

# IV.C. CHARTER OF THE UNIVERSITY STUDENT DISCIPLINARY SYSTEM

(Source: Office of the Provost, Almanac, December 2, 1980; revised, Almanac, September 4, 1984; revised, Almanac, May 26, 1992; revised, Almanac, September 10, 1996; revised, Almanac, April 27, 2010 (<https://almanac.upenn.edu/archive/volumes/v56/n31/senate.html>))

## Preamble

In response to increasing concern about sexual assault and its consequences, the U.S. Department of Education, Office for Civil Rights (OCR) issued a new “guidance” document concerning compliance with Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in educational programs, including sexual misconduct. In this context, the Office of Student Conduct and the Office of the General Counsel, working closely with other University student affairs professionals, prepared amendments to the Charter of the Student Disciplinary System. As required by the Charter, the amendments have been approved by the Council of Deans, the Faculty Senate and the Provost and are in effect.

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## Changes

The significant points of OCR’s guidance include the following:

- Once a school knows or reasonably should know of possible sexual misconduct, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- If sexual misconduct has occurred, a school must take prompt and effective steps to end the sexual violence, prevent its recurrence, and address its effects, whether or not the sexual violence is the subject of criminal investigation.
- A school must take steps to protect the complainant as necessary, including interim steps taken prior to the final outcome of the investigation.
- A school must provide a procedure for students to file complaints of sex discrimination, including complaints of sexual misconduct. These procedures must include an equal opportunity for both parties to present witnesses and other evidence and the same appeal rights.
- A school’s procedures must use the preponderance of the evidence standard to resolve complaints of sexual misconduct. [1]

With the guidance in mind, we developed some special procedures for handling sexual misconduct cases and added a section in the Charter describing these. For the full text of these amendments, please refer to Section II.J. of the amended Charter. The amendments also include other minor clean-up revisions, such as correction of scrivener’s errors.

[1] U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter: Sexual Violence, Background, Summary and Fast Facts, April 4, 2011

## Introduction

The Charter of the Student Disciplinary System sets forth the procedures under which alleged violations of the University’s Code of Student

Conduct, Code of Academic Integrity, and other policies, rules, and regulations are resolved.

The Code of Student Conduct sets forth the responsibility of all students at the University of Pennsylvania to exhibit responsible behavior regardless of time or place. This responsibility includes, but is not limited to, the obligation to comply with all provisions of the Code of Student Conduct; with all other policies and regulations of the University, its schools, and its departments; and with local, state, and federal laws.

The Code of Academic Integrity, and similar codes adopted by some of the University’s schools, set forth the standards of integrity and honesty that should be adhered to in all student academic activities at the University of Pennsylvania.

Violations of the Code of Academic Integrity or school regulations are also violations of the University’s Code of Student Conduct. Further, violations of local, state, and federal laws may be violations of the Code of Student Conduct. Therefore, throughout the Charter references to violation(s) or alleged violation(s) of the Code of Student Conduct include violations of these other policies and laws.

The University disciplinary process at Penn may involve the following stages:

- Bringing a complaint to the Office of Student Conduct
- Resolving a complaint by mediation
- Investigating a complaint
- Filing charges by the University against a student
- Resolving charges by voluntary agreement to sanctions
- Resolving charges by disciplinary hearing
- Appealing the decision of a hearing panel
- Imposing sanctions on a student
- Fulfilling sanctions imposed by the University

Under the University’s Student Disciplinary System, charges are brought on behalf of the University, not on behalf of the complainant(s) who brought the matter to the Office of Student Conduct (OSC) or the party(ies) who may have been directly or indirectly harmed by the alleged violation of University regulations. Therefore, complainants who wish to maintain greater control over the investigation and resolution of their complaints, such as is sometimes appropriate in cases of sexual offenses or in cases involving serious cultural or communicative differences, or those who wish merely to create a record of their complaint without necessarily beginning a formal disciplinary process, may wish to bring their complaint to other University resource offices, particularly the Office of the Ombudsman, which are equipped to handle cases in this manner. Such offices may, when appropriate and helpful in an individual case, consult with relevant campus communities or other resource offices in the process of investigating and resolving a complaint and are able to work closely with both complainants and respondents in resolving such matters. If such efforts fail to arrive at a satisfactory resolution, the complainant still has the option of bringing a complaint to the OSC.

Through the University Honor Council, students play a major role in the Student Disciplinary System by advising the Director of the Office of Student Conduct and the Provost on matters of policy and the operation of the System, and by sitting as members of disciplinary hearing panels. Students also serve as advisors and mediators within the System.

The System places great emphasis on the mediation of disputes, as is appropriate in a University.

## IV.C.1. The Student Disciplinary System

### A. Statement of Purpose

The purpose of the Student Disciplinary System is to further the educational mission of the University of Pennsylvania by providing a fair and effective mechanism for investigating and resolving disputes involving students and alleged violations by students of the University's rules, regulations, and policies.

### B. Jurisdiction of the Student Disciplinary System

1. Through the Office of Student Conduct (OSC), the Student Disciplinary System handles complaints from members of the University community— trustees, faculty, staff or registered students —about alleged violations of the Code of Student Conduct, the Code of Academic Integrity, or other University policies.
2. Except as provided below, the Student Disciplinary System has jurisdiction in all disciplinary matters arising under the regulations of the University against registered students, whether they be undergraduates, graduate or professional students, or others, including students who are on unexpired leaves of absence. Approved or unapproved absence from the University is not a bar to the conduct or completion of disciplinary proceedings under this Charter.
3. In general, a student is any individual who has been admitted, matriculated, enrolled, or registered in any academic program or other educational activity provided by the Trustees of the University of Pennsylvania.
4. The Student Disciplinary System does not handle complaints against graduate and professional students when such cases lie within the jurisdiction of a hearing board or other disciplinary body established by the school of the University in which the student is enrolled. When such a school-based disciplinary procedure exists, it should be the recourse of first resort for the resolution of an alleged violation of University or school regulations, unless the OSC decides, in consultation with the Provost, that it is appropriate in light of the circumstances for the Student Disciplinary System to handle the matter. Schools with such procedures are encouraged to refer disciplinary matters (excluding academic integrity matters) to the University Mediation Program whenever appropriate. When an alleged violation of University regulations by a graduate or professional student is not within the jurisdiction of a disciplinary system established by the student's school, the Student Disciplinary System shall have jurisdiction over the matter.
5. The Student Disciplinary System does not handle alleged violations of the University's parking regulations.
6. Alleged violations of the University's Residential Living policies and contracts are ordinarily handled under the procedures of the Office of College Houses and Academic Services (CHAS) but, if serious enough to warrant sanctions beyond those which the CHAS is authorized to impose, may be referred by the Director of CHAS to the Office of Student Conduct. The fact that proceedings have been held and sanctions imposed under CHAS policies does not preclude proceedings under this charter.
7. The Director of the Office of Student Conduct decides all questions of jurisdiction of the Student Disciplinary System arising under this Charter, consulting with the Provost (or designee) and with the University's General Counsel when necessary. When appropriate, the

Office of Student Conduct may refer a complaint to another University office or disciplinary process.

