

## **Policy Statement**

Pennsylvania College of Health Sciences (the “College”) is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. To that end, the College prohibits sexual misconduct in all its forms, including sex discrimination, sexual harassment, sexual exploitation, sexual assault, relationship violence, and stalking. Such offenses constitute a violation of this policy, are unacceptable, and will not be tolerated.

To this end, the College has designated all employees as “responsible employees” with a duty to promptly report sexual discrimination to which they become aware, in all of its forms, to the Title IX Coordinator.

## **Scope**

This policy applies to all members of the College community, including staff, faculty, administrators, students, applicants for employment, customers, third-party contractors, and all other persons that participate in the College’s educational programs and activities, including third-party visitors on campus. This policy prohibits sex discrimination, sexual harassment, and sexual violence whether the complainant and alleged perpetrator are members of the same or opposite sex, and it applies regardless of national origin, immigration status, or citizenship status. The College’s prohibition on sex discrimination, sexual harassment, and sexual violence extends to all aspects of its educational programs and activities, including, but not limited to admissions, employment, academics and student services.

## **Jurisdiction**

The College may investigate alleged conduct covered by this policy that occurred on campus, during or at an official College program or activity, or at an activity that otherwise affects the College’s working or learning environments, regardless of whether the alleged conduct occurred on or off campus. In situations where the alleged sexual misconduct occurred outside of the context of a College program or activity where the respondent is not a member of the College community (including when the respondent has graduated or left the College), the College typically will not conduct an investigation, but may address the situation and provide appropriate resources to impacted individuals and, where appropriate, the broader College community. The College will investigate complaints made under this policy and, if necessary, take action to prevent the recurrence of sexual misconduct and remedy its effects.

## **Title IX Statement**

It is the policy of the College to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the College’s educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. The College has designated the Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sex discrimination.

**Joseph Peltzer**

Compliance Officer & Title IX Coordinator  
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**OR**

[TitleIX@PACollege.edu](mailto:TitleIX@PACollege.edu)

The College has also designated the following Deputy Title IX Coordinators to assist the Title IX Coordinator in carrying out his or her duties under this policy:

**Kristina Lucia**

Director of Human Resources  
850 Greenfield Road, 2nd floor Stoudt Building  
717-947-6163

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**Matthew Swatchick**

Dean of Students  
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## **Prohibited Conduct**

As described below, the College prohibits: (1) **sex discrimination**, (2) **sexual harassment**, (3) **sexual assault**, (4) **sexual exploitation**, (5) **relationship violence**, and (6) **stalking**.

### **1. Sex Discrimination**

Sex discrimination occurs when persons are excluded from participation in, or denied the benefits of, any College program or activity because of their sex. Sex discrimination also includes discrimination on the basis of pregnancy, gender, gender identity or expression, sexual orientation, and failure to conform to stereotypical notions of femininity and masculinity (i.e., gender stereotyping).

### **2. Sexual Harassment**

Sexual harassment is unwelcome conduct of a sexual nature and includes sexual advances, requests for sexual favors, and other verbal, physical, visual, or digital conduct of a sexual nature when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual's employment or education;
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual; or

- Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment.
  - In determining whether a hostile environment exists, the College will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the complainant's participation in the College's programs and activities, the nature and severity of the conduct at issue, the frequency and duration of the conduct, the relationship between the parties (including accounting for any power differential), the respective ages of the parties, the context in which the conduct occurred, and the number of persons affected.

Examples of Sexual Harassment:

- Pressure for a dating, romantic, or intimate relationship, or for sexual activity
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Unnecessary references to parts of the body
- Sexual innuendos, jokes, humor, or gestures
- Displaying sexual graffiti, pictures, videos or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- Social media use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails or text messages
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Harassing a male because he "isn't manly enough" or a female because she "is too manly"
- Sexual violence (as defined below)

**3. Sexual Violence (including Sexual Assault and Rape)**

Sexual violence is a particularly severe form of prohibited sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity, because he or she is below the minimum age of consent in the applicable jurisdiction, or because of his or her incapacitation due to the use of drugs and/or alcohol. Prohibited sexual violence includes these forms of sexual assault:

