



Widener University

**Equal Opportunity, Harassment,
And Nondiscrimination Policy**

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POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

As used in this document, the term “reporting party” refers to the person impacted by alleged discrimination or harassment. The term “responding party” refers to the person who has allegedly engaged in discrimination or harassment.

Applicable Scope

Widener University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the university’s Equity Resolution Process (ERP), as detailed below. When the responding party is a member of the university community, the resolution process is applicable regardless of the status of the reporting party who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, visitors, campers, etc.

Title IX Coordinator

Alison Kiss Dougherty, Director of Employee Relations, serves as the Title IX Coordinator¹ and oversees implementation of the university’s policy on equal opportunity, harassment and, nondiscrimination. The Title IX Coordinator heads the Title IX Team and acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the Senior Vice President for Administration and Finance, Joseph J. Baker. To raise concerns regarding a potential conflict of interest with any other administrator involved in the resolution process, please contact the Title IX Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

For all students and employees:

Alison Kiss Dougherty
Associate Vice President
Title IX Coordinator
Office of Human Resources
One University Place, Chester, PA 19013
610-499-1301
e-mail: akdougherty@widener.edu

¹ Note that throughout this document, the term “Title IX Coordinator” refers to the Title IX Coordinator or their designee.

Deputy Title IX Coordinators:

For students on the Chester campus:

Brenda Cruz
Director, Residence Life
University Center, Main Campus
610-499-4395 | bxacruz@widener.edu

Larissa Gillespie
Head Women's Field Hockey Coach
Schwart Center, Main Campus
610-499-4434 | lagillespie@widener.edu

Kortne Smith
Coordinator, Multicultural Student Affairs
University Center, lower level
610-499-4413 | kasmith1@widener.edu

Sharmane Walker
Academic Advisor, Graduate Studies and
Extended Learning
Kapelski Learning Center, Suite 123
610-499-4394 | sswalker@widener.edu

For all students and employees:

Kevin Raport
Chief of Campus Safety
Widener University Law Schools
Delaware Law School
4601 Concord Pike, Concord Hall
Wilmington, DE 19803
302-477-2202 | kjraport@widener.edu

For students on the Delaware Law School campus:

Susan Goldberg
Dean of Students
Delaware Law School
4601 Concord Pike
Wilmington, DE 19803
302-477-2173 | slgoldberg@widener.edu

For students on the Commonwealth Law School campus:

Randi Teplitz
Assistant Dean of Students
Commonwealth Law School
3800 Vartan Way
Harrisburg, PA 17110
717-541-3962 | rbteplitz@widener.edu

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: 800-421-3481
Facsimile: 202-453-6012
TDD#: 877-521-2172
e-mail: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>
EEOC Philadelphia District Office
801 Market Street, Suite 1300
Philadelphia, PA 19107
800-669-4000

Reporting Options

Reports of discrimination, harassment, and/or retaliation may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the university's jurisdiction, the ability to investigate, respond, and provide remedies may be more limited:

- 1) Report directly to the Title IX Coordinator or Deputy Title IX Coordinators;
- 2) Report to Campus Safety at 610-499-4200;
- 3) Report to the Health Center at 610-499-1183;
- 4) Report to the Counseling Center at 610-499-1261;
- 5) At the Delaware Law School, report to the psychologist, Dr. Amy Dwinnell at 302-477-2263.

All reports are acted upon promptly while every effort is made by the university to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the university are designated as mandated reporters and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Senior Vice President for Administration and Finance, Joseph J. Baker.

Jurisdiction

This policy applies to behaviors that take place on campus, at university-sponsored events, and may also apply to off-campus conduct and to actions online when the Title IX Coordinator determines that the off-campus conduct or online action affects a substantial university interest. A substantial university interest is defined to include:

- a) Any action that constitutes a criminal offense of harassment or discrimination, or occurs collateral to a criminal offense of harassment or discrimination as defined by law, other than minor traffic offenses. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property, or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the interests of the university as they relate to this policy.

