INDIANA UNIVERSITY OF PENNSYLVANIA
Sexual Discrimination and Sexual Misconduct Policy

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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[1] 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,

[1] The full text of the Final Rule and its extensive Preamble is available here: http://bit.ly/TitleIXReg

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[2] 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 victims bill of rights.

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 unlawful discrimination or harassment on the basis of sex, race, color, age, religion, national or ethnic origin, citizenship status, 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 to coordinate the University's compliance with Title IX and VAWA and to respond to reports of violations. The University has directed the Director of Public Safety and University Police 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 be shared only with a limited circle of individuals, including individuals who "need to know" in order to assist in the review,

[2] The text of Act 16 of 2019 is available here: https://bit.ly/3f7DAr6

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. 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 as 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, such as mandatory reporting obligations concerning abuse including sexual misconduct involving minors. See **Mandated Reporting Obligations of University Officials, Volunteers and Employees** under the **University Reporting Obligations** section for more information.

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 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 individuals designated as having confidentiality 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 individuals designated as having confidentiality may decide to make a report to the University and/or law enforcement. Sexual Discrimination and Sexual Misconduct Resources can be found here: https://www.iup.edu/socialequity/policies/sexual-discrimination-and-sexual-misconduct-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 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 at any point before or during the resolution process that do not fundamentally alter the process. Requests for accommodations may be made to the Title IX Coordinator or the Director of Student Support and Community Standards and may be referred to another appropriate party or office on campus. Neither the Title IX Coordinator nor the Director of Student Support and Community Standards will 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.

Any employee, vendor, or volunteer who requires reasonable accommodation in order to ensure their full and equal participation in an investigation or proceeding under this Policy should make those requests directly to the Office of Human Resources.

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 the utmost importance. The University recognizes that students who have been consuming alcohol and/or using illegal drugs (whether such use is voluntary or involuntary) at the time alleged 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 may not be sanctioned under the IUP Community Standards Policy for violations of alcohol consumption and/or illegal drug use policies occurring at or near the time of the incident(s) of alleged sexual misconduct. The University may require the individual to attend an approved alcohol or drug education 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 the Respondent's refusal to participate result in increased sanctions if the Respondent is found responsible for the violation(s).

10. Standard of Proof
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
This Policy will be effective March 1, 2022.

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.

13. Revocation by Operation of Law
Applicability of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), is subject to future legislative or court actions. Should any portion of the Title IX Final Rule be set aside, stayed, or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require any of the elements of this Policy, this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date, if a case is not complete by that date of opinion or order publication.

SEXUAL MISCONDUCT DEFINITIONS

1. Dating Violence – This 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 – This 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 of Activity at the time of the filing of the complaint. Otherwise, Dating 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 – 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:

- **A. 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.
- **B. 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.
- **C. 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[3].

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.

5. 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:

- **A.** Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's Consent;
- **B.** Indecent exposure or inducing others to expose private or intimate parts of the body when Consent is not present;
- **C.** 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;
- **D.** Prostituting another individual;
- **E.** Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; or
- **F.** Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

[3] The text of Chapter 31 of the Pennsylvania Crimes Code is available here: https://bit.ly/305G9pu

6. 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.

7. Non-Regulatory Quid Pro Quo Sexual Harassment – A University Official, Volunteer, or Student conditioning the provision of aid, benefit, or service of the University on the individual's participation in unwelcome sexual conduct.

8. 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.

9. 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.

10. Regulatory and/or Non-Regulatory Stalking – This means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- **A.** fear for their safety or the safety of others; or
- **B.** 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

1. Advisor – An individual who may be present to provide support to a Party throughout an investigation and/or hearing.

- **A.** 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.
- **B.** Each party is responsible for coordinating and scheduling with their choice of Advisor.
- **C.** The Advisor may be an attorney or a union representative when applicable.
- **D.** 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.
- **E.** If a Party does not attend the hearing, the Party's Advisor may appear and conduct cross-examination on the Party's behalf.

F. 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.

G. 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.

2. 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, or Advisor to any Party or a Decision Maker in the same matter.

3. Business Day – A day when the University is open and operating for conducting business.

4. Complainant – An individual who has reported being or is alleged to be subjected to conduct that could constitute sexual misconduct as defined under this Policy.