### C. General Principles of the Disciplinary System

1. The University's Student Disciplinary System is not a legal system, and University disciplinary proceedings are not civil or criminal litigation. Thus, they operate under different rules, standards, and procedures, and seek to achieve ends different from criminal or civil proceedings.
2. Any member of the University community—trustees, faculty, staff or registered students—may bring a complaint about student conduct or academic integrity to the attention of the Office of Student Conduct. Doing so in no way limits a complainant(s)'s rights or obligations to bring such matters to the attention of other University offices, officers, or resources, including the Office of the Ombudsman and appropriate deans, or to seek recourse outside the University through civil or criminal legal proceedings.
3. In all cases, the University reserves the right to determine how to process a disciplinary complaint. Once a complaint is brought to the attention of the Office of Student Conduct, the OSC, on behalf of the University, will decide how the complaint will be handled, including whether disciplinary charges should be brought against a student.
4. It is expected that most matters brought to the OSC can and should be resolved through mediation and will not result in charges or disciplinary hearings. However, because of their seriousness within an academic community, alleged violations of the Code of Academic Integrity will not be referred for mediation. Thus, except in academic integrity matters and matters that warrant treatment as serious violations of the Code of Student Conduct or other University policies, the initial response by the OSC may be to refer the complainant and respondent to the University's mediation program. Only if mediation fails or is inappropriate will the OSC begin the more formal disciplinary processes outlined in this charter.
5. All members of the University community—trustees, faculty, staff or registered students—are required to cooperate with the Student Disciplinary System. Those individuals who may be interviewed or called as witnesses in a disciplinary matter (including respondents and complainants) are obligated to provide honest and complete statements to the OSC and to the Hearing Panel. While in some circumstances a respondent may choose not to answer questions or provide information because of pending civil claims or criminal charges arising out of the same or other events, the respondent's decision not to answer questions or provide information will not be a reason to delay or defer an investigation or proceedings under this Charter. A student who fails, without good cause, to appear for a hearing after receiving notice, or to cooperate with the investigation conducted by the OSC, may be charged with a violation of the Code of Student Conduct. Repeated disruption of disciplinary hearings or the disciplinary process by a student or the student's advisor may result in charges against the student of non-cooperation with the Student Disciplinary System or exclusion of the student or advisor from disciplinary proceedings including disciplinary hearings. Such exclusion is not a bar to the completion of disciplinary proceedings involving that student.

### D. Organization of the Disciplinary System

1. Office of Student Conduct  
The Office of Student Conduct is the central office responsible for resolving alleged violations of University policies by students. The duties of the OSC include determining whether complaints warrant action by the OSC, referring complaints for mediation or resolution

by other University offices, investigating complaints, determining whether to charge a student with violations of University policies, resolving complaints by voluntary agreements to sanctions, bringing charges of violations to a disciplinary hearing, presenting evidence at hearings, monitoring and enforcing the fulfillment of sanctions imposed pursuant to voluntary agreements or after disciplinary hearings, maintaining records of all disciplinary matters, providing administrative support for all aspects of the disciplinary process (including hearings), and preparing reports and compiling statistics.

## 2. University Mediation Program

The University Mediation Program (UMP) recruits, screens, and trains members of the University community to serve as mediators. The UMP uses the volunteer services of faculty, students, and staff members who have been trained in mediation and dispute resolution and may also use resources available in the University's Law School, in University resource offices such as the Office of the Ombudsman, or outside the University.

## 3. University Honor Council

The University Honor Council (UHC) educates students, faculty and staff regarding both the standards of academic integrity and of behavioral conduct of the University community. The UHC provides independent advice to the Provost and the Office of Student Conduct regarding policies of academic integrity and of conduct, as well as their implementation; the operation of the University Disciplinary System in the areas of academic integrity and student conduct; the general handling of academic integrity and of conduct cases; and the effectiveness and implementation of the University's Code of Academic Integrity and its codes of conduct. Members of the University Honor Council also sit on Disciplinary Hearing Panels for cases of alleged violations of the Code of Academic Integrity, the Code of Student Conduct and related policies.

The UHC meets regularly with the Director of the Office of Student Conduct and may also meet with appropriate administrators and students, faculty or administrative groups or committees to discuss academic integrity and conduct issues. The UHC also initiates and participates in educational programs in the areas of academic integrity and of student conduct.

The University Honor Council consists of a minimum of twenty undergraduate students, recommended by the Nominations and Elections Committee (NEC) in cooperation with the current members of the UHC, and appointed by the Provost for renewable terms of one year. The NEC and UHC are encouraged to ensure that nominees represent a broad cross section of the undergraduate student body. The UHC selects a chair from among its members by a majority vote of the current members. Faculty members and graduate students designated by the Faculty Senate or the Graduate and Professional Student Assembly to sit on Disciplinary Hearing Panels may participate in the work of the UHC at the mutual convenience of the UHC and the faculty member or graduate student.

## 4. Disciplinary Hearing Officer

The Faculty Senate shall appoint a tenured member of the Standing Faculty of the University of Pennsylvania as Disciplinary Hearing Officer (DHO), preferably from among those faculty who have experience with the Student Disciplinary System. The DHO selects members to serve on Disciplinary Hearing Panels; determines the time and location of hearings; and presides over all disciplinary hearings held under this charter. The DHO is responsible for overseeing the procedural integrity of disciplinary hearings. The DHO shall, for example: consider and resolve pre-hearing challenges to the authority or procedures of a Disciplinary Hearing Panel; rule on all disqualification requests and objections to individual panel

members; assist parties to adhere to the basic principles of fairness prior to, during, and subsequent to disciplinary proceedings; and may consult at any time with students, faculty members, the University's General Counsel, or others about procedural issues. The DHO also participates in the training of prospective faculty and student members of Disciplinary Hearing Panels. The DHO serves and may be reappointed at the discretion of the Provost, but his/her removal or reappointment may not occur without prior consultation with the UHC and the chairs of the Faculty Senate.

## 5. Disciplinary Appellate Officer

Every two years, the Provost, after consultation with the UHC and the chairs of the Faculty Senate, shall appoint a tenured member of the Standing Faculty of the University of Pennsylvania as a Disciplinary Appellate Officer (DAO), preferably from among those faculty who have experience with the Student Disciplinary System. The DAO decides appeals of findings and recommended sanctions made by Disciplinary Hearing Panels based on the record of such proceedings and written submissions from the relevant parties. The DAO serves and may be reappointed at the discretion of the Provost, but his/her removal or reappointment may not occur without prior consultation with the UHC and the chairs of the Faculty Senate.

## 6. Disciplinary Hearing Panels

- a. Disciplinary matters are heard by Disciplinary Hearing Panels of five members each. The Disciplinary Hearing Officer randomly selects the undergraduate members of Disciplinary Hearing Panels from the membership of the University Honor Council for academic integrity violations. The Disciplinary Hearing Officer randomly selects the graduate and professional student members of Hearing Panels from lists of thirteen or more graduate and professional students provided annually to the DHO by GAPSA. The Disciplinary Hearing Officer randomly selects the faculty members of Hearing Panels from lists of thirteen or more faculty provided annually to the DHO by the Faculty Senate Executive Committee. GAPSA and the Faculty Senate Executive Committee are encouraged to ensure that nominees represent a broad cross-section of graduate and professional students and faculty, respectively.
- b. In all disciplinary matters except those involving alleged violations of the Code of Academic Integrity, the Disciplinary Hearing Panel is composed of two faculty members and three students of the same category (undergraduate or graduate) as the respondent. If a disciplinary matter involves both undergraduate and graduate respondents, the panel shall include at least one undergraduate and at least one graduate student and two faculty members; the fifth panel member shall be an undergraduate or graduate student selected by the DHO.
- c. In disciplinary matters involving alleged violations of the Code of Academic Integrity, the Disciplinary Hearing Panel is composed of three faculty members and two students of the same category (undergraduate or graduate) as the respondent. If a disciplinary matter involves both undergraduate and graduate respondents, the panel shall consist of one undergraduate student, one graduate student, and three faculty members.
- d. Except for participation on the University Honor Council, no one designated to serve on Disciplinary Hearing Panels may serve simultaneously in any other capacity within the Student Disciplinary System.
- e. If any nominating body chooses fewer than thirteen members to serve on Disciplinary Hearing Panels or cannot make additional members available when needed, the Provost shall make the necessary appointments to fill the complement of the appropriate

group. If any member is unable to serve for any reason, a replacement is selected in the same manner that the original member was chosen.

- f. Student members of Disciplinary Hearing Panels must be in good academic and disciplinary standing, as defined by their schools. The University Honor Council, as appropriate, by a vote of two-thirds of its members, may remove a member who fails to perform his or her duties. When a member ceases to be in good standing or is removed by the UHC, a replacement from the same category shall be chosen in the same manner that the original member was chosen.

