

# TEMPLE UNIVERSITY POLICIES AND PROCEDURES MANUAL

<b>Title:</b>	Preventing and Addressing Sexual Misconduct
<b>Policy Number:</b>	04.82.02
<b>Issuing Authority:</b>	Office of the President
<b>Responsible Officer:</b>	University Counsel
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<b>Reviewing Office:</b>	Office of University Counsel

## **A. Scope of Policy & Rationale**

Temple University is committed to providing a learning and working environment that emphasizes the dignity and worth of every member of its community, free from discriminatory conduct. Sexual misconduct, which includes sexual harassment, is a type of discriminatory conduct that is contrary to this commitment and will not be tolerated. Sexual misconduct subverts the mission and the work of the university, and can threaten the career, educational experience, and well-being of students, faculty, and staff. All members of the Temple community have a responsibility to ensure that the university is free from all forms of sexual misconduct.

Sexual misconduct, including sexual harassment, may also constitute a form of sex discrimination which is illegal under Title VII of the Civil Rights Act of 1964, Title IX of the Elementary/Secondary Education Act of 1972, and state and local law. Inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to the Department of Education, Office for Civil Rights. In addition to any sanctions that may be imposed by the university for violation of this policy, an individual who engages in sexual misconduct against another may be held personally liable to the individual who experienced the misconduct and may be subject to sanctions independent of those imposed by the university.

## **B. Policy Statement**

Temple University prohibits sexual misconduct. For the purpose of this policy, sexual misconduct includes sexual or sex based: hostile environment harassment, quid pro quo harassment, sexual assault, domestic violence, dating violence, and stalking, as well as other forms of sexual exploitation. This policy is intended to promote an environment at the university that is free of sexual misconduct as well as one that is consistent with other constitutional protections and personal freedoms.

The university reserves the right to address, in accordance with other policies and procedures, harassment or behaviors that either do not fall within this policy's definition of prohibited sexual misconduct or that are not based on sex/gender. The Title IX Coordinator will determine whether reported conduct is covered by this policy. If not, such conduct will not be addressed through the procedures as detailed below, but may be considered and handled according to processes articulated in other relevant university policies.

Specifically, this policy provides for:

1. comprehensive education and prevention programs that inform the university community about the nature and forms of sexual misconduct, its impact on individuals and the university community as a whole, and the steps necessary to combat it;
2. equitable procedures for those reporting sexual misconduct as well as for those reported to have engaged in sexual misconduct, including informing individuals about their right to file criminal charges, and the availability of appropriate supportive measures for both parties; and
3. university disciplinary sanctions for those who have violated this policy.

### **C. Title IX Coordinator**

The university's Title IX Coordinator is Andrea Caporale Seiss. The Title IX Coordinator is located in Tuttleman Learning Center, Suite 100, 1809 N. 13<sup>th</sup> St., Philadelphia, PA 19122 and may be contacted by phone at: 215-204-3283 or by email at: [TitleIX@temple.edu](mailto:TitleIX@temple.edu).

The Title IX Coordinator has the primary responsibility for coordinating the university's efforts related to investigation, resolution, and prevention of sexual misconduct and retaliation prohibited by this policy.

### **D. Jurisdiction**

This policy applies to prohibited conduct that takes place on campus, on property owned or controlled by the university, at university-sponsored events, and at any building owned or controlled by a university-recognized student organization. It may also apply to off-campus and to online conduct when the Title IX Coordinator determines that the university has substantial control over both the Respondent and the context in which the reported misconduct has occurred.

If the Respondent is unknown or is not a member of the Temple community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and community resources and explaining available supportive measures.

### **E. Relevant Terms and Definitions**

**Complainant:** An individual who has reportedly experienced sexual misconduct as defined below.

**Reporter:** An individual who brings an Informal Complaint of sexual misconduct to the attention of the university. Any person may report sexual misconduct regardless of whether they are a member of the Temple community or whether they have personally experienced the conduct at issue. A Reporter may be a friend or parent of the Complainant or a witness to the sexual misconduct.

**Respondent:** An individual who has reportedly engaged in sexual misconduct as defined below.

**Formal Complaint:** Written documentation from the Complainant of their desire to initiate a university investigation into reported sexual harassment as defined below. At the time of submitting a Formal Complaint, the Complainant must be either participating in or attempting to participate in the university's programs or activities. A Formal Complaint cannot be anonymous.

A Formal Complaint may also be signed by the Title IX Coordinator, should circumstances necessitate. If a Formal Complaint is signed by the Title IX Coordinator and a Complainant is known, the Complainant will receive all notices and opportunities set forth below.

