

STUDENT DISCIPLINARY PROCEDURES FOR RESOLVING COMPLAINTS OF SEXUAL ASSAULT, SEXUAL VIOLENCE, RELATIONSHIP VIOLENCE AND STALKING

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 Charter¹ 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 Violence 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.² 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.³

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 advisors⁴ 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 addition 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.

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.⁵ 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

227 Sansom Place East
3600 Chestnut St.
Philadelphia, PA 19104-6106
215.898.2887

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

3600 Chestnut Street, Sansom Place East, Suite 228
215.898.6993

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

3401 Walnut Suite 527A
215.898.7281

- ¹ 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.
- ² 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.
- ³ 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.

- ⁴ 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.
- ⁵ 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.

(Source: Almanac, January 27, 2015, Volume 61, No. 20 (https://provost.upenn.edu/uploads/media_items/1-27-charter-amendment-supplement-2.original.pdf))