

# Pennsylvania College of Technology

## Policy Statement

**Title:** Sexual Misconduct/Sexual Harassment

**Number:** P 7.30

**Approved by:**  
Presidential Action

**Approved Date:** 09/2017  
**Last Review Date:** 08/2020  
**Last Revision Date:** 08/2020

**Persons/Departments Affected:**  
All Penn College Students and Employees

**Responsible Department:**  
Student Affairs & Human Resources

### Definitions:

**Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

**Appeals Officer** means a person designated from the Title IX Team to hear any appeals from a determination in Process A.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual misconduct/sexual harassment; or retaliation for engaging in a protected activity.

**Complaint (formal)** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct/sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.

**Confidential Resource** means an employee who is not a Mandated Reporter of notice of sexual misconduct/sexual harassment (irrespective of Clery Act Campus Security Authority status).

**Day** means a business day when the College is in normal operation.

**Directly Related Evidence** is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.

**Education program or activity** means locations, events, or circumstances where Penn College exercises substantial control over both the Respondent and the context in which the s sexual misconduct/sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.

**Final Determination:** A conclusion by preponderance of the evidence (more likely than not) that the alleged conduct did or did not violate policy.

**Finding:** A conclusion by preponderance of the evidence (more likely than not) that the conduct did or did not occur as alleged (as in a “finding of fact”).

**Formal Grievance Process** means “Process A,” a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

**Formal Resolution Process** means “Process B,” a method of investigating a complaint of an alleged violation of the College’s Sexual Misconduct/Sexual Harassment Policy and/or Procedure.

**Investigator** means the person or persons charged by Penn College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

**Mandatory Reporter** means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of sexual misconduct/sexual harassment with the Title IX Coordinator and/or their supervisor.

**Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

**Official with Authority (OWA)** means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual misconduct/sexual harassment on behalf of the College.

**Parties** include the Complainant(s) and Respondent(s), collectively.

**Policy** means the Sexual Misconduct/Sexual Harassment Policy.

**Procedure** means the Sexual Misconduct/Sexual Harassment Procedure.

**Process A** means the Formal Grievance Process detailed in this Procedure and defined in this Policy.

**Process B** means the procedures detailed in this Procedure that apply only when Process A does not, as determined by the Title IX Coordinator.

**Recipient** means a postsecondary education program that is a recipient of federal funding.

**Relevant Evidence** is evidence that tends to prove or disprove an issue in the complaint.

**Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct/sexual harassment; or retaliation for engaging in a protected activity.

**Resolution** means the result of an informal or Formal Grievance Process.

**Sanction** means a consequence imposed by the College on a Respondent who is found to have violated this policy.

**Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

**Sexual Misconduct Hearing Panel** refers to those who have decision-making and sanctioning authority within the College's Formal Grievance process (Process A) and Formal Resolution Process (Process B).

**Title IX Coordinator** is at least one official designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

**Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, investigators, and any member of the Sexual Misconduct Hearing Panel.

**Risk Assessment** refers to an individualized process, conducted by the Penn College Police, to determine if a Respondent poses an immediate threat to the physical health or safety of the Complainant, a Witness, or the College community in general arising from the allegation of sexual misconduct/sexual harassment.

**Policy:**

**I. Rationale for Policy**

- a. Penn College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual misconduct/sexual harassment, and for allegations of retaliation. Penn College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **II. Applicable Scope**

- a. The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using Penn College's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.
- b. When the Respondent is a member of the campus community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Penn College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The policies below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## **III. Title IX Coordinator**

- a. The Vice President for Student Affairs serves as the Title IX Coordinator and oversees implementation of the College's policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating Penn College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual misconduct/sexual harassment prohibited under this policy.