#### 7. Advisors

- a. Advisors help students involved in disciplinary proceedings to understand the disciplinary process, respect and comply with the provisions of this Charter, and deal with all aspects of the process. Any University faculty member, staff member, or student in good academic and disciplinary standing may serve as an advisor. The OSC maintains lists of individuals who are willing to serve as advisors and who have received training in the operation of the Student Disciplinary System.
- b. Upon receiving notice of a complaint and the accompanying list of trained advisors, a respondent may select an advisor from this list or choose any other University faculty member, staff member, or student in good academic and disciplinary standing to advise the respondent during the disciplinary process. If criminal charges are pending against a respondent or, in the judgment of the Office of the University's General Counsel, are reasonably in prospect, the respondent's advisor may be an attorney who is not a member of the University community. In such instances, the attorney shall be expected to observe the procedures of this Charter and comply fully and promptly with decisions of the DHO or other University officials or bodies charged with the administration of this Charter in the same manner expected of members of the University community.
- c. An advisor may accompany any complainant, witness, or respondent to, and may participate in, any meeting regarding a disciplinary complaint. Advisors also may accompany complainants, respondents, and witnesses to hearings, but generally may not participate directly in such hearings (except as provided in section IV.C.2.F.4.f below). Advisors to respondents may, however, quietly advise the respondent(s) during the hearing and may also make a brief statement at the conclusion of the hearing, before the panel begins its deliberations.
- d. Any advisor who fails to observe the procedures of this Charter or comply fully and promptly with decisions of the DHO may, after appropriate warning, be disqualified by the DHO from continuing to serve. In the event of such disqualification, the hearing may proceed whether or not a replacement advisor is available or it may be rescheduled, at the sole discretion of the DHO. Any person disqualified from serving as an advisor shall be ineligible to serve as an advisor for a period of two years. Repeated disruption of disciplinary hearings or the disciplinary process by an advisor may result in charges against the advisee of non-cooperation with the Student Disciplinary System. If the advisor is a member of the student body, faculty, or staff of the University, disciplinary charges may be brought against the advisor in the appropriate forum.

## IV.C.2. The Disciplinary Process

### A. Bringing a Complaint to the Office of Student Conduct

1. Any student, faculty or staff member who believes that a student has violated University rules, regulations or policies may file a complaint, which must be in writing, with the OSC. A complaint asks the OSC to consider the matter for possible referral or investigation. Students, faculty, or staff members also may consult informally with the OSC staff to determine whether they wish to file a complaint. Complaints made to other University offices or personnel also may be referred to the OSC.
2. The OSC promptly evaluates each complaint it receives to determine whether the University's Code of Student Conduct, Code of Academic Integrity, or other applicable rules, regulations, or policies may have been violated. When the OSC determines that no such violation may have occurred, it may dismiss the matter without further investigation, or it may refer the parties to the University Mediation Program or elsewhere to resolve their dispute. When the OSC determines that a violation may have occurred, it may refer the matter for mediation or undertake an investigation that may lead to the filing of formal charges against a student or students.
3. A complaint is not a charge that a student has violated University regulations. Charges against a student are only made by the University (not by complainants) following an investigation. Until there is a determination to the contrary by voluntary agreement to sanctions or by a Disciplinary Hearing Panel, there is a presumption that an accused student has not violated University rules, regulations, or policies.
4. When a complaint is filed, the OSC promptly gives written notice of the complaint and its allegations to the student(s) alleged to have violated University rules. A copy of the Charter shall be included with the notice, as well as a list of potential advisors who have received training from the OSC.

### B. Resolving a Complaint by Mediation

1. The University encourages informal mediation whenever practical and appropriate. If the parties agree, at any time the OSC may refer any disciplinary matter other than an alleged violation of the Code of Academic Integrity to the University Mediation Program (UMP) or other resources for mediation. Members of the University community—Trustees, faculty, staff or registered students—may also contact the University Mediation Program directly.
2. It is within the sole discretion of the OSC to determine whether a disciplinary complaint is suitable for mediation. If mediation fails or new information comes to light about an unresolved matter then in mediation, the OSC may proceed with an investigation and the filing of disciplinary charges. The OSC may also set a date after which it will begin to investigate the original complaint or file charges if a matter has not been successfully mediated.
3. If the OSC refers a complaint for mediation and both parties to the dispute agree to participate, the UMP will assign a trained mediator and advise the complainant(s) and respondent(s) in advance of the date, time and place set for mediation. In order to resolve a disciplinary matter by mediation, both the complainant and the respondent must agree, first, to participate in the mediation and, second, to the proposed resolution.
4. If a student fails to comply with the terms of a mediation agreement, the OSC may take steps to enforce the agreement (including use of a Disciplinary Hold or the filing of new charges under the Code of



Student Conduct) or may investigate the original complaint and bring disciplinary charges under this Charter.

## C. Investigating a Complaint

1. If, after a preliminary evaluation of a complaint, the OSC determines that a violation of the Code of Student Conduct may have occurred and if the complaint is inappropriate for mediation or mediation fails, the OSC shall investigate the complaint and determine whether to bring charges of a violation.
2. In the course of its investigation, the OSC may interview any witnesses, including the respondent(s) or potential respondent(s). The OSC shall inform each witness that anything they say in such interviews may be introduced as evidence at a hearing.

## D. Filing Charges by the University Against a Student

In light of its investigation of a complaint, the OSC may file charges against a student(s) of a violation(s) of the University's Code of Student Conduct, Code of Academic Integrity, or other University rules, regulations, or policies. The OSC also may add charges beyond the scope of the original complaint, may add additional students as respondents, or may dismiss the original complaint as unfounded. If the OSC decides to charge a student with a violation of University regulations, the OSC must inform the respondent(s) of the charges in writing, identifying the University rules, regulations, or policies alleged to have been violated. The OSC shall inform both respondent(s) and complainant(s) whether charges have been filed.

## E. Resolving Charges by Voluntary Agreement to Sanctions

1. Following the notice that charges have been filed against a student, the OSC may discuss with the respondent and the respondent's advisor what disciplinary sanction(s) would be appropriate to resolve the matter by voluntary agreement to sanctions. The respondent may accept, reject, or propose an alternative to the proposed sanction(s), and may be accompanied and assisted by an advisor, who may participate in these discussions. Statements made during discussions about whether a respondent will enter into a voluntary agreement to sanctions may not be introduced as evidence at any subsequent hearing, but may provide a basis for further investigation by the OSC.
2. A resolution by voluntary agreement to sanctions may be entered into by written agreement at any time after a complaint has been filed and prior to a disciplinary hearing. All sanctions allowed under this Charter are available to the OSC as part of a resolution by voluntary agreement to sanctions. By agreeing to such a resolution, a respondent waives further proceedings under this Charter.
3. Complainants and complainants' advisors are not parties to voluntary agreements to sanctions.
4. If, in the judgment of the OSC, a voluntary agreement to sanctions is not reasonably in prospect, or if the respondent(s) reject a proposed sanction, the OSC may bring the disciplinary matter to a hearing.

## F. Resolving Charges by Disciplinary Hearing

1. Scheduling Disciplinary Hearings
  - a. If disciplinary charges are not resolved by a voluntary agreement to sanctions, the Disciplinary Hearing Officer promptly begins the process of scheduling the Disciplinary Hearing, with due regard for the time required for all parties to prepare for the hearing. The DHO shall provide reasonable advance notice in writing to the complainant(s), respondent(s), and witnesses of the date, time,

and place of the hearing and of the names of the panel members assigned to hear the disciplinary matter.

