

# SEXUAL MISCONDUCT COMPLAINT RESOLUTION PROCESS

## I. INTRODUCTION AND GENERAL PROCEDURES

### *Introduction*

Harrisburg University is committed to providing a safe and nondiscriminatory environment for all members of its community. The University's *Policy on Sexual Misconduct* prohibits sexual assault, sexual exploitation, stalking, dating violence, domestic violence, sexual harassment, and retaliation. The procedures below outline the process the University follows when it receives a report alleging a violation of the *Policy on Sexual Misconduct*. The Office of Compliance is responsible for handling reports alleging sexual misconduct. All reports will be handled in a prompt, fair, and impartial manner in accordance with Title IX, the *Violence Against Women Act*, and other relevant laws and regulations, applicable University policies, and these guidelines.

The process described below is Harrisburg's internal University process to determine whether Harrisburg's policy has been violated and is not a court system. As such, Harrisburg's process does not use the same rules of procedure and evidence as those used by courts or law enforcement to investigate or adjudicate criminal or civil legal violations. A victim of sexual violence or other crime has the right to simultaneously file and pursue a criminal complaint with law enforcement and a complaint with the University if he or she chooses, and to be assisted by the University in notifying law enforcement authorities if he or she chooses, or to decline to notify such authorities. Parties may also have options to file civil actions in court.

Because allegations of sexual misconduct can sometimes raise challenging new issues and involve competing interests, the University reserves discretion to take reasonable actions to address those issues in a manner consistent with the spirit of the applicable policies and these guidelines, while preserving fairness for both parties and maintaining the integrity of the resolution process.

### *Participant Roles*

- A **complainant** is the person who reports a concern and/or who has been impacted by an alleged policy violation
- A **complainant** is the person who has been the victim of a violation of University policy.
- A **respondent** is the person who is alleged to have violated University policy.
- **Parties** is a term that refers to the complainant and the respondent collectively.
- A **witness** is a person who has direct or indirect knowledge related to specific aspects of a case.
- An **advisor** is a support person who may be present to provide support to a complainant or respondent throughout an investigation and/or hearing. An advisor may not also serve as a witness in the same matter.

### *Participation in Process*

The University invites complainants and witnesses to participate fully in the complaint resolution process. In order for the University to investigate a complaint and/or enable a respondent to fully respond to the allegations, most

situations will require the complainant's participation and that their identity be disclosed to the respondent. If a complainant decides not to participate, but wants disciplinary action to be taken, the University will determine whether it is possible to move forward with a case without the participation of the complainant. In some cases, it will not be possible for disciplinary action to be taken without the participation of the complainant.

When individuals report allegations of sexual misconduct to the University and do not consent to the disclosure of their names and/or do not disclose the identity of the alleged offenders or identifiable information about the alleged offenders, the University's ability to respond to the complaints may be limited. In cases where an individual reporting sexual misconduct requests anonymity or does not wish to proceed with an investigation, the University will attempt to honor that request but, in some cases, the Title IX Coordinator or designee may determine that the University needs to proceed with an investigation based on concern for the safety or well-being of the broader University community (e.g., risk of future acts of sexual violence or a pattern of sexual misconduct). Harrisburg reserves the right to take appropriate action in such circumstances, including in cases when the individual reporting the misconduct is reluctant to proceed.

The University expects respondents to participate fully in all aspects of the complaint resolution process. If a respondent elects not to participate in any part of the process, the University may proceed without the respondent's participation. Respondents will be held accountable for any outcomes issued, even if they decline to participate.

All participants have the responsibility to be completely truthful with the information they share at all stages of the process. Any individual who knowingly or intentionally provides false information as part of a report or investigation under this Policy will be subject to discipline in accordance with the procedures set forth in the Student Handbook, Faculty Handbook, or Staff Handbook. This provision does not apply to a good faith report that is not substantiated or proven by a preponderance of the evidence.

### ***Privacy and Sharing of Information***

The University considers complaints and investigations of sexual misconduct to be private matters for the parties involved. For that reason, the University will protect the identity of persons involved in reports of sexual misconduct to the best of its ability. The University will only share personally identifiable information with persons with a need-to-know in order for the University to investigate and respond or to deliver resources or support services. The University does not publish the names nor post identifiable information about persons involved in a report of sexual misconduct in the University's Daily Crime Log or elsewhere online. The University does not confirm to outside parties the identity of an individual who may be involved in a report of sexual misconduct without that individual's consent. However, the University cannot promise complete confidentiality or privacy in the handling of sexual misconduct reports or complaints.

