

V. Procedures for Resolving Complaints of Sexual Misconduct Against Staff

A. Introduction

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

B. Confidentiality

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

C. Reporting Complaints of Sexual Misconduct

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

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

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

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

Complainants may also choose to file a report with the District Attorney, the Office for Civil Rights of the U.S. Department of Education, or other external agencies. The University’s processes and the legal system

work independently of one another, and the University has its own interest in, and responsibility for, the enforcement of its Sexual Harassment Policy.¹⁵ Therefore, the University will not unilaterally defer its processes pending the outcome of a criminal process, nor will the outcome of any legal process be determinative of the University result. The University will, however, comply with reasonable requests by law enforcement for cooperation, and may temporarily suspend its fact-finding process in a sexual assault investigation so as not to impede the law enforcement process.

3. Support, Counseling and Advice

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

4. Timeframe for Submitting a Complaint

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

5. Complainant Request for Confidentiality

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

D. Investigation and Resolution of Complaints

The Office of the Associate Vice President for Equity and Title IX Officer (AVP) is responsible for overseeing the informal or formal resolution of all complaints made against a University staff member for a violation of the University’s Sexual Misconduct Policy. Complaints should be lodged with the AVP who will ensure that complaints are investigated

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

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

by a trained Investigative Officer (IO), who will select a co-investigator to form the Investigative Team. The Investigative Team will consult with the Dean of the School or Vice President of the Division in which the respondent works, or the Vice President for Human Resources in any case for which the Dean or Vice President has an actual or the appearance of a conflict of interest or is implicated in the complaint.

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

1. Timely Resolution

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

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

2. Rights and Protections for Complainant and Respondent

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

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

(c) Both parties have the right to participate in the process, or to refrain from participation.¹⁷ The failure to participate will not be used as evidence against either party, but also will not prevent the process from proceeding unless the complainant determines to withdraw the complaint and the University decides to abide by that request.

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

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

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

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 and Sexual Relationships in the Workplace and Educational Settings and not the

Sexual Harassment, Sexual Violence Relationship Violence or Stalking Policy, the complaint will be investigated by an IO, working with the appropriate Dean or Vice President, or in the event of an actual or perceived conflict of interest, the Vice President for Human Resources. The facts, conclusions, and recommendations reached by the IO will be reported to the appropriate Vice President or Dean. In the event of a finding of responsibility for a violation of the Sexual Misconduct Policy, appropriate disciplinary action will be taken.

Any disciplinary action taken against a staff person is subject to appeal by either party in writing to the Vice President for Human Resources (or designee) and the Dean of the School or Vice President of the Division

in which the respondent works, who jointly have exclusive jurisdiction to decide appeals.

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

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

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

Sexual Harassment, Violence, Relationship Violence, and Stalking

If the AVP determines that the complaint involves a possible violation of the Sexual Harassment, Violence Policy, Relationship Violence and Stalking Policy (Sexual Harassment Policy) the procedures set forth below will apply.

1. Preliminary Determination

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

2. Investigation

If the AVP makes the determination that there is a sufficient basis to proceed, a Statement of Charge Letter will be issued, based on the complaint and any preliminary investigation conducted. The Charge Letter will be provided to the complainant and the respondent. The respondent will be provided the opportunity to respond in writing to the Charge, and any response will be shared with the complainant. The Dean or Vice President of the Division in which the respondent is employed will also receive a copy of the Charge Letter.

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

Prior to interviews, the complainant, the respondent, and any relevant witnesses will be informed by the IO that statements they make during the process may be admissible in concurrent or subsequent civil or criminal court proceedings and will accordingly also be informed of their rights as outlined in Section B above. The parties will be advised of the seriousness of the proceeding and the expectation that the information they provide is both accurate and complete. Any false or misleading statements may subject the party making such statements to proceedings under the applicable University policy, handbook, code and/or charter. The complainant and respondent may have their advisors¹⁸ 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

¹⁸ The University will provide a list of advisors from the Penn community to complainants and respondents. Advisors will be offered training by the University to support both complainants and respondents in this process. The parties need not select an advisor from this list. The parties may select any Penn faculty or staff member to advise them or retain an attorney. The role of the advisor or their attorney, however, will be limited to an advisory role and counsel will not be permitted to have an active role in the proceedings other than directing questions to the other party or to witnesses during a hearing.

¹⁷ 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.

they have accompanied, and they may be excluded from the interview for disruptive behavior.