- b. Hearings normally take place as soon as possible after the filing of charges. Upon a showing of good cause by the OSC or the respondent(s), the DHO may grant a reasonable extension of any time limit set forth in the Charter.
  - c. The DHO may expedite a Disciplinary Hearing in appropriate circumstances, including disciplinary matters involving students who have been placed on mandatory temporary leave of absence or conditional attendance, graduating students, or students who are about to take a leave of absence or to leave campus to study elsewhere.
2. Disqualification of Hearing Panel Members
    - a. Members of the Hearing Panel selected by the DHO should disqualify themselves from hearing a disciplinary matter if they believe in good faith that their capacity for making an objective judgment in the disciplinary matter is, or may reasonably appear to be, impaired. Members should not disqualify themselves for any other reason.
    - b. The respondent(s) or the OSC may object for specific cause to any panel member selected by the DHO. The objection must be in writing and must be received by the DHO at least 48 hours in advance of the date and time set for the hearing.
    - c. The DHO will rule upon all disqualification requests and objections to panel members. If the DHO decides that a challenge is valid, or if there is a voluntary disqualification, the DHO, after notifying the respondent(s) and the OSC, will replace the disqualified member with another panel member randomly selected from the same category.
  3. Pre-Hearing Exchanges and Testimony
    - a. Before the hearing, the OSC and the respondent(s) shall exchange among themselves and with the DHO copies of all exhibits to be presented, the names of witnesses to be called, and a brief summary of the substance of testimony expected to be presented to the Hearing Panel.
    - b. When the DHO believes that it will contribute to the expedition and fairness of a Disciplinary Hearing, he/she may (but need not) ask the OSC to prepare a written statement of its case against the respondent(s) and give the respondent(s) a reasonable opportunity to prepare a written response. The OSC and respondent(s) also may submit statements at their own initiative. The statements and any accompanying exhibits may be considered by the Hearing Panel, in addition to testimony, arguments, or evidence presented at the actual hearing.
    - c. In exceptional circumstances, when a witness or exhibit does not become known or available until immediately before the hearing, the DHO may, at his/her discretion, permit the evidence to be presented or may reschedule the hearing to a later time.
    - d. If a respondent or the OSC anticipates that a key witness will be unavailable for a hearing, they may ask the DHO to preserve the testimony of the witness on tape and present it as evidence at the hearing. The OSC and the respondent(s) must be notified in advance of the date, time and place of the taping. All parties who would be permitted to question such a witness at a hearing may question the witness at the taping.
  4. Conduct of Hearings
    - a. Disciplinary hearings are not trials, and they are not constrained by technical rules of procedure, evidence, or judicial formality. They are designed to encourage open discussion among the participants that promotes the hearing panel's understanding

of the facts, the individuals involved, the circumstances under which the incident occurred, the nature of the conduct, and the attitudes and experience of those involved. The rules of evidence applicable to legal proceedings do not apply to disciplinary hearings. Information, including hearsay evidence, may be considered if it is relevant, not unduly repetitious, and the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs.

- b. The DHO presides over all hearings and decides all questions about the admissibility of evidence and the conduct of hearings. While the DHO may be present for the Hearing Panel's discussions to answer procedural questions, the DHO does not deliberate or vote with the Panel regarding its findings or its recommendation of sanctions.
  - c. Disciplinary hearings are held in private unless the respondent(s) and the complainant(s) agree in writing to an open hearing. The DHO may limit attendance at a hearing to ensure fair and orderly proceedings. If a hearing is opened in accord with this procedure, the DHO may, when necessary to maintain order or to protect the rights of participants, declare the hearing closed to the public. In a case involving important privacy interests, the DHO may close a hearing or part of a hearing that has been opened upon determining that the privacy rights of a participant may be jeopardized.
  - d. Upon a showing that the required notice was provided, the hearing against a respondent(s) may proceed in his/her absence.
  - e. At the hearing, the OSC presents the results of the its investigation of the complaint, calls witnesses to testify and presents the University's evidence against the student(s). Members of the Hearing Panel may also call witnesses to testify and may question any witness appearing before it. Respondents may also call witnesses to testify and ask questions of all witnesses.
  - f. A respondent is responsible for presenting his/her own case before the Hearing Panel. However, at the discretion of the DHO, the respondent's advisor may be permitted to question witnesses on behalf of a respondent or to address the Hearing Panel. The DHO's exercise of discretion in this matter will be guided by the principles that govern disciplinary hearings, specifically, fairness, the need for orderly procedures, and the Hearing Panel's duty to understand the facts and parties in the disciplinary matter.
  - g. Complainants may attend the hearing, testify if they wish to do so, and may be accompanied by an advisor. Neither complainants nor their advisors may call witnesses or present evidence or arguments.
  - h. At the conclusion of the hearing the OSC and the respondent(s) or their advisor(s) may make brief statements. At the discretion of the Disciplinary Hearing Officer, the complainant(s) or their advisor(s) may be permitted to make a brief statement. The time allowed for such statements shall be set by the DHO.
  - i. The OSC shall arrange for a verbatim transcript or recording to be made of all disciplinary hearings. The transcript or recording is the property of the University of Pennsylvania and becomes part of the record of the disciplinary proceedings.
5. Findings and Recommendations of the Hearing Panel
    - a. Only evidence presented at the hearing shall be considered by the Hearing Panel. The Hearing Panel shall presume a respondent innocent unless proven responsible for a violation by clear and convincing evidence. All decisions of the Hearing Panel require a majority vote.

- b. Following the hearing, the members of the Hearing Panel meet to discuss in private their findings, which consist of two parts: 1) a determination of whether the respondent is responsible for any violation; and 2) if so, a recommendation of sanction(s).
  - c. The OSC may recommend to the Hearing Panel a sanction to be imposed if the Hearing Panel finds the respondent(s) responsible for a violation. The respondent(s) may respond to the OSC's proposed sanction(s). Before the Panel makes its recommendation on sanctions, it shall review any previous disciplinary offenses by and sanctions against the respondent(s).
  - d. If the Hearing Panel determines that the respondent(s) is not responsible for a violation, no sanction may be recommended against the respondent(s) and the respondent may not be subject to further proceedings under this Charter on the same charge(s).
  - e. If the Hearing Panel finds that a student is responsible for a violation of University rules or regulations, it shall recommend to the Provost appropriate sanctions. Only the Provost (or designee), acting on behalf of the University, may actually impose a sanction on a student. The Provost (or designee) shall not impose a sanction until after any appeal of the Hearing Panel's decision has been decided by the DAO.
6. Notice of Hearing Panel Decision
 

The Hearing Panel shall promptly transmit its decision, including its findings and recommendation regarding sanctions, in writing to the DHO, the OSC, the respondent(s) and the Provost as soon as possible after the end of the hearing.

## **G. Appealing a Hearing Panel's Decision**

1. The Disciplinary Appellate Officer (DAO) has exclusive jurisdiction to decide appeals. Appeals are based solely on the record of the disciplinary hearing and the written submissions and responses of the respondent(s) and the OSC.
2. Only respondent(s) may appeal the Hearing Panel's findings of responsibility except where applicable laws or regulations may extend this right to complainants. Both the respondent(s) and the OSC may appeal the Hearing Panel's recommendation of sanction(s). An appellant must submit any appeal to the DAO in writing within 10 days after the Hearing Panel has rendered its opinion. The appeal must state in detail the specific grounds upon which it is based and must be sent to the OSC or respondent(s), as appropriate.
3. When the appeal is received, the OSC provides the Disciplinary Appellate Officer with a copy of the respondent's charge letter, a copy of the Hearing Panel's findings, a verbatim transcript or tape recording of the Disciplinary Hearing, and any exhibits considered by the panel in reaching its recommendations. The respondent and the OSC have ten days from the date of the appeal to submit to the DAO a written response to the appeal.
4. Appellate review is limited to allegations of material and prejudicial procedural error in the conduct of hearings, error in the interpretation or application of relevant University regulations, consideration of new evidence sufficient to alter the Hearing Panel's findings or severity of the recommended sanctions. If the DAO finds sufficient basis, he/she may reverse or modify the Hearing Panel's findings or proposed sanctions, or may remand the disciplinary matter for further investigation by the OSC or a new hearing before a new Hearing Panel. However, the DAO may not recommend a more severe sanction(s) unless the OSC has appealed the sanction(s) recommended by the Hearing Panel.

5. After considering an appeal, the Disciplinary Appellate Officer shall promptly issue his/her decision in writing and shall provide copies to the OSC, the DHO, the Provost, and the respondent(s).