1. University Policy on Nondiscrimination

Widener University adheres to all federal and state civil rights laws prohibiting discrimination in private institutions of higher education. Widener University will not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of sex, gender, pregnancy status, age, race, national origin or ethnicity, religion, disability, status as a veteran of the Vietnam era or other covered veteran, sexual orientation, gender identity, marital status, or genetic information, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive, or limit the educational, employment, residential, and/or social access, benefits, and/or opportunities of any member of the campus community, guest, or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the university policy on nondiscrimination. When brought to the attention of the university, any such discrimination will be appropriately addressed and remedied by the university according to the Equity Resolution Process described below. Non-members of the campus community who

engage in discriminatory actions within university programs or on university property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with university programs as the result of their misconduct. All vendors serving the university through third-party contracts are subject by those contracts to the policies and procedures of their employers.

2. University Policy on Accommodation of Disabilities

Widener University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

a. **Students with Disabilities**

Widener University is committed to providing qualified students with disabilities with reasonable accommodation(s) and support needed to ensure equal access to the academic programs and activities of the university.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Disabilities Services who coordinates services for students with disabilities. The Director of Disabilities Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are reasonable to the student's particular needs and academic programs.

b. **Employees with Disabilities**

Pursuant to the ADA, Widener University will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would result in undue hardship. An employee with a disability is responsible for requesting an accommodation, in writing, to the Office of Human Resources and providing appropriate documentation. The Office of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what

reasonable accommodation(s) could enable the employee to perform those duties.

3. University Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Widener University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under university policy.

a. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), the Commonwealth of Pennsylvania and the State of Delaware regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Widener University has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- unwelcome,
- sexual, sex-based, and/or gender-based,
- verbal, written, online, and/or physical conduct.

Anyone experiencing sexual harassment in any university program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education, and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment, and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- Severe, or
- persistent or pervasive, and
- objectively offensive, such that it:
 - unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the university's educational, employment, social, and/or residential programs.

Quid Pro Quo Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development, employment, or performance.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes around on an e-mail list they created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office, not pertaining to course materials, or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her and she is the target of relentless remarks about cigars, the president, "sexual relations", and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

b. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Widener University has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Widener University considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the university reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact, and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Violations include, without limitation:

i. Sexual Harassment (as defined in section b above)

ii. Non-Consensual Sexual Intercourse

Defined as:

- any sexual intercourse
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual intercourse includes:

- Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

iii. Non-Consensual Sexual Contact²

Defined as:

² The state definitions of sexual offenses are available at:

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=31&sctn=21&subctn=0>, and are applicable to criminal prosecutions for sexual assault in Pennsylvania, but may differ from the definition used on campus to address policy violations. Delaware statutes can be found at: <http://www.delcode.delaware.gov/title11/c005/sc02/index.shtml>

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes:

- Intentional contact with the breasts, groin, genitals, or mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact in a sexual manner.

iv. Intimate Partner Violence

Defined as violence or abuse between those in an intimate interaction and/or relationship to each other³;

Examples of Intimate Partner Violence:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy constitutes intimate partner violence.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of intimate partner violence.
- A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control, though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

³ Relevant Pennsylvania statutes on domestic relations can be found here, <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.061..HTM>, and are applicable to prosecutions for dating and/or domestic violence in the Commonwealth of Pennsylvania, but are not the same as Widener policies addressing Intimate Partner Violence. Relevant DE statutes can be found here: <http://delcode.delaware.gov/title10/c009/sc01/>

v. Stalking⁴

- Stalking 1:
 - i. a course of conduct
 - ii. directed at a specific person
 - iii. that is unwelcome, AND
 - iv. would cause a reasonable person to feel fear or suffer substantial emotional distress
- Stalking 2:
 - v. repetitive and menacing
 - vi. pursuing, following, harassing, and/or interfering with the peace and/or safety of another

Examples of Stalking:

- **Stalking 1:** A student persistently seeks to locate another student on campus, even going so far as waiting for them outside of classes and showing up to their on-campus place of employment and/or residence hall requesting that they go out on a date together.
- **Stalking 2:** A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by e-mail, "You can ask me to stop, but I'm not giving up. We are meant to be together and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student e-mailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."

