

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

### A. Introduction

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

### B. Confidentiality

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

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

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

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

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

#### (a) Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings

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

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

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

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

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

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

#### 3. Support, Counseling and Advice

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

#### 4. Timeframe for Submitting a Complaint

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

#### 5. Complainant Request for Confidentiality

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

### D. Investigation and Resolution of Complaints of Sexual Harassment, Sexual Violence, Relationship Violence and Stalking

#### 1. Timely Resolution

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

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

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

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

(c) Both parties have the right to participate in the process, or to refrain from participation.<sup>12</sup> The failure to participate will not be used as evidence against either party, but also will not prevent the process from proceeding

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

<sup>11</sup> The AVP or the IO will work with other appropriate University offices, including the Vice Provost for University Life and the Vice Provost for Faculty, to determine if interim measures are appropriate.

<sup>12</sup> Please note that declining to respond to questions posed by the other party’s advisor during a hearing, will impact the Panel’s ability to rely upon the information provided by that party.

unless the complainant determines to withdraw the complaint and the University determines to abide by that request.

(d) Both parties may have an advisor, who may be their lawyer, present when being interviewed by the Investigative Team and the Hearing Panel, but the lawyer or other advisor will not be permitted to present statements or seek the production of evidence. The advisor will be permitted to pose questions to the other party or any witnesses subject to determinations of relevance and other appropriate issues by the DHO. Advisors must be a member of the University community, unless the advisor is serving as legal counsel to one of the parties.

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

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

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

### 3. Preliminary Determination

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

### 4. Investigation

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

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

Prior to interviews, the complainant, the respondent and any relevant witnesses will be informed by the IO that statements they make during the process may be admissible in concurrent or subsequent civil or criminal court proceedings. Accordingly, the parties and witnesses will be informed of their rights as outlined in Section D2 above. The parties will be advised of the seriousness of the proceeding and the expectation that the information they provide is both accurate and complete. Any false or misleading statements may subject the party making such statements to proceedings under the applicable University policy, handbook, code and/or charter. The complainant and respondent may have their advisors<sup>12</sup> and/or outside counsel present for their interviews, but the advisors or outside counsel will not be permitted to participate in the interview other than to provide advice to the person they have accompanied, and they may be excluded from the interview for disruptive behavior.

In conducting the investigation, the Investigative Team may, as appropriate, also consult with other campus officials including but not limited to administrators in the relevant School(s), the Division of Public Safety, the AVP, the Senior Vice President for Institutional Affairs and Chief Diver-

sity Officer, the Vice Provost for Faculty or the Vice Provost for University Life. The Investigative Team may also consult with the Office of General Counsel, which may determine in particular cases to engage outside counsel to assist the University throughout this process. The Investigative Team may engage forensic and other experts, as needed.

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

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

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

The draft investigative report and related exhibits and evidence will be provided to both the complainant and respondent for review and comment, under strict instructions that they are and at all times remain strictly confidential, and are not to be shared with anyone other than their families and advisors, who must be members of the University community and/or outside counsel, as described above without the expressed consent of the AVP. Sharing of the draft report by either party, their families, advisors or outside counsel with any additional persons is strictly prohibited and anyone with whom the report is shared must be so advised. The complainant and the respondent will be given the opportunity to respond to and comment on the draft investigative report in writing.

#### (b) Final Report

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

### 6. Resolution Without a Hearing

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

### 7. Hearing Panel

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

#### (a) Panel Membership

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

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

- i. Members will be selected from a pool of faculty who have agreed to serve for a term of one or more years.
- ii. Only Panels that have training in handling complaints involving sexual misconduct will hear sexual misconduct cases.
- iii. Faculty appearing on a Panel may not share a professional, personal or academic department affiliation (e.g., have a faculty appointment or be enrolled in a course of study) with either of the parties. Faculty asked to serve must recuse themselves or be dismissed if they have any professional or personal ties to either of the parties or to individuals with whom the parties are closely associated. Faculty with personal knowledge of the alleged incident of sexual misconduct also must recuse themselves or be dismissed.
- iv. The University will train members of the pool to fulfill their responsibilities as adjudicators according to the procedures and policies outlined here

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

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

and to ensure compliance with Title IX and other applicable state and federal guidelines. In addition, the Panel will be provided with “just in time” training on adjudicating sexual violence cases, unless the Panel members have recently been trained.

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

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

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

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

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

#### **Hearing Panel Interviews**

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

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

i. The Hearing will be held in private. Initial interviews will be conducted by the Panel and each party’s advisor will then have an opportunity to pose questions to the other party and any witnesses. Only the person interviewed (and in the case of the parties, that person’s advisor or outside counsel) will be present during the Panel interview. The complainant or respondent (and their advisor or outside counsel, as applicable) will be able to view interviews from separate rooms, upon request, via closed-circuit television or similar video transmission.

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

iii. The complainant and respondent may propose witnesses and provide specific questions in advance that they believe important to ask of other parties or witnesses. The parties’ advisors also may ask questions of the other party and witnesses during the Hearing subject to the DHO’s determination of relevance or other appropriate reasons. The DHO, in consultation with the Panel, will determine the relevance as well as the appropriateness of witnesses and questions, and may accordingly place restrictions on, include or exclude witnesses or other information.

iv. When the Panel is conducting the interview of the complainant and respondent, each may bring an advisor or outside counsel with them to provide advice and support. The advisor or outside counsel will be permitted to direct relevant questions to the other party or to witnesses. The advisor, complainant or respondent and may be excluded from the interview by the DHO for disruptive behavior.

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

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

After the Hearing concludes, the Panel will immediately deliberate in private to decide whether, by clear and convincing evidence, the respondent has violated the University’s Sexual Misconduct Policy. Preponderance of the evidence means that the Panel must find that it is more likely than not that the faculty member is responsible for a violation of the Policy. A finding of responsibility requires a majority vote of the members of the Panel.

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

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

### **8. Sanctions**

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

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

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

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

### **Resource Offices**

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

The following is a list of confidential resources that can be contacted for support, counseling and advice. The information shared with these resources generally will be held in confidence, consistent with the University’s obligation to address complaints of sexual violence, unless the person sharing the information gives his or her consent to the disclosure of that information. The commitment to confidentiality does not preclude the sharing of information among responsible University administrators as needed, including to keep members of the University community safe.

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

24-hour Helpline: (215) 898-6600

4040 Chestnut Street

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

#### **Penn Women’s Center**

(215) 898-8611

3643 Locust Walk

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

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

(215) 898-5044

3907 Spruce Street

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

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

(215) 898-0104

3643 Locust Walk

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

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

(215) 898-8456

240 Houston Hall, 3417 Spruce Street

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

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

(215) 898-8261

113 Duhring Wing, 236 S. 34th Street

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

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

(866) 799-2329

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

#### **Penn Violence Prevention**

(215) 746-2642

VPUL, 3611 Locust Walk

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

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

If reports of sexual misconduct are made with or come to the attention of the following offices, they must ensure that appropriate action is taken,

# OF RECORD

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including notifying the University's AVP and Title IX Officer:

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

(215) 898-6993

Suite 421, Franklin Building

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

**Student Intervention Services, VPUL**

(215) 898-6081

(215) 768-6527 Nights/Weekends 3611 Locust Walk

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

**Office of Student Conduct**

(215) 898-5651

Suite 400, 3440 Market Street

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

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

(215) 898-6093

Suite 600, Franklin Building

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

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

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

**Associate Vice President for Equity and Title IX Officer**

215-898-2887

3901 Walnut Street, Suite 320

<https://titleixoffice.upenn.edu/>