- A. *Sexual penetration without consent (e.g., rape):* Any penetration of the sex organs or anus of another person when consent is not present; any penetration of the mouth of another person with a sex organ when consent is not present; or performing oral sex on another person when consent is not present. This includes penetration or intrusion, however slight, of the sex organs or anus of another person by an object or any part of the body.
- B. *Sexual contact without consent (e.g., fondling):* Knowingly touching or fondling a person's

genitals, breasts, thighs, groin, or buttocks, or knowingly touching a person with one's own genitals, breasts, or buttocks, when consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.

- C. *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the laws of the state in which the incident occurred.
- D. *Statutory rape*: Sexual intercourse with a person who is under the statutory age of consent under the laws of the state in which the incident occurred.

#### 4. Sexual Exploitation

Taking sexual advantage of another person for the benefit of oneself or a third party when consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- Indecent or lewd exposure or inducing others to expose themselves when consent is not present;
- Recording any person engaged in sexual or intimate activity in a private space without that person's consent;
- Distributing personal, sexual information, images, or recordings about another person without that person's consent (applies even if the videos were obtained with consent);
- Recruiting, harboring, transporting, providing, or obtaining another person for the purpose of sexual exploitation;
- Inducing incapacitation in another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct actually occurs; and
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity.

#### 5. Relationship Violence (Dating/ Domestic Violence)

Dating violence and domestic violence are forms of relationship violence that can also constitute sexual misconduct when motivated by a person's sex. These types of conduct, no matter the motivation behind them, are a violation of this policy and will be addressed pursuant to the Complaint Resolution Procedures below.

- A. *Domestic Violence*: Includes acts of violence committed by a current or former spouse or intimate partner of a complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate

partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

*Dating Violence:* Means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship

## 6. Stalking

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. Stalking can include conduct that occurs via electronic communications, including social media (i.e., cyberstalking)

## Consent

### Explanation of Consent

Lack of consent is a critical factor in determining whether sexual violence has occurred. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent (see explanation of coercion below)
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent
  - Warning signs of when a person may be incapacitated due to drug and/or alcohol use include: slurred speech, falling down, passing out, and vomiting
- If a person is asleep or unconscious, there is no consent
- If a person is below the minimum age of consent in the applicable jurisdiction, there cannot be consent
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent

- Being in a romantic relationship with someone does not imply consent to any form of sexual activity
- Effective consent may not exist when there is a disparity in power between the parties (e.g., faculty/student, supervisor/employee)

### **Coercion**

Coercion is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity.

Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. When someone makes it clear that he/she does not want to engage in sexual activity, that he/she wants to stop, or that he/she does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

### **Incapacitation**

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the "who, what, where, when, why or how" of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation can only be found when the respondent knew or should have known that the complainant was incapacitated when viewed from the position of a sober, reasonable person.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol of other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; or
- Capacity to appreciate the nature of circumstances of the act.

No single factor alone is determinative of incapacitation. Some common signs that someone is incapacitated may include:

- Slurred speech
- Smell of alcohol on breath
- Confusion
- Shaky balance
- Stumbling or falling down
- Vomiting
- Combativeness or emotional volatility
- Outrageous or unusual behavior
- Unconsciousness

Sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. ***If there is any doubt as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.***

## **ROLES AND RESPONSIBILITIES**

### **Title IX Coordinator**

It is the responsibility of the Title IX Coordinator to: (1) ensure the College's compliance with Title IX; (2) identify and address any patterns or systemic problems of sexual misconduct at the College; (3) coordinate dissemination of information and education and training programs; (4) receive complaints under this policy; (5) assist members of the College Community in understanding that sexual misconduct is prohibited by this policy; (6) answer questions about this policy; (7) ensure that employees and students are aware of the procedures for reporting and addressing complaints of sexual misconduct; and (8) to implement the Complaint Resolution Procedures or to designate appropriate persons for implementing the Complaint Resolution Procedures. The Deputy Title IX Coordinator will assist the Title IX Coordinator in carrying out these responsibilities.