⁴ Relevant Pennsylvania statutes on stalking can be found here:

<http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.001..HTM> and are applicable to prosecutions for stalking in the Commonwealth of Pennsylvania, but are not the same as Widener policies addressing stalking.

Relevant DE statutes can be found in Section 1312a, here: <http://delcode.delaware.gov/title11/c005/sc07/>

vi. Sexual Exploitation

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD), or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

vii. Force and Consent⁵

Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The

⁵ Pennsylvania does not have a statutory definition of consent applicable to criminal prosecutions for sex offenses. Delaware uses the following definition: (j) "Without consent" means:

- (1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or
- (2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or
- (3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or
- (4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or
- (5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Consent: Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability,

involuntary physical restraint, and/or from the taking of incapacitating drugs.

In Pennsylvania, children less than 13 years of age cannot grant consent to sexual activity. Teens between the ages of 13 and 15 can consent to sexual activity with peers who are no more than four years older. People aged 16 and older can legally consent to sexual activity with anyone they choose, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute. In Delaware, children less than 12 years of age cannot grant consent to sexual activity. A minor who has not yet reached age 16 is unable to consent to a sexual act with a person more than 4 years older.

Examples of lack of consent:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 pm until 3:00 am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
- Jiang is a junior at the university. Darla is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to

watch a movie. Jiang and Darla, who have never met before, are attracted to each other. After the movie, everyone leaves and Jiang and Darla are alone. They hit it off and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Darla. Darla, who was abused by a baby-sitter when she was five and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Darla has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Darla is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Darla that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this and John says yes. Clothes go flying and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale and Kevin thinks he may have thrown up. John gets back into bed and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him

for the wild night. John remembers nothing and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol and Kevin thought John was physically ill and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

c. Bias/Hate-Related Harassment

Harassment constitutes a form of discrimination that is prohibited by university policy as well as the law. Widener University condemns and will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of any status protected by policy or law. Widener will seek to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, the university may also impose sanctions on the harasser through application of the Equity Resolution Process. Widener University's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively offensive such that it interferes with, limits, or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.⁶

4. Other Civil Rights Offenses

In addition to the forms of sexual misconduct and harassment described above, the following behaviors are also prohibited whether or not the act is based upon the reporting party's actual or perceived membership in a protected class. All faculty and staff cases regarding reported

⁶ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance. The document is available at: <http://www2.ed.gov/about/offices/list/ocr/docs/race394.html>

violations of the civil rights offenses listed below will be handled through the Title IX Coordinator.

Student reports of possible violations of these other civil rights offenses based on the reporting party's actual or perceived membership in a protected class will be initially reviewed by the Title IX Coordinator for resolution under these procedures. When such actions do not involve discriminatory conduct, they may be forwarded by the Title IX Coordinator for further action under the Student Code of Conduct to the Assistant Dean of Student Conduct. When the report describes a student-prohibited behavior which is not based on the reporting party's actual or perceived membership in a protected class, the report will be forwarded immediately to the Assistant Dean of Student Conduct for action under the Student Code of Conduct.

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- Bullying, defined as:
 - Repeated and/or severe
 - Aggressive behavior
 - Likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally
 - That is not speech or conduct otherwise protected by the 1st Amendment.

Any other university policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Sanctions for the above-listed "Other Civil Rights Offenses" behaviors range from reprimand through expulsion (students) or termination of employment.

The university reserves the right to address offensive conduct and/or harassment that: 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not based on a protected status. Such behaviors will be addressed through respectful confrontation, remedial actions, education, and/or effective conflict resolution mechanisms. For assistance

with conflict resolution techniques, employees should contact the Director of Employee Relations and students should contact the Assistant Dean of Student Conduct.

5. Retaliation

Retaliation is defined as any adverse action taken against persons participating in an activity protected under the Equal Opportunity, Harassment, and Nondiscrimination Policy because of their participation in that protected activity. Retaliation includes any form of intimidation, threat, coercion, or any other type of discrimination or harassment because of an individual's complaint, report, or participation in a protected activity. Any individual or group of individuals can engage in retaliation.

