conduct.

*Responder or Responding Party:* The student or group alleged to have violated provisions of the Student Code of Conduct.

**Sanction:** The penalty levied against a student or group found “responsible” for violating one or more provisions of the Student Code of Conduct.

**Sexual Misconduct Investigator:** The Title IX Coordinator or the individual designated by the Title IX Coordinator to perform an investigation under the Sexual Misconduct Policy. The Investigator may not have a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general. The Investigator may not serve as a Decision Maker, Appeals Officer or Advisor to any Party in the same matter.

**Stipulation:** A condition, beyond the sanction, required of persons or groups found “responsible” for violating provisions of the Student Code of Conduct.

**Student:** Any person:

1. admitted to the University and has registered for courses and/or participated in orientation;
2. active in a University program of study;
3. living in University residence halls even though they are not enrolled at the University.

The term “Student” shall include employees, volunteers, and officials where the employee, volunteer, or official otherwise meets the enrollment criteria set forth in this definition.

**Student Conduct Meeting:** This meeting provides Responder/Reporter(s) with the opportunity to discuss the allegation that led to the referral, receive and review additional information about the student conduct process, clarification of their rights and options, the ability to inspect and review all relevant information as well as a range of potential sanctions for the violation in question, should the charges be substantiated.

**Student Conduct Facilitator:** A trained faculty or staff member designated to facilitate Student Conduct Meetings and/or Administrative Hearings.

**Student Organization:** Any organized group, that has complied with, or is in the process of complying with the University’s requirements for registration, recognition, or is formed through University academic, athletic, or auxiliary department, or is funded by the Student Government Association ("SGA"), including any fraternity, sorority, association corporation, order, society, corps, club or service, social or similar group. This definition does not alter or diminish the definition of "student organization" set forth in the University's Anti-hazing policy.

*Title IX Coordinator:* The individual designated by the University, with assistance of the Deputy Title IX Coordinators, to coordinate the University's compliance with Title IX and the Violence Against Women Act ("VAWA") and to respond to Reports of violations. The Title IX Coordinator may not have a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general. The Title IX Coordinator may serve as the Investigator of a Formal Complaint. The Title IX Coordinator may serve as the Investigator of a Formal Complaint for Formal Complaints against Respondents who are Employees. The Title IX Coordinator may not serve as a Decision Maker or Appeals Officer.

*University:* Shippensburg University of Pennsylvania.

*University Business Days:* any day on which the University is open for business. This term excludes Saturdays, Sundays, University holidays, and any days on which the University is closed due to emergency (e.g., snow days, etc.).

*University Community:* The students and employees (including faculty) of the University. For purposes of Referrals, the University Community also includes guests and visitors of the University, and employees of the University's affiliated entities [Aramark; Follett; Grace B. Luhrs University Elementary School; Pennsylvania State Employees Credit Union; Shippensburg University Foundation; Shippensburg University Student Services, Inc.; UPS Store; WellSpan Health].

*University Conduct Board:* A group of trained individuals representing the University community that hear the testimony and other evidence from all involved parties at a hearing. The Board renders a decision of "responsible" or "not responsible" and, in cases involving student misconduct, recommends appropriate sanctions and stipulations when required.

University Conduct Boards are made up of a non-voting chairperson and a three-member voting panel. The non-voting chairperson may not be a student.

The panel is comprised of two employees and one student. In matters related to academic integrity, at least one employee on the panel must be a faculty member. In matters related to the University's Sexual Misconduct Policy, the University Conduct Board members are selected from a pool of prospective members who have been trained in the University's conduct process concerning sexual misconduct.

*University Property:* All objects, items, and real estate and buildings owned, controlled, leased or managed by the University and all highways, trafficways and bicycle and pedestrian facilities that traverse or abut such lands and buildings.

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## **IV. Student Rights**

The following rights are recognized:

- Every student has the right to pursue all University activities, free from unlawful harassment, discrimination, and physical harm.
- Every student has the right to personal privacy, except as otherwise provided by law.
- Every student has the right to fair and consistent processes in accordance with all applicable state and federal laws and regulations.

This Code does not create, alter, or detract from any rights otherwise afforded under federal or state law.

During any interactions, meetings, or hearings with the Office of Student Conduct & Community Standards, individual students:

- Have the right not to answer any questions asked of them.
- Have the right to hear all the information against them.
- Have the right to have a process advisor present and to bring witnesses on their behalf.
- Have the right ask questions.
- Have the right to appeal the decision of a hearing.\*

\*Note: A Student Conduct Meeting is NOT a hearing and does not include appeal rights.

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## **V. Rules and Regulations**

The following is a listing of the Rules and Regulations at Shippensburg University. Because students are expected to show good judgment and use common sense at all times, the list is not an exhaustive codification. However, it generally sets forth a clear description of prohibited conduct.

Students and/or student organizations involved in misconduct will be addressed through the University student conduct system.

### *a. Regulations*

The following regulations apply to all students and student organizations as outlined below. Student organizations, as well as their members or leaders, may be held collectively and/or individually responsible for violations of the regulations outlined below and/or other University policies.

#### ***1. Failure to act in a manner that reflects personal and academic integrity.***

Prohibited conduct includes:

**A. File a False Report:** Filing a false police report or student conduct incident report.

**B. False Statements:** Making false statements as part of a University student conduct hearing or to a University official.

**C. Theft:** This includes: (1) theft or attempted theft of the property or services of the University, any group, or any individual, by means of taking, deceiving, misappropriating, or misusing; and/or (2) possession of stolen property and/or receiving stolen property.

**D. Improper Use of ID:** Allowing others to use their University identification card or temporary residence hall access card or using another's University identification card or temporary residence hall access card.

**E. False Information:** Knowingly providing false information in any manner to the University. This includes all matters of record and transactions with the University.

**F. University Documents:** Altering, forging, transferring, or otherwise misusing any University document or record, allowing any University document or record issued to a student to be used falsely by another person, or falsely using University documents issued to another.

**G. Agent of University:** Acting as an official representative of the University unless authorized to do so.

**H. Licensing:** Violating any licensing or contractual agreements, University policies, or any laws related to information technology.

**I. Commercial Use:** Using University computing or telecommunications equipment, facilities, and/or services for commercial purposes or non-University related activities without official authorization.

**J. Data Use:** Accessing, using, altering, destroying, or transferring any information resources without authorization from the data owner.

**K. Wiretapping:** Creating an illegal audio or video recording of another without their consent in a space where there is a reasonable expectation of privacy.

**L. Password Use:** Using, without authorization, another person's password or authorization code to access computing, telecommunications, or other services..

**M. Computing and Telecommunications Operations:** Engaging in any activity that infringes on the operation of any University computing network. This includes establishing or operating computer network-based servers, including but not limited to, file servers, wireless connectivity servers, print servers, web servers, and/or peer-to-peer sharing.

**N. Academic Integrity:** Any violations of the University's Academic Integrity Policy that have been referred by the Academic Integrity Board (AIB) for further action through the student conduct process. Further information about the Academic Integrity Policy can be found [here](#).

***2. Failure to act in a way that reflects personal and community responsibility toward the person and property of others.***

Prohibited conduct includes:

**A. Failure to Report:** Failing to report a violation of the student code of which a student has knowledge.

**B. Safety Hazard:** Creating, or helping to create, a safety hazard. Knowingly violate safety/security regulations or interfere with the safe and clean environment of others. This includes demonstrating behavior or engage in activities that endanger the safety or well-being of oneself or others.

**C. Explosives/Dangerous Weapons:** Possessing or using dangerous weapons. This includes, but is not limited to, guns, knives, martial arts' devices, percussion weapons, bow and arrows, ammunition, clubs, firecrackers, fireworks, other explosives, or any other devices used aggressively.

D. Fire: Setting a fire or attempting to start a fire; engaging in behavior that potentially could start a fire, e.g., burning candles, burning incense, or lighting aerosol propellants; or falsely report a fire, bomb, or similar emergency.

E. Smoking Indoors: Smoking cigarettes, cannabis, or using electronic vape devices inside a University building.

F. Emergency Procedures: Interfering with emergency services or procedures. This includes failing to evacuate a building or cooperate with University staff members during a fire alarm, tampering with fire equipment, or using such equipment in a manner other than for the control or prevention of a fire.

G. Alcohol: Violating University alcohol policies by:

1. Consuming and/or possessing alcoholic beverages on campus or in campus housing, regardless of the individual's age, other than during a sanctioned university activity and at a locations where alcohol has been permitted and in compliance with applicable laws.
2. Illegal possession or consumption of alcohol off campus including, but not limited to, possessing or consuming alcohol beverages under the age of 21 and/or public possession of an open container.
3. Purchasing or attempting to purchase alcohol illegally.

All alcoholic beverages will be confiscated and disposed of by University personnel. Items such as kegs, taps, and/or beer bongs will be given to the University Police.

H. Drive Under the Influence: Driving under the influence of alcohol or other drugs.

I. Drug Paraphernalia: Possessing drug paraphernalia.

1. All drug paraphernalia will be confiscated by the University police.

J. Furnishing Alcohol to Minors: Sharing, furnishing, selling, and/or distributing alcohol to persons under the age of 21 including, but not limited to, charging admission to a social event where alcohol is served, hosting or organizing a social gathering where persons under the age of 21 are permitted to consume alcohol, and/or providing alcohol to person under the age of 21.

K. False ID: Possession or use of a false identification.

L. Illegal Drugs: Possessing or using illegal drugs including but not limited to opioids & narcotics, hallucinogens, non-prescription stimulants, etc.

1. All illegal drugs will be confiscated by the University Police.

M. Illegal Drug Distribution: Manufacturing, sharing, furnishing, distributing, selling, exchanging, or offering to sell illegal drugs or drug paraphernalia.

N. Over the Counter Medications: Misusing over the counter medications, prescriptions, and/or other legal materials or substances, in such a way as to cause or result in Disorderly Conduct and/or Illegal Drug Distribution.

O. Illegal Gambling: Engaging in any gambling activities except as authorized by state and federal law.

P. Responsibility for Visitors: Failing to inform their visitors of the need to conform to the rules and regulations of the University.

Q. Residence Hall Visitation: Violating the “Residence Hall Visitation Policy” as defined here: [https://www.ship.edu/housing/housing\\_agreement/guest\\_policy/](https://www.ship.edu/housing/housing_agreement/guest_policy/)

R. University Operations: Interfering with the effective operation of any function or service of the University.

S. Cannabis: Possessing or using cannabis (marijuana).

1. All cannabis will be confiscated by the University police.

T. Organization Funds: Misappropriating or misusing student organization funds or property.

U. University Logo: Using, without authorization, the name or insignia of the University or its affiliated student groups.

V. Organization Functions: Interfering with the activities or functions of student organizations.

***3. Failure to act in a manner that reflects respect for oneself, others, university policies, and laws.***

Prohibited Conduct:

A. Noise: Causing or contributing to unreasonable noise. Courtesy and reasonableness are always expected as the rights of those being disturbed are preeminent. All reasonable efforts at maintaining quiet are expected in residence halls/rooms/suites during designated quiet hours.

B. Discriminatory Behavior: Actions that violate the University's Non-Discrimination Policy and/or otherwise discriminate against an individual or group of individuals based on race, sex, ethnicity, national origin, age, disability, religion, sexual orientation, gender identity, gender expression, veteran status, or military affiliation.

C. Disorderly Conduct: conduct that:

- intentionally or recklessly creates a hazardous or physically offensive condition;
- causes reasonable persons to fear for their safety or the safety of another; or
- disrupts the normal practices, processes, and functions of the University or the local municipalities

D. Harassment: Engaging in repeated, severe, or pervasive actions directed towards a specific individual, group, or entity with the intent or effect to disturb or alarm. This includes, but is not limited to, conduct in person or delivered by indirect means including notes, phone calls, and use of social media or other electronic media. This regulation applies to harassment that is not sex-based; matters related to sexual harassment are handled in accordance with the University's Sexual Misconduct Policy.

E. Harming Behavior: Engaging in any act which results in the infliction of pain, injury, or damage to any person or property by willful and deliberate means. This offense includes (a) assault, (b) attempted assault, or (c) behavior which may result in injuries to oneself or others.

F. Harming Behavior Toward University Official: Harassment, threatening conduct, or harming behavior toward a University employee related to the employee's work role.

G. Hazing: Engaging in conduct prohibited under the Shippensburg University anti-hazing policy. (A copy of the Anti-hazing policy is attached in the Appendix to this Code.)

H. Retaliation (non-sexual misconduct): Acts and/or threats directed against or other adverse action taken against any person in response to that person's participation in or involvement with the conduct process, a law enforcement matter, or any formal investigation conducted by

University staff. Retaliation related to a sexual misconduct matter will be handled in accordance with the University's Sexual Misconduct Policy.

I. Sexual Misconduct – The University prohibits all Sexual Misconduct violations, as defined below, and as set forth in the University's Sexual Misconduct Policy. This prohibited conduct can affect all genders, gender identities and sexual orientations. Some of these prohibited forms of conduct may also be crimes under Pennsylvania or federal law. Please refer to the University's Sexual Misconduct Policy for a full statement of definitions and procedures related to complaints of sexual misconduct under Title IX. Absent a formal Title IX complaint, or when Title IX regulatory requirements may not apply, alleged violations of sexual misconduct may be handled by the University in accordance with the student conduct process.

a. Dating Violence – (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence. Dating Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Dating Violence will be categorized as Non-Regulatory.

b. Domestic Violence – (as defined in the VAWA amendments to the Clery Act), includes any violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under Pennsylvania's domestic or family violence laws or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

Domestic Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Domestic Violence will be categorized as Non-Regulatory.

c. Sexual Assault – (As defined in the Clery Act) – This includes any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent. Sexual Assault may be one of the following categories:

1. Sexual Penetration Without Consent – Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when consent is not present. This includes performing oral sex on another person when consent is not present.
2. Sexual Contact Without Consent – Knowingly touching or fondling a person’s genitals, breasts, buttocks, or anus, or knowingly touching a person with one’s own genitals or breasts, when consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.
3. Statutory Sexual Assault – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other person does not have authority over them as defined in Pennsylvania’s institutional sexual assault statute<sup>1</sup>. Sexual Assault is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Sexual Assault will be categorized as Non-Regulatory.
4. Sexual Exploitation – Engaging in sexual behaviors directed toward or involving another person or use of another person’s sexuality for purposes of sexual gratification, financial gain, personal gain or personal advantage when consent is not present. This includes, but is not limited to, the following actions, including when they are done via electronic means, methods or devices:

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- Indecent exposure or inducing others to expose private or intimate parts of the body when consent is not present;
- Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's consent;
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

d. Regulatory Prohibited Conduct – For purposes of this Policy, the term includes the defined violations of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking.

e. Regulatory Quid Pro Quo Sexual Harassment – An Employee conditioning the provision of aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct.

f. Non-Regulatory Quid Pro Quo Sexual Harassment – An official, volunteer or Student conditioning the provision of aid, benefit or service of the University on the individual's participation in unwelcome sexual conduct.

g. Regulatory Hostile Environment Sexual Harassment – Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity.

h. Non-Regulatory Hostile Environment Sexual Harassment – Unwelcome conduct, on the basis of sex, that a reasonable person would determine is sufficiently severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from any educational, employment, social or residential program offered in connection with the University.

i. Stalking – (as defined in the VAWA amendments to the Clery Act) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress. A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person’s property. Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. Stalking is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Stalking will be categorized as Non-Regulatory.