***Informal Complaint:*** An Informal Complaint of sexual misconduct may be submitted to the Title IX Coordinator by anyone regardless of whether they are participating in the university's programs or activities. Upon receiving an Informal Complaint, the Title IX Coordinator or appropriate designee will reach out to the individual who has reportedly experienced sexual misconduct, if known, and discuss available resources, supportive measures, and options moving forward. An Informal Complaint, unless determined otherwise by the Title IX Coordinator, will not initiate a formal university investigation.

***Consent:***<sup>1</sup> For the purpose of this policy, consent means knowing, voluntary, and clear permission by words or actions to engage in sexual activity. Consent must be ongoing through sexual activity and can be revoked at any time. Mere assent (an affirmative statement or action) shall not constitute consent if it is given by a person who is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of their incapacitation, unconsciousness, youth, mental deficiency, or if the assent is the product of threat or coercion.<sup>2</sup> Consent to prior sexual activities does not constitute consent to future acts.

***Incapacitation:*** Incapacitation occurs when an individual is unable to make rational, reasonable decisions because they lack the capacity to understand what is happening. Incapacitation is determined through consideration of the circumstances and all relevant indicators of a person's mental and physical state.

## F. Prohibited Conduct

The following are definitions of specific prohibited conduct under this policy.

***Sexual Harassment:*** Conduct on the basis of sex/gender when one or more of the below categories are also met:

1. *Quid Pro Quo Harassment.* Submission to unwelcome conduct is a) made explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity, or b) used as a basis for an employment-related, educational, or other decision affecting an individual.
2. *Hostile Environment Harassment.* Unwelcome conduct that is severe, pervasive, and objectively offensive such that it effectively denies an individual from participating in or benefitting from the university's education or employment programs and/or activities. Conduct must be severe, persistent, and pervasive from both a subjective and an objective perspective. In evaluating these aspects, the university will consider the totality of the known circumstances.
3. *Dating Violence.* Violent acts or conduct by a person who is or has been in a social

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<sup>1</sup> Consent in relationship to sexual activity is defined in Pennsylvania in accordance with its plain and common meaning. See Com. v. Duffy, 832 A.2d 1132, 1139 (Pa. Super. 2003).

<sup>2</sup> See 18 Pa.C.S.A. §311.

relationship of a romantic or intimate nature with the Complainant. Whether such a relationship exists will be determined based on the Complainant's statement and with consideration of (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts that meet the definition of "domestic violence."

4. *Domestic Violence*. Violent acts or conduct committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or who has cohabitated with the Complainant as a spouse, by a person similarly situated to a spouse of the Complainant, 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 Commonwealth of Pennsylvania, or as "domestic violence" is otherwise defined under the laws of the Commonwealth of Pennsylvania.<sup>3</sup>
5. *Stalking*. A course of conduct directed at a specific individual that would cause a reasonable person to fear for their safety or the safety of others; or suffer severe emotional distress; or as "stalking" is otherwise defined by the law of the Commonwealth of Pennsylvania. One engages in an impermissible course of conduct if one engages in two or more acts that include, but are not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates about a person in a way prohibited as described above, or interferes with a person's property.<sup>4</sup>
6. *Sexual Assault*. Includes any of the following, or threat or attempt to engage in any of the following:
  - a. Any intentional and unconsented touching of the following for the purpose of sexual gratification:
    - i. an intimate body part of another person, such as a sexual organ, buttocks or breast;
    - ii. any body part of another person with a sexual organ; or
    - iii. any part of another person's body with the intent of accomplishing a sexual act.
  - b. Vaginal or anal penetration of another individual, by body part or object, without the other person's consent; or
  - c. Vaginal, anal, or oral sexual intercourse with another individual without the other person's consent.

In accordance with federal regulations, the university prohibits sexual assault that includes conduct defined by federal agencies as rape, sodomy, sexual assault with an object, and fondling.<sup>5</sup>

***Sexual Exploitation:*** Conduct in which a person takes non-consensual sexual advantage of another individual for the benefit of anyone other than the individual being exploited. When sexual exploitation rises to the level of sexual harassment as defined in this policy, the reported conduct will be processed through the procedures set forth below. In the event that sexual exploitation does not

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<sup>3</sup> See 23 Pa. C.S.A. § 6102, et seq. and 18 Pa.C.S.A. § 2711.

<sup>4</sup> See 18 Pa.C.S.A. § 2709.1.

<sup>5</sup> The U.S. Department of Justice sets forth the definitions of relevant sex offense terms here: <https://ucr.fbi.gov/nibrs/nibrs-user-manual>.

rise to the level of sexual harassment, this conduct will be addressed through the disciplinary procedures in applicable university policies. Examples of sexual exploitation include, but are not limited to, the following:

- Live streaming, taking and/or disseminating pictures, video, or audio recording of another person engaged in sexual activity without the consent of all involved in the activity.
- Exposing one's genitals in non-consensual circumstances, including via online communications.
- Sexual voyeurism, such as watching another engage in sexual activity or undressing without consent in circumstances where there is a reasonable expectation of privacy.
- Disrobing another person without their consent.
- Knowingly transmitting sexually transmitted infections (STI) or sexually transmitted diseases (STD) without disclosing that one is infected with an STI or STD.
- Intentionally removing, damaging, or lying about use of a prophylactic or contraceptive device (e.g., condom, female condom, or other forms of birth control) when consent has only been given for protected sexual activity.