Retaliation against an individual for alleging harassment or discrimination, supporting a party bringing an allegation, or for assisting in providing information relevant to a claim of harassment or discrimination is a serious violation of university policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Widener University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- Student-athlete A files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification.
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct investigation against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the investigation.

6. Remedial Action

Widener University will implement initial remedial, responsive, and/or protective actions upon notice of alleged harassment, retaliation, and/or discrimination. Such actions could include, but are not limited to: no contact orders, providing counseling and/or remedial services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic

or work schedule and assignment accommodations, safety planning, and/or referral to campus and community support resources. Widener University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest, or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation. The university will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the university's ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described below.

7. Confidentiality and Reporting of Offenses Under This Policy

All Widener University employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials – thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. Other resources exist for reporting parties to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at Widener University:

a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- Off-campus (non-employees):
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors and the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. University

employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

b. Formal Reporting Options

All university employees are mandated reporters unless they fall under the “Confidential Reporting” section above.⁷ Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared with the Title IX Coordinator. Employees must promptly share all details of the reports they receive. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not constitute notice that must be reported to the Coordinator by employees, unless the individuals reporting clearly indicate that they wish a report to be made. Remedial actions may result from such disclosures without formal university action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that the university’s ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or resolution.

In cases indicating pattern, predation, threat, weapons, and/or violence, the university will likely be unable to honor a request for confidentiality. In less severe cases where the reporting party requests confidentiality and the circumstances allow the university to honor that request, the university will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action unless required to do so by law. A reporting party has the right, and can expect, to have allegations taken seriously by Widener University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

⁷ Aramark employees are not employees of the university.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including, but not limited to: the Office of Student Affairs, Office of Student Conduct, Campus Safety, and the Behavioral Intervention Team (BIT). Information will be shared as necessary with investigators, witnesses, and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Failure of non-confidential employees, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of university policy and can be subject to disciplinary action by the Provost for faculty members and by the Chief Human Resources Officer for all other employees.

8. Federal Timely Warning Obligations

Parties reporting sexual misconduct should be aware that under the Clery Act, university administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The university will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

9. False Allegations

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action by the Provost for faculty members and by the Chief Human Resources Officer for all other employees.

10. Amnesty for Reporting Party and Witnesses

The university community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to university officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, the university pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

Students: Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to Campus Safety). The university pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

11. Parental Notification (allegations involving students)

The university reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status, or conduct situation, particularly alcohol and other drug violations. The university also reserves the right to notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the university will contact parents/guardians to inform them of situations in which, at the university's sole discretion, there is a significant and articulable health and/or safety risk. The university also reserves the right to designate which university officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

12. Federal and State Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence, stalking, and other crimes for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to Campus Safety regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime and to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct, Campus Safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories), and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously. The university must also comply with the Pennsylvania Uniform Crime Reporting Act and college and university security regulations.

EQUITY RESOLUTION PROCESS FOR ALLEGATIONS OF HARASSMENT, SEXUAL MISCONDUCT, AND OTHER FORMS OF DISCRIMINATION

Widener University will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination, that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class involving students, staff, or faculty members. These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

Overview

Upon notice to the Title IX Coordinator, this resolution process involves a prompt, preliminary inquiry to determine if there is reasonable cause to believe this policy has been violated. If so, the university will initiate a confidential investigation that is thorough, reliable, impartial, prompt, and fair. The investigation and the subsequent resolution process determines whether this policy has been violated. If so, the university will promptly implement effective remedies designed to end the conduct, prevent its recurrence, and address its effects.

1. Reporting Misconduct

Any member of the community, guest, or visitor who believes that the policy on Equal Opportunity, Harassment, and Nondiscrimination has been violated should contact the Title IX Coordinator.

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. Any member of the community, including visitors, may contact Campus Safety to make a report. These individuals will in turn notify the Title IX Coordinator. The university website also includes a reporting form at <https://publicdocs.maxient.com/incidentreport.php?WidenerUniv> which may serve to initiate the resolution process.

