

III. Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct⁴

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 students 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. This amendment to the Student Disciplinary Charter supplements these other policies and initiatives, addressing the process by which complaints against an enrolled University student for a violation of the Sexual Misconduct Policy (which includes its Sexual Harassment, Sexual Violence, Relationship Violence, and Stalking Policy (“Sexual Harassment 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 Associate Vice President and Title IX Officer (AVP), the Division of Public Safety, the Senior Vice President for Institutional Affairs and Chief Diversity Officer, Office of General Counsel, Counseling and Psychological Services, Student Health Service, and academic advising offices.

C. Reporting Complaints of Violation of Sexual Misconduct

1. Office of the Associate Vice President for Equity and Title IX Officer (AVP)

The Office of the AVP will be responsible for managing all complaints made against enrolled University students for violations of its Sexual Misconduct Policy (including sexual harassment and sexual violence). Complaints should be lodged with the AVP who will assign the complaint to a trained investigator (IO) who will work under the AVP’s direction and supervision.

Complaints must either be presented in writing or based upon information provided by the complainant to the IO who will then memorialize the allegations in writing and have the allegations confirmed by the complainant. Complainants may include University students or others within the community who allege a violation of the Policy by a student enrolled at the University during the period that student has been enrolled.

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 processes and the legal system work independently of one another and the University has its own interest in, and responsibility for, ensuring the enforcement of its Sexual Misconduct Policy.⁵ Therefore, the University will not unilaterally defer its processes pending the outcome of any 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 will upon reasonable request temporarily suspend its fact-finding process in a sexual misconduct investigation so as not to impede the law enforcement process.

⁴ This procedure amends and supersedes the Charter of the University of Pennsylvania Student Disciplinary System with respect to violations of University policy for behaviors that are defined in the University’s Sexual Misconduct Policy. It applies to each of the 12 schools, notwithstanding the existence of separate procedures that individual schools may have adopted for violations of laws or policies other than the University Sexual Misconduct Policy. If a complaint involves allegations of violations of the Sexual Misconduct Policy as well as other University policies, the matter can either be fully resolved using this process, or divided into two separate proceedings, as appropriate in any particular case.

⁵ The University recognizes that should it be proceeding in cases where criminal charges are pending, however, the respondents may choose not to participate in the disciplinary process 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.

3. Support, Counseling and Advice

In making a decision about how to proceed with a complaint, complainants may seek support, counseling, and advice from other offices on campus, including the Special Services Department in the Division of Public Safety, Penn Violence Prevention, Office of the University Chaplain, Penn Women’s Center, Counseling and Psychological Services, Office of the Ombuds, African-American Resource Center, or Lesbian Gay Bisexual Transgender Center. A list of these offices is provided in Section E below. Should a complainant decide to proceed with the University’s disciplinary process against an enrolled University student, the Office of the AVP will be the single place to initiate the process.

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 any action may be limited by the passage of time or the matriculation status of the alleged respondent.

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 IO 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 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

1. Timely Resolution

Where possible, the process of resolving complaints, exclusive of any appeal, should be completed within 60 business days of the filing of the written complaint. The appeal should be completed, where possible, 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 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. The failure to participate will not be used as evidence against either party⁶, but also will not prevent the process from proceeding unless the complainant withdraws the complaint and the University determines to abide by that request or the respondent withdraws from the University.

(d) Each party may have a lawyer or other advisor 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 party’s advisor will be able to direct questions to the other party or witnesses interviewed by the Panel subject to determinations of relevance and other procedural issues by the Disciplinary Hearing Officer.

(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, that evidence may be considered by the Hearing Panel if there is a finding of responsibility and a sanction is being determined.

(g) While the process is underway, the Vice Provost for University Life (VPUL) will work with the complainant and respondent, ensuring support is made available to both parties. VPUL will also be responsible for implementing interim measures to protect the parties, or any of the witnesses, consistent with principles of fairness, including implementing measures regarding hous-

⁶ 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 individual.

ing, academic accommodations and scheduling changes, no contact orders, and any other appropriate actions to protect the parties or any of the witnesses.

3. Preliminary Determination

Upon receiving a complaint, the AVP will make a preliminary determination as to whether the complaint falls within the purview of a 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 Misconduct 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, 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 IO will lead a thorough and fair 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"). The co-investigator(s) will be University administrators or faculty members appropriately trained to investigate and handle sexual misconduct cases who are 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 made 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 D.2(c) above. They will also be reminded of the consequences of making false statements to the IO under the Code of Student Conduct and the Charter of the University of Pennsylvania Student Disciplinary System. The complainant and respondent may have their advisors⁷ 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 student, 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, Division of Public Safety, the AVP and Title IX Officer, Senior Vice President for Institutional Affairs and Chief Diversity Officer, or the Vice Provost for University Life. 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.

5. Investigative Report

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 will use a "preponderance of the evidence" standard. In other words, to find a student responsible for violating the Sexual Misconduct 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 remains 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

⁷ The University will provide a list of advisors from the Penn community to complainants and respondents who have been trained 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. The parties may also retain outside counsel in addition to, or instead of, using an advisor. The role of outside counsel, however, will be limited to an advisory role and counsel will not be permitted to have an active role in the proceedings.