All participants in an investigation of sexual misconduct will be informed that confidentiality helps enhance the integrity of the investigation, protect the privacy interests of the parties and protect the participants from statements that might be interpreted to be retaliatory or defamatory. For these reasons, the complainant and respondent will be asked at the beginning of the investigation to keep the information related to the investigation and resolution private, to the extent consistent with applicable law. Witnesses and advisors will be asked to maintain complete confidentiality, to the extent consistent with applicable law.

The University reserves the right to share information regarding the case with other appropriate parties on a need-to-know basis in accordance with FERPA and other applicable law.

### ***Retaliation***

Any participant in a sexual misconduct complaint who is aware of possible retaliation or has other concerns regarding the matter should report these concerns to the Title IX Coordinator, who shall take appropriate action to address such conduct in a prompt and equitable manner. Retaliation is explained on page 8 of the [\*Sexual Misconduct Policy\*](#).

### ***Case Resolution Timeline***

In most cases, the University investigates and resolves complaints of sexual misconduct, including determining what sanctions and/or corrective actions will be taken, within 60 days of receiving a complaint, though this may vary based on the availability of the parties and witnesses, the scope of the investigation, provision of interim protective measures or accommodations, or unforeseen circumstances. Many cases are resolved in a much shorter time. Extensions of time beyond this 60 day timeframe may occur for good cause. In cases where there is a simultaneous law enforcement investigation, the University may need to temporarily delay its investigation while law enforcement gathers evidence. However, the University investigation will generally proceed with its investigation and resolution of a complaint during any law enforcement investigation.

### ***Conflicts of Interest***

A list of investigators and appeal reviewers who may make findings in sexual misconduct matters is available through the Office of Compliance. Harrisburg reserves the right to use an appropriately trained investigator or appeal reviewer not on this list as it deems necessary. Parties have the opportunity to raise the issue of a potential conflict of interest or perceived bias within 2 days of their initial meeting with a Title IX staff member. The Title IX Coordinator will determine whether a conflict of interest exists. No investigator or appeal reviewer will make findings or determinations in a case in which they have a conflict of interest. The Title IX Coordinator may hire external investigators in particularly complicated cases if perceived bias cannot be avoided.

### ***Standard of Evidence***

The University uses the preponderance of the evidence standard in investigations and hearings of complaints alleging sexual misconduct and any related violations. This means that the investigation and hearing determine whether it is more likely than not

that a violation of the policy occurred. A preponderance of the evidence means that over 50% of the information supports a finding that the misconduct occurred.

### ***Advisor/Legal Counsel***

Complainants and respondents may be accompanied by one advisor throughout the investigation and any hearing process. An advisor is a support person who is present to provide support to a complainant or respondent throughout an investigation and/or appeal hearing. An advisor may not speak, write, or otherwise communicate with an investigator, hearing officer or panel on behalf of the complainant or respondent. Advisors who do not abide by these guidelines may be excluded from the process.

In any matter involving a complaint of sexual assault, stalking, or dating or domestic violence, the advisor may be any person of the party's choosing, including an attorney. However, an advisor may not also serve as a witness in the same matter. Further, the advisor is still limited to the supportive and not participatory role described above. In all other matters, advisors cannot be a witness or party in the matter or a related matter, a family member of the complainant or respondent, or an attorney.

## **II. REPORTING SEXUAL MISCONDUCT**

### ***Time Limitations for Reporting Sexual Misconduct***

All reports should be made as soon as possible after an incident because the passing of time makes a review of the evidence more difficult and the memories of involved parties become less reliable. There is no time limit for when an incident of sexual misconduct may be reported. The Title IX Coordinator reserves the right to conduct an initial inquiry, investigate, or otherwise address any report, regardless of the time it is made, based on concern for the safety or well-being of the University community.