### **Administrators, Department Chairs, and Other Managers**

It is the responsibility of administrators, department chairs, and other supervisors (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

### **Employees – Reporting Requirement**

Throughout this policy, the term “employees” includes all faculty, staff, and administrators. It is the responsibility of employees to review this policy and comply with it.

All College employees have a duty to report sexual misconduct to the Title IX Coordinator or Deputy Title IX Coordinator when they receive a report of such conduct, witness such conduct, or otherwise obtain information about such conduct. This includes employees who may have a professional license requiring confidentiality if they are not employed by the College in that professional role. An employee not reporting sexual misconduct as required by this policy may be disciplined accordingly, up to and including termination.

### **Students**

It is the responsibility of students to review this policy and comply with it.

## **COMPLAINTS & RESOLUTION**

The College will resolve complaints of violations of this policy in accordance with its Complaint Resolution Procedures, referenced herein.

A “complainant” is the party seeking for a complaint to be investigated and resolved in accordance with this policy. A “respondent” is the party who has been alleged to have violated this policy and is responding to a complaint.

### **Formal Resolution**

Formal resolution of a complaint begins with an investigation conducted by an investigator assigned by the Title IX Coordinator. The investigation is conducted in accordance with the procedures listed below. The conclusion of an investigation may, or may not, result in a finding of a policy violation, based on a preponderance of the evidence standard. For complaints where a policy violation is found, the College will impose disciplinary action, including and up to termination or expulsion.

### **Informal Resolution**

As an alternative to pursuing a formal complaint and investigation, a complainant may seek an informal resolution through the Title IX Coordinator. An informal resolution may result in implementing protective measures and accommodations, targeted or general educational programming or training, and/or direct intervention with the respondent, but does not result in formal disciplinary measures.

Informal resolution is available in matters in which the Title IX Coordinator determines it is appropriate and will only be used after the parties have received a full disclosure of the allegations and their options for formal resolution and both voluntarily elect to engage in informal resolution. During an informal resolution process, either party is entitled to end the informal process at any time and use the formal process.

### **Making a Complaint**

Individuals who wish to report sexual misconduct should submit a complaint with the Title IX Coordinator or a Deputy Title IX Coordinator via phone, email, internet form (on the PA College website), or in person, if preferred. This contact information is available on Page 2 of this policy.

So that the College has sufficient information to investigate a complaint, the complaint should include, to the extent known: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the College may follow up appropriately.

All members of the College Community should be aware that all employees, other than those identified as confidential resources, have an obligation to report information about sexual misconduct to the Title IX Coordinator for review and investigation, and they may not keep this information confidential.

### **Conduct that May Constitute a Crime**

Any person who wishes to make a complaint of sexual misconduct that may also constitute a crime—including sexual violence, domestic violence, dating violence, or stalking—is encouraged to make a complaint to local law enforcement. If requested, the College will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911.

An individual reporting sexual misconduct to the College may also *decline* to notify such authorities.

### **Timing of Complaints**

There is no time limit for when an incident of sexual misconduct may be reported; however, reports should be made as soon as possible after the incident, preferably within one year, because the passing of time makes a review of the evidence more difficult and the memories of involved parties become less reliable. Late reporting may limit the College's ability to investigate and respond to the conduct complained of.

### **Bad Faith Complaints**

While the College encourages all good faith complaints of sexual misconduct, the College has the responsibility to balance the rights of all parties. Therefore, if the College's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

## **CONFIDENTIAL RESOURCES**

If a complainant desires to talk confidentially about an incident of sexual misconduct, there are resources available. The following resources are available to assist you and will not further disclose the information you provide, unless otherwise required to do so by law (e.g., if the complainant is a minor):

Quest Behavioral Health & EAP Services

Administrative Hours (8:00 am - 4:30 pm Monday – Friday)

Clinical Services Hours (24 hours a day, 7 days a week)