J. Threatening Conduct: Engaging in conduct that is reasonably understood to intimidate or create fear of the infliction of pain, injury, or damage to property. This includes, but is not limited to, conduct in person or delivered by indirect means including notes, phone calls, use of technology, and social media or other electronic media.

K. Indecent Conduct: Engaging in intrusive, lewd, obscene, or indecent conduct. This includes the use of technology (webcams, cameras, cell phones, etc.) to invade one’s privacy.

L. Freedom of Movement: Interfering with the freedom of movement of others, including others’ access and use of public facilities, campus facilities, or private living space.

M. Tamper, Remove, or Damage Property: Tampering with, misusing, borrowing, removing, damaging, defacing, or destroying property of others or the University, without permission.

N. Failure to Comply: Failing to fully comply with the reasonable directives of University staff acting according to their duties or with the directives/sanctions of a disciplinary hearing board or officer. This includes, but is not limited to, the fulfillment of required sanctions/stipulations.

O. Trespassing: Trespassing, conspiring, or engaging in unauthorized entry. This includes the unauthorized use or possession of keys, including those of the University.

**P. Refuse ID:** Refusing, upon request, to provide their correct name and appropriate identification to a University staff member or authorized police officer performing their legitimate duties.

**Q. Violate Policies:** Violating any published University policies, rules, and regulations, including those published in the Student Handbook.

**R. Violate Law:** Violating federal, state, or local laws or ordinances.

**S. Condone Violation:** Being present during any violation of the Student Code of Conduct and/or University Policies in such a way as to condone, support, or encourage that violation.

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## **VI. Student Conduct Process**

Refer to the University's Sexual Misconduct Policy for a statement of the process and procedures associated with reporting and adjudicating matters of sexual misconduct.

### *Overview*

Shippensburg University believes strongly in providing a fundamentally fair and impartial student conduct process. To that end, both the reporter(s) and responding student or student organization will receive reasonably specific advanced written notice containing a description of the alleged acts of misconduct under the Student Code of Conduct, including time, date, and place of occurrence and the rules of conduct allegedly violated so as to allow the responder the opportunity to properly prepare a response.

Shippensburg University also believes in providing students with multiple pathways to resolution including but not limited to meetings, alternative dispute resolutions, and formal hearings.

In the event of a formal hearing, the University allows the reporter(s) and the responder the right to question each other, the right to question witnesses against them, the right to present evidence, the right to call their own witnesses, the right to have a process adviser present for support, the right against self-incrimination, and the right to appeal a student conduct decision.

Procedural modifications (e.g., the use of a screen during a hearing; and/or utilizing appropriate remote appearance technology) may be granted at the discretion of the Dean of Students as long as they are consistent with fundamental fairness.

A student may waive any of the rights contained in this Code other than written notification of the charges against them.

In all matters, and as necessary, Shippensburg University reserves the right to initiate resolution proceedings without a formal report or participation by the reporter(s).

### *Use of Process Advisors*

Students have the right to use a process advisor in the student conduct process. The advisor may be an attorney (at students' own expense) but cannot be a potential witness or other party. The process advisor does not have the right to speak or participate directly in any aspect of the conduct process other than to introduce themselves.

### *Informal Resolution*

When appropriate and agreeable to the parties and any designated University official, violations of the Student Code of Conduct may be resolved through informal means, including mediation, in lieu of an adjudication of Code of Conduct violation(s). Violations involving violence, physical harm, and serious property damage generally are not considered appropriate for informal resolution.

### *Initiation of a Referral*

Any member of the University community or personnel from a law enforcement agency (herein referred to as the Reporter(s)) may initiate a written referral against any student or student organization (herein referred to as the Responder).

All referrals must be in writing and should be submitted as soon as possible after the events on which the referral is based.

All misconduct reports, other than those relating to alleged sexual misconduct, must be submitted to the Office of Student Conduct & Community Standards. Referrals may be submitted: electronically through the website or in person at 210 Old Main.

### *Referral Review*

#### *General Misconduct by Students & Student Organizations*

The Dean of Students or designee will review referrals to determine if sufficient information is present to warrant further action. If it is the opinion of the Dean of Students or designee that insufficient information is present, the referral will be dismissed. There will be no appeal of this

dismissal decision.

## Notification of Referral for Further Proceedings

### *General Misconduct by Students*

Where a referral indicates a possible Code violation, the Dean of Students or designee will identify all relevant information. In the event that a formal investigation is required, the Dean of Students or designee will provide a written notice of investigation to the responder and will appoint a fact-finder to conduct the investigation.

### *General Misconduct by Student Organizations*

In matters involving a student organization, the executive board or leadership of the student organization will represent the organization as the responder.

Individuals who provide information as part of an investigation, to the extent possible, may remain confidential throughout the conduct process, provided their identities are known to the University and the investigative entity serves as a witness during the hearing procedures.

The investigator(s) will determine the best method of information gathering. This may include a mandated group meeting or a series of mandated individual meetings.

Students who fail to appear for investigative interviews or who fail to cooperate in good faith during investigative interviews may be subject to action under the Student Code. Students will be asked to sign an investigation participation form affirming the truthfulness of statements provided and their rights.

In the interest of full disclosure and to reduce the incidence of retaliatory behavior, the investigators will make every attempt to keep student testimony for group misconduct confidential. Cell phones and any other technology may be collected during any meeting to avoid collusion and conspiracy but will not be subject to search without student permission or warrant.

The investigator(s) may recommend interim action to the Dean of Students at any point in the investigation.

Although participation in the investigation is optional, future membership in the group may be assessed on the student member's cooperation.

## *Student Conduct Meeting*

### General Misconduct by Students & Student Organizations

Upon identification of all relevant evidence related to a referral, the Dean of Students or designee will provide the responder with written notice of a Student Conduct Meeting. The Student Conduct Meeting will be facilitated by a Student Conduct Facilitator designated by the Dean of Students.

Written notice of the Student Conduct Meeting will include:

1. the date, time, and place of the Student Conduct Meeting;
2. a brief summary of the referral, including where and when the alleged act(s) occurred, and a brief description of the alleged act(s) of misconduct;
3. the specific charges pending against the responder;
4. statement of student rights and responsibilities; and
5. the name and contact information of the Student Conduct Facilitator.

During the Student Conduct Meeting the responder will receive additional information about the student conduct process, including information relating to: rights, the range of potential sanctions for the charged violation(s); and resolution options available through the conduct process. The responder will also be afforded the opportunity to inspect and review all relevant information.

The Student Conduct Facilitator will give the responder the opportunity to:

1. request informal resolution in appropriate matters;
2. accept responsibility for the charge(s) and accept the sanctions and stipulations given by the Student Conduct Facilitator;
3. deny responsibility for the charge(s) and, provided the range of sanctions for the charged violations do not include suspension or expulsion, request an Administrative Hearing with a Student Conduct Facilitator; or
4. deny responsibility for the charge(s) and request a hearing on the charge(s).

If a responder fails to attend the Student Conduct Meeting, the matter will be moved to an Administrative Hearing or a University Conduct Board hearing as appropriate. If a responder fails to attend either the Administrative Hearing or the University Conduct Board hearing, the matter

will be heard in their absence.

### *Scheduling the Hearing*

The Dean of Students will provide the parties with written notice of the hearing at least 5 University business days prior to the scheduled hearing time. The hearing notice will contain a statement of

1. the date, time, and place of the hearing;
2. a statement addressing where and when an alleged act(s) of misconduct occurred;
3. a statement of the specific charges pending against the responder;

While every effort will be made to schedule the hearing at a time convenient for all parties, final scheduling authority rests with the Dean of Students or designee. The Dean of Students or designee also has the authority, when hearings involve more than one responder, to have the responders heard separately.

Hearings will not be scheduled during a time that any party to the hearing has a scheduled class.

24-hour notice is needed to request an updated hearing date and time.

### *Hearing Procedures*

The provisions below apply to both Administrative Hearings before a Student Conduct Facilitator and University Conduct Board Hearings, with the exception that Administrative Hearings are heard by the Student Conduct Facilitator rather than a full University Conduct Board.

### *Burden of Proof*

The University bears the burden of establishing any charged violation of this Code. The responder does not have the burden to prove that a violation did not occur. A responder may decide not to share their side of the story or may decide not to participate in the hearing or an investigation.

None of these decisions shifts the burden of proof away from the University.

### *Standard of Proof*

In all Code of Conduct processes, the University is responsible for establishing any charged violation by a “preponderance of the evidence” standard. This means that the University must show that it is more likely than not that the alleged violation of the Student Code of Conduct occurred.

## *Openness*

All hearings are closed to the public unless both the reporter(s) and responder agree, at least 24 hours in advance, to allow members of the University community to attend.

## *Participants*

Participants at a hearing include the fact-finder; reporter; responder; process advisers; and the witnesses. In an Administrative Hearing, the fact-finder is the Student Conduct Facilitator. In all other hearings, the fact-finder is the University Conduct Board.

Both the reporter and responder have the right to challenge the designation of a Student Conduct Facilitator or University Conduct Board member for cause. Cause is defined as personal bias or prior involvement with parties or circumstances surrounding the matter. A challenge to a Student Conduct Facilitator or University Conduct Board member for cause must be presented to the Dean of Students Office in writing no later than 24 hours before the scheduled hearing.

## *Evidence*

Only evidence that is admitted during the hearing shall be considered in evaluating the matter.

The university is not bound by formal rules of evidence. Evidence or information that may not be admissible in a court of law may be admissible in a conduct hearing or as part of an investigation. The Student Conduct Facilitator or the Chairperson of the University Conduct Board will decide what information is admissible as part of a hearing.

Court documents, including affidavits of probable cause, preliminary hearing transcripts, and other relevant court and public records, may be utilized at a student conduct hearing given their inherent reliability, even when the person that prepared them is not available to testify or answer questions.

If the Student Conduct Facilitator or University Conduct Board determines that key evidence is missing, the hearing may be continued to a later time to accommodate the presentation of such evidence at the hearing.

Procedural modifications (e.g., closed captioning, the use of a screen during an in-person hearing; etc.) may be granted at the discretion of the Dean of Students or designee as long as they are requested and consistent with fundamental fairness. A party wishing to request a procedural modification should do so at least 24 hours prior to the scheduled hearing time.

## *Responder/Reporter(s)*

Both the reporter and the responder are expected to appear at a hearing. However, in the event that a reporter or responder fails to attend a student conduct hearing, the Dean of Students or their designee reserves the right to dismiss the matter or to proceed with the hearing. If a responder fails to appear, the hearing may be conducted in their absence.

## *Other Witnesses*

The reporter(s) and responder are required to notify the Office of Student Conduct & Community Standards of the names and contact information of their respective witnesses at least 24 hours prior to the scheduled hearing time.

The office will notify witnesses of the hearing date and time. However, the reporter(s) and responder have the responsibility to arrange for the attendance of their witnesses at the hearing.

Witnesses are only allowed into the hearing during their period of testimony or when called to answer questions. The Student Conduct Facilitator or University Conduct Board reserves the option of limiting the number of witnesses providing statements at a hearing.

In matters of student organization misconduct, individuals who provide information as part of an investigation may remain confidential throughout the conduct process, provided their identities are known to the University and the investigative entity serves as a witness.

## *General Outline for Hearing Proceedings*

Hearings generally follow, but are not required to strictly adhere to, the format outlined below:

- Introduction of the hearing including introductions of participants, review of charges, statement of hearing expectations, and statements of rights & responsibilities.
- Opening statements from the reporting and responding parties.
- Questions from the Student Conduct Facilitator or University Conduct Board.
- Witnesses called individually by either the reporting or responding parties and subsequent questions for witnesses.
- Concluding statements or impact statements from the reporting and responding parties.

Once the hearing has concluded, the Student Conduct Facilitator or University Conduct Board goes into a private session to determine whether the responder is “responsible” or “not responsible.” A simple majority of the board members hearing the matter is needed to establish

“responsible” finding.

If a decision of “responsible” is reached, the Student Conduct Facilitator or University Conduct Board will make a recommendation of sanctions and stipulations. The Dean of Students or designee makes the final determination of sanctions and stipulations based upon the nature of the code of conduct violation.

Past violations of the student code of conduct will be factored into the determination of the sanctions and stipulations but will not be considered in establishing whether a responder is “responsible” or “not responsible” of the current charges.

A written decision will be issued, setting forth the outcome of the hearing. Absent extenuating circumstances, the written decision will be issued as expeditiously as possible but in no event later than 15 University business days after conclusion of the hearing. The decision letter will include factual findings and rationale for the decision and present a complete description of the sanctions and stipulations, if any. Appeal criteria and procedures will be outlined as well.

All hearings conducted by the University Conduct Board are conducted via virtual platforms (Zoom, Microsoft Teams, etc.) and recorded using the platforms record feature. An in-person hearing may be requested by the involved parties in extenuating circumstances, but final determination of modality lies with the Dean of Students or their designee. Other types of hearings may be recorded at the discretion of the Student Conduct Facilitator. Any additional video, audio, stenographic, or photographic recording of any hearing is prohibited.