## H. Imposing Sanctions on a Student

1. Sanctions recommended against a respondent by a Hearing Panel or the DAO are imposed by the Provost, or his designee, and may include any reasonable sanction, including, but not limited to, the following:  
 Warning—A warning is a written admonition given by the OSC on behalf of the University in instances of minor misconduct.  
 Reprimand—A reprimand is written censure for violation of the University's rules, regulations, or policies, given by the OSC on behalf of the University, which includes notice to the student that continued or repeated conduct violations shall result in the imposition of more serious sanctions.  
 Fine—A monetary fine may be levied as a disciplinary sanction and is payable to the Trustees of the University of Pennsylvania. (not appropriate in cases of academic integrity violations).  
 Restitution—Restitution is reimbursement for the damage, loss, or misappropriation of University, private or public property or compensation for injury to individuals. Restitution may take the form of monetary payment, property, or appropriate service (not appropriate in cases of academic integrity violations).  
 Disciplinary Probation—Disciplinary Probation may be imposed for a specified period or indefinitely (i.e., for as long as and whenever a student is a full- or part-time student at the University of Pennsylvania). Probation may be imposed for a single instance of misconduct or for repeated minor misconduct. Any future misconduct or academic integrity violation by a student on Disciplinary Probation, found to have occurred during the probationary period, may be grounds for suspension or, in especially serious instances, expulsion from the University.  
 Withdrawal of Privileges—Withdrawal of privileges is the denial of specified privileges or the ability to participate in specified activities for a designated period of time.  
 Suspension—Suspension is the termination of student status and separation from the University until a specified date. Suspension means the loss of all rights and privileges normally accompanying student status. While on disciplinary suspension, students may not obtain academic credit at Penn or elsewhere toward completion of a University of Pennsylvania degree. Students are eligible to return to the University after the specified suspension term has elapsed. Suspension is imposed in instances of serious misconduct; it is generally the minimum sanction imposed for a violation of the Code of Academic Integrity.  
 Indefinite Suspension—An indefinite suspension is termination of student status and separation from the University for an unspecified period, without an automatic right of return to the University as a student (though specific conditions for return as a student may be specified). When the conditions of an indefinite suspension have been fulfilled, the student must make a formal request, as specified in the conditions, to return to student status. Indefinite suspension is imposed in instances of extremely serious misconduct or in instances of continued serious misconduct following the imposition of probation or suspension for a specified period.  
 Expulsion—Expulsion is a permanent termination of student status and permanent separation from the University of Pennsylvania. Expulsion is imposed in instances of the most serious misconduct or in instances of continued serious misconduct following the imposition of probation or suspension.

2. In addition to the sanctions defined above, students may be required to perform a designated number of hours of University or other community service or to utilize University or other educational or counseling services related to the nature of the misconduct.
3. Sanctions may be imposed alone or in combination with other sanctions. The Disciplinary Hearing Panel or the DAO may recommend whether the sanctions should appear on the transcript of a respondent, and, if so, for how long.
4. After the imposition of sanctions, a faculty member involved in an academic integrity matter shall be informed of the outcome of the disciplinary proceedings. If the student has been found not to be responsible for an academic integrity violation, the instructor should re-evaluate and assign a grade (which may differ from the grade originally assigned) based on the student's academic performance in the course. If the student has been found responsible for an academic integrity violation, the instructor may assign any grade the instructor deems appropriate. In the event that the student believes the final grade is unfair or fails to take account of the outcome of the disciplinary proceeding, the student may appeal the grade through the existing academic grievance procedure for the evaluation of academic work established by each school and academic department.

## I. Fulfilling Sanctions Imposed by the University

1. Under the Code of Student Conduct, students are required to comply with all disciplinary sanctions. Failure to do so constitutes a violation of the Code and is itself subject to disciplinary proceedings by the OSC.
2. The OSC monitors the implementation and fulfillment of sanctions. In performing this duty, the OSC shall have the cooperation of the Division of University Life, the respondent(s)'s dean, and other appropriate University offices. No sanction shall be enforced while an appeal is pending.

## IV.C.3. Additional Matters

### A. Administration of the Disciplinary System

1. The Provost is responsible for implementation of this Charter, administrative oversight of the Student Disciplinary System, including the OSC, and ensuring that the Student Disciplinary System functions fairly and in furtherance of the educational mission of the University. The Provost may instruct the OSC regarding the handling of special cases, but he/she may not so instruct the DHO, the DAO, or the members of Disciplinary Hearing Panels.
2. When circumstances warrant, the OSC may take such administrative steps as may be necessary and feasible to effect the prompt resolution of a disciplinary matter, including, but not limited to, tape recording the testimony of witnesses who may be unavailable at the time of hearing; making special arrangements to ensure the attendance of complainants, respondents, witnesses, or other participants at a hearing; and scheduling hearings outside of the normal academic year.
3. In any disciplinary matter in which a member of the Student Disciplinary System cannot perform her/his duties under this Charter, an alternate may be designated by the Provost using the procedures appropriate to that individual's position in the system. In addition, when the Provost determines that circumstances warrant, such as (but not limited to) when a conflict of interest or a particularly complex or controversial disciplinary matter arises, the Provost may appoint a special OSC staff member, a special Disciplinary

Hearing Officer, or a special Disciplinary Appellate Officer using the procedures appropriate to the position.

## **B. Reports to the University Community**

1. Subject to the limitations imposed by law and the University's policies on the confidentiality of student records and information, the OSC, in consultation with the Provost, the University Conduct Council, and the University Honor Council, shall make periodic reports to inform the University community about the character and extent of the work of the Disciplinary System, including the nature of violations of University rules and regulations and the sanctions imposed. The reports of the OSC shall deal both with disciplinary matters that go to hearing and with disciplinary matters that are resolved before hearing, and shall include such information as the total number of disciplinary matters handled during the preceding year broken down by type of resolution (e.g., mediation, voluntary agreement to sanctions, hearing), by type of violation, by type of sanction(s) imposed, and by whether or not the respondent(s) were found responsible for a violation.
2. With the approval of the Provost, the OSC may also make extraordinary reports to the University community concerning the outcome of certain exceptional disciplinary matters, subject to the limitations imposed by law and the University's policies on the confidentiality of student records and information.

## **C. Disciplinary Holds**

At any time after the filing of a complaint, the OSC, after consulting with the student's academic dean, may place a "Disciplinary Hold" on the academic and/or financial records of any student for the purpose of preserving the status quo pending the outcome of proceedings, enforcing a disciplinary sanction, or ensuring cooperation with the Student Disciplinary System. A Disciplinary Hold may prevent, among other things, registration, the release of transcripts, and the awarding of a degree.

## **D. Mandatory Leave of Absence and Conditional Attendance**

In extraordinary circumstances, when a student's presence on campus is deemed by the University to be a threat to order, health, safety, or the conduct of the University's educational mission, the Provost (or designee), in consultation with the student's dean or associate dean, may place the student on a mandatory temporary leave of absence or impose conditions upon the student's continued attendance, pending a hearing of disciplinary charges. When reasonably possible, the student shall be provided with an opportunity to be heard before a decision is made by the Provost (or designee) to impose a mandatory temporary leave of absence or conditions on the student's attendance. At the respondent's request, and where feasible, the OSC may expedite the investigation of a complaint and the disciplinary hearing against a student placed on a mandatory temporary leave of absence or conditional attendance.

## **E. Civil or Criminal Proceedings**

The University may proceed with disciplinary proceedings against a student under this Charter regardless of possible or pending civil claims or criminal charges arising out of the same or other events. The OSC, with the concurrence of the Provost and after consultation with the University's General Counsel, shall determine whether to proceed with charges against a student who also faces related charges in a civil or criminal tribunal. If the University defers proceeding with disciplinary charges against a student in light of related charges in a civil or criminal tribunal, the University may at any subsequent time proceed

with disciplinary proceedings against that student under this Charter irrespective of the time provisions set forth in this Charter.