#### **G. Expectations Regarding Relationships Between Students/Persons in Authority:**

The relationship between students and persons in authority (faculty, instructors, advisors, athletic coaches, and others) is central to the academic mission of the university. No persons in authority, as that term is explained below, shall ask a student for a date or sexual favor, or in other ways make a sexual advance toward the student. While an individual is a student of a particular person in authority, any sort of sexual or romantic advances or relationship between them is prohibited, whether such action rises to the level of sexual harassment as defined by this policy. In the event the reported conduct does not constitute sexual harassment as defined above, this conduct will be addressed under applicable work rules and/or other university policies.

1. An individual is a student of a particular person in authority:
  - a. When a student is registered in a course taught by the instructor and has not yet received a final grade; or
  - b. When a student is assigned to be advised by a particular instructor, whether the instructor is serving as an undergraduate advisor, graduate advisor, or member of a thesis or dissertation committee; or
  - c. At other times when an instructor has a relationship with a student such that a student's activities at the university are being supervised or evaluated by the instructor; or
  - d. At other times when an advisor, athletic coach, physician, laboratory operator or other similar individual has a relationship with a student such that the student's activities at the university are being supervised or evaluated by that person. The relationships covered by this paragraph include, but are not limited to, medical residents and physicians and student members of athletic teams and athletic department coaches.

#### **H. Options and Resources:**

##### *Supportive Measures*

For both the Complainant and Respondent, the university offers and will implement

appropriate and reasonable responsive, supportive, and/or protective measures upon notice of sexual misconduct, regardless of whether a Formal Complaint has been filed. Such measures, which are free of charge and non-disciplinary in nature, are intended to support both parties, address immediate effects of sexual misconduct, and preserve access to educational and employment programs and activities. The university will maintain the confidentiality of these measures, provided that doing so does not impair the university's ability to provide the measures.

Measures may include, but are not limited, to:

- Referral to counseling, medical, and/or other health services
- Referral to financial aid counseling
- Alteration of campus housing
- Modifications to work/academic arrangements
- Academic support
- Adjustments to academic deadlines, course, schedules, etc.
- Leaves of absence
- Reassignment of parking designation
- Relocation of office space
- Reconfiguration of reporting structure
- Provision of campus escorts
- Contact restrictions between the Complainant and Respondent

#### *Medical Attention and/or Law Enforcement*

If desired, Complainant should consider seeking medical attention and/or law enforcement assistance as soon as possible. The university can assist the Complainant in notifying appropriate local law enforcement and assist in directing individuals on how to obtain protection from abuse orders through the appropriate court. In circumstances of sexual violence, health care providers can treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease.

Although the university strongly encourages all members of its community to report violations of this policy to law enforcement, it is wholly up to the individual who has experienced the misconduct whether or not to make such a report. Tuttleman Counseling Services, Student Health Services, and Women Organized Against Rape (WOAR) provide individuals a confidential resource, emotional support, and an opportunity to discuss reporting options, if they choose.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If an individual chooses not to make a complaint regarding an incident, they are still able to confer with Campus Safety Services or other law enforcement to preserve evidence in the event of a later change of mind.

#### *Campus Resources*

- Campus Safety Services (<http://www.temple.edu/safety/>) (215.204.1234)
- Title IX Coordinator ([sexualmisconduct.temple.edu](http://sexualmisconduct.temple.edu))
  - o Andrea Caporale Seiss (215.204.3283)
- Student Health Services (<http://www.temple.edu/studenthealth/>) (215.204.7500)
- Tuttleman Counseling Services (including Sexual Assault Counseling and Education) ([counseling.temple.edu](http://counseling.temple.edu)) (215.204.7276)

- Wellness Resource Center ([wellness.temple.edu](http://wellness.temple.edu)) (215.204.8436)
- Office of Student Conduct and Community Standards ([studentconduct.temple.edu](http://studentconduct.temple.edu)) (215.204.3286)
- Equal Opportunity Ombudspersons (<https://www.temple.edu/eoc/ombudspersons.htm>)
- Vice Provost for Faculty Affairs (<https://faculty.temple.edu>)
- Employee Health Services (<http://www.temple.edu/employeehealth/Index.html>)
- Employee Assistance Program (<https://www.temple.edu/hr/departments/benefits/eap.htm>)