5. 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. Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is not present when an individual is incapacitated due to alcohol, drugs, 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 distinct from drunkenness or intoxication. When drug use is involved, incapacitation is a state distinct from 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.

6. Decision Maker(s) – 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.

7. Disciplinary Sanction – The penalty imposed on an individual for violating this Policy. For Students, Disciplinary Sanctions are subject to applicable University 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 University Officials or

Volunteers, this may include the removal or the request for removal of the University Official or Volunteer from their respective position.

8. Education Program or Activity – For purposes of this Policy, the term "Education Program or Activity" includes any activity that occurs in, on or within:

- **A.** Any on-campus premises;
- **B.** 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.
- **C.** 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.

9. 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.

10. 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.

11. Formal Complaint – This 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.

12. Hearing Officer – The person or persons who have decision making and sanctioning authority within the University's Formal Grievance process.

13. 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.

14. Notice of Allegations – The written notice the Title IX Coordinator or designee is required to provide to the Parties following receipt of a Formal Complaint. See **Notice of Allegations** section below.

15. Notice of Hearing – The written notice the Title IX Coordinator, Director of Student Support and Community Standards, or other designee is required to provide the Parties prior to the hearing. See **Notice of Hearing** section below.

16. University Official – A member of a Council of Trustees or of the Board of Governors or their respective designees.

17. Parties or Party – A term that refers to the Complainant and the Respondent collectively or the Complainant or Respondent individually.

18. Respondent – Any individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct as defined under this Policy.

19. Student – Any person: (1) seeking admission to the University through the formal University application process, (2) admitted to the University, (3) eligible to register or schedule for classes, or (4) living in University or University-affiliated residence halls even if they are not enrolled at the University. The term "Student" shall include Employees, Volunteers, and University Officials where the Employee, Volunteer, or University Official otherwise meets the enrollment criteria set forth in this definition.

20. 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 either Party. Supportive Measures may be offered, as appropriate, to the Complainant and/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.

21. 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 not serve as a Decision Maker or Appeals Officer.

22. 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.

23. 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 of 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 and the University President, Provost, Vice President for Student Affairs, Vice President for Administration and Finance, Deans, Athletic Director, and others designated by the President have authority to institute corrective measures for reports of alleged violations of this Policy. Mandated reports to the Title IX Coordinator by University Officials, Volunteers, and Employees shall not automatically result in corrective measures being instituted. Individuals are encouraged to report sexual misconduct directly to the Title IX Coordinator, through the University's electronic and anonymous reporting systems or by filing a Formal Complaint.

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, through the University's on-line

reporting system (https://www.iup.edu/socialequity/report-an-incident-of-concern/index.html), 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.

Contact Information for the Indiana University of Pennsylvania Title IX Coordinator:

Elise Glenn, Chief Diversity and Inclusion Officer/Title IX Coordinator
B-17 Delaney Hall
920 Grant Street
Indiana, PA 15705
Email: title-ix@iup.edu; social-equity@iup.edu; eglenn@iup.edu
Telephone: 724-357-3402

Such a report may be made at any time (including during non-business hours) by using the online reporting form (https://www.iup.edu/socialequity/report-an-incident-of-concern/index.html), by 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 individual(s) designated as having confidentiality, please contact the IUP Counseling Center, 724-357-2621. (See also, "Individuals Appointed with Confidentiality" document at https://www.iup.edu/socialequity/policies/sexual-discrimination-and-sexual-misconduct-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 a Title IX Deputy Coordinator by any person. A report may be accompanied by a request for (1) Supportive Measures; (2) no further action; (3) a request to initiate an informal resolution process; and/or (4) 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

Any individual may also file a report about sexual misconduct using the Incident of Concern reporting form(s): https://www.iup.edu/socialequity/report-an-incident-of-concern/index.html . While anonymous reports are accepted, the University's ability to address misconduct reported anonymously is significantly limited.

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 ninety (90) business days after the filing of a 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 a written complaint with a signature or other indication that the Complainant is the person filing the Formal Complaint describing the facts alleged.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The University will inform the Complainant of this decision in writing and the Complainant will not be required to 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

Individuals may also seek to initiate a criminal complaint independent of or parallel with any report made to the University: Indiana University Police: 724-357-2141; Indiana Borough Police: 724-349-2121; Pennsylvania State Police: 724-357-1960

Please Note: The University's Policy, definitions, and burden of proof may differ from 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 a 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 by emailing OCR.Philadelphia@ed.gov, or by 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 717-787-9780 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/how-file-charge-employment-discrimination .