## **F. Disciplinary Records**

1. **Maintenance of Records**  
Except as may be otherwise provided by applicable law, records of all complaints, disciplinary proceedings, mediations, and voluntary agreements to sanctions are maintained by the OSC in accordance with the University's Protocols for the University Archives and Records Center and University policies on the confidentiality and maintenance of student records.
2. **Confidentiality**  
Except as may be otherwise provided by applicable law, all disciplinary proceedings, the identity of individuals involved in particular disciplinary matters, and all disciplinary files, testimony, and findings are confidential, in accordance with University policies and federal law concerning the confidentiality of student records. However, no provision of this Charter or the University's own confidentiality shall be interpreted as preventing a student from seeking legal advice.
3. **Violation of Confidentiality**  
Failure to observe the requirement of confidentiality of a disciplinary hearing by any member of the University community, other than the respondent, constitutes a violation of University rules and may subject the individual to the appropriate procedures for dealing with such violations. The respondent may disclose confidential information pertaining to him/herself, but may not violate the confidentiality of others. If the respondent discloses, causes to be disclosed, or participates in the disclosure of information that is confidential, any person whose character or integrity might reasonably be questioned as a result of such disclosure shall have the right to respond in an appropriate forum, limited to the subject matter of the initial disclosure.

## **G. Release of Information on Disciplinary Proceedings**

1. To provide students involved in disciplinary matters with appropriate liaison with their school offices in regard to their academic work, the dean or appropriate associate dean of the school(s) of the respondent(s) shall be confidentially-informed when a complaint is filed, when a sanction is imposed, or when a disciplinary complaint is otherwise resolved by the Student Disciplinary System. When a sanction is imposed, the Director of Career Planning and Placement may be informed by the OSC if the sanction(s) is reportable outside the University. When a transcript notation is required as part of a sanction, the University Registrar is also informed and required to implement the sanction as directed by the OSC on behalf of the Provost.
2. As required by law, in disciplinary matters involving allegations of sexual offenses, the complainant(s) shall be informed of the outcome of disciplinary proceedings, including voluntary agreements to sanctions.

## **H. Reportability of Sanctions**

1. Subject to applicable law and the University's policies on the confidentiality of student records and information, any disciplinary sanction may be reportable outside the University of Pennsylvania, subject to specific policies governing the reporting of sanctions adopted by the Council of Undergraduate Deans for undergraduate students and the Council of Graduate Deans for graduate and professional students.



2. Resolution of disciplinary charges by voluntary agreement to sanctions is treated like a finding of responsibility and is reportable in the same manner as sanctions imposed following a Disciplinary Hearing.

## I. Amendment of the Charter

Amendments to this Charter may be recommended by the University Honor Council, the Office of Student Conduct, University Council, Faculty Senate Executive Committee, or other appropriate members of the University community and proposed by the Provost. Amendments take effect upon the approval of the Council of Deans, except that the Council of Deans may at its discretion refer proposed amendments to the deans and faculties of the individual schools for approval.

## Applicability of the New Code and System

*The Code of Academic Integrity and the Charter of the Student Disciplinary System apply to all undergraduates in the School of Arts and Sciences, including the College of Liberal and Professional Studies; the School of Engineering and Applied Science; the Nursing School; and the Wharton School.*

*They also apply to all graduate students in the Annenberg School for Communication, the School of Arts and Sciences, the School of Design, the Graduate School of Education, the Nursing School and the School of Social Policy and Practice and to Ph.D. students in the Wharton School. MBA students in the Wharton School are covered by their own code of conduct.*

*The Schools of Law, Medicine, Dental Medicine and Veterinary Medicine have their own codes and disciplinary systems, as does the Biomedical Graduate Studies program.*

## IV.C.4. Student Disciplinary Procedures for Resolving Complaints of Sexual Assault, Sexual Violence, Relationship Violence and Stalking<sup>1</sup>

(Source: Office of the Provost, Almanac, January 27, 2015 (<https://almanac.upenn.edu/archive/volumes/v61/n20/pdf/012715supplement.pdf>))

### Introduction

The University of Pennsylvania is committed to providing a safe and healthy environment, free of gender-based misconduct, to all members of our community and visitors to our community. As such, sexual assault, sexual violence, relationship violence, and stalking will not be tolerated.

In order to ensure the creation of a climate where students are able to thrive and achieve their full potential, the University has developed a wide range of policies, educational programs, broad-based resources, support, and reporting systems. This amendment to the Student Disciplinary Charter supplements these other policies and initiatives, addressing the process by which complaints against an enrolled University student for a violation of the Sexual Violence, Relationship Violence and Stalking Policy ("Sexual Violence Policy") will be adjudicated and resolved.

### Confidentiality

Confidentiality is of critical importance in ensuring that these sensitive matters are handled appropriately. The University has an obligation to address complaints with respect to the violation of the Sexual Violence Policy as fairly and expeditiously as possible as soon as it becomes aware of an allegation that the Policy has been violated. To that end,

if any University official is informed of an allegation that the Policy has been violated, the University is required to respond, unless the informed official is serving in a privileged capacity (designated confidential resource, therapists, clergy, or medical providers).

The response to the complaint, however, including seeking a resolution under this procedure, should be treated as confidential, to the extent consistent with the requirements of law. University staff and faculty may share information with others who have a legitimate need to know in order to fairly and effectively address complaints, but the information should be considered confidential and should be protected to the extent possible consistent with legal obligations. Such administrators may include, for example, the Office of the Vice Provost for University Life, the Office of the Sexual Violence Investigator, the Title IX Officer, Public Safety, the Office of General Counsel, Counseling and Psychological Services, Student Health, and academic advising offices.

## I. Reporting Complaints of Violation of the Sexual Assault Policy

### A. Office of the Sexual Violence Investigative Officer

The Office of the Sexual Violence Investigative Officer (IO) will be responsible for managing all complaints made against an enrolled University student alleging a violation of the Sexual Violence Policy.

Complaints must either be presented in writing, or based upon information provided by the complainant to the IO who will then memorialize the allegations in writing and have the allegations confirmed by the complainant. Complainants may include University students or others both within and outside the community alleging a violation against a University enrolled student.

### B. Office of the District Attorney and Office of Civil Rights

Complainants may also choose to file a report with the District Attorney or with the Office of Civil Rights of the U.S. Department of Education.

The University system and the legal system work independently from one another, but will coordinate efforts to the extent possible. The University will not unilaterally defer its proceeding pending the outcome of any criminal process, nor will the outcome of any legal process be determinative of the University result. Rather, the University has its own interest in, and responsibility for, ensuring the enforcement of its Sexual Violence Policy.<sup>2</sup> The University will, however, comply with reasonable requests by law enforcement for cooperation, and will upon reasonable request temporarily suspend its fact-finding process in a sexual assault investigation so as not to impede the law enforcement process.

### C. Support, Counseling and Advice

In making a decision about how to proceed with a complaint, complainants may seek support, counseling, and advice from other offices on campus, including the Special Services Unit in the Division of Public Safety, the Sexual Violence Educator, the Office of the Chaplain, the Penn Women's Center, Counseling and Psychological Services, Student Intervention Services, and the Lesbian Gay Bisexual and Transgender Center. A list of these offices is provided in Section III below. Should the complainant determine to proceed with an on campus disciplinary process against an enrolled University student, the Office of the Sexual Violence Investigative Officer will be the single place to initiate the process.<sup>3</sup>

## D. Timeframe for Submitting a Complaint

The University does not limit the timeframe for filing a report of a violation of the Sexual Violence Policy. Reports may be filed at any time, although the University's ability to investigate or take any action may be limited by the passage of time or the matriculation status of the alleged respondent.

## E. Complainant Request for Confidentiality

The University is required by Title IX to weigh the complainant's request for confidentiality/privacy with the University's commitment to provide a reasonably safe and nondiscriminatory environment. In situations where a complainant requests privacy, the University's ability to investigate and respond to the allegations may be limited.