***Off-Campus Resources***

- Philadelphia Police (911)
- The Philadelphia Sexual Assault Response Center (215.800.1589)  
<https://www.drexelmed.edu/Home/AbouttheCollege/DepartmentsCentersandInstitutes/ClinicalDepts/EmergencyMedicine/DivisionofForensicEmergencyMedicine.aspx>
- North Central Victims Services Counseling Services (215.763.3282)
- Women in Transition Counseling (215.763.1111)
- Women Organized Against Rape Hotline (215.985.3333)
- Pennsylvania Coalition Against Rape (<http://www.pcar.org/>)
- Lutheran Settlement House ([lutheransettlement.org](http://lutheransettlement.org))
- Pennsylvania Coalition Against Domestic Violence (<http://www.pcadv.org/>)
- Rape, Abuse and Incest National Network ([www.rainn.org](http://www.rainn.org))
- The National Center for Victims of Crime ([www.ncvc.org/ncvc/Main.aspx](http://www.ncvc.org/ncvc/Main.aspx))
- National Organization of Male Sexual Victimization ([www.malesurvivor.org](http://www.malesurvivor.org))
- Department of Justice - Office on Violence Against Women (<http://www.ovw.usdoj.gov/sexassault.htm>)

**I. Reporting Procedures**

The reporting and resolution procedures set forth below are internal administrative procedures of the university. These procedures are designed to afford a prompt, fair, and equitable response to reports of sexual misconduct, to maintain confidentiality and fairness consistent with applicable legal requirements, and to impose appropriate sanctions on those who have violated this policy.

As to those forms of sexual misconduct that also violate local, state, or federal law, the university may pursue an investigation, take appropriate remedial action, and/or impose disciplinary sanctions against a member of the university community at the same time the individual is facing criminal charges for the same incident, even if the criminal prosecution is pending, has been dismissed, or the charges have been reduced. The below procedures are supplemental to, and are not intended to displace, other disciplinary procedures set forth in any applicable collective bargaining agreement, the Employee Handbook or any other rules pertaining to a university employee, including faculty.

Because Temple University places a high priority on health and safety, those who report sexual misconduct or participate as a Complainant or a witness in sexual misconduct investigations, or who seek medical assistance for themselves or another, will not be subject to disciplinary sanctions for their consumption of alcohol and/or other substances.

### *Informal Complaints*

If a person reports to a university administrator, department head, faculty member, or Equal Opportunity Ombudsperson that they have experienced sexual misconduct but chooses not to file a Formal Complaint at that time, the Complainant will be promptly contacted by the Title IX Coordinator ([diversity.temple.edu/titleix](https://diversity.temple.edu/titleix)) or their designee.

Informal complaints to university personnel will be treated as privately as possible, consistent with applicable legal requirements and safety considerations. Complainants will be promptly contacted by the Title IX Coordinator ([diversity.temple.edu/titleix](https://diversity.temple.edu/titleix)) or their designee to discuss available supportive measures and resources, to understand the Complainant's wishes, and to explain the process of filing a Formal Complaint should the Complainant wish to do so.

Equal Opportunity Ombudspersons shall be designated annually by the appropriate university officials and shall be knowledgeable about sexual misconduct issues and trained to assist in understanding such matters. Ombudspersons should be sensitive to the feelings, rights, and interests of all parties, and have demonstrated ability to handle confidential and sensitive matters in a discreet manner. A sufficient number of ombudspersons should be designated each year to afford reasonable access to them at all university campuses. A list of current Equal Opportunity Ombudspersons is published on the Office of Equal Opportunity Compliance's ("EOC") website: [diversity.temple.edu](https://diversity.temple.edu)).

Any individual may bring an Informal Complaint to the attention of the university, regardless of whether they are a member of the Temple community or whether they have personally experienced the conduct at issue. A Reporter may include, but is not limited to, a friend or parent of the Complainant or a witness to the sexual misconduct.

The Title IX Coordinator may be contacted at any time by any of the following methods to bring an Informal Complaint to the attention of the university:

In person: Tuttleman Learning Center, Suite 100, 1809 N. 13<sup>th</sup> St., Philadelphia, PA 19122  
By phone at: 215-204-3283  
By email at: [TitleIX@temple.edu](mailto:TitleIX@temple.edu)

### *Formal Complaints*

A person wishing to file a Formal Complaint of sexual harassment may contact the Title IX Coordinator or Campus Safety Services, who are primarily responsible for coordinating university investigations of these complaints. At the Complainant's request, the Philadelphia Police Department's Special Victims Unit will be contacted to lead any criminal investigation. All Formal Complaints will be treated as privately as possible, consistent with applicable legal requirements and customary law enforcement practices. Individual Complainants will be informed promptly of available support services, as well as legal and administrative options, if reasonably available, such as protection from abuse orders through an appropriate court of law and changes to housing assignments and academic or work schedules.