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 intentional

misrepresentations of facts. If an investigation results in a finding that a person has willfully filed a bad faith report, filed a false Formal Complaint, or made intentional misrepresentations of fact as part of the reporting or resolution process, the person may be subject to appropriate Disciplinary Sanctions under the Community Standards Policy in the case of Students or other relevant University Policy and collective bargaining agreements in the case of University 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 alleged abuse 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 University Employees, University Officials, and Volunteers are required to notify the University Police and the ChildLine run by the Pennsylvania Department of Human Services (1-800-932-0313). All other members of the University community are strongly encouraged to report suspected child abuse to law enforcement or the ChildLine at: https://www.iup.edu/humanresources/policies/protection-of-minors/

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 charges 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 **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 their 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:
- **A.** undertake an individualized safety and risk analysis; and
- **B.** 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.
- **A.** The University will provide written notice of the emergency removal and applicable charges.
- **B.** The University will provide an opportunity for the Respondent to appeal that decision to an appropriate Hearing Officer or designee within 10 business days of the imposition of the emergency removal.
- **C.** The designated University Hearing Officer 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 member(s) of the University community arising from the allegations of 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.

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 as an alternative to the formal investigation and hearing procedures only where a Formal Complaint has been filed. Upon written

agreement of all parties, informal resolution may be initiated at any time prior to a finding in a hearing and may be terminated at any time prior to final informal 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, 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 University Official under this Policy.

SEXUAL MISCONDUCT RESOLUTION PROCESS

1. Formal Complaint

The Sexual Misconduct Resolution Process is initiated by a Complainant providing the Title IX Coordinator with a Formal Complaint with a signature or other indication that the Complainant is the person filing the 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 business 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:

- **A.** Notice of the University's Sexual Misconduct Resolution Process including a link to a copy of the process.
- **B.** Notice of the allegations potentially constituting violations 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.
- **C.** 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.
- **D.** A statement that the Parties may have an Advisor of their choice.
- **E.** 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.
- **F.** Individuals are prohibited from knowingly filing a false report or making misrepresentations. Following an investigation and hearing under applicable Policy, if 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 Community Standards Policy in the case of Students or other relevant University Policy in the case of University Officials, Employees, or Volunteers.

The Parties will be notified by their University email accounts or if the University email is disabled, by other reasonable means if they are a Student or Employee, and by other reasonable means if they are neither. Once a notice is emailed or otherwise reasonably sent, it is presumptively delivered.

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) contained in a Formal Complaint, the Title IX Coordinator will determine if:

- **A.** The conduct is alleged to have occurred in the United States;
- **B.** The conduct is alleged to have occurred in the University's Education Program or Activity; and
- **C.** The alleged conduct, if true, would constitute Regulatory Prohibited Conduct as defined in this Policy.

If all the above criteria 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 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:

- **A.** 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;
- **B.** The Respondent is no longer enrolled in, associated with, or employed by the University; or,
- **C.** 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 Community Standards Policy, the Sexual Misconduct Resolution Process set forth in this Policy may 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 Community Standards Policy, the matter may be referred for further action to the University's Office of Student Support and Community Standards, 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 Policy 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 a **University Official** or **Volunteer** contains any allegations under this Policy, the University or System will follow applicable requirements in other University or System Policy or procedures/standards for resolution of the allegations contained in the Formal Complaint. Officials and Volunteers are not entitled to live hearings or appeal rights pursuant to this Policy and process.

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 institutional email account or other reasonable means. It is the responsibility of parties to maintain and regularly check their email accounts. Once a notice is emailed or otherwise reasonably sent, it is presumptively delivered.

7. Investigation

A. General Rules of Investigations

The Title IX Coordinator and/or 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, 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 cannot be used to determine responsibility.

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.

Medical records of a party (or parent, if applicable) will not be considered as part of the investigation without the expressed consent of the party to whom the medical records belong. Any relevant medical records shared with the Investigator will be attached to the Investigative Report and shared with the other party and Decision Maker(s).

