



Policy DE001: Sexual Misconduct Policy and Procedures

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INTRODUCTION

1. Purpose of Policy

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined WKH PHDQLQJ RI 7LWOH , ; ¶ V SURKLELWLRQ RQ VH[GLVFULPL harassment and sexual violence FH WKDW LQWHUIHUH ZLWK D VWXGHQW ¶ V D programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972¹ that:

- x Defines the meaning of

The University will promptly and equitably respond to all reports of sexual misconduct in order to

Certain individuals are designated as having confidentiality. For reports made to employees designated with having confid

California Campus	https://www.calu.edu/student-life/health-wellness.aspx https://www.calu.edu/inside/campus-safety/anonymous-witness.aspx
Clarion Campus	https://www.clarion.edu/student-life/health-fitness-and-wellness/ https://www.clarion.edu/about-clarion/offices-and-administration/university-support-and-business/office-of-social-equity/complaint-form.html
Edinboro Campus	https://www.edinboro.edu/life-at-the-boro/health-and-wellness/ghering/index.php KWWSV FP PD[LHQW FRP UHSRUWLQJIR 3HQQ:HVV8QLY OD\RXWBLG

All University proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the & OHU \ \$FW 7LWOH , ; RI WKH (GXFDWLRQ 3P1 u "

11. Effective Date

Based on the Final Rule, this Policy will be effective August 14, 2020.

12. Impact on other Policies or Processes

As used in this Policy, sexual misconduct may also encompass criminal conduct under Pennsylvania

Domestic Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Domestic Violence will be categorized as Non-Regulatory.

3. **Retaliation** ±Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual (A) for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations; or (B) because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. A finding of retaliation under this Policy is not dependent on a finding that the underlying sexual misconduct occurred.

4. **Sexual Assault** ±(As defined in the Clery Act) ±This includes any sexual act directed against another person, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent. Sexual Assault may be one of the following categories:
 - A. **Sexual Penetration Without Consent** - Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.

 - B. **Sexual Contact Without Consent** -

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Stalking will be categorized as Non-Regulatory.

OTHER DEFINITIONS

1. **Advisor** - An individual who may be present to provide support to a Party throughout an investigation and/or hearing.
 - A. Advisors may accompany a Party to any meeting or hearing they are required or eligible to attend, but may not speak for the Party, except for the purposes of cross-examination.
 - B. Each party is responsible for coordinating and scheduling with their choice of Advisor.
 - C. The Advisor of choice may be an attorney or a union representative (when applicable) or other individual selected by the party.
 - D. If a party does not have an Advisor of choice present for a hearing, the University will appoint an Advisor for the limited purposes of asking questions and conducting cross-examination.
 - E. , I D 3DUW\ GRHV QRW DWWHQG WKH KH Ask questions of WKH 3DUW\ cross-examination on WKH 3DUW\ TV
 - F. The Advisor is not prohibited from having a conflict of interest or bias in favor of or against a Party, nor is the Advisor prohibited from being a Witness in the Sexual Misconduct Resolution Process.

2. **Appeals Officer** ±The individual or individuals with the authority under law or otherwise appointed

without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a

signed by the Title IX Coordinator, alleging sexual misconduct against a Respondent and requesting initiation of the process set forth in this Policy to investigate the allegation of sexual misconduct.

- 11. Hearing Officer** ±The individual, usually the Director of Student Conduct, who facilitates the hearing, maintains decorum, and upholds procedure during the hearing. During a Hearing, the Hearing Officer is not a Decision Maker and is a non-voting participant in the Hearing.
- 12. Investigator** - The Title IX Coordinator or the individual designated by the Title IX Coordinator to perform an investigation under this Policy. The Investigator may not have a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general. The Investigator may not serve as a Decision Maker, Appeals Officer or Advisor to any Party in the same matter.
- 13. Notice of Allegations** ±The written notice the Title IX Coordinator or designee is required to provide to the Parties following receipt of a Formal Complaint. See Notice of Allegations section below.
- 14. Notice of Hearing** ±The written notice the Title IX Coordinator, Hearing Officer, o

against Respondents who are Employees. The Title IX Coordinator or Deputy Title IX Coordinator may not serve as a Decision Maker, Appeals Officer or as an Advisor to any Party.