Both the responder and reporter(s) are permitted to schedule an appointment in which they would be allowed to review a hearing record.

### *Outcomes*

Outcomes are actions imposed resulting from a finding of responsibility for a violation of the Student Code of Conduct. Outcomes can take the form of sanctions or stipulations and are documented in an outcome letter. Outcomes may be imposed on both individual students and student organizations.

### Sanctions

Sanctions are utilized to help students and student organizations develop more productive patterns of behavior, to support the integrity of the academic mission, and to protect the members of the academic community. While the sanctions below are listed progressively, they are selected to correspond with the severity or frequency of violations.

### Individual Student Sanctions

Warning: Official notice that specific behavior or activity was in violation of the conduct code and that further violations may result in more serious disciplinary action. This action serves to formally communicate that certain behavior and activity are unacceptable and need to be corrected.

Censure: Official notification of a specified period of review and monitoring during which behavior and activity must demonstrate compliance with University rules, regulations, and policies. Further violations will result in more severe disciplinary action, especially if they occur during the specified period of censure.

Probation: Official notification of a specified period of review and monitoring in response to behavior or acts, although not serious enough to warrant suspension, deemed highly inappropriate and strongly against University standards. Further violations of the conduct code will result in more severe disciplinary action, including an examination of continued status as a student.

Term Suspension: Official notification involving a disciplinary separation from the University for a specified period generally not less than one semester (excluding summer). Suspension involves denial of all affiliated privileges and rights, including the privilege of using University facilities. Any stipulated conditions shall be met before readmission.

Indefinite Suspension: Official notification involving a disciplinary separation from the University for an indefinite period. Suspension involves denial of all affiliated privileges and rights, including the privilege of using University facilities. A person shall not return to the University from an indefinite suspension without the approval of the Dean of Students or designee. All stipulated conditions, if any, shall be met before readmission.

Expulsion: Official notification of permanent disciplinary separation from the University with denial of all affiliated privileges and rights. Use of campus facilities is prohibited. Expulsions can be reviewed at the request of a former student in writing to the Dean of Students no sooner than

10 years after the date of expulsion.

### Student Organization Sanctions

Organization Reprimand: The organization is informed in writing that the group has been found responsible of a violation of University regulations and its actions are deemed inappropriate.

Organization Probation: The organization is informed in writing that it is on probation for a specified period of time. Probation is a period of review and observation during which the group must demonstrate the ability to comply with University rules, regulations, and other requirements as stipulated by the sanction. A student group will remain on Probation at least through the date indicated or until the date all assigned sanctions and stipulations have been completed, whichever occurs later. Conditions that restrict privileges may also be imposed.

Final Organization Probation: A final probation status means that any violation of the Code of Conduct by the group, during this time, will result in the group's immediate suspension. A student organization will remain on Final Probation at least through the date indicated or until the date all assigned sanctions and stipulations have been completed, whichever occurs later.

Organization Suspension: The organization is prohibited from conducting any and all group activity on- or off-campus and University recognition is suspended. All events should be canceled immediately and not resume until the stated date. This includes, but is not limited to, meetings, recruitment, fundraising, educational programs, and socials. During the period of suspension, if the group is found operating without permission, they will be subject to additional disciplinary action. For reinstatement, within 30 days prior to the conclusion of the suspension period, the executive board or leadership of the student organization will need to make an appointment with the Office of Student Conduct & Community Standards or their designee to arrange for the removal of the suspension. A student organization that fails to comply with sanction or stipulations as directed during this period will be subject to review for Organization Disestablishment.

Organization Disestablishment: The organization loses its formal University recognition and is permanently prohibited from conducting any and all group activity on- or off-campus. All events must be canceled immediately.

Stipulations

Stipulations may be attached to all sanctions as deemed appropriate. The Dean of Students, or designee, has final authority in determining appropriateness of stipulations. The following is a list, while not exhaustive, of stipulations available for use by Student Conduct Facilitators and the University Conduct Board:

Restitution: Reimbursement for actual damage to or destruction of property, including that of the University or of other persons.

Housing Transfer: Movement from a current residential assignment to another location in campus housing. A student shall not be transferred from one assignment to another unless minimally at the level of censure.

Housing Suspension: Removal from campus housing for a specified period of time. The room deposit shall be forfeited in all matters. A student shall not be suspended from campus housing unless minimally at the level of probation.

Counseling: Required to meet with a University counselor or private therapist (at the students' expense).

Alcohol/Drug Referral: Participation in the Connection Program which provides alcohol and drug education. This requires an interview with a staff member and possible participation in an educational series or information sessions. It may also require a substance abuse assessment by a professional therapist. Referral to the Connection Program may include a fee for service component.

Community Service: Donating a predetermined number of hours on either the campus or in the community.

Loss of Privileges: Prohibition of participation in campus co-curricular activities or use of campus services, e.g., intramural participation, room reservation privileges, use of bulletin boards, hosting organization social functions, etc.

Educational Outcome: Educational outcomes can be assigned to individuals or groups to promote learning and growth as a response to violations of community standards. Educational outcomes take on a wide variety of forms and are tailored to specific needs. Educational outcomes are assigned in conjunction with or in lieu of formal sanctions.

Paper: A written assignment on a determined topic and of a certain length determined within the student conduct process.

Fines: A monetary fine imposed through the student conduct process. In any situation where a fine has been imposed, the student retains the right to appeal the dollar amount of a fine. Fine appeals will be submitted electronically to [studentconduct@ship.edu](mailto:studentconduct@ship.edu) and include the individual's name and a description of why they are appealing.

Other Stipulations: The University reserves the right to impose other sanctions in addition to those listed above in response to specific circumstances of a matter.

### *Interim Measures*

An interim measure may be imposed when the serious nature or immediacy of the situation makes it impractical to follow normal disciplinary procedures. A decision to impose one or more of the interim measures identified in this section, will be made by the Dean of Students or their designee.

Interim measures are not formal discipline, nor are such measures in lieu of disposition of student conduct charges.

### Individual Students

#### Informal Interim Measures

At its discretion, the University may impose one or more of the following informal interim measures pending disposition of student conduct charges where the student represents a serious threat to the safety of themselves or others, or to University property:

Stayed Interim Suspension: applies to certain non-exclusionary stipulations to ensure the safety and well-being of all students and to safeguard university property pending disposition of the underlying charges. Such stipulations may include, but are not limited to: a directive that the student promptly update the Dean of Students on the status of any pending criminal proceedings and/or update the Dean of Students on any ADR progress or dispositions. Any additional violations of University regulations or failure to abide by the stipulations may result in the imposition of an interim suspension or additional student conduct charges. There is no right of appeal from a stayed interim suspension.

Interim removal from a University course: removes a student from a particular course prior to a formal hearing being held. This action only applies to the course in question during the interim period and it allows the student to attend their other classes. There is no right of appeal from interim removal from a University course.

Interim Suspension: In matters where a student represents an immediate threat of harm to the student, other persons, other university property, an interim suspension may be imposed. An interim suspension requires a student to immediately leave University property prior to a formal hearing being held. The student will not be permitted to return to campus or participate in any university programs or activities during the interim period without the expressed permission of the Dean of Students. An interim suspension cannot be appealed prior to a hearing.

Absent extenuating circumstances, the University Conduct Board will meet for a formal hearing on the underlying charges within ten (10) University business days following the issuance of the interim suspension. If an extension occurs, the hearing will be held at the earliest possible date. If during the formal hearing, suspension or expulsion is not a warranted outcome, the student will be reinstated. A formal hearing following interim suspension can be appealed following the University appeal process.

### Student Organizations

Interim Organization Suspension: The Dean of Students or designee may impose an interim suspension upon any student organization whose presence on-campus constitutes a threat to the health, safety, and welfare of its members or others, or the welfare of the University, its property, or personnel.

Interim Organization Action: The Dean of Students or designee may impose a loss of privileges upon any student organization.

Following imposition of either of the interim measures, the conduct process will continue as outlined above. If it is established that an organization is “responsible” a sanction consistent with the violation(s) will be imposed.

### *Appeals*

Appeals must be presented in writing within five (5) University business days following issuance of a written decision.

The University allows one level of appeal review. The designated appeal agents are set forth below:

- Appeals of Student Conduct Facilitator decisions will be directed to the Director of Student Conduct & Community Standards;
- Appeals of decisions made by the Director of Student Conduct & Community Standards will be directed to the Dean of Students; and
- Appeals of decisions made by the Dean of Students or the University Conduct Board will be directed to the University Appeals Agent.

No further appeals are permitted.

An appeal may be sought on the following grounds:

1. That a fundamental error occurred in the hearing procedures that unreasonably interfered with the responder's rights. Such claims must be specifically described in the appeal letter.
2. That new evidence or information germane to the matter and not available at the time of the hearing has been uncovered. This evidence must be clearly presented in the appeal letter.
3. That the sanction imposed was unjust, unreasonable, or inappropriate. The letter must clearly explain the reasoning for this appeal.

An appeal is not a new hearing, but is a review of the records from the original hearing. An appeal may be dismissed if not sought on proper grounds. Additionally, any appeal that fails to set forth the required supporting information may be rejected. Any rejected appeal may be corrected and resubmitted for review within 2 University business days.

Upon review, the appeal agent may decide to: (a) uphold the original decision in full; (b) modify the outcome; or (c) return the matter back to the original hearing entity for reconsideration.

The original sanctions and stipulations remain in effect during the appeal process. However, the appeal agent has the authority, under extenuating circumstances, to defer the imposed sanctions and stipulations while an appeal is in process.

Absent extenuating circumstances, the written decision will be issued as expeditiously as possible but in no event later than 15 University business days after receipt of the appeal.

*Medical Amnesty*

The Shippensburg University community's best interests are served when individuals seek help for those in need of emergency medical assistance without fear of student conduct violations for alcohol and drug use. In any situation where an individual is seeking help for someone experiencing a medical emergency, amnesty for alcohol, drug, and/or hazing related charges will be granted within the student conduct process under this provision. In order to be eligible for amnesty, the following requirements must be established:

1. The individual is reasonably believed to be the first person notifying 911, police, or emergency services;
2. The individual provided their own name to the 911 operator, police, or emergency services;
3. The individual remained with the person(s) needing assistance until first-responders arrived.

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## **VII. Student Conduct Records**

Student conduct records are retained by the Office of Student Conduct & Community Standards and are considered confidential.

A student conduct file will not be released to non-University parties without the written consent of the specific student or pursuant to a judicial order or lawfully issued subpoena.

Disciplinary information may also be provided in certain limited circumstances in accordance with the Family Educational Rights and Privacy Act of 1974 (as amended).

Student conduct files are maintained separately from all other University files and are not considered part of the academic record. A student's conduct file, including tape recordings of hearings, shall be retained for the following lengths of time before being destroyed:

- Conduct matters resulting in Suspension, Expulsion, and that of Student Organizations are maintained indefinitely.
- Conduct matters resulting in Warning, Censure, or Probation are maintained until a student graduates or is otherwise not enrolled for a period of two years.

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## **VIII. Parent or Guardian Notification**

Effective October 1, 1998, the Family Educational Rights and Privacy Act allows Shippensburg University personnel to notify the parents or legal guardians of a student if the student is found in violation of Regulations (B)(6) (Alcohol, Illegal Drugs, and Gambling) sections (a) through (i) as set forth in this Code. The student must be under the age of 21 at the time of notification to comply with the law. Parents or legal guardians shall typically receive notification via a letter from the Office of the Dean of Students. The letter will be sent to the home address on record at the University.

Parents or legal guardians, students, and the University are viewed as a partnership in promoting responsible decision-making, healthy lifestyles, positive community behavior, academic success, and personal development. Thus notifying parents or legal guardians of alcohol and/or other drug-related incidents is a fulfillment of the obligations associated with this partnership. Notification should not be viewed as punitive but rather as an attempt to engage in productive dialogue.

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## **IX. Code of Conduct Revisions**

The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Non-material modifications to procedure may be made that do not jeopardize the fundamental fairness owed to any party, through updates to the electronic version on the website.

The Dean of Students may also vary procedures materially with notice (on the website of the Office of Student Conduct & Community Standards as appropriate) upon determining that state or federal law(s) or regulation(s) require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in the most recent form. This document does not create legally enforceable protections beyond the protection of Pennsylvania and federal laws which frame such codes generally.

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## **X. Approvals**

Proposed Code of Conduct revisions shall be initially submitted by the Dean of Students to the University President for approval. Proposed revisions may be referred for review by shared governance bodies (Executive Management Team, Student Affairs Committee, and University Forum) at the discretion of the University President.

Approved: President Charles E. Patterson (8/8/2024)

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## **XII. APPENDIX**

### **Residence Hall Policies**

#### **Residence Hall and Room Visitation Policy**

Students living in University owned residence hall rooms and suites may have visitors twenty-four hours, seven days per week. It is assumed that all visitors are invited and/or welcome. The terms guest and visitor are used interchangeably, defined according to the following categories:

- Shippensburg University students who do not have a room assignment in the residence hall they are visiting.
- Non-Shippensburg University Students (parents, friends, family, etc.) who are visiting campus and wish to enter a residence hall.

#### ***General Parameters***

Roommates are expected to discuss with each other the general parameters for hosting visitors within the confines of the room (e.g., advance notice, acceptable visitation hours, visitor behavior, etc.). It is the responsibility of the host to ensure that the presence of a guest does not infringe upon the rights of their roommates. Any resident planning to host an overnight visitor is expected to secure prior permission from all their roommates before inviting a guest to stay. No visitor will be allowed to stay within a room for more than two consecutive nights.

Visitors are expected to follow the rules and regulations of the University, with hosts required to assume full responsibility and accountability for the behavior of visitors. Visitors who are Shippensburg University students will also be held accountable for violations of the Student Code of Conduct. Any resident negatively affected by another student's guest is encouraged to contact the Residence Life staff for assistance.

Guests of residential students are required to register their motor vehicle with the University Police upon arrival. There is no charge for this service. The University Police Station is open twenty-four hours per day, seven days per week. Failure to register a vehicle may result in the issuance of a parking citation.