Phone: 717-851-1486

Toll-free: 800-364-6352

YWCA Rape Crisis Hotline

Behavioral Health and Developmental Services

Phone: 800-654-1211

Domestic Violence and Complainant Resources in Pennsylvania

Sexual Assault/Rape Crisis Centers – 888-772-7227

<http://www.pcadv.org/Find-Help/Complainant-Resources-PA/>

RAINN (Rape, Abuse & Incest National Network)

National Sexual Assault Hotline: 800-656-4673

<https://hotline.rainn.org/> (online hotline)

The College also provides individuals with an on-campus confidential resource option. This resource is available to assist you and will not further disclose the information you provide, unless otherwise required to do so by law (e.g., if the complainant is a minor). While the resource listed below will maintain your confidentiality, he/she may periodically report non-identifiable aggregated data to the Title IX Coordinator so that the College can analyze whether there are patterns or systemic problems of sexual misconduct on campus.

Designated Confidential Resource of the College

Theresa Freeman, RN

College Nurse, Health & Wellness Services

[tefreeman@pacollege.edu](mailto:tefreeman@pacollege.edu)

(717) 947-6189

## RETALIATION

It is a violation of this policy to retaliate against any member of the College Community who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section.

## AMNESTY

The College recognizes that an individual who has been drinking alcohol or using drugs may be hesitant to report sexual misconduct. To encourage reporting, the College will not take disciplinary action for drug or alcohol use against an individual making a good faith report of sexual misconduct, either as the complainant or as a witness, provided that these conduct violations did not and do not place the health

or safety of any other person at risk. The College may, however, require the reporting individual to attend a course or pursue other educational interventions related to alcohol and drugs.

The College's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs.

## **LIMITATIONS ON CONFIDENTIALITY**

The College considers complaints and investigations conducted under this policy to be private matters for the parties involved and will make reasonable and appropriate efforts to preserve both parties' privacy when investigating and resolving a complaint. For that reason, the College will protect the identity of persons involved in reports of sexual misconduct to the best of its ability. The College will only share personally identifiable information with persons with a "need to know" in order for the College to investigate and respond to the complaint or to deliver resources or support services. The College does not publish the names nor post identifiable information about persons involved in a report of sexual misconduct. However, the College cannot guarantee confidentiality to those who make complaints.

If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the College's ability to respond may be limited. The College reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the College Community.

Note that certain types of sexual misconduct are considered crimes for which the College must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public, in accordance with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990. These disclosures will be made without including personally identifying information.

## **ACADEMIC FREEDOM**

The College is firmly committed to free expression and academic freedom. The College is equally committed to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community, and firmly believes that these two legitimate interests can coexist. Discrimination, harassment, and retaliation against members of the College community are not protected expressions or the proper exercise of academic freedom. The College will consider academic freedom in the investigation of reports of sexual misconduct or retaliation that involve an individual's statements or speech.

## **EDUCATION & TRAINING**

Because the College recognizes that the prevention of sexual misconduct is important, it offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention; and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator.

## **COMPLAINT RESOLUTION PROCEDURES**

These Complaint Resolution Procedures apply to the resolution of all reports under the Sexual Misconduct Policy. They apply to the resolution of complaints against students, faculty, administrators, staff, and third parties, and they are the exclusive means of resolving complaints of sexual misconduct.

For purposes of these Complaint Resolution Procedures, “Investigator” means the individual(s) designated by the Title IX Coordinator to investigate a particular complaint (and may include the Title IX Coordinator and/or Deputy Title IX Coordinator).

### **Promptness, Fairness and Impartiality**

These procedures provide for prompt, fair, and impartial investigations and resolutions. All College officials involved in the investigation or appeal process shall discharge their obligations under these Complaint Resolution Procedures fairly and impartially. If an involved College official determines that he or she cannot apply these procedures fairly and impartially due to any actual or perceived conflict of interest, another appropriate individual will be designated to administer these procedures.

### **Required Training**

These procedures will be implemented by College officials who receive annual training on the issues related to sex discrimination, sexual harassment, sexual exploitation, coercion, sexual violence, domestic violence, dating violence, and stalking and how to conduct a fair and equitable investigation.