Complainants will be informed about the outcome of any investigation undertaken by the university. In addition, under appropriate circumstances, the university will inform members of the university community of reported sexual misconduct without identifying the individual



Complainant. In appropriate cases, reports made to Campus Safety Services will automatically be referred to the Office of Student Conduct and Community Standards.

#### **J. Confidentiality**

The university will protect to the fullest extent of the law the identity of persons who report having experienced sexual misconduct. If the Complainant would like to remain anonymous and does not consent to the disclosure of their name or other identifiable information to the Respondent, the university will provide supportive measures to the Complainant, but will be limited in its ability to take disciplinary action.

The university will make every reasonable effort to abide by Complainant's wishes regarding anonymity; however, there may be circumstances that necessitate an investigation into the reported conduct. This decision will be made by the university's Title IX Coordinator, the Executive Director of Campus Safety Services, the Dean of Students, and/or the Associate Vice President of Human Resources, or their designees, in conjunction with the Office of University Counsel as well as any other necessary university offices. If the university proceeds with an investigation, the Complainant will be provided with all the notices and opportunities set forth below.

Students who have experienced sexual misconduct can report confidentially to:

Tuttleman Counseling Services  
T: 215.204.7276  
<http://www.temple.edu/studentaffairs/counseling/>

Student Health Services  
T: 215.204.7500  
<http://www.temple.edu/studenthealth/>

Wellness Resource Center  
T: 215.204.8436  
<http://wellness.temple.edu/>

Women Organized Against Rape (WOAR)  
T: 215.985.3333  
<http://www.woar.org>

Employees who have experienced sexual misconduct can report confidentially to:

Employee Health Services  
T: 215.204.2679  
<http://www.temple.edu/employeehealth/>

Employee Assistance Program  
T: 1.888.267.8126  
<http://www.temple.edu/hr/departments/benefits/eap.htm>

Philadelphia Center Against Sexual Violence (WOAR)  
T: 215.985.3333  
<http://www.woar.org>

Lutheran Settlement House  
T: 215-426-8610  
<http://www.lutheransettlement.org>

Students and employees who have experienced sexual misconduct can report confidentially to:

The Psychological Services Center (PSC)  
T: 215.204.7100 or e-mail [psc@temple.edu](mailto:psc@temple.edu) to request an appointment.  
The PSC is located in Temple University's Entertainment and Community Education Center (ECEC) at 1509 Cecil B Moore Ave, Suite 420, Philadelphia, PA 19121.

### **K. Investigations of Allegations of Sexual Harassment**

Formal Complaints of Sexual Harassment (as defined by this policy) filed with the university will be investigated by the appropriate office in accordance with the below procedures. Under university policy, an investigation of Sexual Harassment – as defined by this policy - includes a hearing, which is described in further detail in Subsection 3 below. A determination of responsibility occurs at the conclusion of the hearing. In the event that the Respondent is found responsible for a violation of this policy, there is consideration of appropriate next steps, up to and including dismissal from the university. The disciplinary process is described in further detail in Section L below as well as in related policies and procedures.

The processes for investigating and determining sanctions will be prompt, fair, equitable, and administered by properly trained individuals. The university endeavors to conduct the investigation and render sanctions (if appropriate) as promptly as possible, generally between ninety (90) and one hundred twenty (120) business days, recognizing that circumstances may arise that delay the process. Should such circumstances arise, the university will provide written notice to the parties of the delay and the reason for such a delay. The university will ensure that all those who are materially involved with administering these processes will be free from conflicts of interest and bias that would affect the outcome. Training materials used by the university for those materially involved with the investigation and disciplinary processes may be found [here](#).

#### **1. General Procedural Elements**

Regardless of the status of the Complainant and Respondent (i.e., student, faculty, staff), the following procedural elements will be provided to the parties and are applicable throughout the investigation process. When reported conduct implicates or can be addressed under two policies, the university may, if circumstances allow, combine the investigation and follow one process to appropriately address the reported conduct.

##### **a. Notice of Allegations**

Upon receipt of a Formal Complaint, the university will provide written notice to the Complainant and Respondent with details about the reported conduct and time to prepare a response before any interview. Written notice will also include:

- A copy of this policy and any other relevant procedures;
- A statement that the Respondent is presumed not responsible and a determination regarding responsibility is rendered at the end of the hearing;
- A statement regarding each party's ability to have an advisor of their choice; and
- A statement regarding the university's prohibition of retaliation.

If, in the course of the investigation, the university determines that there are distinct and/or additional allegations that were not included in the original notice provided to the parties, the university will provide written notice of these additional allegations to the known parties as soon as reasonably possible upon discovery of those distinct and/or additional allegations, with details about the additional allegations and time to prepare a response before any subsequent interview.