## **IV. Independence and Conflict-of-Interest**

- a. The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to

ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

- b. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Penn College President at [president@pct.edu](mailto:president@pct.edu) or (570) 320-8010 or by visiting the President's Office in the Student & Administrative Services Center (SASC), Room 3054. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.
- c. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Penn College President at [president@pct.edu](mailto:president@pct.edu) or (570) 320-8010 or by visiting the President's Office in the Student & Administrative Services Center (SASC), Room 3054. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

#### V. Administrative Contact Information

- a. Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Elliott Strickland, Vice President for Student Affairs  
Title IX Coordinator  
Student & Administrative Services Center (SASC), Room 3005  
One College Avenue  
Williamsport, PA 17701  
(570) 320-5310  
[estrickl@pct.edu](mailto:estrickl@pct.edu)  
[www.pct.edu/sexualmisconduct](http://www.pct.edu/sexualmisconduct)

Kathy Zakarian, Director of Counseling  
Deputy Coordinator & Lead Investigator of Title IX – Student Issues  
Bush Campus Center (CC), Room 204  
One College Avenue  
Williamsport, PA 17701  
(570) 327-4765  
[kathy.zakarian@pct.edu](mailto:kathy.zakarian@pct.edu)

Heather Shuey, Director of Development and Compliance  
Deputy Coordinator & Lead Investigator of Title IX– Employee Issues  
Student & Administrative Services Center (SASC), Room 2010  
One College Avenue  
Williamsport, PA 17701  
(570) 327-4770; ext. 7863  
[hms27@pct.edu](mailto:hms27@pct.edu)

- b. The College has also classified key staff in areas such as Student Affairs, Academic Affairs, Dean of Enrollment and Academic Operations, Dean's Council, and President's Council as Mandatory Reporters of any knowledge

they have that a member of the community is experiencing sexual misconduct/sexual harassment. This group also includes Coaches, Mentors, and Student Organization Advisors. This group does not include Counselors, Health Service Providers, or Faculty unless they are in their roles as Coaches, Mentors, or Student Organization Advisors.

- c. Inquiries may be made externally to:  
Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
(800) 421-3481  
FAX (202) 453-6012  
TDD (877) 521-2172  
[OCR@ed.gov](mailto:OCR@ed.gov)  
<http://www.ed.gov/ocr>
- d. For additional information on other applicable federal or state agencies, please contact the Penn College Grants & Sponsored Programs office at (570) 320-2400, x7580.
- e. For complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC)

## **VI. Notice/Complaints of Sexual Misconduct/Sexual Harassment**

- a. Notice or complaints of sexual misconduct/sexual harassment may be made using any of the following options:
  - i. File a complaint with, or give verbal notice to, the Title IX Coordinator or Deputy Coordinators. Such a report may be made at any time (including during non-business hours) in-person, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or Deputy Coordinators.

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Student & Administrative Services Center (SASC), Room 2010  
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[hms27@pct.edu](mailto:hms27@pct.edu)

- ii. Report online, using the Silent Witness Form at [www.pct.edu/silentwitness](http://www.pct.edu/silentwitness). Anonymous reports are accepted but can give rise to a need to investigate. Penn College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.
  - iii. If any employee, report the matter to their immediate supervisor, or an administrator in their department or operational unit.
- b. A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or online through the Silent Witness Form) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations.
  - c. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly provided correct contact information is included.

## **VII. Supportive Measures**

- a. Penn College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual misconduct/sexual harassment.
- b. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College’s education program or activity, including measures designed to protect the safety of all parties or the College’s educational environment, and/or deter sexual misconduct/sexual harassment.

- c. The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.
- d. The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. Penn College will act to ensure as minimal an academic/workplace impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.
- e. These actions may include, but are not limited to:
  - i. Referral to counseling, medical, and/or other healthcare services.
  - ii. Referral to the Employee Assistance Program.
  - iii. Referral to community-based service providers
  - iv. Education to the institutional community or community subgroup(s)
  - v. Altering campus housing assignment(s)
  - vi. Altering work arrangements for employees or student-employees
  - vii. Safety planning
  - viii. Providing campus safety escorts
  - ix. Providing transportation accommodations
  - x. Implementing contact limitations (no contact orders) between the parties
    - 1. Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.
  - xi. Academic support, extensions of deadlines, or other course/program-related adjustments
  - xii. Persona Non Grata (PNG) orders
  - xiii. Timely warnings
  - xiv. Class schedule modifications, withdrawals, or leaves of absence
  - xv. Increased security and monitoring of certain areas of the campus
  - xvi. Any other actions deemed appropriate by the Title IX Coordinator