## **I. INVESTIGATION AND RESOLUTION OF THE COMPLAINT**

### **A. Timing of the Investigation**

The College will endeavor to conclude its investigation and resolution of the complaint within sixty (60) calendar days of receiving it. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation. If either the complainant or respondent need additional time, they shall notify the Investigator in writing explaining how much additional time is needed and why it is needed.

### **B. Informal Resolution**

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and resolution procedure. The following standards apply to any informal resolution method that is utilized:

- The informal process can only be used with both parties’ voluntary cooperation and appropriate involvement by the institution (e.g., the Title IX Coordinator);
- The complainant will not be required to “work out” the problem directly with the respondent; and
- Either party may terminate the informal process at any time and elevate the complaint to the formal investigation procedures described below.

**C. Interim Measures**

Interim measures are reasonable measures the College can put in place for an individual who reports having experienced sexual misconduct, or an individual who has been accused of a policy violation. The Title IX Coordinator or his/her designee may determine that reasonable interim measures for the parties involved, or witnesses, are appropriate during an investigation, informal resolution, as well as outside of the complaint process.

Interim measures may include separating the parties, placing limitations on contact between the parties, or making alternative class-placement or workplace arrangements. Interim measures are available regardless of whether an individual chooses to report an incident to the College or pursue a complaint. The College will keep confidential any interim measures and accommodations provided, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide these measures.

Failure to comply with the terms of interim measures may constitute a separate violation of this policy.

To seek an interim measure, students, staff and faculty should contact the Title IX Coordinator.

**D. Preponderance of the Evidence Standard**

In making any determination on the resolution of the complaint, the evidentiary standard is the preponderance of the evidence; that is, whether it is more likely than not that sexual misconduct occurred.

**E. Support Person/Advisor**

During the investigation and resolution processes, both a complainant and a respondent may ask a support person/advisor to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person/advisor cannot be another complainant or respondent or potential witness. The support person/advisor does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and must agree to maintain the confidentiality of the process. A support person/advisor may be removed if he or she becomes disruptive or does not abide by the limitations discussed in the previous sentence.

**F. Pending Criminal Investigation**

Some instances of sexual misconduct may also constitute criminal conduct. In such instances, the complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the College will assist the complainant in doing so. The pendency of a criminal investigation, however, does not relieve the College of its responsibilities under Title IX. Therefore, to the extent doing so does not interfere with any criminal investigation, the College will proceed with its own investigation and resolution of the complaint.

## **II. RIGHTS OF THE PARTIES**

During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- Equal opportunity to identify and have considered witnesses and other relevant evidence
- Similar and timely access to all information considered by the Investigating Officer
- Equal opportunity to review any statements or evidence provided by the other party
- Equal access to review and comment upon any information independently developed by the Investigating Officer should the Investigating Officer share such information with the other party
- Equal opportunity to appeal determinations pursuant to Section III, below

## **III. COMMENCEMENT OF AN INVESTIGATION**

Once a complaint is made, the Investigator will commence an investigation of it as soon as practicable, but not later than seven (7) days after the complaint is made. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes sexual misconduct. During the course of the investigation, the Investigator may receive counsel from College administrators, the College's attorneys, or other parties as needed.

In certain narrow circumstances, the Investigator may commence an investigation even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigator will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concerns.

### **A. Content of the Investigation**

During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. The investigator will facilitate effective cross-examination of the relevant information; though the parties will not cross-examine the other party or witnesses directly in person. All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

### **B. Resolution**

At the conclusion of the investigation, the Investigating Officer will prepare a written report. The written report will explain the scope of the investigation and identify findings of fact. The report will be provided at the same time to both parties for review and comment. Both the complainant and respondent will have a five (5) business days to review the report and provide comments. If necessary, the version of the report provided to the complainant and/or respondent will be redacted to ensure that sensitive and non-

relevant information concerning any remedial and/or disciplinary measures is disclosed in a manner consistent with Title IX, the Family Educational Rights and Privacy Act (“FERPA”) and the Clery Act.