#### b. Evidentiary Considerations

The burden of gathering evidence sufficient to reach a determination rests with the university and not with either party. All relevant evidence will be evaluated objectively, using the preponderance standard (i.e., "more likely than not"). This standard is used regardless of the status of the Respondent, who is presumed not responsible for the reported misconduct until a determination regarding responsibility is rendered at the end of the hearing. Throughout the investigation, the parties have an equal opportunity to present witnesses, including expert witnesses (at the parties' own expense).

Questions or evidence that contain or seek disclosure of information protected under a legally recognized privilege are not permissible and will not be considered unless the individual holding such privilege has voluntarily waived the privilege and documented the waiver in writing.

#### c. Dismissal of Formal Complaint

##### i. Mandatory Dismissal

At any point during this process, the Title IX Coordinator (or their designee) will dismiss the Formal Complaint, in whole or in relevant part, if any of the below are met:

- The Title IX Coordinator (or their designee) determines that the reported conduct, even if proven true, does not constitute sexual harassment as defined above;
- The Title IX Coordinator (or their designee) determines that the reported conduct did not occur against an individual in the United States; and/or
- The Title IX Coordinator (or their designee) determines that the reported conduct did not occur in a location, event, or circumstance over which the university exercised substantial control.

##### ii. Discretionary Dismissal

At any point during this process, the Title IX Coordinator (or their designee) may dismiss the Formal Complaint, in whole or in relevant part, if any of the below are met:

- The Complainant notifies the Title IX Coordinator (or their designee) in writing that they would like to withdraw the Formal Complaint, in whole or in part;
- The Respondent is no longer enrolled in or employed by the university; and/or
- Specific circumstances prevent the university from gathering evidence sufficient to reach a determination regarding the reported conduct.

Should the Title IX Coordinator (or their designee) decide to dismiss a Formal Complaint, the Title IX Coordinator or designee will send written notice of this dismissal and related rationale to the parties simultaneously. Dismissal from the Sexual Harassment investigation process does not preclude university action under an alternate policy provision.

### iii. Appeal of Dismissal

Each party has the right to appeal the decision to dismiss a Formal Complaint. The parties will be notified simultaneously in writing a) when either party submits such an appeal and b) of the final outcome, including the rationale, after the appeal is resolved. When an appeal is submitted, both parties have an opportunity to submit a written statement in support of or challenging the original determination.

An appeal of a dismissal of a Formal Complaint is submitted to the Senior Advisor for Equity, Diversity and Inclusion or their designee and may be submitted on the following bases:

- (A) Procedural irregularity that affected the decision to dismiss the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the decision to dismiss the matter; and/or
- (C) The Title IX Coordinator, investigator(s), and/or hearing board had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the decision to dismiss the matter.

## 2. Investigation Interviews

Properly trained investigators will meet with the parties and others to obtain information about the reported conduct. These meetings may occur in-person, over video conference or telephone, and/or other modes as necessary depending on the circumstances.

### a. Notice of Interview/Meeting

The university will provide written notice to any Complainant or Respondent whose participation is expected at any interview, hearing, or other meeting held pursuant to this process. Such notice will include the date, time, location, participants, and purpose of the meeting, with time for the party to prepare to participate.

### b. Advisors

The parties have the opportunity to be advised by a personal advisor of their choice, who may, but is not required to be an attorney, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. During investigation interviews/meetings, an advisor may only consult and advise their advisee, but is not permitted speak for their advisee at any meeting. Unless special exception is granted, each party may have only one advisor present at any given time.

#### c. Review of Evidence

The university will provide both parties and their advisors, if any, an equal opportunity to review the evidence gathered during the investigation interview process that is directly related to the reported conduct, including evidence upon which the university does not intend to rely, and evidence that has a tendency to show the Respondent is more or less likely to be found responsible. Such evidence will be made available to the parties and their advisors prior to completion of the investigation report and the parties will have at least ten (10) business days to submit a written response, which the investigator(s) will review prior to completing the investigation report.

An investigation report will be provided to the parties and their advisors, if any, at least ten (10) business days prior to a hearing, for review. The parties will be permitted, if they choose, to submit a written response to the investigation report prior to commencing the hearing. Any written response to the report must be submitted at least five (5) business days before the hearing.

### 3. Hearings

The Complainant<sup>6</sup> and the Respondent each have the opportunity to attend and to present evidence at a hearing before a properly trained hearing board, which may include or be comprised of an internal or external adjudicator. Hearings may be conducted with the parties physically present in the same location, or, at the request of either party or the discretion of the university, the hearing may occur with the parties and witnesses appearing at the hearing virtually, with technology enabling the hearing board and parties to simultaneously see and hear the party or the witness answering questions. There will be a single record of the hearing, which may include an audio recording. The record will be made available to the parties for review upon request. The hearing procedures may be augmented by other applicable policies (such as Collective Bargaining Agreements, Student Conduct Code, etc.)

