

We revised and enhanced the University's Sexual Misconduct Policy and Procedures last year with the knowledge that Title IX regulations being proposed by the US Department of Education could necessitate additional changes to Penn's policies and procedures. The new Title IX regulations were issued on May 5, 2020 with an effective date of August 14, 2020. Our leadership team worked to understand the preamble and regulations, which were more than 2,000 pages long, in order to determine what changes were needed to ensure that the University was in compliance with the new regulations. Unfortunately, the timeframe provided did not allow for the broad consultation and comment period that has been Penn's practice and that occurred during academic year 2018-19.

The Policy announced today represents another important step in our work to prevent and respond to sexual misconduct. However, the development and implementation of these policies and procedures is a dynamic process and we will continue our work to ensure that our policies are aligned with our unwavering commitment to provide a healthy and safe environment for all members of the Penn community, free from sexual misconduct. As we implement the revised policies and procedures this fall, we welcome any further comments and advice from faculty, staff, and students regarding ways that might strengthen our policies beyond the changes we have adopted here to ensure that our policies and procedures are effective and fair in dealing with this serious issue.

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## University of Pennsylvania Sexual Misconduct Policy, Resource Offices and Complaint Procedures

Effective August 14, 2020

The mission of the University of Pennsylvania is to offer a world-class education to our students, train future leaders, expand and advance research and knowledge, serve our community and society both at home and abroad, and provide the most expert and outstanding healthcare for our patients. To create and sustain a campus climate in which members of the University community are able to thrive and achieve their full potential, the University has established a wide range of policies, educational programs, resources, support, and reporting systems to respond to complaints of sexual misconduct made against students, postdoctoral or other trainees, faculty, and staff. Sexual harassment, sexual violence, and other forms of sexual misconduct will not be tolerated. The University's policies, resources, and complaint procedures include the following:

- I. Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy
- II. Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings
- III. Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct
- IV. Procedures for Resolving Complaints of Sexual Misconduct Against Faculty
- V. Procedures for Resolving Complaints of Sexual Misconduct Against Staff

As detailed in these policies and procedures, in all cases where a member of the community, or other person, wishes to initiate a complaint against a member of the community (student, faculty, or staff) for sexual misconduct, the complaint should be brought to the Associate Vice President for Equity and Title IX Officer ("AVP"). The AVP will be responsible for determining the appropriate procedures to be followed and will be charged with overseeing the process.

Not every act that might be offensive to an individual or a group necessarily will be considered sexual harassment and/or a violation of the University's standards of conduct. In determining whether an act violates University policy, the totality of the circumstances surrounding the conduct must be carefully reviewed. Due consideration must be given to the protection of individual rights, open expression, and academic freedom.

### Complaints Against Faculty

Any member of the University community, visitor to campus, or a participant in a University-sponsored activity may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or consensual romantic or sexual relationships in the workplace or educational setting against a faculty member, instructor, postdoctoral or other trainee, or teaching assistant. The complaint should be made to the AVP who will meet with the complainant; determine whether the behavior is covered by the Sexual Misconduct Policy and, if so, the appropriate process for resolution or investigation; and oversee that process. If a determination is made that the complaint involves a violation of the Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Faculty. If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings Policy, then the AVP will oversee the informal resolution or investigative

process(es). The AVP will advise the Dean of the applicable School that a complaint has been made and discuss any interim measures that may be needed. In either case, for Standing Faculty, the Procedure Governing Sanctions Taken Against Members of the Faculty, *Handbook for Faculty and Academic Administrators*, Part II.E.16, will be followed where applicable. Complaints against faculty alleging inappropriate conduct that does not meet the definition of sexual harassment, sexual violence, or relationship violence or stalking under these policies shall be addressed by the Dean's Office of the School or the Office of the Vice Provost for Faculty, consistent with University policies and procedures.