Residents of campus residence halls may, by secret ballot and after at least two weeks of classes, choose to restrict the visitation on their particular floor. If residents desire to limit visitation hours on their floor only, a meeting must be called that allows open debate regarding the proposed restrictions. Within three class days following the meeting, a secret ballot will occur. Only floor members are eligible to vote. Residence life staff will administer the election and tally the results. Seventy-five percent of the total floor residents must vote in favor of the proposed visitation restrictions in order to implement them. If passed, restricted visitation hours go into effect immediately, subject to enforcement by both the residents and the residence life staff.

### ***Residence Hall Sign-In Procedures (Out-of-Hall Visitors)***

Nonresident visitors must be met in the main lobby by a host who resides within that particular residence hall. The host and guests are expected to proceed directly to the lobby desk and complete the registration process. Guests must have a photo ID that includes a birth date (i.e. driver's license, state ID card, passport) to be signed in. Non-SU student IDs without a birth date, workplace IDs, photos of ID cards, etc. are not acceptable forms of identification.

It is a violation of this policy to host visitors without registering them at the hall desk during desk hours. Violators are subject to University judicial action.

### ***Residence Hall Escort Policy (Out-of-Hall Visitors)***

All visitors must be escorted by their host around the building. Any situation involving an unescorted visitor will be considered a violation of this policy and will subject the host and visitor, if a student, to judicial action by the University.

### ***Overnight Guest Policy Specific to Minors***

Housing and Residence Life welcomes all visitors in residence halls provided that they are in accordance with all university rules and regulations. However, because of the significant responsibility and level of care required for children, siblings or individuals under the age of 18 that are not currently enrolled at Shippensburg University, they are not permitted to stay in residence as an overnight visitor unless taking part in a recognized university event or are on-campus at the behest of the University. This requires advanced approval from the sponsoring organization and Housing & Residence Life. All overnight guests must have and provide a photo ID that includes a birth date.

### ***Student Host Responsibility***

It is the responsibility of the student host to inform their guest(s) of the sign in, guest escort, and overnight guest policies and how to prepare. The University will not be responsible for housing unprepared guests who cannot be signed in due to lack of identification, age, or other issues. Student hosts are also responsible for informing their guests of University policies and behavior expectations as outlined in the Student Code of Conduct, parking policies, Residence Hall Rules and Regulations, etc.

### ***Residence Hall Room Entry Policy***

Shippensburg University is committed to the protection of students' right to privacy within the confines of their assigned residence hall rooms. This right to privacy is balanced by a responsibility to ensure the health and safety of the University community. The University also has an obligation to protect its property, service functions, and educational mission from damage or disruption. It is within this context that the following guidelines were established:

University staff members shall generally enter a residence hall room within the following parameters:

- Under conditions of serious threat to the safety or well-being of persons or property. Such conditions must be above and beyond the routine responsibilities of the staff members.
- To eliminate disturbing noise emanating from an electronic device (e.g., alarm clocks, stereos) in a room with no occupants present. The staff members may enter the room, disable the device, and immediately leave.

- To perform routine maintenance, complete repairs, or to conduct regular room inspections. Room inspections are generally for assessing compliance with fire safety regulations, damage, health conditions, maintenance needs, and cleanliness. Such inspections are generally announced at least twenty-four hours in advance. Residents need not be present during the room inspection.
- When instructed to by an authorized police officer.
- With the permission of an assigned resident.
- Upon the issuance of an administrative search warrant.

Upon entering a room according to the aforementioned guidelines, staff members may confiscate and document items that constitute violations of law or University rules, regulations, and policies. These items must be in plain, unobstructed view of the staff member. Police personnel may also be called when appropriate. Confiscated items (e.g., cooking appliances) not in violation of local, state, and federal laws will be returned to the owner when appropriate. Additionally, University staff members will not routinely admit a third party to another person's assigned room without the consent of the occupant.

State and federal law governs the protocol for entry into and/or search of campus rooms when enforcing criminal statutes. Such entry is normally the responsibility of police personnel.

The issuance of an administrative search warrant is typically based on probable cause. Probable or reasonable cause is less than certainty and more than mere suspicion that the search of a particular dwelling will disclose specific evidence. Absent exigent circumstances, administrative searches must have the advance approval of the President, or the Vice President for Student Affairs, or the Dean of Students, or a designee. Once approval is received, persons entering a dwelling should announce themselves and their purpose. A lack of response from within the dwelling in a reasonable amount of time may justify the use of a master key to enter the premises. The search for evidence justifies intrusion only into the areas of the dwelling where such items may be found. Violations discovered during this administrative action will be subject to resolution within the University student conduct system.

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**Residence Hall Rules & Regulations**

1.0 Rooms shall be kept clean and sanitary at all times, including the proper disposal of empty beverage and food containers. Suite residents are responsible for cleaning the bathroom(s) in their suite.

2.0 No nails, double-sided tape, cellophane tape, adhesive-backed wall coverings and decorations, paint, and stain shall be used on any room, door, lobby, stairwell, or hallway surface. It is recommended that residents use push pins in the suites to hang items on walls in their suite spaces. ONLY McLean Hall may use Command Strips. Residents will be charged for any damage caused by items placed in rooms.

3.0 Furniture shall not be moved from its designated location to another location. This includes, but is not limited to, removal of furniture from public areas to private rooms. Room furniture is the responsibility of the occupants and shall not be moved, lost, or damaged. Occupants will be financially responsible for loss and/or damage.

4.0 The possession and/or use of cooking appliances in residence hall rooms is prohibited. Examples of such include, but are not limited to, hot plates, immersion coils, electric frying pans, toaster ovens, electric griddles, air fryers, hot pots, toasters, grills, popcorn poppers that use oil, and hot shots. Hot-air popcorn poppers and drip coffee makers under 12-cup capacity are permitted in all rooms. Blenders and Juicers are permitted. Slow cookers and rice cookers are not permitted. One microwave with a maximum wattage of 750 is permitted per room or suite.

5.0 One compact refrigerator drawing less than three amps and no larger than 4.3 cubic feet is permitted in each residence hall room. Refrigerators must carry UL approval, be positioned to allow adequate ventilation, and be connected directly into a wall socket or power strip with a circuit breaker.

6.0 All electrical appliances must be in good working order and carry the UL approval. Electrical appliances must be plugged directly into the wall socket or into a UL approved power source with an internal circuit breaker. Power sources must be free of defects such as cracked, split, or nicked insulation; exposed wires; knots, burn marks; and loose connections. Power sources shall not be connected in a series to one another and they must not be covered, e.g., with carpet. Extension cords are not allowed.

7.0 Light cords and appliance cords shall be free of kinks and knots, must be UL approved, and must not have breaks, worn insulation, or broken plugs.

8.0 External antennas for TV or radio and tampering with the cable TV system are prohibited. Misuse or redirection of cable TV for personal use is a criminal offense.

9.0 Open flames, smoldering embers, and spark/flame producing items are prohibited in residence halls. This includes, but is not limited to, the burning and/or possession of incense, candles, oil lamps, lanterns, lava lamps, Scentsy candle warmers, electric wickless candles, and potpourri burners.

10.0 Smoking is prohibited in all residential facilities.

11.0 No animals or pets of any kind are permitted in residence halls, except fish. Aquariums up to a 10-gallon capacity are allowed. No more than one aquarium per bedroom is acceptable. Assistance animals registered with the Office of Accessibility Resources are permitted once approved. Approval must be renewed each academic year.

12.0 Road signs (e.g., parking, street, stop) and parking cones are not permitted in residence halls.

13.0 No athletic/sports related games shall be played or athletic equipment used within a residence hall except in designated areas. This includes, but is not limited to, the use of free weights, roller blades/skates, hoverboards, skateboards, rackets, dart boards, hockey equipment, balls, frisbees, "Nerf" style guns that launch projectiles.

14.0 Only university provided beds are allowed in student's rooms. Waterbeds, lofts, bed risers, and hanging or suspended bed frames are not allowed.

15.0 Storing or using flammable/combustible liquids, flammable/explosive gases and dangerous chemical mixtures are prohibited. Kerosene heaters and charcoal stoves are also prohibited.

16.0 No alteration or modification of the room accommodations shall be made. Closet doors and venetian blinds/curtain rods must remain in place. Smoke detectors and sprinkler systems must not be covered or tampered with.

17.0 Bicycles may be parked in the racks by the residence halls or placed in the designated hall storage area. They may be kept in residence hall rooms if all roommates agree. Bicycles shall not be kept in any other area of the residential facility because of the possibility of interfering with exit routes and housekeeping services. All bicycles must be registered with the University Police.

18.0 Motorcycles, mopeds, and any other type of gasoline motor shall not be stored/parked in rooms. Such items shall only be parked in accordance with University parking regulations and procedures. Electric Recreational Vehicles (e-bikes, e-scooters, etc.) are not permitted to be used, parked, or stored in any area of the residence halls.

19.0 Decorations used for seasonal or special events must be made of fire retardant materials. Natural Christmas trees and natural decorations are not allowed. UL approved LED string lights are permitted in residence hall rooms. All other non-LED holiday lights are prohibited. Approved LED string lights must be in good condition. No more than two LED light strings should be plugged into one another, and the lights may not be placed above a door frame, or attached to fire sprinkler or alarm devices. No more than 50 LED lights are permitted on a string. LED light strips with adhesive backings should not be attached to the ceilings/walls. Damage caused by adhesive light strips will be billed to the resident(s).

20.0 Outside window sills must be kept clear of all objects. Window screens shall not be removed.

21.0 Only the following additional furniture items are permitted in residence hall rooms: rugs/carpets, futons, computer stands and chairs are allowed if positioned to allow proper exit or entrance.

22.0 No items, e.g., posters, flags, tapestries, etc. shall be hung from room ceiling; nor shall they be hung on or in front of windows or exit doors.

23.0 Space heaters are prohibited in residence hall rooms, unless sanctioned by University staff for accommodation purposes.

24.0 Room keys, mailbox keys, and access cards are for the exclusive use of the resident to whom they are assigned. They remain the responsibility of the resident and they must never be given to other parties for use. Residents must maintain a university ID with their accurate building sticker identifier (issued upon moving into the residence hall). Building stickers should never be removed, given, or sold to other parties. University ID and building stickers must be shown to university staff when upon entering the residence hall or when requested. If a resident loses their university ID, they must contact their Residence Director to request a replacement

sticker. ID must be present at the time that a building sticker is issued. If a student withdraws from the university, they must return their university ID to the Shippensburg University Police Department before leaving campus.

25.0 Students shall not use their assigned space as a sales room or storage location for commercial activity. Solicitation and fund raising activities must conform to the limited enterprises regulations outlined in the Student Handbook.

26.0 All residence hall rooms are subject to regular maintenance and safety inspections. Residents must allow University personnel into rooms for health, fire, safety, and maintenance inspections. Physical plant personnel and employed contractors will be allowed to enter private rooms to perform their duties. When possible, advance notice of such events will be given.

27.0 Students are responsible for any damage that occurs within the confines of their rooms. Students are also responsible for any damage they create, or help create, on the campus.

28.0 Trash and personal items shall not be left or deposited in any public areas of the residence halls.

29.0 Students shall not tamper with, overload, damage or vandalize elevators.

30.0 Students are prohibited from engaging in activities that violate any health, safety, maintenance, or fire codes as defined by University policy, rules, and regulations; as well as those defined by local, state and federal laws.

31.0 Students are expected to abide by all the terms and conditions outlined in the "Student Housing Agreement" (Refer to the electronic copy of the Housing Agreement on the Housing and Residence Life website for the specific academic year.)

32.0 Students shall not operate any computer network servers from any residence hall location. This includes, but is not limited to, chat, file, print, web, ftp, and unix shell servers.

33.0 Students shall only connect one computer into each ResNet outlet. This connection shall only occur within their assigned rooms.

34.0 3D printers are prohibited in the residence halls.

35.0 Bed curtains hung to provide privacy are only permitted when purchased directly through Campus Canopies. "Homemade" structures with curtains, pop tents, or other privacy barriers that cover a bed will not be permitted. Campus Canopies must be assembled and used per manufacturer instructions and have all four feet flat on the floor, leaving at least 18" of clearance from the top of the structure to the ceiling. Campus Canopies may not be used on bunk beds. Additional fabric or other materials may not be added to a Campus Canopy to create a "ceiling" within the structure.

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### **Shippensburg University Antihazing Policy (SU Policy Number: 301-012.0)**

**ORIGINATING OFFICE:** Chief Student Affairs Officer

**PURPOSE:** Shippensburg University ("SU") is committed to maintaining an educational environment that fosters the health, safety, and dignity of all those within the university community. The University has no tolerance for hazing.

**SCOPE:** This policy applies to individuals and organizations associated with the university. In addition, this policy applies to acts that are conducted on or off-campus if such acts constitute hazing under this policy. This policy does not apply, however, to reasonable athletic, law enforcement or military training, contests, competitions, or events.

**OBJECTIVE:** To provide clear guidance on what constitutes hazing and the consequences for engaging in hazing.

#### **DEFINITIONS:**

Hazing – Hazing is any action taken or situation created intentionally, knowingly, or recklessly that places an expectation on a person joining or maintaining status in an organization that is not consistent with requirements for membership, team rules, university regulations and policies, etc. Conduct that may be considered hazing is as follows:

1. a) Actions that produce an emotional, psychological or physical discomfort, embarrassment, harassment or ridicule;
2. b) Can occur regardless of a person's willingness to participate;
3. c) Is prohibited by the laws of the Commonwealth of Pennsylvania and/or United States of America.

Hazing behaviors can include, but are not limited to:

Any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug, or other substance, or any other forced physical activity that could adversely affect the physical health and safety of the individual; activities that cause extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or any other forced activity that could adversely affect the mental health or dignity of the individual; or any willful destruction or removal of public or private property.

Any activities as described in this definition upon which the initiation or admission into, affiliation with, or continued membership in a student organization is directly or indirectly conditioned shall be presumed to be forced activity, the willingness of an individual to participate in such activity notwithstanding. Any student organization or Shippensburg University student that commits hazing is subject to disciplinary action through the Office of Student Conduct & Community Standards.

Organization - Includes any of the following:

1. A fraternity, sorority, association corporation, athletic team, club or intramural sports team, order, society, corps, club or service, social, or similar group, whose members are primarily minors, students, or alumni of the organization or University.
2. A national or international organization with which a fraternity or sorority or other organization, as enumerated under paragraph (1), is affiliated.