21. Volunteer - A recognized volunteer or any individual who represents or acts on behalf of the university or whose actions may bind the university, regardless of whether the individual receives monetary or other compensation. For purposes of this Policy, employees and officials of recognized affiliated entities, ROTC instructors, visiting professors and unpaid camps and conference personnel

On Campus Reporting Locations:

Edinboro Campus	Clarion Campus	California Campus
Andrew Matt amatt@pennwest.edu 213 Reeder Hall	Amy Salsgiver asalsgiver@pennwest.edu 423 Becht Hall	Sheleta Camarda-Webb camardawebb@pennwest.edu 426 Dixon Hall

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

7 KH 8 QLYHUVLW \ ¶ V 7 LMOH Ho work & RIR d G d s D W R d L e x u a l m i s c o n d u c t and have knowledge about resources and services, both on and off campus, including the availability of Supportive Measures.

If a report of misconduct discloses a serious or immediate threat to the campus community, the University will issue a timely warning to the community to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant.

PLEASE NOTE: Title IX Coordinators are not a confidential source of support. While they will address matters reported with sensitivity and will keep your information as private as possible, confidentiality cannot be guaranteed. To speak with an individual designated as having confidentiality, please contact Wellness Services:

Edinboro Campus	Clarion Campus	California Campus
McNerny Hall	Becht Hall	Carter Hall
Counseling 814-732-2252	Counseling 814-393-2255	Counseling 724-938-4056
Student Health Services	UPMC Health Services	Student Health Center
814-732-2743	814-393-2121	724-938-4232

PLEASE ALSO NOTE: Making a report is different from filing a Formal Complaint (see the section titled Filing a Formal Complaint). A report is defined as notification of an incident of sexual misconduct to the Title IX Coordinator or designee by any person. A report may be accompanied by a request for (1) Supportive Measures; (2) no further action; (3) filing a Formal Complaint a request to initiate an informal resolution process; and/or (4) a request to initiate an informal resolution process after filing a Formal Complaint. Filing a Formal Complaint initiates the University ¶ ¶ Formal investigation process. (See

2. Electronic and Anonymous Reporting

You may also file a report about sexual misconduct using the appropriate links below. While anonymous reports are accepted, WKH 8 Q Lab by address for misconduct reported anonymously is significantly limited.

Individuals may use this https://cm.maxient.com/reportingform.php?PennWestUniv&layout_id=38 to electronically file a report of sexual misconduct with the University.

Individuals may also file a report electronically by email to: asalsgiver@pennwest.edu

3. Filing a Formal Complaint

The timeframe for the Sexual Misconduct Res8Complaint

Pennsylvania State Police Troop E 4320 Iroquois Avenue Erie, PA 16511 814-898-1641	Pennsylvania State Police 2090 Commerce Road Clarion, PA 16214 814-226-1710	Pennsylvania state Police Troop B-Belle Vernon 560 Circle Drive Belle Vernon, PA 15012 724-929-6262
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PLEASE NOTE 7KH 8QLYHUVLW\¶V SROLF\ GHILQLWLRQV DQG EX FULPLQDO ODZ 1HLWKHU ODZ HQIRUFHPHQW¶V GHFLVLRQ ZK prosecution, is determinative of whether sexual misconduct has occurred under this Policy. In cases where there is a simultaneous law enforcement investigation, there may be circumstances when the University may need to temporarily delay its investigation while law enforcement gathers evidence. However, the University will generally proceed with Formal Complaint even during the time of a pending law enforcement investigation.

The University may not be informed of reports made to law enforcement agencies.

5. External Reporting Options

A person may also file a complaint with the U.S. Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by calling 1-800-421-3481 : 1-877-521-2172 TTY or emailing OCR.Philadelphia@ed.gov or visiting <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

A person may also file a complaint with the Pennsylvania Human Relations Commission by calling 717-787-9780 for the Harrisburg Regional Office; 412-565- 5395 for the Pittsburgh Regional Office; or 215-560-2496 for the Philadelphia Regional Office; or by visiting <https://www.phrc.pa.gov/Pages/default.aspx>.

Employees may also file a charge with the Equal Employment Opportunity Commission regarding an alleged violation of Title VII by calling 1-800-669-4000 or visiting <https://www.eeoc.gov/employees/howtofile.cfm>.

The University may not be informed of reports made to external agencies.

6. Truthfulness

the Sexual Misconduct Resolution Process applies to more than one Complainant and/or more than one Res SRQGHQW EXW HDFK SDUW\ LV VWLOO DQ. The Decision of the Title IX Coordinator to consolidate Formal Complaints is not subject to appeal.

UNIVERSITY REPORTING OBLIGATIONS

1. Mandated Reporting Obligations of

allegations raised in the Formal Complaint at any time during the investigation or hearing.