### Complaints Against Staff

Any member of the University community, visitor to campus, or a participant in a University-sponsored activity may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or consensual romantic or sexual relationships in the educational setting or workplace, against a staff member. The complaint should be made to the AVP who will meet with the complainant and coordinate with the Office of Staff and Labor Relations in the Division of Human Resources, as appropriate. If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings Policy, then the AVP will oversee the informal resolution or investigative process(es), advising the Dean or Vice President of the applicable administrative Division that a complaint has been made and discussing any interim measures that may be needed. If a determination is made that the complaint involves a violation of the Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Staff or the applicable collective bargaining agreement. Complaints against staff members alleging inappropriate conduct that does not meet the definition of sexual harassment, sexual violence, or relationship violence or stalking under these policies shall be addressed by the Division of Human Resources and/or the Office of Affirmative Action and Equal Opportunity Programs, consistent with University policies and procedures.

### Complaints Against Enrolled Students

Any member of the University community, visitor to campus, or a participant in a University-sponsored activity may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or consensual romantic or sexual relationships in the educational setting or workplace against an enrolled student. The complaint should be directed to the AVP who will oversee the investigative and resolution process(es). If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings Policy, then the AVP will oversee the informal resolution or investigative process(es), advising the Dean of the applicable School that a complaint has been made and discussing any interim measures that may be needed. If a determination is made that the complaint

involves a violation of the Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct. Complaints against enrolled students alleging inappropriate conduct that does not meet the definition of sexual harassment, sexual violence, or relationship violence or stalking under these policies shall be addressed by the Office of Student Conduct or the School in which the Respondent is enrolled, consistent with University and School policies and procedures.

The University has resource offices available to provide information, education and support as outlined in the policies and procedures below.

## Reporting and Monitoring

The University is committed to ensuring that members of the University community who share information regarding incidents of sexual misconduct receive the information, counseling and support that they need and are aware of the process for making a complaint. The University is also committed to monitoring reports and complaints of sexual misconduct so that any patterns or systemic problems revealed by such reports and complaints can be addressed. Consistent with these commitments, the University has determined that the AVP should be advised when incidents of

sexual misconduct are reported to the Division of Human Resources (and Human Resources staff in the Schools and Centers); Deans, Vice, Associate, or Assistant Deans in the 12 Schools, Vice Provosts, Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP), and Division of Recreation and Intercollegiate Athletics (DRIA). Information provided to offices designated as confidential resources in the Sexual Misconduct Policy are to provide the AVP with information regarding possible violations that protects the identity of the individual who provided it. However, in all cases in which there is a danger to the parties or others, that information must be reported immediately to Wellness Services or the Special Services Department in the Division of Public Safety. When an incident of sexual misconduct is reported to the AVP, appropriate steps will be taken to ensure that the individual who reported the incident has been advised of the available resources and the process for making a formal complaint. Members of the University community who have crime statistics reporting obligations under the Clery Act are obligated to report the matter to the Division of Public Safety, in addition to the AVP. For additional information about Clery Act reporting or to make a report, refer to the Clery Act & Crime Reporting page at <https://www.publicsafety.upenn.edu/clery/>

## I. Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy

All forms of sexual harassment, sexual violence, relationship violence and stalking and attempts to commit such acts are considered to be serious misconduct and may result in disciplinary action up to and including expulsion or termination of employment. In addition, such acts may violate federal, state and local laws and perpetrators of such acts may be subject to criminal prosecution. This policy, which prohibits behaviors that are more generally addressed by the University's Sexual Misconduct Policy, applies to faculty, post-doctoral and other trainees, students, staff and visitors to the University campus and facilities.

### Sexual Harassment

For the purposes of University policy, the term "sexual harassment"<sup>1</sup> refers to any unwanted conduct that is based on an individual's sex, sexual orientation, gender identity, or gender expression and that:

- Conditions an educational or employment benefit on participation in unwelcome sexual conduct;
- A reasonable person would determine is so severe, pervasive, and/or objectively offensive that it effectively denies a person equal access to an educational or employment program or activity.

**Sexual violence** includes a range of behaviors in which an act of a sexual nature is taken against another individual without that person's consent or when the individual is unable to consent. There are various types of sexual violence, including but not limited to sexual assault and rape (defined below).

**Sexual assault** (including but not limited to rape) is defined as having committed any of the following acts:

- Any physical sexual contact that involves the use or threat of force or violence or any other form of coercion or intimidation.
- Any physical sexual contact with a person who is unable to consent due to incapacity or mental or physical impairment. "Incapacity" or "impairment" include but are not limited to being under the influence of alcohol or drugs or being too young to consent.