B. 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:

1) 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;

2) 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 make the evidence available to each Party and each Party's Advisor, if any, for inspection and review through an electronic format or a hard copy. The University will also provide a draft of the investigation report for review. 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 ten (10) business days to inspect and review the evidence, review the draft investigation report, and submit a written response 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 five (5) business 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 Parties and Advisors may not disseminate or photograph or otherwise copy any of the evidence subject to inspection and review for any purpose unrelated to the Sexual Misconduct Resolution Process. Any violation of this confidentiality requirement may result in separate disciplinary action under the Community Standards Policy 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.

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 discretion of the Investigator, in consultation with the Title IX Coordinator.

The Investigator has ten (10) business days to generate a report 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.

C. 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.

The Investigation Report will be shared with the Parties and their Advisors at least ten (10) business days prior to any hearing for their review and written response. Any written response received will be appended to the Investigation Report and shared with the Decision Maker(s) and the other party and their Advisor prior to the hearing.

D. 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 Community Standards Policy, the University will notify the Parties of the additional allegations by their University email accounts or other reasonable means. Once a notice is emailed or otherwise reasonably sent, it is presumptively delivered.

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

8. General Rules of Hearings

A. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Director of Student Support and Community Standards, the Hearing Chair, or other 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:

1) 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 that could result.

2) The time, date, and location of the hearing.

3) 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 must inform the Director of Student Support and Community Standards, the Hearing Chair, or other designee of any desire to have the hearing occur in separate rooms at least three (3) business days prior to the hearing to ensure appropriate technology is in place**.**

4) Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.

5) A copy of the University's Statement of Affirmation for participation in a resolution process.

6) A list of the Decision Maker(s) who will attend the hearing, along with an invitation to object to any actual or perceived conflicts of interest or bias of the Decision Maker(s) prior to the hearing. The President of the University or their designee shall serve as the Decision Maker for all cases involving a Respondent who is an employee.

7) A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence.

8) Notification that each party must have an Advisor present at the hearing, and that each party may choose their Advisor. The Party should notify the Hearing Chair or other designee in advance of the hearing if they do not have an Advisor, and the University will appoint one.

9) A list of materials provided to the Decision Maker(s) about the matter and the opportunity to provide a written response in advance of the hearing.

10) Information regarding whom to contact to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing.

11) For compelling reasons, the Hearing Chair or other designee may reschedule the hearing.

B. 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 a Party in an attempt to secure a Party's participation.

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 due to technological errors or for other reasonable issues or accommodations.

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.

C. 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.

D. Participants in the Hearing

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

1) The Decision Maker(s)
2) The Hearing Chair
3) Hearing facilitators, if applicable and different than the Hearing Chair
4) Conduct administrator or designee or IT personnel or other University personnel
5) The Parties
6) Advisor of choice or provided by the University for each Party
7) Witnesses
8) The Investigator and/or Title IX Coordinator or Deputy Title IX Coordinator
9) Any individuals necessary to provide interpretation or other support services associated with reasonable accommodations to facilitate participation in the hearing.

The Decision Maker(s) and Hearing Chair will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or in favor of 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.

E. Hearing Procedures

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

1) The Decision Maker(s) or hearing facilitator will open and establish rules and expectations for the hearing.
2) The Parties will each be given the opportunity to provide opening statements.
3) 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 Decision Maker(s) or hearing facilitator will direct that it be disregarded.

4) Decision Maker(s) will ask questions of the Parties and Witnesses.

5) Parties will be given the opportunity for cross-examination after the Decision Maker(s) conduct(s) their initial round of questioning. See **Cross-Examination Procedure** below.

6) During the Parties' cross-examination, the Decision Maker(s) or hearing facilitator will have the authority to pause cross-examination at any time for the purposes of asking follow up questions; and any time necessary in order to enforce order for the hearing or the established rules of decorum. If any individual does not comply with the established rules of decorum, the Hearing Chair may remove that individual from the proceeding.

7) 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) or hearing facilitator. A Party's waiver of cross-examination does not eliminate the ability of the Decision Maker(s) to use statements made by the Party.

F. Relevant Evidence and Questions

"Relevant" evidence and questions are those questions and evidence that tend 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:

1) Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:

- **a)** They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or
- **b)** They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent or lack thereof;

2) Evidence and questions that constitute or seek disclosure of information protected under a legally recognized privilege including attorney-client privilege; or

3) Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

G. Cross-Examination

1) 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.

2) Parties will not be permitted to personally cross-examine each other.