The report, along with any comments received from the parties, will be provided to the Title IX Coordinator who will then determine whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence. This decision will be communicated in writing to both parties at the same time, and will include an analysis of the Title IX Coordinator’s conclusion and the steps necessary to maintain an environment free from discrimination and harassment and to protect the safety and well-being of the complainant and other members of the College Community. Such actions will also include reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of discrimination, harassment, and retaliation. Examples of such action may include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training. The notification of the written report provided to the parties will include a description of the appeal procedures set forth below.

### **C. Sanctioning**

In the event a policy violation is determined to have occurred, the decision will also be communicated to the appropriate sanctioning official listed below who will be responsible for determining discipline for the respondent, including up to termination, expulsion, or other appropriate institutional sanctions. The sanctioning official will have three (3) business days in which to determine a sanction and communicate that decision to the parties, in a manner consistent with Title IX, FERPA, and the Clery Act. The sanctioning officials are as follows:

- For students: The Dean of Students
- For employees, including faculty: The Vice President for Human Resources

The written determination of the Investigator, and any sanction issues by the sanctioning official, shall be final subject only to the right of appeal set forth below.

### **D. Possible Sanctions**

Violations of this policy may result in sanctions and corrective actions, which can include, but are not limited to:

- Verbal warning
- Written warning
- Disciplinary hold on academic and/or financial records
- Performance improvement/management process
- Required counseling
- Required training or education
- Campus access restrictions
- No trespass order (with respect to campus locations)
- No contact directive (with respect to an individual)
- Loss of privileges

- Loss of oversight, teaching or supervisory responsibility
- Probation
- Demotion
- Loss of pay increase
- Transfer (employment)
- Revocation of offer (employment or admissions)
- Disciplinary suspension
- Suspension with pay
- Suspension without pay
- Expulsion
- Degree revocation
- Termination of employment
- Revocation of tenure
- Termination of contract (for contractors)

The College may assign other sanctions as appropriate in each particular situation. To the greatest extent possible, sanctions and corrective actions will be imposed in accordance with relevant policies and/or procedures and other requirements set forth in the applicable Staff Handbook, Faculty Handbook, Student Handbook, other policies or handbooks that may be developed over time, or contracts. In addition, the College may take steps to remediate the effects of a violation on complainants and others.

#### **IV. APPEALS**

##### **A. Grounds for Appeal**

The complainant or respondent may appeal the determination of a complaint only on the following grounds:

1. There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the Investigator, would result in a different decision
2. There was a procedural error significant enough to call the outcome into question
3. The punishment or the corrective action imposed is disproportionate to the offense

##### **B. Method of Appeal**

Appeals must be filed with the Vice President for Academic Affairs (“Appeals Officer”) within five (5) business days of receipt of the written report determining the outcome of the complaint, or sanction, whichever is later. The appeal must be in writing and contain the following:

- Name of the complainant
- Name of the respondent
- A statement of the determination of the complaint, including corrective action if any

- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it, and
- Requested action, if any

When an appeal has been filed, the non-appealing party will be notified of such in writing. The appealing party may request a meeting with the Appeals Officer, but the decision to grant a meeting is within the Appeals Officer's discretion. If a meeting is granted, then the other party will be granted a similar opportunity.

### **C. Resolution of the Appeal**

The Appeals Officer will resolve the appeal within ten (10) days of receiving it and may take any and all actions that he/she determines to be in the interest of a fair and just decision. The parties will be notified in writing if the Appeals Officer's decision will take longer than ten (10) days. The decision of the Appeals Officer is final.

The Appeals Officer shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Investigator's previous written determination and/or the sanctions and remedial measures imposed. The written statement shall be simultaneously provided to the complainant, respondent, and the Title IX Coordinator within three (3) days of the resolution.

Appeals are not re-hearings of the initial Title IX complaint(s). Appeals are confined to a review of the written documentation or record of the Investigators and other pertinent information regarding the grounds for the appeal. The Appeals Officer may remand the case back to the Title IX Coordinator for further consideration in the event that new information is discovered, not originally available to the Investigators and which may result in a different decision.

### **V. INTERSECTION WITH OTHER PROCEDURES**

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other College grievance, complaint, or discipline procedures or Handbooks, these complaint resolution procedures will control the resolution of complaints alleging violations of the Sexual Misconduct Policy.