All employees receiving reports of a potential violation of this policy are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All

initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to the university's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, Widener University will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

2. Preliminary Inquiry

Following receipt of notice or a report of misconduct, the Title IX Coordinator, or their designee, engages in a preliminary inquiry to determine if there is reasonable cause to believe this policy has been violated. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation, and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies or comply with law. As necessary, the university reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the university determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct a formal investigation to commence and the allegation will be resolved through one of the processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when both parties agree to the conflict resolution process, including acceptance of any remedies arising from that process
- Administrative Resolution – resolution by a trained administrator

Conflict Resolution may only occur if selected by all parties, including the Title IX Coordinator. Otherwise, the Administrative Resolution Process applies.

As part of the initial assessment of the facts, the Title IX Coordinator and/or their designee will:

- Assess the nature and circumstances of the allegations
- Address the immediate physical safety and emotional well-being of the reporting party and the university community
- Notify the reporting party of the right to contact law enforcement, seek medical treatment, and counseling and that the university will assist the reporting party in doing so

- Notify the reporting party of the importance of preservation of evidence
- Assess the reported conduct for the need for a timely warning or emergency notification under the Clery Act
- Provide the reporting party with an explanation of the Equity Resolution Process
- Assess for pattern evidence or other similar conduct by responding party
- Assess for the possibility of a deliberately false or malicious allegation
- Discuss the reporting party's expressed preference for manner of resolution and any barriers to proceeding
- Explain the university's policy prohibiting retaliation
- Explain the university's policy on privacy of reports
- Provide a Victim Notice to the reporting party

If conflict resolution is desired by both parties and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation. Conflict resolution is not appropriate if a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the responding party. The university aims to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that this policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator make an extraordinary determination to reopen the investigation. This decision lies at the sole discretion of the Title IX Coordinator.

3. Interim Remedies/Actions

The Title IX Coordinator may provide interim remedies intended to address the short-term effects of harassment, discrimination, and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations. These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering the housing situation of the responding party (resident student or resident employee (or the reporting party, if desired))

- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc., based on consultation with appropriate academic administrators and faculty

The university may interim suspend a student or organization or place an employee on administrative leave, pending the completion of the investigation and resolution procedures, particularly when, in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In cases in which an interim suspension is imposed, the student or student organization will be given the option to meet with the Title IX Coordinator or their designee prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator, in consultation with the Provost, Senior Vice President for Administration and Finance, or the Associate Provost and Dean of Students, as applicable, may implement or stay an interim suspension or administrative leave and determine its conditions and duration. Violation of an interim suspension or administrative leave under this policy will be grounds for expulsion or termination. Interim suspension or administrative leave under this policy will be periodically reviewed with regard to the need for their continuation.

During an interim suspension or administrative leave, a student or employee may be denied access to university housing and/or the university campus/facilities/events. As determined by the Title IX Coordinator, this restriction can include classes and/or all other university activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Title IX Coordinator, and in consultation with appropriate academic administrators and faculty, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The university will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the university's ability to provide the interim actions or protective measures.

4. Formal Investigation

Once the decision is made to commence a formal investigation, the Title IX Coordinator appoints internal or external investigators, usually within two (2) business days of determining that an investigation should proceed. Investigations are completed expeditiously, normally

within ten (10) business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

If requested by authorities, the university may undertake a short delay in its investigation (several days to weeks, to allow for evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The university will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. University action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information, as necessary.

The investigator(s) will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g., the Title IX Coordinator), identify any additional remedial actions that are immediately warranted;
- Determine the identity and contact information of the reporting party;
- Identify all potential violations of this policy;
- Assist the Title IX Coordinator with an immediate inquiry to determine if there is reasonable cause to believe the responding party has violated this policy.
 - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action, unless there is a reasonable basis to believe that the reporting party made deliberately false and/or malicious accusations;
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party;
- Prepare the notice of allegation(s) on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of an advisor of their choosing present for all meetings attended by the advisee;

- Provide the reporting party and the responding party with a written 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 sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses;
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting and responding parties throughout the investigation;
- Once the report is complete, share the report with the parties for their review and comment. The investigators may incorporate feedback from the parties;
- Recommend to the Title IX Coordinator a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- For students, the Assistant Dean of Student Conduct serves as the Resolution Administrator who finalizes and presents the findings to the parties, without undue delay between notifications;
- For employees, the Title IX Coordinator/Director of Employee Relations serves as the Resolution Administrator who finalizes and presents the findings to the parties, without undue delay between notifications;
- For faculty members, the Chief Human Resources Officer serves as the Resolution Administrator who consults with the Provost, finalizes the decision, and presents the findings to the parties, without undue delay between notifications.