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

3. Investigative Report

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

4. Resolution Without a Hearing

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

5. Hearing Panel

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

(a) Panel Membership

The Panel will be comprised of three (3) faculty members and the Designated Hearing Officer (DHO), who will be a non-voting member. The DHO will make all decisions about the organization of the Panel, including decisions regarding the admissibility of evidence, witnesses to appear before the panel, or any additional decisions regarding the administration of the hearing process.¹⁹ Members of the Panel, including the DHO, will observe the following guidelines:

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

ii. Only Panels that have training in handling complaints involving sexual misconduct will hear sexual misconduct cases.

iii. Faculty appearing on a Panel may not share an academic department affiliation (e.g., has a faculty appointment or is enrolled in a course of study) with either of the parties, nor may any faculty member serve on the Panel who

has a professional, or personal relationship with either of the parties. Faculty asked to serve must recuse themselves or be dismissed if they have any personal or professional ties to either of the parties or to individuals with whom the parties are closely associated. Faculty with personal knowledge of the alleged incident of sexual misconduct also must recuse themselves or be dismissed.

iv. The University will train members of the pool to fulfill their responsibilities as adjudicators according to the procedures and policies outlined here and to ensure compliance with Title IX and other applicable state and federal guidelines. In addition, the Panel will be provided with “just in time” training on adjudicating sexual harassment 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 to the DHO so as not to delay the conduct of the Hearing. The DHO will give serious consideration to any challenges made 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 parties. 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 ten 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 Investigative Team and interview key witnesses on whom the Investigative Team 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 Investigative Team, or new evidence is discovered after the Investigative Team 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. The Panel will first conduct interviews with only the person being interviewed (and in the case of the parties, that person’s advisor or outside counsel) present. 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 may also interview the other party and witnesses called by the Panel. 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 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 a preponderance of the evidence, the respondent has violated the University’s Sexual Harassment Policy. Preponderance of the evidence means that the Panel must find that it is more likely than not that the staff member is responsible for a violation of the Poli-

¹⁹ 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.

cy. A finding of responsibility requires a majority vote of the members of the Panel.

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

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

E. Appeals

Either party may appeal the decision of the Hearing Panel by submitting a written request within 10 business days of transmission of the decision of the Hearing Panel. Letters of appeal should specifically state whether the objection is to the judgment of a violation of University policy, the recommended sanction, or both, and explain in detail the grounds for appeal. The request for an appeal will be shared with the other party who will have the opportunity to respond or to direct comments to the DAO within 10 business days. Any such response or comments will be shared with the other party.

1. The Vice President for Human Resources (or designee) and the Dean or Vice President of the School or Division will review the report of the Investigative Team to ensure that the process was consistent with University policy and that the decision was not arbitrary or capricious. Any supporting evidence, and any other relevant materials may also be reviewed by the Vice President for Human Resources (or designee) and the Dean or Vice President (or designee) of the relevant School or Division at their discretion. After considering the appeal, the Vice President for Human Resources (or designee) and the relevant Dean or Vice President (or designee) will promptly notify the parties in writing as to whether the Investigative Team's decision will be upheld or modified.

F. Resource Offices

1. Confidential Resources

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

Special Services Department, Division of Public Safety

24-hour Helpline: (215) 898-6600

4040 Chestnut Street

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

Penn Women's Center

(215) 898-8611

3643 Locust Walk

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

Lesbian Gay Bisexual Transgender Center

(215) 898-5044

3907 Spruce Street

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

African-American Resource Center

(215) 898-0104

3643 Locust Walk

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

Office of the University Chaplain

(215) 898-8456

240 Houston Hall, 3417 Spruce Street

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

Office of the Ombuds

(215) 898-8261

113 Duhring Wing, 236 S. 34th Street

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

Employee Assistance Program, Health Advocate

(866) 799-2329

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

2. Official Reporting Offices for Complaints of Sexual Misconduct

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

Office of Affirmative Action and Equal Opportunity Programs

Suite 421, Franklin Building

(215) 898-6993

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

Office of Student Conduct

Suite 400, 3440 Market Street

(215) 898-5651

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

Office of Staff and Labor Relations, Division of Human Resources

Suite 600, Franklin Building

(215) 898-6093

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

3. Investigative Office for Sexual Misconduct Complaints

The official office for reporting, initiating a formal complaint, and investigation of violations of the Sexual Misconduct Policies, including violations of the Sexual Harassment Policy, 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

3901 Walnut Street, Suite 320

(215) 898-2887

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