#### **VIII. Emergency Removal**

- a. Penn College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk assessment is performed by the College Police in conjunction with the Title IX Coordinator using its standard objective violence risk assessment procedures.
- b. In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be

- implemented or should be modified.
- c. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 48 hours, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.
  - d. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
  - e. The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.
  - f. The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.
  - g. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.
  - h. Where the Respondent is an employee, existing provisions for interim action are applicable including suspension with or without pay while an investigation is underway.

#### **IX. Promptness**

- a. All allegations are acted upon promptly by Penn College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.
- b. Any time the general timeframes for resolution outlined in the College's procedures will be delayed, Penn College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**X. Privacy**

- a. Every effort is made by the College to preserve the privacy of reports. Penn College will not share the identity of any individual who has made a report or complaint of sexual misconduct/sexual harassment; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.
- b. The College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
- c. Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Student Affairs, Academic Affairs, Human Resources, College Police, and Behavioral Intervention Team. Information will be shared as necessary with Investigators, Sexual Misconduct Hearing Panel members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.
- d. The College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.
- e. Confidentiality and mandated reporting are addressed more specifically below.

**XI. Jurisdiction of the College**

- a. This policy applies to the education program and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by the College's recognized student organizations. The Respondent must be a member of College's community in order for its policies to apply.
- b. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to College's educational program. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.
- c. Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:
  - i. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law,

- ii. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual,
- iii. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- iv. Any situation that is detrimental to the educational interests or mission of the College.
- v. If the Respondent is unknown or is not a member of the Penn College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.
- vi. Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.
- vii. In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.
- viii. All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.
- ix. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.
- x. Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual misconduct/sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **XII. Time Limits on Reporting**

- a. There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.
- b. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

- c. When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

### **XIII. Online Harassment and Misconduct**

- a. The policies of Penn College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use the College's networks, technology, or equipment.
- b. Although Penn College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.
- c. Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Penn College community.
- d. Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College's control (e.g., not on College networks, websites, or between College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.
- e. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.
- f. Off-campus harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity or utilizing our resources (electronic or other).

### **XIV. Sexual Misconduct/Sexual Harassment**

- a. The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of PA regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.
- b. Penn College has adopted the following definition of Sexual Misconduct/Harassment in order to address the unique environment of an academic community.
- c. Acts of sexual misconduct/sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
- d. Sexual Misconduct/Sexual Harassment, as an umbrella category, includes the

offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

- i. Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:
  1. Quid Pro Quo:
    - a. an employee of the College,
    - b. conditions the provision of an aid, benefit, or service of the College,
    - c. on an individual's participation in unwelcome sexual conduct.
  2. Sexual Harassment:
    - a. unwelcome conduct,
    - b. determined by a reasonable person, to be so severe, and
    - c. pervasive, and,
    - d. objectively offensive,
    - e. that it effectively denies a person equal access to the College's education program or activity.
  3. Sexual assault, defined as:
    - a. Sex Offenses, Forcible:
      - i. Any sexual act directed against another person,
      - ii. without the consent of the Complainant,
      - iii. including instances in which the Complainant is incapable of giving consent.
    - b. Forcible Rape:
      - i. Penetration,
      - ii. no matter how slight,
      - iii. of the vagina or anus with any body part or object, or
      - iv. oral penetration by a sex organ of another person,
      - v. without the consent of the Complainant.
    - c. Forcible Sodomy:
      - i. Oral or anal sexual intercourse with another person,
      - ii. forcibly,
      - iii. and/or against that person's will (non-consensually), or
      - iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - d. Sexual Assault with an Object:
      - i. The use of an object or instrument to penetrate,