**ENFORCEMENT:** Any individual or organization associated with the university, who is found responsible for committing hazing, will be held accountable under this policy, as well as the university's Code of Conduct. For information on the university's Code of Conduct, please refer to the [website](#) or contact the Office of Student Conduct & Community Standards at [717-477-1164](tel:717-477-1164).

In addition, the University, organizations, and individuals may also be criminally charged under Pennsylvania law.

**SANCTIONS:**

Possible sanctions for an individual student may include:

1. Probation, suspension, or expulsion from Shippensburg University;
2. Imposition of fines;
3. The withholding of diplomas or transcripts pending compliance and/or payment of fines.

Possible sanctions for an organization may include:

1. Educational requirements;
2. Loss of permission to operate on campus or other university property;
3. Loss of privileges and/or activities within the campus community;
4. Loss of recognition at Shippensburg University;
5. Imposition of fines.

**PROHIBITED DEFENSES:** It is not a defense that the consent of the minor or individual was sought or obtained. It is also not a defense to hazing that the conduct was sanctioned or approved by the University or organization.

**REPORTING HAZING ACTIVITY:** All reports of hazing are taken very seriously. If you have been hazed, have witnessed hazing, or suspect that someone you know has been hazed, you can report such information confidentially via **our website** or by phone to University officials. If you wish to speak to someone directly, please contact the Office of Student Conduct & Community Standards at **717-477-1164**.

If the situation requires immediate attention and/or an individual's safety is at risk, please contact the University Police Department **717-477-1444**, or 911 if off-campus. Always call 911 in an emergency. Please provide as much detail as possible when reporting.

**AMNESTY PROVISION:** In any situation where an individual is seeking help for someone experiencing a medical emergency, amnesty for hazing related charges will be granted within the student conduct process under this policy. In order to be eligible for amnesty, the following requirements must be established:

1. The individual is reasonably believed to be the first person notifying 911, police, or emergency services;
2. The individual provided their own name to the 911 operator, police, or emergency services;
3. The individual remained with the person(s) needing assistance until first-responders arrived.

HAZING REPORT: Shippensburg University will maintain a publicly available report of all alleged hazing incidents for a period of five years, in accordance with Pennsylvania law. The SU Hazing Report can be found online [here](#).

DATE: January 26, 2023

RECISSION

APPROVALS

Executive Management Team; 8/25/2020

FILENAME

301-001.0 Student Code of Conduct Policy

DATE

8/25/2020

DISTRIBUTION

Public

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**Sexual Misconduct Policy (SU Policy Number 701-002.0)**

ORIGINATING OFFICE

Office of Equity, Inclusion and Compliance

INTRODUCTION

1. Purpose of Policy

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972<sup>1</sup> that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence) that are reflected in the definitions of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking included as Regulatory Prohibited Conduct under this Policy
- Addresses how the University must respond to reports of misconduct falling within the definitions of Regulatory Prohibited Conduct under this Policy, and
- Mandates a grievance (or resolution) process the University must follow before issuing disciplinary sanctions against a person accused of Regulatory Prohibited Conduct under this Policy.

In addition to federal legislative requirements, Act 16 of 2019<sup>2</sup> of the General Assembly of Pennsylvania requires all postsecondary institutions in the Commonwealth of Pennsylvania to adopt a clear, understandable written policy on sexual harassment and sexual violence that informs victims of their rights under federal and state law, including the crime victim’s bill of rights.

<sup>1</sup> *The full text of the Final Rule and its extensive Preamble is available here:*

*<http://bit.ly/TitleIXReg> <sup>2</sup> The text of Act 16 of 2019 is available here: <https://bit.ly/3f7DAR6>*

## 2. Prohibited Behaviors

The University prohibits all Sexual Misconduct Violations, as defined in this Policy. This prohibited conduct can affect all genders, gender identities and sexual orientations. Some of these prohibited forms of conduct may also be crimes under Pennsylvania or federal law.

The University will promptly and equitably respond to all reports of sexual misconduct in order to eliminate the misconduct, prevent its recurrence, and redress its effects on any individual or the community.

## 3. Title IX, VAWA and Nondiscrimination

The University prohibits any form of discrimination or harassment on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital or family status, medical condition, genetic information, veteran status, or

disability in any decision regarding admissions, employment, or participation in a University program or activity in accordance with the letter and spirit of federal, state, and local non-discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination in Employment Act, the Americans with Disabilities Act and ADA Amendments Act, the Equal Pay Act, and the Pennsylvania Human Relations Act.

The University also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, as amended by the Violence Against Women Act (VAWA). Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled. The University has designated the Title IX Coordinator, with assistance of the Deputy Title IX Coordinators, to coordinate the University's compliance with Title IX and VAWA and to respond to reports of violations. The University has directed Shippensburg University Chief of Police, or designee, to coordinate the University's compliance with the VAWA-related Clery reporting requirements.

#### 4. Statement on Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Every effort will be made to protect the privacy interests of all individuals involved. Privacy, confidentiality and privilege have distinct meanings under this Policy. Privacy generally means that information related to a report of sexual misconduct will only be shared with a limited circle of individuals, including individuals who "need to know" in order to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not bound by confidentiality or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct under this Policy, including Advisors and Witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties, however, nothing in this Policy is intended to impose restraints on a party's ability to discuss the allegations under investigation or to gather and present evidence as part of the resolution process.

Certain individuals are designated as having confidentiality. For reports made to employees designated with having confidentiality, the University will respect the reporting party's expectations of privacy to the extent permissible by law while still ensuring compliance with other reporting obligations. For example, reports involving minors are subject to mandatory reporting requirements. Individuals designated as having confidentiality are required to report the nature, date, time and general location of an incident to the Title IX coordinator. Individuals designated as having confidentiality will not share other information with the Title IX Coordinator or any other employee of the University without the express permission of the disclosing party. Individuals designated as having confidentiality can provide information about the University and off-campus resources, support services and other options. As noted above, because of the confidential nature of these resources, disclosing information to or seeking advice from a confidential resource does not constitute a report or Formal Complaint to the University and will not result in a response or intervention by the University. A person consulting with a confidential resource may decide to make a report to the University and/or law enforcement.

[http://www.ship.edu/EIC/confidential\\_resources/](http://www.ship.edu/EIC/confidential_resources/)

Communication with certain individuals may be privileged by operation of law and reports made to these individuals will not be shared with the University Title IX Coordinator or law enforcement except in very limited situations, such as when failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law.

All University proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX of the Education Amendments of 1972 ("Title IX"), Violence Against Women Act (VAWA), state and local law, and University policy. No information will be released from such proceedings, except as required or permitted by law and University policy. The University may share non-identifying information about reports received in aggregate form, including data about outcomes and Disciplinary Sanctions.

## 5. Disability Accommodations

This Policy does not alter any obligations of the University under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the resolution process that do not fundamentally alter

the process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other University programs and activities.

## 6. Free Expression and Academic Freedom

The University is firmly committed to free expression and academic freedom and to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community. Sexual misconduct, including retaliation, against members of the University is not protected expression nor the proper exercise of academic freedom. The University will consider principles of free expression and academic freedom in the investigation of reports of sexual misconduct or retaliation that involve an individual's statements or speech.

## 7. Alcohol and Drug Use Amnesty for Students

The health and safety of every student at the University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report incidents of sexual misconduct. A witness to, or individual who, experiences sexual misconduct, acting in good faith, who discloses any incident of sexual misconduct to University officials or law enforcement will not be sanctioned under the University's Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sexual misconduct. The University may require the individual attend an approved alcohol or drug education program and without assessing any charges for such program. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

## 8. Scope of Policy

This policy applies to all on campus and off-campus conduct that is likely to have a substantial adverse effect on any member of the University community. There is no time limit for reporting allegations of sexual misconduct; however, the University strongly encourages the prompt reporting of sexual misconduct to allow the University to respond promptly and effectively. If the reported Respondent is not a member of the University community or is no longer associated with the University at the time of the report or at the time a resolution process is initiated, the

University may be unable to investigate or take disciplinary action and may be required to dismiss the Formal Complaint for a lack of jurisdiction. See the Jurisdiction and Dismissals section.

Please see the Reporting Sexual Misconduct section below for more information on how and where to report misconduct, discrimination and/or harassment, or to file a Formal Complaint.

## 9. Burden of Proof

The burden of proof refers to who has the responsibility of showing a violation has occurred. It is always the responsibility of the University to satisfy the burden of proof. The Respondent does not have the burden to prove that a violation did not occur. Respondents may decide not to share their side of the story or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility. Additionally, Decision-Maker(s) shall not make an adverse inference against a Respondent for the Respondent's refusal to participate in an investigation or hearing, nor will Respondent's refusal to participate result in increased sanctions if the Respondent is found responsible for the violation(s).

## 10. Standard of Proof

Consistent with requirements set forth in the Pennsylvania Code pertaining to student disciplinary due process requirements, the University will use the preponderance of the evidence standard in investigations of formal complaints alleging sexual misconduct violations under this Policy. This means that the individual(s) charged with making a finding must determine whether it is more likely than not that a violation of the Policy occurred.

## 11. Effective Date

Based on the Final Rule, this Policy will be effective August 14, 2020.

## 12. Impact on other policies or processes

As used in this Policy, sexual misconduct may also encompass criminal conduct under Pennsylvania and/or federal law. Additionally, sexual misconduct under this Policy may result in civil and/or administrative or legal consequences.

## SEXUAL MISCONDUCT DEFINITIONS

1. Dating Violence – (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence. Dating Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Dating Violence will be categorized as Non-Regulatory.
2. Domestic Violence – (as defined in the VAWA amendments to the Clery Act), includes any violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under Pennsylvania’s domestic or family violence laws or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Pennsylvania. Domestic Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Domestic Violence will be categorized as Non-Regulatory.
3. Retaliation – Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual (A) for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations; or (B) 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 under this Policy. A finding of retaliation under this Policy is not dependent on a finding that the underlying sexual misconduct occurred.

4. Sexual Assault – (As defined in the Clery Act) – This includes any sexual act directed against another person, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent. Sexual Assault may be one of the following categories:
5. Sexual Penetration Without Consent - Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.
6. Sexual Contact Without Consent - Knowingly touching or fondling a person's genitals, breasts, buttocks, or anus, or knowingly touching a person with one's own genitals or breasts, when Consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when Consent is not present, to similarly touch or fondle oneself or someone else.
7. Statutory Sexual Assault – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute. (*The text of Chapter 31 of the Pennsylvania Crimes Code is available here <https://bit.ly/305G9pu>*). Sexual Assault is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Sexual Assault will be categorized as Non-Regulatory.
8. Sexual Exploitation – Engaging in sexual behaviors directed toward or involving another person or use of another person's sexuality for purposes of sexual gratification, financial gain, personal gain or personal advantage when Consent is not present. This includes, but is not limited to, the following actions, including when they are done via electronic means, methods or devices: Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's Consent; Indecent exposure or inducing others to expose private or intimate parts of the body when Consent is not present; Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent; Prostituting another individual; or

Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

9. Regulatory Prohibited Conduct – For purposes of this Policy, the term includes the defined violations of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking.
10. Regulatory Quid Pro Quo Sexual Harassment - An Employee conditioning the provision of aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct.
11. Non-Regulatory Quid Pro Quo Sexual Harassment - An Official, Volunteer or Student conditioning the provision of aid, benefit or service of the University on the individual's participation in unwelcome sexual conduct.
12. Regulatory Hostile Environment Sexual Harassment - Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity.
13. Non-Regulatory Hostile Environment Sexual Harassment - Unwelcome conduct, on the basis of sex, that a reasonable person would determine is sufficiently severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from any educational, employment, social or residential program in offered connection with the University.
14. Stalking – (as defined in the VAWA amendments to the Clery Act) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— fear for their safety or the safety of others; or suffer substantial emotional distress. A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property. Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. Stalking

is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Stalking will be categorized as Non Regulatory.

## OTHER DEFINITIONS

5. Advisor - An individual who may be present to provide support to a Party throughout an investigation and/or hearing. Advisors may accompany a Party to any meeting or hearing they are required or eligible to attend, but may not speak for the Party, except for the purposes of cross-examination. Each party is responsible for coordinating and scheduling with their choice of Advisor. The advisor may be an attorney or a union representative when applicable. If a party does not have an Advisor of choice present for a hearing, the University will appoint an Advisor for the limited purposes of conducting cross-examination. If a Party does not attend the hearing, the Party's Advisor may appear and conduct cross-examination on the Party's behalf. If neither a Party nor their Advisor appear at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing Party for the limited purposes of conducting cross-examination. The Advisor is not prohibited from having a conflict of interest or bias in favor of or against a Party, nor is the Advisor prohibited from being a Witness in the Sexual Misconduct Resolution Process.
6. Appeals Officer – The individual or individuals with the authority under law or otherwise appointed by the University to decide appeals. The Appeals Officer will be free of conflict of interest and bias, and will not serve as the Investigator, Title IX Coordinator, Advisor to any Party or a Decision Maker in the same matter.
7. Complainant – An individual who has reported being or is alleged to be subjected to conduct that could constitute covered sexual misconduct as defined under this Policy.
8. Consent – A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood. In order to be valid, Consent must be active, present and ongoing. Consent is not present when it is the result of coercion, intimidation, force, or threat of harm. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity. When alcohol is involved, incapacitation

is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity. When determining whether Consent has been provided, all the circumstances of the relationship between the parties will be considered.