### ***Reporting Sexual Misconduct***

A report of a violation can be submitted by anyone by any means. Reports can also be submitted by email to [TitleIXReport@HarrisburgU.edu](mailto:TitleIXReport@HarrisburgU.edu), or in person to:

Students should contact:

Deputy Title IX Coordinator for Students:  
Contact: Melissa Morgan, Director of Student Services  
326 Market Street  
Harrisburg, PA 17101  
(717)901-5149

Staff and faculty should contact:

Deputy Title IX Coordinator for Faculty and Staff  
Contact: Ben Allatt, Associate VP for Human Resources  
326 Market Street  
Harrisburg, PA 17101  
(717)901-5112

While anonymous incident reports will be reviewed by the Title IX Coordinator, the University's ability to address alleged misconduct reported by anonymous sources is significantly limited.

Upon receipt of a report of a violation, either from someone other than the alleged victim (e.g., a witness or a colleague), or directly by the alleged victim, a Title IX staff member will contact the alleged victim to provide information about resources and options. The information provided by the Title IX staff member will generally include information about medical and confidential counseling and support resources; options for pursuing a complaint and/or reporting the incident to law enforcement; how to request a protective order or no-contact directive; how to request interim protective measures and accommodations; how to preserve evidence; where to access more information; and an invitation to meet with or speak to a Title IX staff member.

### **III. INITIAL INQUIRY**

When the University receives a report of sexual misconduct, Title IX staff will begin an initial inquiry as soon as practicable, generally within one week. This will most frequently begin with an attempt to gain additional information from the complainant or victim, preferably through an in-person meeting. The scope and timing of further action will depend upon a number of factors, including but not limited to, whether the identity of the victim is known; whether the complainant/ victim is willing to participate in an investigation and/or hearing; whether the complainant/ victim requests anonymity or confidentiality; whether the respondent is affiliated with the University; and whether the University has an obligation to proceed with an investigation based on concerns for the safety of the broader University community, regardless of the complainant's wishes. Following an Initial Inquiry, possible next steps include:

- **Close the Case:** In order for a case to be referred for a full investigation, there must be sufficient information to believe a policy violation may have occurred and the respondent may be responsible. The Office may dismiss a case when insufficient information exists to move forward or when the alleged misconduct—even if substantiated— would not be a violation of policy. The Office may, in its discretion, reopen a case in the future if additional information becomes available or a complainant who was unwilling to pursue formal resolution changes their mind, (consistent with the time limitations discussed above).
- **Informal Resolution:** Informal resolution involves action taken by the University in response to a situation or report of sexual misconduct when formal resolution is not desired by the complainant or when there is not enough information to proceed with a formal resolution process. Examples of informal resolutions can include, but are not limited to, a warning to cease current behaviors, no-contact directives, an educational conversation with the respondent or others, and changes in academic, work, or living arrangements. Mediation will not be used to resolve complaints involving sexual misconduct. See below for further information.

- Formal Resolution: The Title IX Coordinator, Deputy Title IX Coordinator, or designee may determine that there is reasonable information to suggest a policy violation may have occurred. In these cases, the complaint will proceed to further investigation and formal resolution. See below for further information.

#### **IV. PROTECTIVE MEASURES**

The Title IX Coordinator or designee will also determine whether protective measures should be taken while the case is pending. Protective measures may include measures taken prior to the formal resolution to ensure the safety and security of the campus community and/or following the resolution of a case. Protective measures may be applied to the complainant, the respondent or the broader University community and include (but are not limited to):

- A no-contact directive placed between members of the community
- Changes in academic, work, or living arrangements
- Assistance in requesting academic allowances
- A formal request or warning that a community member cease certain behaviors
- Removal of privileges or suspension of activity (including attendance in a specific class)
- Issuance of a timely warning to the University community
- Interim relocation or removal from campus housing
- Interim suspension or administrative leave pending resolution (pursuant to the procedures set forth in the applicable Student, Faculty, and Staff Handbooks).

#### **V. INFORMAL RESOLUTION**

Informal resolution can be used in certain sexual misconduct cases as a way to prevent the recurrence and remediate the impact of alleged sexual misconduct. Informal resolution is most commonly used in cases where the identities of the complainant or respondent are not known or when the complainant wishes to remain anonymous or requests that further action not be taken and the University is able to honor this request. Informal resolution may also be used when the Office determines there is not enough information to proceed to a formal resolution but still believes some action is necessary to address the impact on the University community. Informal resolution is not used when formal resolution is desired by a complainant and the respondent's identity is known. A matter initially resolved through informal resolution may later be referred for formal resolution if additional information becomes available or a complainant who was unwilling to pursue formal resolution changes their mind, (consistent with the time limitations discussed above).