The IO will notify the complainant if the University cannot, in unusual cases, maintain the complainant's confidentiality/privacy. The complainant's and respondent's identities will only be revealed to those individuals who need to know their names in order to investigate or adjudicate the complaint or provide interim measures.

In situations where the University becomes aware of a pattern of behavior by one or more respondents, the University will take appropriate action in an attempt to protect the University community.

# II. Investigation and Resolution of Complaints

## A. Timely Resolution

The process of resolving complaints, exclusive of any appeal, should be completed, unless there are special circumstances, within 60 business days of the filing of the written complaint. The appeal should be completed, absent special circumstances, within 30 business days of the filing of the appeal.

In the event that a Hearing Panel is convened, the complainant and the respondent will both be provided with a copy of the decision of the Panel and given 10 business days to file an appeal.

## B. Rights and Protections for Complainant and Respondent

1. The complainant and respondent have the right to a process that is fundamentally fair, and free of bias or prejudice.
2. The complainant and respondent have the right to be treated with respect, dignity, sensitivity, and fairness throughout the entire process. They are both entitled to seek support from the University and to be informed about the process both before the process is initiated and throughout the process as it unfolds.
3. Both parties have the right to participate in the process, or to refrain from participation. The failure to participate will not be used as evidence against either party, but also will not prevent the process from proceeding unless the complainant determines to withdraw the complaint and the University determines to abide by that request.
4. Both parties may have a lawyer or other advisor present when being interviewed by the Investigative Team and the Hearing Panel, but the lawyer or other advisor will not be permitted to present statements, seek the production of evidence, or question any witnesses.
5. Evidence of prior sexual conduct by the complainant or respondent with other partners will not be considered in the process, and any evidence of a prior sexual relationship between the parties will not be determinative of the issue of consent. If there is credible evidence

of a pattern of violations of the Sexual Violence Policy, that evidence may be considered by the Hearing Panel.

6. While the process is underway, the Vice Provost for University Life (VPUL) will work with the complainant and respondent, ensuring support is provided to both parties. VPUL will also be responsible for implementing interim measures to protect the parties, or any of the witnesses, consistent with principles of fairness, including implementing measures regarding housing, academic accommodations and scheduling changes, no contact orders, and any other appropriate actions to protect the parties or any of the witnesses.

## C. Preliminary Determination

Upon receiving a complaint, the IO will make a preliminary determination as to whether the complaint falls within the purview of the Sexual Violence Policy and whether, on its face, there appears to be a sufficient basis to conduct a full investigation. In making this determination, the IO may interview the complainant and the respondent and conduct whatever preliminary investigation the Officer deems necessary to determine if the actions alleged in the complaint would, if true, constitute a violation of the University's Sexual Violence Policy and there is a reasonable basis for investigating the charges. If the IO concludes there is insufficient basis to proceed, the matter will be concluded and the parties so advised.

## D. Investigation

If the IO makes the determination that there is a sufficient basis to proceed, the Officer will issue a Statement of Charge Letter, based on the complaint and any preliminary investigation conducted. The Charge Letter will be provided to the complainant and the respondent. The respondent will be provided the opportunity to respond in writing to the Charge, and any response will be shared with the complainant.

The IO will lead a thorough and fair investigation, assisted by one or more co-investigators who may come from the school of the complainant or respondent or from elsewhere in the University (the "Investigative Team"). The co-investigator(s) will be University administrators or faculty members appropriately trained as investigators in handling sexual violence cases, and will be selected for individual cases by the IO. The investigation will include interviews of the complainant and respondent, interviews of witnesses, and review of documentation, physical evidence, and any other relevant evidence.

Prior to interviews, the complainant, the respondent, and any relevant witnesses will be informed by the IO that statements they make during the process may be admissible in concurrent or subsequent civil or criminal court proceedings, and will accordingly also be informed of their rights as outlined in Section B above. They will also be reminded of the consequences of making false statements to the IO under the Code of Student Conduct and the Charter of the University of Pennsylvania Student Disciplinary System. The complainant and respondent may have their advisors<sup>4</sup> and/or outside counsel present for their interviews, but the advisors or outside counsel will not be permitted to participate in the interview other than to provide advice to the student, and they may be excluded from the interview for disruptive behavior.

In conducting the investigation, the Investigative Team may, as appropriate, also consult with other campus officials including but not limited to administrators in the relevant School, Public Safety, the Title IX Officer, or the Vice Provost for University Life. The Investigative Team may also consult with the Office of General Counsel, who may determine in particular cases to engage outside counsel to assist the University

throughout this process. The Investigative Team may engage forensic and other experts, as needed.

## E. Investigative Report

At the conclusion of the investigation, the Investigative Team will prepare a draft factual investigative report, including assessments of credibility, a recommended finding as to responsibility, and recommended sanctions, if appropriate. In making the responsibility determination, the Investigative team will use a “preponderance of the evidence” standard. In other words, to find a student responsible for violating the Sexual Violence Policy, the Investigative Team must be convinced that it is more likely than not that a violation of the Sexual Violence Policy has occurred.

### 1. Opportunity for Review and Comment

The draft investigative report will be provided to both the complainant and respondent for review and comment, under strict instructions that the draft report is confidential, and not to be shared with anyone other than their families and advisors, who must be members of the University community and/or outside counsel, as described above. Sharing of the report by either party, their families, advisors or outside counsel with any additional persons will be strictly prohibited. The complainant and respondent will also be provided the opportunity to review the underlying evidence and witness statements with their advisors, but they will not be provided copies. The complainant and the respondent will be given the opportunity to respond to and comment on the draft investigative report in writing.

### 2. Final Report

As a result of the response and comments received, the Investigative Team may conduct a further investigation and/or amend the draft report, if the Team determines either action to be warranted. A final investigative report will be prepared, incorporating any changes, and shared with the complainant and the respondent. The complainant and respondent may submit formal objections or comments to the final report, which will become part of the final report of the matter.

## F. Resolution Without a Hearing

The matter may be resolved at this stage if both parties agree to the recommendations of the Investigative Team with respect to responsibility and, if applicable, sanctions, or if the parties otherwise reach a mutually acceptable resolution. The University, however, will not compel either the complainant or the respondent to engage in face-to-face mediation or to accept the recommendations of the Investigative Team.

## G. Hearing Panel

If the matter is not resolved at this stage in a mutually acceptable manner, the IO will present the final investigative report, together with any comments provided by the complainant and/or respondent, to a Hearing Panel (“Panel”).

### 1. Panel Membership

The Panel will be comprised of three (3) faculty members and the Disciplinary Hearing Officer (DHO), who will be a non-voting member. The DHO will make all decisions about the organization of the Panel, including decisions regarding the admissibility of evidence, witnesses to appear before the panel, or any additional decisions regarding the administration of the hearing process.<sup>5</sup>

Membership of the Panel, including the DHO, will observe the following guidelines:

- i. Members will be selected from a pool of faculty who have agreed to serve for a term of one or more years.

- ii. Only mixed-gender panels that have training and experience in handling complaints involving sexual misconduct will hear sexual misconduct cases.
- iii. Faculty comprising the Panel should be from academic departments in which neither of the parties is enrolled in a course of study, and no faculty member should serve on the Panel who has a mentoring relationship or other personal relationship with either of the parties.
- iv. Faculty asked to serve should recuse themselves or be dismissed if they have any personal ties to either of the parties or to individuals with whom the parties are closely associated. Nor may they have prior personal knowledge of the alleged incident of sexual misconduct.
- v. The University will train members of the pool to fulfill their responsibilities as adjudicators according to the procedures and policies outlined here and to ensure compliance with Title IX and other applicable state and federal guidelines. In addition, the Panel will be provided with “just in time” training on adjudicating sexual violence cases.
- vi. The IO may not serve on the Panel, however the IO may testify before the Panel regarding his or her investigation and may assist the DHO as needed in organizational and administrative matters related to the Panel.
- vii. The complainant and respondent will be notified of the membership of the Panel in advance of the Hearing. Any challenges for cause against individual Panel members must be made promptly so as not to delay the conduct of the Hearing, and will be given serious consideration by the DHO to ensure impartiality of the proceedings.
- viii. All proceedings must be kept strictly confidential among the parties, witnesses and members of the panel. All individuals involved in such hearings must agree to such conditions of confidentiality.