9. Decision Maker - The individual or individuals appointed by the University to render a decision on a Formal Complaint that goes to a hearing. The Decision Maker(s) will be free of conflict of interest and bias, and will not serve as the Investigator, Title IX Coordinator, an Advisor to any Party or Appeals Officer in the same matter. At Shippensburg University, the Decision Maker is the University Conduct Board, which is comprised of 3 panel members and a non-voting chairperson.
10. Disciplinary Sanction - The penalty imposed on an individual for violating this Policy. For Students, Disciplinary Sanctions are subject to applicable University/System policies, up to and including expulsion from the University. For Employees, Disciplinary Sanctions are subject to applicable collective bargaining agreement or University/System policies, up to and including separation from employment. For Officials or Volunteers, this may include the removal or the request for removal of the Official or Volunteer from their respective position.
11. Education Program or Activity – For purposes of this Policy, the term “Education Program or Activity” includes any activity that occurs in, on or within: Any on-campus premises; Any off-campus premises the University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization or a recognized affiliated entity; Computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University’s programs and activities over which the University has substantial control.
12. Employee - An individual who is employed by the State System (either at a State System University or in the Office of the Chancellor) including, but not limited to, faculty members, coaches, staff, managers and student employees.
13. Final Rule – The Final Rule issued on May 19, 2020 by the U.S. Department of Education under Title IX of the Education Amendments of 1972

14. Formal Complaint - means a document, including an electronic submission, filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging sexual misconduct against a Respondent and requesting initiation of the process set forth in this Policy to investigate the allegation of sexual misconduct.
15. Hearing Officer - Non-voting chairperson of the University Conduct Board.
16. Investigator - The Title IX Coordinator or the individual designated by the Title IX Coordinator to perform an investigation under this Policy. The Investigator may not have a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general. The Investigator may not serve as a Decision Maker, Appeals Officer or Advisor to any Party in the same matter.
17. Notice of Allegations - The written notice the Title IX Coordinator is required to provide to the Parties following receipt of a Formal Complaint. See Notice of Allegations section below.
18. Notice of Hearing - The written notice the Title IX Coordinator or designee is required to provide the Parties prior to the hearing. See Notice of Hearing section below.
19. Official - A member of a Council of Trustees or of the Board of Governors or their respective designees.
20. Parties or Party - A term that refers to the Complainant and the Respondent collectively or the Complainant or Respondent individually.
21. Respondent - Any individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct as defined under this Policy.
22. Student - Any person who, on the date of the alleged incident: is registered for course(s); is enrolled in course(s); has confirmed their intent to enroll in programs; is active but not enrolled at the University. The term "Student" shall include Employees, Volunteers and Officials where the Employee, Volunteer or Official otherwise meets the enrollment criteria set forth in this definition.
23. Supportive Measures - Non-disciplinary and non-punitive individualized services designed to restore or preserve access to the University's Education Programs or Activities without unduly burdening the other Party. Supportive Measures will be offered, as appropriate, to the Complainant or the Respondent, regardless of whether a Formal Complaint is filed. Supportive Measures may include, but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort

services, restrictions on contact between the parties (no contact orders), changes in work or housing locations, leaves of absence, and increased security and monitoring of certain areas of the campus.

24. Title IX Coordinator – The individual designated by the University, with assistance of the Deputy Title IX Coordinators, to coordinate the University’s compliance with Title IX and VAWA and to respond to reports of violations. The Title IX Coordinator may not have a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general. The Title IX Coordinator may serve as the Investigator of a Formal Complaint. The Title IX Coordinator may serve as the Investigator of a Formal Complaint for Formal Complaints against Respondents who are Employees. The Title IX Coordinator may not serve as a Decision Maker or Appeals Officer.
25. Volunteer - A recognized volunteer or any individual who represents or acts on behalf of the university or whose actions may bind the university, regardless of whether the individual receives monetary or other compensation. For purposes of this Policy, employees and officials of recognized affiliated entities, ROTC instructors, visiting professors and unpaid camps and conference personnel will be considered volunteers.
26. Witness – A person who has knowledge related to specific aspects of a case and may have reported such aspects to the institution.

## REPORTING SEXUAL MISCONDUCT

Any individual, including a third party, may make a report concerning sexual misconduct. Complainants and third-parties are encouraged to report sexual misconduct as soon as possible to allow the University to respond promptly and effectively.

The Title IX Coordinator (or designee) has authority to institute corrective measures for reports of alleged violations of this Policy. Mandated reports to the Title IX Coordinator by Officials, Volunteers and Employees shall not automatically result in corrective measures being instituted. Individuals are encouraged to report sexual misconduct through the University’s electronic and anonymous reporting systems or by filing a Formal Complaint directly with the Title IX Coordinator or Deputy Title IX Coordinators.

### 1. Reports to the Title IX Coordinator

Any person may report sex discrimination, including sexual misconduct (whether or not the person reporting is the person alleged to be the person subjected to conduct that could constitute sex discrimination or sexual misconduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator. The University's Title IX Coordinator is trained to work with individuals who report sexual misconduct and have knowledge about resources and services, both on and off campus, including the availability of Supportive Measures.

If a report of misconduct discloses a serious or immediate threat to the campus community, the University will issue a timely warning to the community to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant.

PLEASE NOTE: Title IX Coordinators are not a confidential source of support. While they will address matters reported with sensitivity and will keep your information as private as possible, confidentiality cannot be guaranteed. To speak with an individuals designated as having confidentiality, please contact [https://www.ship.edu/EIC/confidential\\_resources/](https://www.ship.edu/EIC/confidential_resources/)

PLEASE ALSO NOTE: Making a report is different from filing a Formal Complaint (see the section titled

Filing a Formal Complaint). A report is defined as notification of an incident of sexual misconduct to the Title IX Coordinator or Deputy Title IX Coordinator by any person. A report may be accompanied by a request for (1) Supportive Measures; (2) no further action; (3) filing a Formal Complaint a request to initiate an informal resolution process; and/or (4) a request to initiate an informal resolution process after filing a Formal Complaint. Filing a Formal Complaint initiates the University's formal investigation process. (See Sexual Misconduct Resolution Process).

## 2. Electronic and Anonymous Reporting

You may also file a report about sexual misconduct using the appropriate links below. While anonymous reports are accepted, the University's ability to address misconduct reported anonymously is significantly limited. Individuals may use this link

([https://www.ship.edu/EIC/how\\_to\\_report/](https://www.ship.edu/EIC/how_to_report/)) to electronically file a report of sexual misconduct with the University. Individuals may also file a report electronically by email to: [titleixcoordinator@ship.edu](mailto:titleixcoordinator@ship.edu).

### 3. Filing a Formal Complaint

The timeframe for the Sexual Misconduct Resolution Process under this Policy begins with the filing of a Formal Complaint and will be concluded within a reasonably prompt manner, and usually no longer than 90 days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, as set forth more fully in the Continuances and Granting Extensions section. Appeals may extend the timeframe for resolution.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator or Deputy Title IX Coordinator a written, signed complaint describing the facts alleged.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may nonetheless determine that a Formal Complaint is necessary. The University will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further, but will receive all notices issued under this Sexual Misconduct Resolution Process. PLEASE NOTE: The Title IX Coordinator does not lose impartiality solely due to signing a Formal Complaint.

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the Informal Resolution Process (see the Informal Resolution section below).

### 4. Criminal Reporting Options

A Complainant may also seek to initiate a criminal complaint, independent of or parallel with any report made to the University.

Shippensburg University Police Department

Reed Operations Center

Shippensburg University

(717) 477-1444

Shippensburg Police Department

60 West Burd Street

Shippensburg, PA 17257

(717) 532-7361

Pennsylvania State Police- Troop H, Carlisle Station

2 Dunwoody Drive

Carlisle, PA 17015

717-249-2121

PLEASE NOTE: The University's policy, definitions, and burden of proof may differ from Pennsylvania criminal law. Neither law enforcement's decision whether to prosecute, nor the outcome of any criminal prosecution, is determinative of whether sexual misconduct has occurred under this Policy. In cases where there is a simultaneous law enforcement investigation, there may be circumstances when the University may need to temporarily delay its investigation while law enforcement gathers evidence. However, the University will generally proceed with Formal Complaint even during the time of a pending law enforcement investigation.

The University may not be informed of reports made with law enforcement agencies.

#### 5. External Reporting Options

A person may also file a complaint with the U.S. Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by calling 1-800-421-3481 ; 1-877-521-2172 TTY or emailing [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov) or visiting <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

A person may also file a complaint with the Pennsylvania Human Relations Commission by calling 717-7879780 for the Harrisburg Regional Office; 412-565- 5395 for the Pittsburgh Regional Office; or 215-560-2496 for the Philadelphia Regional Office; or by visiting

<https://www.phrc.pa.gov/Pages/default.aspx>.

Employees may also file a charge with the Equal Employment Opportunity Commission regarding an alleged violation of Title VII by calling 1-800-669-4000 or visiting <https://www.eeoc.gov/employees/howtofile.cfm>.

The University may not be informed of reports made with external agencies.

## 6. Truthfulness

All participants in the reporting and resolution processes have the responsibility to be truthful with the information they share at all stages of the process. A report of a violation under this Policy is not considered a bad faith report merely because the evidence does not ultimately support the allegation. Individuals are prohibited from knowingly making a false report, filing a false Formal Complaint or making misrepresentations. If an investigation results in a finding that a person has willfully filed a bad faith report, filed a false Formal Complaint or made misrepresentations as part of the reporting or resolution process, the person may be subject to appropriate Disciplinary Sanctions under the Code of Conduct in the case of Students or other relevant University policy and collective bargaining agreements in the case of Officials, Employees or Volunteers.

## 7. Multiple Party Complaints

The Title IX Coordinator may consolidate Formal Complaints involving multiple parties where the allegations of sexual misconduct arise from the same facts or circumstances; in such consolidated matters, the Sexual Misconduct Resolution Process applies to more than one Complainant and/or more than one Respondent, but each party is still an “individual” and not a group or organization. The decision of the Title IX Coordinator to consolidate Formal Complaints is not subject to appeal.

## UNIVERSITY REPORTING OBLIGATIONS

### 1. Mandated Reporting Obligations of University Officials, Volunteers and Employees

All University Officials, Volunteers and Employees (including student employees) are obligated to report incidents of sexual misconduct of which they become aware to the Title IX Coordinator/designee, unless: 1) they serve in a role that makes such reports privileged or are

recognized as providing a confidential resource (see Statement on Privacy and Confidentiality); or 2) they are a faculty member and learn of the report from a student during a classroom discussion, in a writing assignment for a class, or as part of a University-approved research project.

PLEASE NOTE: These reporting exceptions do not apply to reports of sexual misconduct involving an individual who was, or is, a child (a person under 18 years of age) when the abuse allegedly occurred. When a report involves suspected abuse of a child (an individual under the age of 18 at the time of the incident(s) as reported), all the University Employees, Officials and Volunteers are required to notify the University police and the ChildLine run by the Pennsylvania Department of Human Services (1-800-9320313). All other members of the University community are strongly encouraged to report suspected child abuse to law enforcement or the ChildLine.

University Employees designated as Campus Security Authorities (CSAs) under the Clery Act are required to report certain crimes for federal statistical reporting purposes.

## 2. University Obligations Regarding Timely Warnings

Parties reporting Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking should be aware that under the Clery Act, the University must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community. If a report of sexual misconduct discloses a serious or immediate threat to the campus community, the University will issue a timely notification to the community to protect the health or safety of the community. The timely notification will not include any identifying information about the Complainant.

### JURISDICTION AND DISMISSALS

In certain circumstances where violations defined under the Final Rule as Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking) do not meet jurisdictional requirements, the University must dismiss those allegations contained in the Formal Complaint.

In certain circumstances the Title IX Coordinator may dismiss a Formal Complaint, or any specific allegations raised in the Formal Complaint at any time during the investigation or hearing.

Any Party may appeal a dismissal determination. See the Determining Jurisdiction and Mandatory Dismissal for Certain Allegations under the Sexual Misconduct Resolution Process Section for more information.

### EMERGENCY REMOVAL FOR STUDENTS

1. The University retains the authority to remove a Respondent from its Education Programs or Activities on an emergency basis. This action is also referred to as an emergency removal.
2. Before imposing an emergency removal on a student Respondent, the University will: undertake an individualized safety and risk analysis; and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct justifies a removal.
3. If the University imposes an emergency removal on a student Respondent, the University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The University will provide written notice of the emergency removal and applicable charges. The University will provide an opportunity for the Respondent to appeal that decision to an appropriate Decision-Maker or designee within 10 days of the imposition of the emergency removal. The designated Decision-Maker will hear the evidence and determine whether there is sufficient evidence to support the conclusion that the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct and that, based on that threat, removal is the appropriate course of action.
4. If the University learns of evidence that demonstrates that the emergency action is no longer justified after the emergency removal is imposed against a student Respondent, the University will take prompt action to rescind the emergency removal.
5. All emergency removals will also comply with requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel.

### ADMINISTRATIVE LEAVE FOR EMPLOYEES

The University retains the authority to place Employees on administrative leave consistent with applicable requirements of relevant University policies and collective bargaining agreements.

### INFORMAL RESOLUTION PROCESS

Informal means of resolution, such as mediation, may be used as an alternative to the formal investigation and hearing procedures. Informal resolution is a voluntary process and may be used only where a Formal Complaint has been filed. Upon written agreement of all parties, informal resolution may be initiated at any time prior to finding of responsibility in a hearing, and may be terminated at any time prior to final resolution. If the informal process is terminated, the Sexual Misconduct Resolution Process, which includes an investigation and hearing, will proceed. Once a final resolution has been reached and documented and signed by all parties, the resolution cannot be appealed.

Informal resolution may not be utilized when a Student files a Formal Complaint against a University Employee, Volunteer or Official under this Policy.

Please refer to the Student Code of Conduct for more information on Informal Resolution.

## SEXUAL MISCONDUCT RESOLUTION PROCESS

### 1. Formal Complaint

The Sexual Misconduct Resolution Process is initiated by a Complainant providing the Title IX Coordinator a written, signed Formal Complaint describing the facts alleged. See the section titled Filing a Formal Complaint above.

### 2. Notice of Allegations

The Title IX Coordinator will draft and provide a written Notice of Allegations to any Party alleged to have violated this Policy. Such notice will occur as soon as practicable, but no more than 10 days, after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances. The Notice of Allegations will include the following:

1. Notice of the University's Sexual Misconduct Resolution Process including any Informal Resolution process and a hyperlink to a copy of the process.
2. Notice of the allegations potentially constituting violations(s) of any University policy, and sufficient details known at the time the Notice of Allegations is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct

allegedly constituting a policy violation; and the date and location of the alleged incident, if known.

3. 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 hearing.
4. A statement that the Parties may have an Advisor of their choice.
5. A statement that before the conclusion of the investigation, the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source.
6. Individuals are prohibited from knowingly filing a false report or making misrepresentations. If, following an investigation and hearing as appropriate under applicable policy, a person is found to have willfully filed a bad faith report or made misrepresentations as part of a resolution process, the party may be subject to appropriate Disciplinary Sanctions under the Code of Conduct in the case of Students or other relevant University policy in the case of Officials, Employees or Volunteers.