- ii. however slightly,
    - iii. the genital or anal opening of the body of another person,
    - iv. forcibly,
    - v. and/or against that person's will (non-consensually),
    - vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - e. Forcible Fondling:
    - i. The touching of the private body parts of another person (buttocks, groin, breasts),
    - ii. for the purpose of sexual gratification,
    - iii. forcibly,
    - iv. and/or against that person's will (non-consensually),
    - v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - f. Sex Offenses, Non-forcible:
    - i. Incest:
      - 1. Non-forcible sexual intercourse,
      - 2. between persons who are related to each other,
      - 3. within the degrees wherein marriage is prohibited by the jurisdiction where the incident occurred.
    - ii. Statutory Rape:
      - 1. Non-forcible sexual intercourse,
      - 2. with a person who is under the statutory age of consent in the jurisdiction where the incident occurred.
- 4. Dating Violence, defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - e. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the

relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:

- i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - ii. Dating violence does not include acts covered under the definition of domestic violence.
5. Domestic Violence, defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of PA, or
  - g. 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 PA.
  - h. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.
6. Stalking, defined as:
  - a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. directed at a specific person, that
    - i. would cause a reasonable person to fear for the person's safety, or
    - ii. the safety of others; or
    - iii. suffer substantial emotional distress.
  - d. For the purposes of this definition:
    - i. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method,

- device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
    - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
    - iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- e. The College's Policy on Consensual Relationships can be found at [P3.02.20](#).
- f. Penn College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.
- g. Force, Coercion, Consent, and Incapacitation, as used in the offenses above, the following definitions and understandings apply:
  - i. Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want."). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
  - ii. Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
  - iii. Consent is knowing, and voluntary, and clear permission by word or action to engage in sexual activity.
    - 1. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
    - 2. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
    - 3. For consent to be valid, there must be a clear expression in

words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

4. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
  5. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
  6. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
  7. Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.
- iv. Incapacitation is when a person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.
1. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.
  2. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
  3. Incapacitation is determined through consideration of all

relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

4. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## **XV. Retaliation**

- a. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.
- b. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.
- c. Penn College and any member of College community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.
- d. Filing a complaint could be considered retaliatory if those charges are made for the purpose of interfering with or circumventing any right or privilege afforded by this Policy. Therefore, Penn College vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.
- e. The exercise of rights protected under the First Amendment does not constitute retaliation.
- f. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **XVI. Mandatory Reporters**

- a. Although not Mandatory Reporters, all College employees (faculty, staff, administrators) are expected to report actual or suspected sexual misconduct/sexual harassment to appropriate officials immediately, though there are some limited exceptions.
- b. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain

confidentiality and are not required to report actual or suspected sexual misconduct/sexual harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

- c. If a Complainant expects formal action in response to their allegations, reporting to any Mandatory Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator and/or College Police, if desired by the Complainant, who will take action when an incident is reported to them.
- d. The following sections describe the reporting options at Penn College for a Complainant or third-party (including parents/guardians when appropriate):
  - i. Confidential Resources
    1. If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:
      - a. For students, Counselors and College Health Services staff are not required to report issues of sexual misconduct and can provide confidential guidance on resources, services, and College procedure.
      - b. For employees, Services through the Employee Assistance Program (EAP) and College Health Services staff are not required to report issues of sexual misconduct and can provide confidential guidance on resources, services, and/or College procedures.
    - c. Off-campus (non-employees):
      - i. Licensed professional counselors and other medical providers
      - ii. Local rape crisis counselors
      - iii. Domestic violence resources
      - iv. Local or state assistance agencies
      - v. Clergy/Chaplains
      - vi. Attorneys
    - d. All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.
    - e. Employees who are confidential and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would

be harmful to their client or patient.