AVP. Sharing of the 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. The Investigative Team will prepare a final investigative report, incorporating any changes they believe are appropriate, and then share it 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 Disciplinary 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.⁸

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 mixed-gender panels that have received training in handling complaints involving sexual misconduct will hear sexual misconduct cases.
- iii. Faculty comprising the Panel should be from academic departments in which neither of the parties is enrolled in a course of study, and no faculty member should serve on the Panel who has a mentoring relationship or other personal relationship with either of the parties.
- iv. Faculty asked to serve should recuse themselves or be dismissed if they have any personal ties to either of the parties or to individuals with whom the parties are closely associated, or if they have prior personal knowledge of the alleged incident of sexual misconduct.
- v. 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 misconduct cases.
- vi. The IO may not serve on the Panel; however, the IO 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.
- vii. 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.
- viii. 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 response, objections, or comments provided by the complainant or respondent. The Panel will also carefully review the evidentiary record, including witness statements, documents, and physical evidence.

⁸ In carrying out these responsibilities, the DHO may consult with the AVP, the Office of General Counsel and other appropriate office such as the Office of Student Conduct and the Senior Vice President for Institutional Affairs and Chief Diversity Officer. University officers thus consulted will respect the confidentiality conditions of the proceedings.

Hearing Panel Interviews

i. The Panel will interview separately the IO (and co-investigator(s) if the Panel so chooses), the complainant, and the respondent. The DHO 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 his or her 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 his or her report, the DHO may allow that witness to testify or admit the evidence to the hearing, but only if the DHO judges the new witness or evidence to be highly relevant to an accurate and fair determination of the outcome.

ii. The Hearing will be held in private, and only the Panel may conduct interviews. Only the person interviewed (and that person's advisor or outside counsel, as applicable) will be present at the Hearing during interviews. The complainant or respondent (and their advisor or outside counsel, as applicable) will be able to view testimony from separate rooms, upon request, via closed-circuit television or similar video transmission.

iii. Subject to the Rights and Protections set forth in Section D.2 above, the Panel has wide latitude when questioning the complainant, the respondent, and any witnesses in order to determine the accuracy of the final report.

iv. 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 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.

v. When the Panel is conducting the interview of the complainant and respondent, each student will have an advisor or outside counsel with them to provide advice and support. The advisor or outside counsel will be permitted to address questions to the other party during the Hearing subject to determinations of relevancy and other appropriate considerations. If an advisor's behavior is disruptive, the Hearing will be adjourned and the advisor may be excluded from the Hearing.

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 a preponderance of the evidence shows that the respondent is responsible for a violation of the University's Sexual Misconduct Policy. Preponderance of the evidence means that the Panel must be convinced based on the evidence that it is more likely than not that a violation has occurred in order to find a student is responsible for a violation of the policy. A finding of responsibility requires a majority vote of the members of the Panel.

If the respondent is found responsible, the Panel will also determine the 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.

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, 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.

Decisions made by the Panel are considered final, subject only to appeal as outlined below.

(d) Appeal of Hearing Panel Decision

The Panel decision is subject to appeal by either party in writing to a Disciplinary Appellate Officer (DAO), a faculty member with exclusive jurisdiction to decide appeals. In keeping with guidelines for timely resolution as provided in Section D1 above, appeals should be submitted within 10 business days after the decision of the Panel. Letters of appeal should specifically state whether the objection is to the judgment of responsibility, the 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 provide a response or otherwise direct comments to the DAO within 10 business days. Any such comments or response will be shared with the other party.

The DAO will review the report of the Investigative Team and supporting evidence, the audio record from the Panel Hearing, and any other material the DAO deems relevant, in addition to the decision of the Panel in order to ensure that the process was consistent with University policy and that the result was not arbitrary or capricious, that there were no procedural irregularities, that there was no demonstrated bias or conflict of interest

on the part of any fact-finder, and that no new evidence has been brought forward that would alter the outcome of the Hearing.

After considering the appeal, the DAO will promptly issue their decision in writing and will provide copies to the DHO, the Provost, the Senior Vice President for Institutional Affairs and Chief Diversity Officer, the complainant, respondent(s) and other appropriate parties.

E. Resource Offices

1. Confidential Resources

The following can be contacted for support, counseling, and advice:

Special Services Department, Division of Public Safety

24-hour Helpline: (215) 898-6600

4040 Chestnut Street

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

Counseling & Psychological Services (CAPS)

(215) 898-7021

After-hours emergency number: (215) 349-5490

3624 Market Street, 1st Floor, West

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

Sexual Trauma Treatment, Outreach and Prevention (CAPS)

<http://www.vpul.upenn.edu/caps/sttop.php>

Penn Women's Center (PWC)

(215) 898-8611 and (215) 898-6500

3643 Locust Walk

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

Student Health Service (SHS)

(215) 746-3535

Suite 100, 3535 Market Street

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

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 Ombuds

(215) 898-8261

113 Duhring Wing, 236 S. 34th Street

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

Office of the University Chaplain

(215) 898-8456

240 Houston Hall, 3417 Spruce Street

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

Penn Violence Prevention

(215) 746-2642

3611 Locust Walk

<https://secure.www.upenn.edu/vpul/vpv/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, 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>

F. Intake and 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 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/>