#### a. Advisors

The parties have the opportunity to be advised by a personal advisor of their choice, who may, but is not required to be an attorney, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. At the hearing, advisors are permitted to ask the other party and any witnesses all relevant questions and follow-up questions. If a party does not have an advisor present at the hearing, the university will provide the party with an advisor free of charge who may be, but is not required to be, an attorney.

#### b. Evidence

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<sup>6</sup> In the event the Title IX Coordinator signs a Formal Complaint, the individual who has reportedly experienced the alleged conduct will be afforded, if they wish, the same supportive options, notices, and process as if they had submitted a Formal Complaint.

All evidence made available to the parties to review prior to the hearing will be made available to the parties for use during the hearing, including for questioning purposes.

c. Questioning

Advisors are permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those pertaining to credibility. Such questioning must be conducted orally, directly, and in real time by the advisors. Before a party or witness answers a question posed by an advisor, the hearing board must first determine whether the question is relevant. Although the university recognizes that additional questions may arise during the hearing itself, preliminary questions must be submitted to the hearing board in writing at least three (3) days prior to the hearing for assessment of relevance by the hearing board. Should a question be deemed irrelevant, the hearing board will explain any decision to exclude such a question.

Questions and evidence about the Complainant's sexual tendencies or prior sexual behavior are not relevant unless such questions and evidence are offered to prove that someone other than the Respondent engaged in the alleged conduct or if such questions and evidence relate to specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent.

If a party or witness does not answer questions posed by an advisor at the hearing, the hearing board cannot rely on any statement of that party or witness in reaching a determination regarding responsibility. The hearing board cannot render a determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer questions at the hearing.

4. Alternative Resolution

In appropriate circumstances, as determined by the Title IX Coordinator or their designee and the agreement of the parties, alternative resolution may be an option for resolving matters.

**L. Determination of Responsibility and Imposition of University Sanctions**

A determination of responsibility is rendered by the hearing board and is based on the "more likely than not" standard. In other words, the hearing board asks: "is it more likely than not that the Respondent violated the university's Policy on Preventing and Addressing Sexual Misconduct"?

University sanctions, up to and including separation from the university, may be imposed upon those determined to have violated this policy. If applicable, sanctions imposed will be governed by the following processes:

1. Sanctions for violations of this policy by students will be governed by the disciplinary procedures applicable to charges of such misconduct under the Student Conduct Code Policy No. 03.70.12, which is available on the university's policies and procedures webpage (<http://policies.temple.edu/initial.asp>). Student sanctions can include, but are not limited to, probation, psycho-educational counseling, suspension, or expulsion.
2. Sanctions for violations of this policy by university employees, including faculty and

staff, will be governed by the disciplinary procedures in the university Rules of Conduct, Employee Manual, Faculty Handbook and/or a collective bargaining agreement, if applicable. Sanctions for employees may include, but are not limited to, psycho-educational counseling, being placed on leave with/without pay, change in role and responsibilities, and termination of employment.

3. Depending on the context in which the behavior at issue occurred, sanctions for violations of this policy by graduate assistants or other instructional personnel may be governed by university Rules of Conduct and Employee Manual or the Student Conduct Code Policy No. 03.70.12. Sanctions can include, but are not limited to, psycho-educational counseling, being placed on leave with/without pay, change in role and responsibilities, and termination of employment.

A written determination regarding responsibility and sanctions will be issued to the parties simultaneously, and will include:

- The specific allegations implicating this policy;
- A description of the procedural steps the university has taken, including any notifications to the parties, interviews conducted, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of university policy to the facts;
- Responsibility determination for each allegation, including supporting rationale, using the preponderance of evidence standard;
- Sanctions imposed on the Respondent by the university;
- Whether remedies will be provided to the Complainant; and
- Available appeal bases, procedures, and deadlines.

The parties will be notified simultaneously in writing should any changes be made to the disciplinary actions imposed on the Respondent. The determination regarding responsibility becomes final either on the date that the university provides the parties with the written determination of the result of the appeal if an appeal is filed or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **M. Appeal of Determination**

Each party has the right to appeal the determination of the hearing, no more than 10 days from the notification of determination. The parties will be notified simultaneously in writing (a) when either party submits an appeal and (b) of the final outcome, including the rationale, after the appeal is resolved. When an appeal is submitted, the other party will have an opportunity to review that appeal and submit their own statement in response, no more than 10 days from receipt of the other party's appeal. An appeal of a determination of responsibility is submitted to the Title IX Coordinator or their designee and may be submitted on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and/or
3. The Title IX Coordinator, investigator(s), and/or hearing board had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

## **N. Retaliation Prohibited**

Threats, other forms of intimidation, and other types of discrimination against any member of the university community *because of* their initiation of, or participation in, a report, Formal Complaint, or investigation of conduct implicating this policy is strictly prohibited and will itself be cause for appropriate disciplinary action. Complaints of retaliation may be filed in accordance with the reporting process set forth above.