Any Party may appeal a dismissal determination. See the Determining Jurisdiction and Mandatory Dismissal for Certain Allegations under the Sexual Misconduct Resolution Process Section for more information.

EMERGENCY REMOVAL FOR STUDENTS

1. The University retains the authority to remove a Respondent from its Education Programs or Activities on an emergency basis. This action is also referred to as an emergency removal.
2. Before imposing an emergency removal on a student Respondent, the University will:
 - A. undertake an individualized safety and risk analysis; and
 - B. determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct justifies a removal.
3. If the University imposes an emergency removal on a student Respondent, the University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
 - A. The University will provide written notice of the emergency removal and applicable charges.
 - B. The University will provide an opportunity for the Respondent to appeal that decision to an appropriate Hearing Officer or designee within 10 days of the imposition of the emergency removal.
 - C. The designated University Hearing Officer

INFORMAL RESOLUTION PROCESS

Informal means of resolution, such as mediation, may be used as an alternative to the formal investigation and hearing procedures. Informal resolution is a voluntary process and may be used only where a Formal Complaint has been filed. Upon written agreement of all parties, informal resolution may be initiated at any time prior to finding of responsibility in a hearing, and may be terminated at any time prior to final resolution. If the informal process is terminated, the Sexual Misconduct Resolution Process, which includes an investigation and hearing, will proceed. Once a final resolution has been reached and documented and signed by all parties, the resolution cannot be appealed.

Informal resolution may not be utilized when a Student files a Formal Complaint against a University Employee, Volunteer or Official under this Policy.

SEXUAL MISCONDUCT RESOLUTION PROCESS

1. Formal Complaint

The Sexual Misconduct Resolution Process is initiated by a Complainant providing the Title IX Coordinator a written, signed Formal Complaint describing the facts alleged. See the section titled Filing a Formal Complaint above.

2. Notice of Allegations

The Title IX Coordinator will draft and provide a written Notice of Allegations to any Party alleged to have violated this Policy

Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source.

- F. Individuals are prohibited from knowingly filing a false report or making misrepresentations. If, following an investigation and hearing

- A. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- B. The Respondent

Edinboro University and not the Parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Policy has occurred. Either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.

Edinboro University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e., evidence that tends to prove and disprove the allegations). See Inspection and Review of Evidence section below.

Medical records of a party (or parent, if applicable) will not be considered as part of the investigation unless the party to whom the medical records belong provides the records to the Investigator.

unrelated to the Sexual Misconduct Resolution Process. Any violation of this confidentiality requirement may result in separate disciplinary action under the Code of Conduct or other University Policy, as appropriate.

Any evidence subject to inspection and review will be available at any hearing held, including for purposes of cross-examination.

7KH , QYHVWLJDWRU ZLOO FRQVLGHU WKH SDUWQHUV ZULW Report. Parties may request a reasonable extension of the time to submit a written response, which may be denied in the sole discretion of the Investigator, in consultation with the Title IX Coordinator.

The Investigator has 10 days to generate a report or after the responses to additional evidence are due; the Investigator may provide the Parties and their Advisors with written notice extending the investigation and explaining the reason for the extension.

C. Investigative Report

The Investigator will create an Investigative Report that fairly summarizes relevant evidence.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional allegations.

8. General Rules of Hearings

A. Notice of Hearing

No less than 10 days prior to the hearing, the Title IX Coordinator, Hearing Officer or other designee will send written notice of the hearing to the Parties. The Parties will be notified by their University email accounts or by other reasonable means. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Hearing will contain:

- 1) A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential Disciplinary Sanctions actions that could result.
- 2) The time, date, and location of the hearing.
- 3) Information about the option for the hearing to occur with the parties located in separate rooms using technology that enables the Decision Maker(s) and Parties to see and hear a Party or Witness answering questions. Parties should inform the Title IX Coordinator, Hearing Officer or other designee of any desire to have the hearing occur in separate rooms at least 3 days prior to the hearing to ensure appropriate technology is in place.
- 4) Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
- 5) A copy of the rules of decorum for all hearing participants
- 6) A list of the Decision Makers, Board Chair, and Hearing Officer who will attend the hearing, along with an invitation to object to any actual or perceived conflicts of interest or bias of the Decision Maker(s) prior to the hearing.

- 3) IT personnel (as needed)
- 4) The Parties
- 5) Advisor of choice or provided by the University for each Party
- 6) Witnesses
- 7) Any individuals necessary to provide interpretation or other support services associated with reasonable accommodations to facilitate participation in the hearing.