The Parties will be notified by their University email accounts if they are a Student or Employee, and by other reasonable means if they are neither.

The University will provide sufficient time for the Parties to review the Notice of Allegations and prepare a response before any initial interview.

### 3. Determining Jurisdiction and Mandatory Dismissal for Certain Allegations

For alleged violations of Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile

Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking) the following elements will be determined in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred in the University's Education Program or Activity; and

3. The alleged conduct, if true, would constitute covered Regulatory Prohibited Conduct, as defined in this Policy.

If all of the elements are met, the University will investigate the allegations under the processes set forth in this Policy. If any one of these elements is not met, the Title IX Coordinator will notify the parties the specific allegation contained in the Formal Complaint does not meet the required jurisdictional requirements under the Final Rule and is being dismissed. Any Party may appeal a dismissal using the process set forth in the Appeals section below. Dismissal of any violations constituting Regulatory Prohibited Conduct will not affect the University's ability to proceed with an investigation of charges categorized as Non-Regulatory or other charges under this Policy or any other University Policy.

#### 4. Discretionary Dismissals for All Allegations

The Title IX Coordinator may dismiss a Formal Complaint brought under this Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
2. The Respondent is no longer enrolled in, associated with or employed by the University; or,
3. If specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any Party may appeal a dismissal using the process set forth in the Appeals section below.

#### 5. Allegations Potentially Falling Under Two Policies

If a Formal Complaint against a Respondent who is a Student contains allegations of a violation of any of the listed Sexual Misconduct Violations in this Policy, as well as any other violation in the Code of Conduct, the Sexual Misconduct Resolution Process set forth in this Policy will be applied in the investigation and adjudication of all of the allegations. If all of the alleged Sexual Misconduct Violations of this Policy are dismissed, and the remaining underlying allegations, if true, would violate another University policy or the University's Code of Conduct, the matter may be referred for further action by the University's Office of Student Conduct, as appropriate.

If a Formal Complaint against a Respondent who is an Employee contains allegations of violations of

Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking), the Sexual Misconduct Resolution Process set forth in this Policy will be applied in the investigation and adjudication of those allegations. For all other allegations, the University will follow applicable requirements in University policies and relevant collective bargaining agreements for resolution of the other allegations contained in the Formal Complaint.

If a Formal Complaint against a Respondent who is an Official or Volunteer contains any allegations under this Policy, the University or System will follow applicable requirements in University or System policies or procedures and standards for resolution of the allegations contained in the Formal Complaint.

## 6. Notice of Dismissal

Upon reaching a decision that any specific allegation contained in the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal and the reason for the dismissal, simultaneously to the parties through their university or other provided email account. It is the responsibility of parties to maintain and regularly check their university email accounts.

## 7. Investigation

### 1. General Rules of Investigations

An Investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged under a reasonably prompt timeframe, following issuance of the Notice of Allegations.

The University and not the Parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Policy has occurred. Either party may decide not to share their account of what occurred or may decide not to participate in an investigation or

hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.

The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e., evidence that tends to prove and disprove the allegations). See Inspection and Review of Evidence section below.

### 1. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to issuance of the investigation report.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- Evidence that is relevant, even if that evidence does not end up being relied upon by the Decision Maker(s) in making a determination regarding responsibility;
- inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a Party or other source.

The University will send the evidence to each Party and each Party's Advisor, if any, to inspect and review through an electronic format or a hard copy. The University is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The Parties will have 10 days to inspect and review the evidence and submit a written response by email to the Investigator. This response should include any new or additional evidence the Party would like the Investigator to consider. The University will provide copies of the Parties' written responses, and any new or additional evidence provided, to the other Party and their

Advisor. The other Party will have 5 days to inspect, review, and respond to the new or additional evidence through a written response to the Investigator. The University will provide copies of the Party's supplemental written response to the other Party and their Advisor.

The Investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension of the time to submit a written response, which may be denied in the sole discretion of the Investigator, in consultation with the Title IX Coordinator.

The Investigator has 10 days to generate a report or after the responses to additional evidence are due or, alternatively, may provide the Parties and their Advisors with written notice extending the investigation and explaining the reason for the extension.

The parties and their Advisors must sign an agreement not to disseminate the Investigative Report or photograph or otherwise copy any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Sexual Misconduct Resolution Process. Violation of the agreement may result in disciplinary action under the Code of Conduct or other University Policy, as appropriate.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

### 1. Investigative Report

The Investigator will create an Investigative Report that fairly summarizes relevant evidence. The Investigative Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

### 1. Ongoing Notice

If, in the course of an investigation, the University decides to investigate allegations about either Party that are not included in the Notice of Allegations and are otherwise covered Sexual Misconduct Violations falling within this Policy or other violations of the University's Code of Conduct, the University will notify the Parties of the additional allegations by their University email accounts or other reasonable means.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

## 8. General Rules of Hearings

### 1. Notice of Hearing

No less than 10 days prior to the hearing, the Title IX Coordinator or designee will send written notice of the hearing to the Parties. The Parties will be notified by their University email accounts or by other reasonable means. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Hearing will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential Disciplinary Sanctions actions that could result.
- The time, date, and location of the hearing.
- Information about the option for the hearing to occur with the parties located in separate rooms using technology that enables the Decision Maker(s) and Parties to see and hear a Party or Witness answering questions. Parties should inform the Title IX Coordinator or designee of any desire to have the hearing occur in separate rooms at least 3 days prior to the hearing to ensure appropriate technology is in place.
- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
- A list of the individual Decision Makers who will attend the hearing, along with an invitation to object to any actual or perceived conflicts of interest or bias of the Decision Makers prior to the hearing.

- A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the testimony or any statements provided by the Party or Witness prior to the hearing will not be considered by the Decision Maker.
- Notification that the parties may have the assistance of an Advisor of their choice at the hearing and will be required to have one present for any questions they may desire to ask of the other Party or Witnesses. The Party should notify the Title IX Coordinator or designee in advance of the hearing if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present.
- A copy of all the materials provided to the Decision Maker(s) about the matter and the opportunity to provide a written response in advance of the hearing.
- Information regarding who to contact to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing.
- For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing.

## 1. Hearing

The University will not issue a Disciplinary Sanction arising from an allegation of a violation of this Policy without holding a hearing, unless otherwise resolved through an informal resolution process or an alternate process permitted under this Policy. If the University determines a hearing is necessary, the Parties cannot waive the right to a hearing.

The University may still proceed with the hearing in the absence of a Party, and may reach a determination of responsibility in their absence. The University will not threaten, coerce, intimidate, or discriminate against the Party in an attempt to secure the Party's participation.

If a Party does not participate in a hearing or submit to cross-examination in the hearing, the Decision Maker(s) may not rely on any "statement" by that Party. See Cross Examination section below.

The Decision Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the hearing or refusal to answer cross examination or other questions. The hearing may be conducted with all Parties physically present in the same geographic location, or, at the University's discretion, any or all Parties, Witnesses, and other participants may appear at the hearing virtually through video

conferencing technology. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors. All proceedings will be recorded through audio recording. That recording or transcript will be made available to the Parties for inspection and review upon request.

## 1. Continuances or Granting Extensions

The University may determine that multiple sessions or a continuance (i.e., a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

## 1. Participants in the Hearing

Hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

- The Decision Maker(s)
- The Non-Voting University Conduct Board Chairperson
- Conduct administrator or designee or IT personnel or other University personnel
- The Parties
- Advisor of choice or provided by the University for each Party
- Witnesses
- Any individuals necessary to provide interpretation or other support services associated with reasonable accommodations to facilitate participation in the hearing.

The Decision Maker(s), including the non-voting chairperson, will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case. The Parties will have an opportunity to raise any objections regarding a Decision Maker's actual or perceived conflicts of interest or bias at the beginning of the hearing.

Parties and Witnesses cannot be compelled to participate in the hearing, and have the right not to participate in the hearing free from retaliation.

## 1. Hearing Procedures

For all hearings conducted under this Policy, the procedure will be as follows:

- University Conduct Board Chairperson will open and establish rules and expectations for the hearing.
- The Parties will each be given the opportunity to provide opening statements.
- The Investigator will present a summary of the final investigation report, including items that are and are not contested. The Investigator will be subject to questioning by the Decision Maker(s) and the Parties (through their Advisors). The Investigator should not be asked their opinion on credibility, recommended findings or determinations. If such information is introduced, the University Conduct Board Chairperson will direct that it be disregarded.
- University Conduct Board members will ask questions of the Parties and Witnesses.
- Parties will be given the opportunity for cross-examination after the Decision Maker(s) conduct(s) its initial round of questioning. See Cross-Examination Procedure below.
- During the Parties' cross-examination, the University Conduct Board chairperson will have the authority to pause cross-examination at any time for the purposes of asking the University Conduct Board members own follow up questions; and any time necessary in order to enforce order for the hearing or any established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision Maker(s). A Party's waiver of cross-examination does not eliminate the ability of the Decision Maker(s) to use statements made by the Party.

#### Relevant evidence and questions

“Relevant” evidence and questions are those questions and evidence that tends to make an allegation of sexual misconduct more or less likely to be true. “Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of any process initiated under this Policy:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
  1. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  2. They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege including attorney-client privilege; or
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

### Cross-Examination

- Each Party's Advisor may conduct cross-examination of the other Party or Parties and Witnesses and ask follow-up questions, including those challenging credibility directly, orally, and in real time.
- Parties will not be permitted to personally cross-examine each other.
- If a Party does not participate in a hearing, the Party's Advisor may attend and conduct cross-examination on behalf of the Party.
- If neither a Party nor their Advisor appear at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing Party and ask cross-examination questions.
- Before any cross-examination question is answered, the University Conduct Board Chairperson will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including questions by University Conduct Board panel members may be deemed irrelevant if they have been asked and answered.
- The Chairperson must explain to the Party proposing the question any decision to exclude a question as not relevant.
- If a Party or Witness does not submit to cross-examination at the hearing, the Decision Maker(s) may not rely on any statement of that Party or Witness in reaching a determination regarding responsibility.
- The Decision Maker(s) may not draw an inference about a determination of regarding responsibility based solely on a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions.

### Decisions

#### 1. General Considerations for Evaluating Testimony and Evidence

- While the opportunity for cross-examination is required in all hearings under this Policy, determinations regarding responsibility may be based in part, or entirely, on documentary,

audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision Maker(s).

- Decision Maker(s) shall not draw inferences regarding a Party or Witness' credibility based on the Party or Witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.
- Generally, credibility judgments should rest on the demeanor of the Party or Witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
- Credibility judgments should not rest on whether a Party or Witness' testimony is nonlinear or incomplete, or if the Party or Witness is displaying stress or anxiety.
- Where a Party or Witness' conduct or statements demonstrate that the Party or Witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision Maker(s) may draw an adverse inference as to that Party or Witness' credibility.
- Decision Maker(s) will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
- The Final Rule requires the University to admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision Maker(s) will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.
- The Final Rule requires the University to allow parties to call character witnesses to testify. The University does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision Maker(s) will be instructed to afford very low weight to any non-factual character testimony of any Witness.

#### Timeline for Decision

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within 10 University business days of the completion of the hearing.

## Finality

The determination regarding responsibility becomes final either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested as set forth in the Appeals section below.

## *Disciplinary Sanctions Against Students*

### Possible Disciplinary Sanctions

Please refer to the University's Student Code of Conduct for a written list of possible disciplinary sanctions and stipulations that the University may impose upon students, singly or in combination.

### Previous Disciplinary Sanctions

Previous Disciplinary Sanctions of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

### Timing

The Disciplinary Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

## *Disciplinary Sanctions Against Employees, Officials and Volunteers*

### Possible Disciplinary Sanctions

Disciplinary Sanctions imposed on an Employee for violating this Policy, subject to an applicable collective bargaining agreement or University/System policies, may include a penalty up to and including separation from employment.

Disciplinary Sanctions imposed on an Official or Volunteer may include a penalty up to removal or the request for removal of the Official or Volunteer from their respective position.

### Timing

The Disciplinary Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

## *Appeals Where the Respondent is a Student:*

Each Party may appeal the dismissal of a Formal Complaint or any included allegations or a determination of responsibility on the following grounds:

- A procedural irregularity under the University policy or procedures that affected the hearing outcome.
- New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the Formal Complaint that could affect the outcome of the matter.
- The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
- The Disciplinary Sanction imposed was disproportionate or inappropriate.

Appeals must be filed in writing within 5 University business days of being notified of the decision and must indicate the grounds for the appeal.

The submission of an appeal stays any Disciplinary Sanctions for the pendency of an appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the University will notify the other party in writing of the appeal as soon as practicable, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal. If the basis of the appeal is the Disciplinary Sanction imposed was disproportionate or inappropriate, the other Party will be given 5 days to respond to the Disciplinary Sanctions basis of appeal after being notified of the appeal.

Appeals will be decided by the Appeals Officer who will be free of conflict of interest and bias, and will not serve as an Investigator, Title IX Coordinator, Advisor or Decision Maker in the same matter.

The appealing party must meet its burden to demonstrate the outcome was affected by a preponderance of the evidence. The role of the Appeals Officer is not to reweigh the evidence. The Appeals Officer will confine their review to the basis of appeal alleged and may modify the sanction. The Appeals Officer may modify the Disciplinary Sanction if an appeal on the basis of

an disproportionate or inappropriate Disciplinary Sanction being imposed is granted. In the event a Disciplinary Sanction is modified, the other party will be notified of the modified Disciplinary Sanction.

The outcome of appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

### *Appeals Where the Respondent is an Employee*

Each Party may appeal the dismissal of a Formal Complaint or any included allegations or a determination of responsibility on the following grounds:

- A procedural irregularity under the University policy or procedures that affected the hearing outcome.
- New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the Formal Complaint that could affect the outcome of the matter.
- The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

Appeals must be filed in writing within 5 days of being notified of the decision and must indicate the grounds for the appeal.

The submission of an appeal stays any Disciplinary Sanctions for the pendency of an appeal. Supportive Measures remain available during the pendency of the appeal.

If a Party appeals, the University will notify the other Party in writing of the appeal as soon as practicable, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals will be decided by Appeals Officer who will be free of conflict of interest and bias, and will not serve as an Investigator, Title IX Coordinator, Advisor or Decision Maker in the same matter.