**Rape** is defined as sexual assault involving an act of penetration and includes acquaintance rape (assailant and victim know each other).

**Non-forcible sex acts** include unlawful sex acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent as defined by Pennsylvania law.

**Consent** is an affirmative decision to engage in mutually agreed upon sexual activity and is given by clear words or actions. Consent may not be inferred from silence, passivity or lack of resistance alone. Furthermore, consent to one form of sexual activity does not imply consent to other

forms of sexual activity and the existence of a current or previous dating, marital or sexual relationship is not sufficient to constitute consent to additional sexual activity. Assent shall not constitute consent if it is given by a person who, because of youth, disability, intoxication or other condition, is unable to lawfully give his or her consent.

**Relationship violence**, also commonly known as dating violence, is defined as an act or a pattern of abuse committed by a person involved in a social, sexual or romantic relationship, past or present, with the victim. Relationship violence can encompass a broad range of behaviors that may include physical violence, sexual violence, emotional violence and economic violence.

**Domestic violence** is defined as abuse committed against an adult who is a spouse or former spouse, cohabitant or someone with whom the abuser has a child, has an existing dating or engagement relationship or has had a former dating or engagement relationship.

**Stalking** means engaging in a course of conduct directed at specific person(s) that would cause a reasonable person to fear for his or her safety, the safety of others, or to suffer substantial emotional distress.

In determining whether the alleged conduct violates this policy, consideration will be given to the totality of the circumstances, including the nature of the conduct and the context in which the alleged incident occurred. Generally, complaints of sexual harassment, sexual violence, relationship violence and stalking must be made by members of the University community and those made by individuals who are not students, faculty, staff, post-doctoral or other trainees, or alumni will be directed to external resources available to respond to their complaint or provide support and advice.

The University regards such behavior as a violation of the standards of conduct required of all members of its community. Accordingly, as noted in the University's *Handbook for Faculty and Academic Administrators*, *Human Resources Policy Manual*, *Pennbook* and other publications, persons engaged in such behavior are subject to the full range of internal disciplinary actions, including separation from the institution. The same range of disciplinary actions will be applied in the event of retaliation against an individual who in good faith makes an allegation of sexual harassment, who cooperates in an investigation into such allegations, or who opposes any act of sexual misconduct as defined in this Policy.

Not every act that might be offensive to an individual or a group necessarily will be considered a violation of the University's standards of conduct. In determining whether an act constitutes sexual misconduct, the totality of the circumstances surrounding the conduct must be carefully reviewed. Due consideration must be given to the protection of individual rights, open expression, and academic freedom.

### A. Resources

Schools, Centers and administrative Divisions should make known to all of their members the available resource offices for information, counseling and support, as well as the informal and formal procedures for resolving complaints of sexual harassment within the appropriate School, Center, Division, or at the University level. These resources include the following:

<sup>1</sup> The terms "harassment" and "sexual harassment" are used throughout and are defined as a matter of University policy, and are not necessarily identical or limited to the uses of the term in external sources, including governmental guidelines, laws, regulations or legal decisions. Where sexual harassment involves sexual violence, relationship violence, domestic violence and/or stalking, refer also to the University's Sexual Violence, Relationship Violence and Stalking Policy. This Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy and the Consensual Romantic & Sexual Relations in the Workplace and Educational Setting Policy are sometimes referred to together as the "Sexual Misconduct Policies."

## 1. Confidential Resources for Information, Counseling and Support

Resource offices are available to assist members of the Penn community and visitors to the campus who have been, or know someone who has been, the victim of sexual violence, relationship violence or stalking. The staff of these offices are available to provide counseling and support, as well as information about and assistance with making a complaint.