### 2. Hearing Procedures

Hearings must be prompt, fair, and impartial, affording the complainant’s allegations and the respondent’s defenses all due consideration and protecting the rights of both parties. The Panel will review the Investigative Team’s final report, including any response, objections, or comments provided by the complainant or respondent. The Panel will also carefully review the evidentiary record, including witness statements, documents, and physical evidence.

#### i. Hearing Panel Interviews

The Panel will interview separately the IO (and co-investigator(s) if the Panel so chooses), the complainant, and the respondent. The Panel will, whenever possible, provide the complainant and respondent with at least five days advance notice of the Hearing. If reasonably possible, interviews will be conducted on one day, but if such scheduling would require an unreasonably long day, or if such scheduling would unreasonably delay the proceeding, the hearing may be scheduled over multiple days. The Panel may seek additional evidence from the IO and interview key witnesses on whom the IO relied in drawing his or her conclusions, as well as request additional evidence from the IO to clarify the evidentiary record, provided that it can do so without unreasonably delaying the process. In the event that a new witness comes forward during the Hearing who was not originally interviewed by the IO, or new evidence discovered after the IO has issued his or her report, the DHO may allow that witness to testify or admit the evidence to the hearing, but only if

the DHO judges the new witness or evidence to be highly relevant to an accurate and fair determination of the outcome.

- a. The Hearing will be held in private, and only the Panel may conduct interviews. Only the person interviewed (and that person's advisor or outside counsel, as applicable) will be present at the Hearing during interviews. The complainant or respondent (and their advisor or outside counsel, as applicable) will be able to view testimony from separate rooms, upon request, via closed-circuit television or similar video transmission.
- b. Subject to the Protections set forth in Section B above, the Panel has wide latitude when questioning the complainant, the respondent and any witnesses in order to determine the accuracy of the report.
- c. The complainant and respondent may propose witnesses and provide specific questions in advance that they believe important to ask of other parties or witnesses. The DHO, in consultation with the Panel, will determine the relevance as well as the appropriateness of witnesses and questions, and may accordingly place restrictions on, include, or exclude witnesses or other information.
- d. When the Panel is conducting the interview of the complainant and respondent, each student may bring an advisor or outside counsel with them to provide advice and support, but the advisor or outside counsel will not be permitted to participate in the interview other than to provide advice to the student and may be excluded from the interview by the DHO for disruptive behavior.
- e. The interviews by the Panel will be recorded (audio only). No observers will be permitted to make any audio or video recordings.

### 3. Hearing Panel Decision

After the Hearing concludes, the Panel will immediately deliberate in private to decide whether a preponderance of the evidence shows that the respondent is responsible for a violation of the University's Sexual Violence Policy. Preponderance of the evidence means that the Panel must be convinced based on the evidence that it is more likely than not that a violation has occurred in order to find a student is responsible for violation the policy. A finding of responsibility requires a majority vote of the members of the Panel.

- i. If the respondent is found responsible, the Panel will also determine the appropriate sanction, by majority vote, based upon the facts of the case and University precedent, with a presumption in favor of the sanction recommended by the IO.
- ii. The Panel will arrive at its conclusion as expeditiously as possible, and will promptly advise both the complainant and the respondent in writing of its decision with respect to responsibility and, if applicable, sanctions. In keeping with guidelines for timely resolution as provided in Section A above, the written decision will be provided as soon after the conclusion of the proceeding as is possible.
- iii. Decisions made by the Panel are considered final, subject only to appeal as outlined below.

## H. Appeal of Hearing Panel Decision

The Panel decision is subject to appeal by either party in writing to a Disciplinary Appellate Officer (DAO), a faculty member with exclusive jurisdiction to decide appeals. In keeping with guidelines for timely resolution as provided in Section A above, appeals should be submitted

within 10 business days after the decision of the Panel. Letters of appeal should specifically state whether the objection is to the judgment of responsibility, the sanction, or both, and explain in detail the grounds for appeal.

1. The DAO will review the report of the Investigative Team and supporting evidence, the audio record from the Panel Hearing in the discretion of the Appellate Officer, and any other material the DAO deems relevant, in addition to the decision of the Panel in order to ensure that the process was consistent with University policy and that the result was not arbitrary or capricious.
2. After considering the appeal, the DAO will promptly issue his or her decision in writing and will provide copies to the DHO, the Provost, the Vice President for Institutional Affairs, the respondent(s) and other appropriate parties.

## III. Resource Offices

### A. Confidential Resources

The following can be contacted for support, counseling, and advice:

#### **Special Services Unit, Division of Public Safety**

24-hour Helpline: 215.898.6600  
4040 Chestnut Street

#### **Counseling & Psychological Services (CAPS)**

Main Number: 215.898.7021  
After hours emergency number: 215.349.5490  
133 South 36th Street, 2nd Floor

#### **Penn Women's Center (PWC)**

Main Numbers: 215.898.8611 and 215.898.6500  
3643 Locust Walk

#### **Student Health Service (SHS)**

Main Number: 215.746.3535  
3535 Market Street, Suite 100

#### **Lesbian Gay Bisexual Transgender Center**

Main number: 215.898.5044  
3901 Spruce Street

#### **Office of the Chaplain**

Main Number: 215.898.8456  
240 Houston Hall, 3412 Spruce Street

#### **Director, Sexual Violence Prevention & Educator**

VPUL, 3611 Locust Walk  
215.898.6081

### B. Official Reporting Offices

The following are official reporting offices for violations of the Sexual Violence Policy:

#### **Office of the Sexual Violence Investigator**

215.898.2887  
3600 Chestnut Street, Sansom Place East, Suite 227

#### **Title IX Officer and Office of Affirmative Action and Equal Opportunity Programs (OAA/EOP)**

215.898.6993  
3600 Chestnut Street, Sansom Place East, Suite 228

#### **Student Intervention Services, VPUL**



3611 Locust Walk  
215.898.6081  
215.768.6527 Nights/Weekends

**Office of Student Conduct**

207 Duhring Wing  
215.898.5651

**Division of Human Resources**

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- <sup>1</sup> This procedure amends and supersedes the Charter of the University of Pennsylvania Student Disciplinary System with respect to violations of the University policy on Sexual Violence, Relationship Violence, and Stalking as those terms are defined in that policy ("Sexual Violence Policy"). It applies to each of the 12 schools, notwithstanding the existence of separate procedures that individual schools may have adopted for violations of laws or policies other than the University Sexual Violence Policy. If a complaint involves allegations of violations of the Sexual Violence Policy as well as other University policies, the matter can either be fully resolved using this process, or divided into two separate proceedings, as appropriate in any particular case.
- <sup>2</sup> The University recognizes that should it be proceeding in cases where criminal charges are pending, the respondents may choose not to participate in the disciplinary process in order to protect their Fifth Amendment rights. Such decision will not be used as evidence against any respondent and the Hearing Panel will be instructed not to draw any adverse inference from the failure to participate.
- <sup>3</sup> While the Investigative Officer will be responsible for managing the complaint investigation and resolution process, as described below, the IO will work with other appropriate University offices, including the Vice Provost for University Life, to determine if interim measures are appropriate before a final resolution is reached.
- <sup>4</sup> The University will provide a list of advisors from the Penn community to complainants and respondents. Advisors will be trained by the University to support both complainants and respondents in this process. The parties need not select an advisor from this list, but may select any faculty or administrative member of the community to advise them. The parties may also retain outside counsel in addition to, or instead of, using an advisor. The role of the outside counsel, however, will be limited to an advisory role and will not be permitted to have an active role in the proceedings.
- <sup>5</sup> In carrying out these responsibilities, the DHO may consult with the IO, the Office of General Counsel and other appropriate offices such as the Office of Student Conduct and the Vice President for Institutional Affairs. University officers thus consulted will respect the confidentiality conditions of the proceedings.