3) If a Party does not participate in a hearing, the Party's Advisor may attend and conduct cross-examination on behalf of the Party.

4) 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.

5) Before any cross-examination question is answered, the Decision Maker(s) or hearing facilitator will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Decision Maker(s) may be deemed irrelevant if they have been asked and answered.

6) The Decision Maker(s) or hearing facilitator must explain to the Party proposing the question any decision to exclude a question as not relevant.

7) The Decision Maker(s) may not draw an inference about a determination regarding responsibility based solely on a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions.

8) Failure to answer questions at the hearing may impact the information the Decision Maker(s) will consider. In accordance with due process requirements applicable to Pennsylvania universities, hearings must include the opportunity to cross-examine witnesses when credibility determinations are at issue. As such, if any witness is not available for cross-examination, the Decision Maker(s) must determine whether any statements or testimony from that witness are admissible for the Decision Maker(s)' consideration.

9. Decisions

A. Timeline for Decision

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

B. 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.

10. Disciplinary Sanctions Against Students

A. Possible Disciplinary Sanctions

The University may impose the following Disciplinary Sanctions upon Students individually or in combination: Disciplinary Warning, Disciplinary Probation, Ban from University Owned/Operated Residence Halls, Suspension, Expulsion, or any educational or supportive sanction deemed appropriate by the Decision Maker(s).

B. Previous Disciplinary Sanctions

Previous Disciplinary Sanctions of any kind involving the Respondent may only be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and may not be considered to determine whether or not an alleged violation occurred.

C. Timing

The Disciplinary Sanctions will be implemented as soon as is feasible upon the completion of the appeal process.

11. Disciplinary Sanctions Against Employees, University Officials and Volunteers

A. 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 a University Official or Volunteer may include a penalty up to removal or the request for removal of the University Official or Volunteer from their respective position.

B. Timing

The Disciplinary Sanctions will be implemented as soon as is feasible upon the completion of the appeal process.

12. Appeals Where the Respondent is a Student

A. Each Party may appeal the outcome of the process on the following grounds:

1) A procedural irregularity under the University Policy or procedures that affected the hearing outcome.

2) 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.

3) 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.

4) The Disciplinary Sanction imposed was arbitrary or capricious.

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

C. 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.

D. 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 .

E. Once the appeal has been received, the Director of Student Support and Community Standards will conduct an initial review to determine if the appeal request meets the limited grounds and is timely. If the appeal does not meet the grounds for appeal or is not timely, the Director of Student Support and Community Standards will notify the parties. If the appeal does meet at least one of the grounds for appeal and is timely, the Director of Student Support and Community Standards will forward the appeal for review by an Appeal Panel or Appeal Officer.

F. Appeals will be decided by an Appeal Panel or Appeal Officer which 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.

G. The Appeal Panel or Appeal Officer will confine their review to the basis of appeal alleged and may require the Decision Maker(s) to consider any new evidence and make a finding, require a new Decision Maker(s) to re-hear the case, or modify the sanction.

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

13. Appeals Where the Respondent is an Employee

A. Each Party may appeal the outcome of the process on the following grounds:

1) A procedural irregularity under the University Policy or procedures that could have affected the hearing outcome.

2) 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.

3) 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 could have affected the outcome of the matter.

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

C. 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.

D. If a Party appeals, the University will notify the other Party in writing of the appeal as soon as practical, 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.

E. Appeals will be decided by the President or by an Appeal Panel whose members 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. In cases of an appeal filed by an Employee who is a faculty member, the Chancellor or their designee will serve as the Appeal Officer. In all other cases of an appeal filed by an Employee, the President or their designee will serve as the Appeal Officer.

F. The Appeal Panel will confine their review to the basis of appeal alleged.

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

H. All local or Step 3 grievance rights under a collective bargaining agreement will be stayed pending the disposition of the appeal.

RIGHTS/RESPONSIBILITIES

1. 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.

2. 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.

3. 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.

4. 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.

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

6. 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.

7. 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.

8. An affected party has the right to request Supportive Measures from the University, which may include interim contact restrictions.

9. The reporting party has the right to seek medical treatment to address physical and mental health and to preserve evidence.

10. Parties may also have options to file civil actions in court or with administrative agencies.

11. To file a Formal Complaint, please contact the Title IX Coordinator/designee.