## **O. Education and Prevention Programs**

Educational efforts are essential to the establishment of a campus environment that is as free as possible from sexual misconduct. Education, which includes training and staff development, has at least three goals: (a) ensuring that all persons are aware of their rights and responsibilities in the university community; (b) advising members of the university community of unacceptable behavior; and (c) informing all persons about the available mechanisms to address complaints of violations of this policy.

In collaboration with the Title IX Coordinator, various university offices (Wellness Resource Center, Institutional Diversity, Equity, Advocacy, and Leadership (“IDEAL”), Human Resources, etc.) provide educational programming and training opportunities for students, faculty, and staff regarding sexual misconduct. A training session on the university's sexual misconduct policy will be included in the orientation required of all new students, faculty, and other employees. Follow-up educational efforts, including online training and policy review for all members of the university community, occur with such frequency and in such a manner as to carry out the purposes of this policy.

The Title IX Coordinator, along with other university offices, are responsible for developing and implementing a comprehensive, institution-wide education and prevention campaign for all university members related to the prevention of sexual misconduct of all forms. This campaign includes:

- Developing orientation programs for new students, faculty and staff, and developing ongoing awareness campaigns regarding the university's policies and prevention programs related to sexual misconduct, including Pennsylvania's definitions of sexual misconduct, as well as how to avoid potential incidents;
- Training selected students and faculty and staff members to provide support, education, and referrals to individuals who have experienced sexual misconduct;
- Training residential life staff, orientation group leaders, and members of high-profile, identifiable groups on risk factors, warning signs of abusive behavior, and risk reduction for sexual misconduct, as well as how to avoid potential attacks or incidents;
- Conducting workshops on myths and risk factors associated with sexual misconduct, including programmatic intervention with high-profile groups;
- Working cooperatively with various university programs regarding curricular development and faculty and staff development;
- Providing safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of sexual misconduct against a person other than the individual; and



- Providing referrals to Tuttleman Counseling Services.

In addition to these prevention and educational responsibilities, Tuttleman Counseling Services is responsible for providing counseling services to students who have experienced sexual misconduct.

The Department of Human Resources is responsible for facilitating training on this policy to university employees, including faculty. Human Resources responsibilities include:

- Providing training on this policy at new hire orientation, which will include Pennsylvania's definitions of sexual assault, consent, domestic violence, dating violence, sexual exploitation, and stalking;
- Referring and providing support for employees who experience sexual misconduct to the appropriate law enforcement agency as well as the Employee Assistance Program and other external resources; and
- Providing ongoing educational resources for faculty and staff regarding the university's policies and prevention programs related to sexual misconduct.

#### *Review*

From time to time, the President may appoint an oversight committee comprised of students, faculty and/or staff to monitor and recommend revisions to the university's policies, programs, and procedures relating to sexual misconduct, including revisions required to comply with federal and state law.

#### *Notice*

This policy is published on the university's policies and procedures website ([policies.temple.edu](http://policies.temple.edu)). Hard copies are available in the Title IX Office, Tuttleman Learning Center, Suite 100, Office of Equal Opportunity Compliance, 2 Mezzanine, Sullivan Hall, as well as in Tuttleman Counseling Services, the Office for Student Conduct and Community Standards, the Wellness Resource Center, and Campus Safety Services and will be provided to students or employees who report they have experienced sexual misconduct whether the conduct occurred on- or off-campus. Training materials used for individuals involved in the implementation of this process are available [here](#).

#### *Notes*

##### **1. Dates of official enactment and amendments:**

Adopted by the President on September 10, 1992.

##### **2. History:**

This policy was formerly designated as Presidential Policy Statement No. I-27. Revised and renamed (formerly known as the policy on "Sexual Assault") October 1, 2013.

Revised July 2015.

Revised and renamed July 2017.

Revised and consolidated with the Preventing and Addressing Sexual Misconduct Policy June 2020.

Revised August 2023.

**Reviewed By:**

Office of University Counsel, Equal Opportunity Compliance, Title IX Coordinator,  
Department of Human Resources

**3. Cross References/Appendix:**

Preventing and Addressing Discrimination and Harassment policy

#04.81.11

Student Conduct Code policy #03.70.12

Ratification of Nondiscrimination policy #04.81.01

Nondiscriminatory policy (as to Students) policy #04.81.02

Ethnic Intimidation policy #04.81.03

For the current listing of Equal Opportunity Ombudsperson Appointments, please refer to  
<http://www.temple.edu/eoc/AppDev/ombuds.asp>