Informal resolution does not result in findings related to responsibility or in sanctions. Options for informal resolution include, but are not limited to:

- A no-contact directive placed between members of the community
- Changes in academic, work, or living arrangements
- An educational meeting with the respondent
- Training for a group or unit
- A formal advisory letter

- Permanent relocation or removal from student housing

## **VI. FORMAL RESOLUTION**

### ***Notification to Respondent***

The sexual misconduct complaint resolution process operates under a standard of fairness, which includes an opportunity for the respondent to be notified of the alleged misconduct and the policy violations under consideration and an opportunity to be heard. As such, if a case is referred for formal resolution, the Office will notify the respondent of the alleged misconduct and the respondent will be given an opportunity to respond. The notification will typically include a brief description of the alleged misconduct, a list of any University policies allegedly violated, and a description of the steps toward resolution. The University may modify the list of policies allegedly violated based on additional information revealed during investigation.

### ***Investigation***

The University will investigate complaints proceeding through formal resolution. Depending upon the circumstances, one or more investigators will be assigned from a list of trained investigators. In some cases an outside investigator may be retained. All investigators are trained on Title IX and the University's policies and procedures. Depending on the circumstances and in its discretion, the University may consolidate for investigation multiple complaints involving the same respondent; and/or complaints where the parties have made sexual misconduct allegations against each other.

During an investigation, the complainant will have the opportunity to describe their allegations and present supporting evidence to the investigator. The respondent will have the opportunity to hear the allegations, respond to them, and present supporting evidence to the investigator. Investigation meetings are not electronically recorded by the University, and may not be recorded by any participant. Parties and witnesses may take notes during investigation meetings. Generally, the investigator will meet with each party and each witness separately. In some cases, the investigator may interview the parties and/or witnesses more than once. The parties may submit additional materials or information to the investigator following their interview(s). In all cases, both the complainant and respondent will have equal opportunities to share information and have their information considered.

The complainant and the respondent will both have the opportunity to present names of witnesses they suggest the investigator solicit information from and questions they request that the investigator ask the other party. Complainants and respondents may only present factual witnesses and may not present character or expert witnesses. The investigator will take the lists provided by the complainant and respondent into consideration when identifying whom they will interview and what questions they ask, but these decisions remain in the investigator's discretion. The investigator may also choose to interview other witnesses not identified by the parties.

Following investigation, the matter will be resolved using either Administrative Resolution, as discussed below.

## ***Administrative Resolution***

Administrative resolution is used in all sexual misconduct cases involving faculty, staff, or third party respondents, and in cases involving student respondents.

Administrative resolution involves a determination made by the Title IX Coordinator of whether the *Policy on Sexual Misconduct* has been violated.

The complainant and the respondent will both be notified simultaneously in writing of the findings of the administrative resolution. In the event a violation is found, the investigator will also provide their findings to the appropriate University office.

- For student respondents, in the event a policy violation is found, the Title IX Coordinator will determine what sanctions or corrective actions should be imposed on the respondent in accordance with the Sanctions set forth in Section VII. .
- For staff respondents, in the event a policy violation is found, the Title IX Coordinator will provide findings to the Office of Human Resources and, when appropriate, the respondent's manager(s), who are responsible for deciding what sanctions or corrective actions should be imposed on the respondent, in accordance with the procedures set forth in Staff Handbook.
- For faculty respondents, in the event a policy violation is found, the Title IX Coordinator will provide findings to the Provost and the Office of Human Resources. Any sanctions or corrective actions imposed will be determined in accordance with the procedures set forth in the Faculty Handbook.
- For third party respondents, findings of a violation will be provided to the appropriate University office for further action consistent with the findings.