The Decision Maker(s) and Hearing Officer will not have a conflict of interest or bias in favor of

universities, hearings must include the opportunity to cross-examine witnesses when credibility determinations are at issue. As such, if any witness is not available for cross examination, the Decision Maker(s) must determine whether any statements or testimony from that witness are admissible.

9. Decisions

A. General Considerations for Evaluating Testimony and Evidence

- 1) While the opportunity for cross-examination is required in all hearings under this Policy, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision Maker(s).
- 2) Hearsay evidence may not be used to establish a fact necessary to establish responsibility consistent with the requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel.
- 3) Decision Maker(s) shall not draw inferences regarding a Party or Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.
- 4) Generally, credibility judgments should rest on the demeanor of the Party or Witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
- 5) Credibility judgments should not rest on whether a Party or Witness is nervous, incomplete, or if the Party or Witness is displaying stress or anxiety.
- 6) Where a Party or Witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision Maker(s) may draw an adverse inference as to that Party or Witness.
- 7) Decision Maker(s) will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
- 8) The Final Rule requires the University to admit and allow testimony regarding polygraph testing.

B. Timeline for Decision

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within 10 days of the completion of the hearing.

C. Finality

The determination regarding responsibility becomes final either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested as set forth in the Appeals section below.

10. Disciplinary Sanctions Against Students

A. Possible Disciplinary Sanctions

The University may impose the following Disciplinary Sanctions upon Students, singly or in combination:

Disciplinary Warning: Official notice that specific behavior or activity was in violation of the conduct code and that further violations may result in more serious disciplinary action. Students receiving a Disciplinary Warning remain in good disciplinary standing.

Disciplinary Probation: Official notification of a specified period of review and monitoring. Further violations of the conduct code may result in more severe disciplinary action, including an examination of continued status as a Student. Students on Disciplinary Probation are not in good disciplinary standing.

Final Disciplinary Probation: Final Disciplinary

Expulsion: Official notification of permanent separation D Q G W H U P L Q D W L R Q R I W K H status as a Student, and exclusion from University property, privileges, and activities. Students on Expulsion are not in good disciplinary standing.

Restitution: Reimbursement for damage to, or destruction of, University property.

Housing Reassignment: Movement from a current residential assignment to another location in campus housing. Housing rates may be impacted.

Housing Removal: Removal from campus housing for a specified period of time. Access to campus housing including visitation is prohibited. Should circumstances warrant, housing removal could be permanent. In accordance with Residence Life policy, in such instances there will be no refund of housing fees.

Restriction of Privileges: Exclusion from, or limits on, participation in specified services and activities or specified campus facilities. Prohibition of participation in campus co-curricular activities or use of campus services, e.g., intramural participation, room reservation privileges, leadership

Educational Activities: Completion of a specified activity, service project, educational program, event, assignment, papers, meetings or other educational and/or restorative assignment.

B. Previous Disciplinary Sanctions

Previous Disciplinary Sanctions of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

C. Timing

The Disciplinary Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

11. Disciplinary Sanctions Against Employees, Officials and Volunteers

A. Possible Disciplinary Sanctions

Disciplinary Sanctions imposed on an Employee for violating this Policy, subject to an applicable collective bargaining agreement or University/System policies, may include a penalty up to and including separation from employment.

Disciplinary Sanctions imposed on an Official or Volunteer may include a penalty up to removal or the request for removal of the Official or Volunteer from their respective position.

B. Timing

The Disciplinary Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

12. Appeals by Where the Respondent is a Student

A. Each Party may appeal the dismissal of a Formal Complaint or any included allegations or a determination of responsibility on the following grounds:

- 1) A procedural irregularity under the University policy or procedures that more likely than not affected the hearing outcome.
- 2) New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the Formal Complaint that more likely than not could affect the outcome of the matter.
- 3) The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that more likely than not affected the outcome of the matter.
- 4) The Disciplinary Sanction imposed was arbitrary or capricious or the appropriateness of the sanction.

B. Appeals must be filed in writing within 5 days of being notified of the decision and must indicate the grounds for the appeal.

C. The submission of an appeal stays any Disciplinary Sanctions for the pendency of an appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

D. If a party appeals, the University will notify the other party in writing of the appeal as soon as practicable, however the time for appeal shall be offered equitably to all parties and shall not be

G. The outcome of appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

13. Appeals

RIGHTS/RESPONSIBILITIES

- A. Reports and Formal Complaints have different meanings. An individual has a right to make a report of sexual misconduct to the University, which may be accompanied by a request for Supportive M