## APPENDIX

### RESOURCES FOR COMPLAINANTS & RESPONDENTS

In addition to the confidential resources listed within the policy, the College provides the additional information as a resource to its campus community.

#### GENERAL RESOURCES

Please contact the Title IX Coordinator if you have any questions about the resources listed below or need assistance in accessing additional information about existing counseling, health, mental health, complainant advocacy, legal assistance, visa and immigration assistance and other services available for complainants of sexual misconduct.

##### Counseling

###### Quest Behavioral Health & EAP Services

Administrative Hours (8:00 am - 4:30 pm Monday – Friday)

Clinical Services Hours (24 hours a day, 7 days a week)

Phone: 717-851-1486

Toll-free: 800-364-6352

###### YWCA 24-Hour Sexual Assault Hotline

Phone: 717-392-7273

###### Additional Domestic Violence and Complainant Resources in Pennsylvania

- Sexual Assault/Rape Crisis Centers
  - Phone: 888-772-7227
- Pennsylvania Coalition Against Domestic Violence
  - Website: <http://www.pcadv.org/Find-Help/Complainant-Resources-PA/>

###### RAINN (Rape, Abuse & Incest National Network)

National Sexual Assault Hotline: 800-656-4673

Website: <https://hotline.rainn.org/> (online hotline)

##### Immigration

###### HIAS & Council Migration Service of Philadelphia

Phone: 215-832-0900

Website: <http://www.hiaspa.org/>

*Nonprofit Legal and Social Services for Immigrants and Refugees*

Nationalities Service Center

Phone: 215-893-8400

<https://nscphila.org/>

*A non-profit organization that provides social, educational, senior, translation and interpretation, and legal services for immigrants and refugees in the Greater Philadelphia area.*

Pennsylvania Immigration Resource Center

Phone: 717-600-8099

Website: <http://www.pirclaw.org/>

*PIRC is a non-profit organization that provides access to justice through legal services – direct representation, coordination of pro bono legal assistance, and pro se assistance.*

## **PRESERVING EVIDENCE**

The College strongly encourages individuals who have experienced sexual misconduct and individuals who have been accused of a violation under this policy to preserve relevant evidence to the greatest extent possible.

Below are suggestions for preserving evidence related to an incident of sexual misconduct. It is important to keep in mind that each suggestion may not apply in every incident:

### **General evidence preservation suggestions:**

- Individuals should consider not altering, disposing of, or destroying any physical evidence of sexual misconduct.
- If there is suspicion that a drink may have been drugged, an individual should inform a medical assistance provider and/or law enforcement as soon as possible so they can attempt to collect possible evidence (e.g., from the drink, through urine or blood sample).
- Individuals can preserve evidence of electronic communications by saving them and/or by taking screen shots of text messages, instant messages, social networking pages, or other electronic communications, and by keeping pictures, logs, or copies of documents that relate to the incident and/or perpetrator.
- Even if an individual chooses not to make a complaint with the College regarding sexual misconduct, they may consider speaking with law enforcement to preserve evidence.

### **Evidence preservation suggestions specific to sexual assault (for survivors)**

- Because some evidence, particularly evidence that may be located on the body, dissipates quickly (within 48-96 hours), individuals who have been sexually assaulted and wish to preserve evidence should go to a hospital or medical facility immediately to seek a medical examination and/or evidence collection.

Pennsylvania College of Health Sciences  
**ADMINISTRATIVE POLICY STATEMENT**

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- An individual who has been sexually assaulted and wishes to preserve evidence should, if possible, not shower, bathe, douche, smoke, brush teeth, eat, drink, use the bathroom, or change clothes or bedding before going to the hospital or seeking medical attention.
- If an individual who has been sexually assaulted decides to change clothes or bedding and wishes to preserve evidence, he/she should not wash the clothes worn or bedding used during the assault, and should bring them to a hospital, medical facility, or the police in a non-plastic (e.g., paper) bag.

<b>Audience:</b> All College
<b>Date Issued:</b> 6/5/18
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