Generally, the information shared with the resources listed below will be held in confidence, consistent with the University's obligation to address complaints of sexual violence, unless the person sharing the information gives their consent to the disclosure of that information. Non-identifying information regarding complaints should be provided to the AVP for purposes of assuring compliance with Title IX and other applicable laws and regulations. Confidential resources are not obligated to share identifying information with the AVP when an incident of sexual violence is shared with that resource. However, the commitment to confidentiality does not preclude the sharing of information among University administrators as appropriate to keep members of the University community safe. In addition, confidential resources should submit non-identifying information about incidents of sexual violence to the Division of Public Safety for the purpose of crime statistics reporting under the Clery Act. (For additional information regarding reporting requirements, see the Clery Act & Crime Reporting page at <https://www.publicsafety.upenn.edu/clery/>)

- *African-American Resource Center* (resource for students, staff or faculty)
- *Counseling and Psychological Services*, including its Sexual Trauma Treatment Outreach and Prevention team also known as STTOP (resource for students),
- *Employee Assistance Program* (resource for staff or faculty)
- *Lesbian Gay Bisexual Transgender Center* (resource for students, staff or faculty)
- *Office of the University Chaplain* (resource for students, staff, faculty, postdoctoral and other trainees or visitors)
- *Office of the Ombuds* (resource for students, staff, faculty, postdoctoral and other trainees, or visitors)
- *Penn Violence Prevention* (resource for students)
- *Penn Women's Center* (resource for students, staff or faculty)
- *Special Services Department*, Division of Public Safety (resource for students, staff, faculty, postdoctoral and other trainees or visitors)
- *Student Health Service* (resource for students)

## 2. Informal and Formal Mechanisms for Complaint Resolution

If both parties agree and the AVP deems it to be an appropriate instance for an informal resolution of a complaint, the AVP will meet with the parties individually, and others as appropriate, in an effort to resolve the complaint. When informal resolution is not chosen, one of the parties is not satisfied with the results, or the proposed resolution is not appropriate, the formal mechanisms described below should be used.

A formal complaint of sexual misconduct against any member of the Penn community should be initiated by contacting the AVP. Formal complaints will be handled in accordance with the applicable procedures as set forth below.

### Complaints Against Faculty

Any member of the University community, visitor to campus or a participant in a University-sponsored activity may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or inappropriate romantic or sexual relationships in the educational setting or workplace, against a faculty member, instructor, postdoctoral or other trainee, or teaching assistant. The complaint should be made to the AVP, who will meet with the complainant, determine the appropriate process under University policy for investigation, and oversee that process. If a determination is made that the complaint involves a violation of the Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Faculty. If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings Policy, then the AVP will oversee the formal or informal resolution process(es), advising the Dean of the applicable School that a complaint has been made and discussing any interim measures that may be needed. In either case, for Standing Faculty, the Procedure Governing Sanctions Taken Against Members of the Faculty, *Handbook for Faculty and Academic Administrators*, Part II.E.16, will be followed where applicable.

### Complaints Against Staff

Any member of the University community visitor to campus or a participant in a University-sponsored activity may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or inappropriate romantic or sexual relationships in the educational setting or workplace, against a staff member. The complaint should be made to the AVP who will meet with the complainant and coordinate with the Office of Staff and Labor Relations in the Division of Human Resources, as appropriate. If a determination is made that the complaint involves a violation of the Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Procedures for Resolving Complaints of Sexual Misconduct Against Staff or the applicable collective bargaining agreement. If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings Policy, the AVP will oversee the formal or informal resolution process(es), advising the Dean or Vice President of the applicable administrative Division that a complaint has been made and discussing any interim measures that may be needed.

### Complaints Against Enrolled Students

Any member of the University community or a visitor to campus may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or inappropriate romantic or sexual relationships in the educational setting or workplace against an enrolled student. The complaint should be directed to the AVP who will oversee the investigative and resolution process(es). If a determination is made that the complaint involves a violation of the Sexual Harassment, Sexual Violence, Relationship Violence and Stalking Policy, then the AVP will direct the process in accordance with the Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct. If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relationships in the Workplace and Educational Settings Policy, then the AVP will oversee the formal or informal resolution process(es), advising the Dean of the applicable School that a complaint has been made and discussing any interim measures that may be needed.

Members of the University community who would like assistance with making a formal complaint may contact any of the confidential resources identified above. As further set forth below, all formal complaints involving Sexual Misconduct are to be initiated by contacting the Associate Vice President for Equity and Title IX Officer ("AVP") who will be responsible for deciding whether the conduct described would violate the Sexual Misconduct Policy, and if so, which investigative or resolution process to pursue.