The appealing party must meet its burden to demonstrate the outcome was affected by a preponderance of the evidence. The role of the Appeals Officer is not to reweigh the evidence. The Appeal Officer will confine their review to the basis of appeal alleged.

The outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

## RIGHTS/RESPONSIBILITIES

- Reports and Formal Complaints have different meanings. An individual has a right to make a report of sexual misconduct to the University, which may be accompanied by a request for Supportive Measures. An individual also has a right to make a Formal Complaint of sexual misconduct, which is a request to initiate the University's informal resolution process or a formal disciplinary process, which includes an investigation and may proceed to a hearing.
- Prior to the conclusion of a sexual misconduct investigation, the Complainant may request to withdraw the Formal Complaint by contacting the Title IX Coordinator/designee in writing. The Title IX Coordinator/designee will determine whether to close the case or conclude the investigation without the Complainant's continued participation.
- An individual also has the right to report sexual misconduct to law enforcement, separate and apart from any report or Formal Complaint made to the University.
- Victims and witnesses of sexual misconduct have the right to be assisted by the University in notifying law enforcement authorities of sexual misconduct or they can decline to notify such authorities.
- Witnesses and Parties cannot be compelled to participate in the hearing, and have the right not to participate in the hearing free from retaliation.
- Each Party who is charged with a violation of this Policy where jurisdiction is appropriate has a right to a hearing and for an Advisor to cross-examine Parties and Witnesses.
- At the time a report is made, the reporting party does not have to decide whether to file a Formal Complaint or make a report of sexual misconduct to law enforcement.
- An affected party has the right to request Supportive Measures from the University, which may include interim contact restrictions.
- The reporting party has the right to seek medical treatment to address physical and mental health and to preserve evidence.
- Parties may also have options to file civil actions in court or with administrative agencies.
- To file a Formal Complaint, please contact the Title IX Coordinator/designee.

## RECISSION

## APPROVALS

Approved by EMT on 8/25/2020

FILENAME

701-002.0 Sexual Misconduct Policy

DATE

3/28/2023

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**Anti-Discrimination & Anti-Harassment Policy** (SU Policy Number: 701-001.1)

ORIGINATING OFFICE

Office of Equity, Inclusion and Compliance

PURPOSE

To explain the policy of anti-discrimination and anti-harassment and outline prohibited conduct and actions that Shippensburg University ("University") will take to respond to reports of discrimination and/or harassment. This policy does not address sex-related misconduct including sexual harassment which is controlled by Shippensburg University's Sexual Misconduct Policy, **SU Policy Number 701-002.0**. All University mandated reporters must report suspected child abuse and child neglect consistent with the Shippensburg University's Protection and Supervision of Minors on Campus and Mandated Reporting of Child Abuse Policy. This Policy also does not control romantic and/or sexual relationships as defined by the Policy, **PASSHE 2020-02 Amorous Relationships**.

SCOPE

Shippensburg University is committed to equal access to programs, facilities, admission and employment for all persons. It is the policy of the University to maintain an environment free of harassment and free of discrimination against any person because of age, race, color, national origin, sex, sexual orientation, gender identity, gender expression, physical or mental disability,

marital status, pregnancy and parenting students, religion, and veteran status. Discriminatory conduct and harassment violates the dignity of individuals, impedes the realization of the University's educational mission, and will not be tolerated. Conduct prohibited by this policy may also violate applicable federal and state law. This policy shall not be construed to restrict academic freedom at the University, nor shall it be construed to restrict constitutionally protected expression.

## OBJECTIVE

To ensure that students, applicants for employment, and employees of Shippensburg University, as well as individuals who have a contractual relationship with the University, including, but not limited to vendors and contractors understand that discrimination and harassment against any individual on the basis of race, color, sex, ethnicity, national origin, age, mental or physical disability, marital status, pregnancy and parenting students religion, sexual orientation, gender identity, gender expression, veteran status, or other protected status or characteristic is strictly prohibited and will not be tolerated. To ensure that students, applicants for employment, and employees of Shippensburg University, as well as individuals who have a contractual relationship with the University, including, but not limited to vendors and contractors understand that harassment will not be tolerated.

## DEFINITIONS

**Discrimination:** Conduct of any nature that denies an individual the opportunity to participate in or benefit from a University program or activity, or otherwise adversely affects a term or condition of an individual's employment, education, or living environment, because of age, race, color, national origin, sex, sexual orientation, gender identity, gender expression, physical or mental disability, religion, and veteran status.

**Employee:** All those personnel who are seeking employment or are employed by Shippensburg University, including all personnel, vendors, contractors who operate on university property or in a capacity that serves university functions.

**Faculty:** All employees assigned teaching and instructional duties, including those faculty as defined by the Collective Bargaining Agreement between APSCUF and the Pennsylvania State System of Higher Education ("PASSHE").

**Harassment:** Behavior consisting of physical or verbal conduct that is sufficiently severe or pervasive such that it substantially interferes with an individual's employment, education or access to University programs, activities or opportunities and would detrimentally affect a reasonable person under the same circumstances. Harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or slurs. Whether the alleged conduct constitutes prohibited harassment depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs and the status of the individuals involved.

**Reporting Individual:** The individual making the report of discrimination, harassment, or retaliation.

**Responding Individual:** The individual against whom the report of discrimination, harassment, or retaliation has been made.

**Retaliation:** Any action, directly or through others, which is aimed to deter a reasonable person from reporting misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual 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 under this Policy. A finding of retaliation under this Policy is not dependent on a finding that the underlying misconduct occurred.

**Student:** Persons, who on the date of the alleged incident: are registered for course(s); enrolled in course(s); have confirmed their intent to enroll in programs; or are active but not enrolled at the University.

**Vendor and Contractor:** An individual, program, company or school that provides a program, activity, or service to the University that interacts with members of the campus community including students, employees, and faculty and which include experiential learning services such as internships, practicum experiences, pre-service teaching experiences, or other community service experiences in which the University places students.

## PROCEDURES

Reporting Discrimination and/or Harassment

An individual covered by this policy who believes they have been subject to discrimination, harassment, or retaliation may seek resolution by filing a **Reporting Discrimination, Harassment or Retaliation Form** within 90 days of the alleged act of discrimination, harassment, or retaliation. Any supervisor, manager or administrator who witnesses or receives an oral or written report of discrimination, harassment, and/or retaliation must immediately notify and forward the report to the Director of the Office of Equity, Inclusion and Compliance. The University President may extend, for a reasonable period of time, any of the deadlines specified in this section for good cause shown.

In the event of an allegation of discrimination, harassment, or retaliation against any administrator with ultimate reporting obligation to the University President or against an individual in the Office of Equity, Inclusion and Compliance, a report detailing the alleged misconduct and responsible parties should be filed with the **Office of the Provost and Vice President for Academic Affairs** or at (717) 477-1371.

In the event of an allegation of discrimination, harassment, or retaliation against the Provost and Vice President for Academic Affairs or the University President, a report detailing the alleged misconduct and responsible parties should be filed with the Office of the Chancellor at 2986 N 2nd Street Harrisburg, PA 17110-1201 or at (717) 720-4423.

#### Preliminary Inquiry

Following receipt of a report of discrimination, harassment, or retaliation, the Director of the Office of Equity, Inclusion and Compliance or their designee will promptly determine whether the report is properly classified as a possible instance of discrimination and/or harassment based on the Reporting Individual's protected class status. Absent unusual circumstances, this process should be completed in 90 days with recognition that circumstances may elongate the timeline. Where a report alleges actions that do not fall within this policy, the Director of the Office of Equity, Inclusion and Compliance or their designee may refer the matter to the Human Resources Office or the Dean of Students and direct further review, as appropriate. Such review may result in action such as mediation or other administrative action as deemed appropriate by the reviewing officer.

If a Reporting Individual does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the complainant may make such a request to the Director of the Office of Equity, Inclusion and Compliance or their designee, who will evaluate that request in light of the duty to ensure the safety of the University and comply with applicable law. In any case where the report does not evidence violence, threat, pattern, predation, and/or weapon use, the Director of the Office of Equity, Inclusion and Compliance or their designee may respect a Reporting Individual's request, and will take action only so far as necessary to determine appropriate remedies.

As necessary, Shippensburg University reserves the right to initiate resolution proceedings without participation by the Reporting Individual.

## Resolution Processes: Informal and Formal

### Informal Resolution Process

If the Director of the Office of Equity, Inclusion, and Compliance or their designee deems the report to fall within the scope of this policy following a preliminary inquiry, they will inform the Reporting Individual who may then seek an Informal Resolution Process. The Reporting Individual and Responding Individual must both agree in writing to participate in the Informal Resolution Process and meet with the Director of the Office of Equity, Inclusion, and Compliance or their designee or their designated University Resolution Mediator within thirty (30) business days of initiating the Informal Resolution Process.

The Responding Individual may be told of the identity of the Reporting Individual at this stage. Investigation is optional, since the emphasis is not on establishing a founded or unfounded report, but on stopping the alleged misconduct. If deemed appropriate under certain circumstances, the Director of the Office of Equity, Inclusion, and Compliance or their designee may meet with the Reporting Individual and Responding Individual together if, in their judgment, such a meeting could foster a resolution to the issues and the Reporting and Responding Individuals agree to such a meeting.

If the Reporting Individual is not satisfied with the Informal Resolution Process or its outcome, or no longer wants to participate in the Informal Resolution Process, they may pursue Formal Resolution. If the Responding Individual declines to participate in the Informal Resolution Process, the Formal Resolution Process may be initiated.

Informal Resolution Process should conclude within thirty (30) days of request; however, there may be extenuating circumstances that delay that timeline. Following Informal Resolution Process, all parties will receive a short written memorandum setting forth the agreed upon solution. Any act of retaliation directed against the Reporting or Responding Individuals or other persons involved in the process may result in disciplinary action up to and including termination and expulsion.

If at the conclusion of Informal Resolution Process, or if at any time therein, the Reporting Individual should decide to withdraw the report, the University Director of the Office of Equity, Inclusion, and Compliance or their designee, shall retain the right to pursue a report in its own name under this policy.

## Formal Resolution Process

### Notice of Receipt of a Formal Report and Investigation

Within fifteen (15) business days of deciding that the report falls within the scope of this Policy, the Director of the Office of Equity, Inclusion, and Compliance or their designee will issue a written Notice of Report and Investigation to the parties involved. This notice will include the Reporting Individual's name and the allegation(s) made.

### Investigation

Generally, the Investigation will be conducted by the campus investigator or the Director of the Office of Equity, Inclusion, and Compliance or their designee. The Investigator(s) will review and investigate the report, interview the parties to it, seek out any relevant documents/communication deemed pertinent to the investigation, as well as any relevant witnesses or persons having knowledge of the situation.

Investigations will be completed promptly, normally within thirty (30) days of the decision to conduct the investigation. However, an investigation may take longer depending on the nature, extent and complexity of the allegations, availability of the involved parties, witnesses, and police involvement, if any.

### Final Investigative Report

Upon completion of the investigation, the Investigator(s) will produce a final investigative report setting forth the facts, a summary of possible policy violation(s), and a recommendation of findings and review that report with the Director of the Office of Equity, Inclusion, and Compliance who will submit that report to the supervising Dean, Vice President, and University President. Following receipt of the final investigative report, the supervising Dean, Vice President or the University President will make a final determination of action(s).

#### Final Determination of Action

**Unfounded Report- No Violation.** If the supervising Dean, Vice President, or University President determine the matter as unfounded after the conclusion of an investigation, they will issue a letter to that effect to the Reporting and Responding Individuals and the matter will be deemed closed.

**Founded Report- Violation.** If the supervising Dean, Vice President, or University President determines the matter to be founded, they will assess sanction(s) and will inform the Reporting Individual via letter that appropriate action has been taken, but will generally not list specific disciplinary actions, which may be a part of the Responding Individual's personnel file, except where the sanction directly relates to the discriminated or harassed individual.

#### Sanctions

**For Students:** Students who fail to comply with this Policy will be subject to sanctions, including sanctions defined by the University Student Code of Conduct.

**For Employees:**

In all instances for employees, the supervising Dean, Vice President, or University President retain the sole authority and discretion to take formal disciplinary action against an employee. Individuals who are found to have violated this Policy will be subject to disciplinary action(s), as set forth by the applicable Collective Bargaining Agreement ("CBA"), Board of Governors Policy, or other University Policy. Such action(s) against employees could include, but are not limited to, an informal oral reprimand, a written reprimand, required training, suspension or other disciplinary action up to and including termination of employment.

#### Reports with External Agencies/Organizations

Individuals are encouraged to use these report procedures but are not required to do so and may choose to pursue reports in other forums. In addition to or in place of the University's procedures, Reporting Individuals may choose to file a report with federal or state agencies such as the Pennsylvania Human Relations Commission (717) 787-9780, the U.S. Equal Employment Opportunity Commission (800) 669- 4000, or the Office of Civil Rights of the U.S. Department of Education (215) 656-8541.

This Policy is not intended to interfere with any rights an employee may have under an applicable CBA. Unionized individuals may choose to pursue a report through the appropriate CBA grievance procedures.

## RESOURCES

Shippensburg University is committed to ensuring that individuals who experience discrimination, harassment, or retaliation have access to a variety of services and resources. To talk with someone to receive support and assistance in a confidential setting contact any of the supportive resources. Employees are eligible for crisis counseling by contacting the State Employee Assistance Program ("SEAP") at 800-692-7459. Students may see a counselor at the Shippensburg University Counseling Center by calling 717-477-1481 or visiting the Wellness Center.

## RECISSION

This policy is effective immediately following approval, and replaces all other policies whether in print or electronic format.

## APPROVALS

EMT Approval: October 15, 2019

EMT Approval: August 25, 2020

EMT Approval (revised) April 1, 2021

Forum April 13, 2021

## FILENAME

701-001.1 Anti-Discrimination Anti-Harassment Policy

DATE

4/23/2021

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## Raider Neighbor

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Contact the Office of Student Conduct & Community Standards

Old Main 210

1871 Old Main Drive, Shippensburg, PA 17257

Phone: 717-477-1164 Fax: (717) 477-4007 <mailto:studentconduct@ship.edu>

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