Notification of findings and sanctions may be provided to the complainant and the respondent in separate correspondence from the investigator and the office imposing the sanction. Notification to the complainant will include findings related to violations of policy, remedies offered or provided to the complainant, sanctions imposed on the respondent that directly relate to the complainant, and any other steps the University has taken to prevent the recurrence and eliminate a hostile environment, if such was found to exist. In a case related to alleged sexual assault, stalking, or dating or domestic violence, the notification of outcome will also include the rationale for the findings related to violations of policy and all sanctions imposed on the respondent, not just those directly related to the complainant. The respondent generally will not be notified of the individual remedies offered or provided to the complainant. Complainants and respondents are informed of appeal procedures for the sanctions and any changes to the outcome that occur prior to the time that such outcome becomes final. The University encourages the parties to maintain confidentiality of all communication related to findings and sanctions.

## **VII. SANCTIONS**

When a violation of the Policy on Sexual Misconduct is found, sanctions are determined based on several factors, including the severity of the conduct and any prior policy violations. In addition, the University may take steps to address the

effects of the conduct on victims and others, including, but not limited to, counseling and support resources, academic and housing assistance, change in work situations, leaves of absence, and training or other preventative measures. Sanctions and remedial actions aim to eliminate any hostile environment, prevent sexual misconduct from recurring, and remedy any discriminatory effects on a complainant or others. Sanctions and corrective actions can include, but are not limited to:

- Verbal warning
- Written warning
- Advisory Letter
- Monitoring
- Disciplinary hold on academic and/or financial records
- Performance improvement/management process
- Required counseling or therapy
- Required training or education
- Campus access restrictions
- Loss of oversight, teaching or supervisory responsibility
- Probation
- Demotion
- Loss of pay increase
- Revocation of offer (employment or admissions)
- Disciplinary suspension
- Suspension with pay
- Suspension without pay
- Exclusion
- Expulsion
- Degree revocation
- No contact directive (with respect to an individual)
- Loss of privileges
- Termination of employment
- Termination of contract (for contractors)
- No trespass order

## **VIII. APPEALS**

### ***A. Appeals after Administrative Resolution***

The complainant or respondent may appeal the sanctions in an administrative resolution or the determination of the sanctions. An appeal will be handled in a manner consistent with any applicable terms or procedures in the Faculty Handbook, Staff Handbook, or applicable contract. Otherwise, the terms and procedures outlined in these guidelines will control.

The appeal must be made within five (5) calendar days of the date of the written notification of the findings or, if sanctions are imposed, the determination of sanctions. An appeal must be in writing and specify the basis for the appeal. The original finding is presumed to have been decided reasonably and appropriately by a preponderance of the evidence. The only grounds for appeal are as follows:

- New information discovered after the investigation that could not have reasonably been available at the time of the investigation and is of a nature that could materially change the outcome;
- Procedural errors within the investigation or resolution process that may have substantially affected the fairness of the process ;

- An outcome (findings or sanctions) that was manifestly contrary to the weight of the information presented (i.e., obviously unreasonable and unsupported by the great weight of information).

In the event sanctions were imposed, it shall be in the discretion of the Title IX Coordinator and the sanctioning office whether the sanctions shall be implemented or stayed pending resolution of an appeal.

Appeals will be handled by the following reviewers, who may delegate the review of an appeal to a designee, and will delegate review in any case in which they cannot serve as an impartial reviewer.

Students should contact:

Deputy Title IX Coordinator for Students:  
Contact: Melissa Morgan, Director of Student Services  
326 Market Street  
Harrisburg, PA 17101  
(717)901-5149

An appeal of a complaint against a faculty member should be addressed to:

Deputy Title IX Coordinator for Faculty and Staff  
Contact: Ben Allatt, Associate VP for Human Resources  
326 Market Street  
Harrisburg, PA 17101  
(717)901-5112

An appeal of a complaint against a staff member or third-party should be addressed to:

Deputy Title IX Coordinator for Faculty and Staff  
Contact: Ben Allatt, Associate VP for Human Resources  
326 Market Street  
Harrisburg, PA 17101  
(717)901-5112

The decision on an appeal will be issued as expeditiously as possible, usually within 21 days, though this may vary based on the scope of the appeal or unforeseen circumstances. The reviewer may review the full case, beyond the aspects of the case outlined in the request for appeal. If the reviewer does not find that any of the three grounds for appeal are present in the case, the outcome will be upheld. If the reviewer finds that any of the grounds for appeal are present in the case, they may amend the outcome, may issue a new outcome, or may refer the matter back to the investigator for further consideration. A final outcome on an appeal is not subject to further appeal.