### B. Reporting and Monitoring

The University is committed to ensuring that members of the University community who share information regarding incidents of sexual misconduct receive the information, counseling and support that they need and are aware of the process for making a formal complaint. The University is also committed to monitoring reports and complaints of sexual misconduct so that any patterns or systemic problems revealed by such reports and complaints can be addressed. Consistent with these commitments, the AVP should be advised when incidents of sexual misconduct, including sexual violence, are reported to any of the University's resource offices (except those identified as confidential resources), Division of Human Resources (as well as Human Resources staff in the Schools and Centers); Deans, Vice, Associate or Assistant Deans of the 12 Schools; Vice Provosts; Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP); and Division of Recreation and Intercollegiate Athletics (DRIA). When an incident of sexual misconduct is reported to the AVP, appropriate steps will be taken to ensure that the individual who reported the incident has been advised of the resources available to them and the process for making a formal complaint. Members of the University community who have crime statistics reporting obligations under the Clery Act are obligated to report the matter to the Division of Public Safety, in addition to the AVP. For additional information about Clery Act reporting or to make a report, refer to the Clery Act & Crime Reporting page at <https://www.publicsafety.upenn.edu/clery/>

### C. Rights of Complainants and Respondents

Persons who make a complaint and those who are responding to complaints have the following rights:

- The option to notify law enforcement;
- The option to have an advisor, including an attorney the party has retained,

present during interviews that are part of a University initiated investigation;

- To be notified of counseling and support services available; and
- To be notified of available options to change academic, living or work arrangements.

#### **D. Education and Prevention**

*All members of the University community have a responsibility to aid in the prevention of sexual harassment and are encouraged to discuss concerns with the AVP or another of the University resource offices listed in the policy. The AVP will ensure that the policy is publicized regularly and that educational programs and training are offered to faculty, staff, and students.*

#### **E. Policy Against Retaliation**

University policy expressly prohibits retaliation against faculty, staff or students who in good faith make reports of violations of this policy. In addition, knowingly and intentionally making a false report of a violation of this policy is prohibited. Members of the Penn community who take adverse action against, intimidate, threaten or otherwise engage in retaliation against a person because they filed a complaint of sexual misconduct or served as a witness during an investigation are subject to disciplinary action, up to and including termination of their employment or expulsion from the University.

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## II. Consensual Romantic and Sexual Relationships in the Workplace and Educational Setting Policy

### A. Faculty and Students and Academic Settings

The relationship between faculty member<sup>2</sup> and student is central to the academic mission of the University. No non-academic or personal ties should be allowed to interfere with the integrity of the faculty-student relationship. Consensual sexual relations between faculty and student can adversely affect the academic enterprise, distorting judgments, or appearing to do so to others, and providing incentives or disincentives for student-faculty contact that are inappropriate.

For these reasons, any sexual relations or dating relationships between a faculty member and an undergraduate student enrolled at the University are prohibited. The prohibition extends to all academic advisors and program directors, including those based in the College Houses and other University-owned or administered housing. The prohibition also extends to graduate, professional, or undergraduate student assistants, but, in their case, only with respect to those undergraduate students over whom they have academic responsibility.<sup>3</sup>

Although consensual sexual relations or dating relationships between faculty and graduate or professional students are not categorically prohibited, the University strongly discourages all sexual relations or dating relationships between faculty and graduate or professional students. Further, sexual relations or dating relationships between a faculty member and a graduate or professional student during the period of the faculty/student relationship are prohibited. The prohibition extends to sexual relations or dating between a graduate or professional student and other students for whom they have some supervisory academic responsibility, between department chairs and students in that department, and between graduate group chairs and students in that graduate group. Likewise, sexual relations and dating relationships are prohibited between a graduate or professional student and their academic advisors, program directors, and all others who have any supervisory responsibility for that student.

### B. Workplace and Other Settings

Those entrusted with responsibility for supervising, evaluating, advising, or mentoring other members of the Penn community are in inherently unequal positions. Faculty, staff, and others should not evaluate or supervise those with whom they have a familial, romantic or sexual relationship because of the potential for conflict of interest, or the appearance of favoritism, exploitation or bias. As is the case for faculty, sexual or romantic relationships between staff members and undergraduate students are prohibited. Although consensual sexual relations or dating relationships between staff and graduate or professional students, are not categorically prohibited, the University strongly discourages all sexual relations or dating relationships between staff and graduate or professional students.