ii. Anonymous Notice to Mandated Reporters

1. At the request of a Complainant, notice may be given by a Mandatory Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandatory Reporter cannot remain anonymous themselves.
2. If a Complainant has requested that a Mandatory Reporter maintain the Complainant's anonymity, the Mandatory Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandatory Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.
3. Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.
4. However, anonymous notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared.
5. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandatory Reporter, but all other details must be shared with the Title IX Coordinator. Mandatory Reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

iii. Mandated Reporters and Formal Notice/Complaints

1. The College has also classified key staff in areas such as Student Affairs, Academic Affairs, Dean of Enrollment and Academic Operations, Dean's Council, and President's Council as Mandatory Reporters of any knowledge they have that a member of the community is experiencing sexual misconduct/sexual harassment. This group also includes Coaches, Mentors, and Student Organization Advisors. This group does not include Counselors, Health Service Providers, or Faculty unless they are in their roles as Coaches, Mentors, or Student Organization Advisors.
2. Mandatory Reporters must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.
3. All College employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a

- Complainant or third-party.
4. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandatory Reporters, as those details must be shared with the Title IX Coordinator.
  5. Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.
  6. Supportive measures may be offered as the result of such disclosures without formal College action.
  7. Failure of a Mandatory Reporter, as described above in this section, to report an incident of sexual misconduct/sexual harassment of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.
  8. Though this may seem obvious, when a Mandated Reporter is engaged in sexual misconduct/sexual harassment or other violations of this policy, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.
  9. Finally, it is important to clarify that a Mandatory Reporter who is themselves a target of sexual misconduct/sexual harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

**XVII. When a Complainant Does Not Wish to Proceed**

- a. If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.
- b. The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.
- c. The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.
- d. A compelling risk to health and/or safety may result from evidence of

patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Penn College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

- e. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively.
- f. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.
- g. When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.
- h. Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.
- i. In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options (see Procedure), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.
- j. If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

#### **XVIII. Federal Timely Warning Obligations**

- a. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Penn College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.
- b. Penn College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

**XIX. False Allegations and Evidence**

- a. Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.
- b. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College Policy.

**XX. Amnesty for Complainants and Witnesses**

- a. The Penn College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.
- b. It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.
- c. To encourage reporting and participation in the process, Penn College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.
- d. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.
  - i. Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the College Police).
    1. The College maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.
  - ii. Employees: Sometimes, employees are hesitant to report sexual misconduct/sexual harassment they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the

course of that relationship might hesitate to report the incident to College officials.

1. The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## **XXI. Federal Statistical Reporting Obligation**

- a. Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):
  - i. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
  - ii. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
  - iii. VAWA (Violence Against Women’s Act)-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
  - iv. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.
- b. All personally identifiable information is kept private, but statistical information must be shared with College Police regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.
- c. Campus Security Authorities include key staff in areas such as Student Affairs, Academic Affairs, Dean of Enrollment and Academic Operations, Dean’s Council, and President’s Council including Coaches, Mentors, and Student Organization Advisors. This group does not include Counselors, Health Service Providers, or Faculty unless they are in their roles as Coaches, Mentors, or Student Organization Advisors.

## **XXII. Preservation of Evidence**

- a. The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders and is particularly time-sensitive. If the Complainant notifies the College, the College will inform the Complainant of the importance of preserving evidence by taking the following actions:
  - i. Seek forensic medical assistance at a hospital, ideally within 120 hours of the incident (sooner is better).
  - ii. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
  - iii. Try not to urinate.

- iv. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- v. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container available from College Police
- vi. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.
- vii. During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

**Revision History:**

- Date: 08/2020 New Policy and Procedure language for compliance with new 2020 DOE OCR Rules, language in Policy and Procedure is taken from the 2020 ATIXA One Policy/Two Procedures Model, copyrighted by ATIXA, All Rights Reserved.
- 09/2017 New unified Policy and Procedure that brings together P & PR 3.02.01 (Sexual Harassment) and P & PR 4.07 (Student Sexual Misconduct).

**Cross References:**

- Student Code of Conduct Procedure, [PR 4.43](#)
- Sexual Misconduct/Sexual Harassment Policy, [PR 7.30](#)