Consensual sexual or romantic relationships between those employed by the University as faculty or staff are not in general prohibited by this policy. However, relationships between employees in which one has direct or indirect authority over the other are potentially problematic, including relationships between supervisors and their direct and indirect reports, between senior faculty and junior faculty, and managers and those

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<sup>2</sup> For purposes of this policy, “faculty” includes (but is not limited to) standing faculty, clinical faculty, associated faculty, and academic support staff, as well as clinical or lab supervisors, postdoctoral fellows, house staff, residents, graduate and undergraduate teaching assistants, and any other person providing instruction, academic advising, or academic oversight of an enrolled student in any school, course, or program, including summer and off-campus programs, irrespective of geographical location.

<sup>3</sup> “Academic responsibility” includes (but is not limited to) teaching, grading, mentoring, advising, or evaluating research or other academic activity, participating in decisions regarding funding or other resources, clinical supervision, and recommending for admissions, employment, fellowships, or awards. In this context, students include graduate and professional school students, postdoctoral scholars, and clinical residents or fellows.

who report to them (directly or indirectly). If such a relationship develops or exists as a result of a change in employment or academic status, the person in the position of greater authority or power must recuse themselves to ensure that they do not exercise any supervisory or evaluative function over the other person in the relationship. Where such recusal is required, the recusing party must also notify their supervisor, department chair, dean or manager, so that person can ensure adequate alternative supervisory or evaluative arrangements are put in place. Such notification is always required where recusal is required. This obligation to recuse and notify exists for past as well as for current relationships. Failure to disclose the relationship in a timely fashion will itself be considered a violation of policy.

It is understood that sexual or romantic relationships may be private and the University treats such information sensitively and (to the extent practicable) confidentially. The University has the option to take any action necessary to ensure compliance with the spirit of this policy, including transferring either or both employees to minimize disruption of operations.

### Mechanisms for Complaint Resolution

To make a complaint alleging a violation of this policy, the Associate Vice President for Equity and Title IX Officer (“AVP”) should be contacted.

#### Complaints Against Faculty

If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relations in the Workplace and Educational Settings Policy, (other than sexual harassment, sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), advising the Dean of the applicable School that a complaint has been made and discussing any interim measures that may be needed. In either case, for Standing Faculty, the Procedure Governing Sanctions Taken Against Members of the Faculty, *Handbook for Faculty and Academic Administrators*, Part II.E.16, will be followed where applicable.

#### Complaints Against Staff

If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relations in the Workplace and Educational Settings Policy (other than sexual harassment, sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), advising the Dean or Vice President of the applicable administrative Division that a complaint has been made and discussing any interim measures that may be needed.

#### Complaints Against Enrolled Students

If a determination is made that the complaint involves a violation of the Consensual Romantic and Sexual Relations in the Workplace and Educational Settings Policy (other than sexual harassment, sexual violence or sexual assault), then the AVP will oversee the informal resolution or investigative process(es), advising the Dean of the applicable School that a complaint has been made and discussing any interim measures that may be needed.

### C. Policy Against Retaliation

University policy expressly prohibits retaliation against faculty, staff or students who in good faith make reports of violations of this policy. In addition, knowingly and intentionally making a false report of a violation of this policy is prohibited. Members of the Penn community who take adverse action against, intimidate, threaten or otherwise engage in retaliation against a person because they filed a complaint of sexual misconduct or served as a witness during an investigation are subject to disciplinary action, up to and including termination of their employment or expulsion from the University.

### III. Student Disciplinary Procedures for Resolving Complaints of Sexual Misconduct<sup>4</sup>

#### 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.<sup>5</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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 party<sup>6</sup>, 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-

<sup>6</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 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 advisors<sup>7</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 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

<sup>7</sup> 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.<sup>8</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 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.

<sup>8</sup> 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/vvp/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/>

## 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/pwcc/>

#### **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/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>

**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/>

## 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.<sup>15</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 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.<sup>16</sup>

#### 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

<sup>15</sup> 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.

<sup>16</sup> 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.<sup>17</sup> 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 advisors<sup>18</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

<sup>18</sup> 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.

<sup>17</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.

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.<sup>19</sup> 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

<sup>19</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.

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-

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/>