At any point during the investigation, if it is determined, by a preponderance of the evidence, there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has the authority to terminate the investigation and end resolution proceedings, with notice to all parties, unless the reporting party requests that an extraordinary determination be made to reopen the investigation.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the university's investigation and Equity Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype, or similar technology, if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not have the ability to offer evidence later during the appeal if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

If, in the course of the investigation or the resolution process, other allegations surface involving the responding party which may, by themselves, constitute a violation of this policy or any other university policy, the responding party will be informed of such additional allegations, in writing. The responding party will be given the opportunity to respond to the additional allegations before any findings are issued. Any investigation or resolution of additional allegations may be processed in accordance with this policy or other applicable university policy.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other proceedings associated with the resolution process.

5. Advisors

Each party is allowed to have an advisor of their choice present with them for all resolution meetings and proceedings, from the beginning of the process through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is willing and available, and usually otherwise not involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney, or any other supporter a party chooses to serve in the advisor role. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community or proceed without an advisor. At all times, the university will correspond directly with the parties and not through any third party.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. The university cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an

attorney, the university is not obligated to provide one. Responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or resolution administrators. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated or whether the party will have to choose another advisor for the remainder of the process, if an advisor is desired.

The university expects that the parties will wish to share documentation related to the allegations with their advisors. The university provides a Title IX consent form that authorizes such sharing. The parties must complete this form before the university is able to share records with an advisor, though parties may share the information directly with their advisor, if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the university. The university may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the university's privacy expectations.

The university expects an advisor to make the necessary arrangements to allow attendance at university meetings when scheduled. The university does not typically change scheduled meetings to accommodate an advisor's inability to attend. The university will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video, and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

6. Resolution

During or at the conclusion of the investigation, the Title IX Coordinator will review the investigation, which may include meeting with the investigator, and determine whether there is reasonable cause to proceed with the resolution process. If there is reasonable cause, the Title IX Coordinator will direct the investigation to continue and the allegation will be resolved through either conflict resolution or administrative resolution.

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with university policy. While the contents of the resolution meetings are private, the parties have discretion to share their own experiences, if they so choose, and should discuss doing so with their advisors.

a. Conflict Resolution

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal resolution process. The Title IX Coordinator will determine if conflict resolution is appropriate, based on: the nature of the conduct at issue, the susceptibility of the conduct to conflict resolution, and with the agreement of both parties. In a conflict resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. For students, the Title IX Coordinator will consult with the Associate Provost and Dean of Students regarding the conflict resolution process. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached and failure to abide by the accord can result in a shift to Administrative Resolution.

Conflict resolution will not be the resolution mechanism used to address reports of sexual assault or violent behavior of any kind, in cases involving a student

alleging sexual harassment against an employee in a position of authority over the student, or in other cases of serious violations of this policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to pursue Administrative Resolution and the Title IX Coordinator, or any party participating in conflict resolution, can stop that process at any time and request a shift to Administrative Resolution. If the effort at conflict resolution fails, Administrative Resolution will apply.

Both parties will be notified of the outcome of Conflict Resolution. Notification will be made in writing and may be delivered in person. If not delivered in person, notification will be mailed to the local or permanent address of the parties as indicated in official university records, and e-mailed to the parties' university-issued e-mail account. Once mailed, e-mailed, and/or received in-person, notice will be presumptively delivered.

b. Administrative Resolution

Administrative Resolution can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment, and Nondiscrimination, at any time during the process.

In Administrative Resolution, the Resolution Administrator has the authority to address all collateral misconduct, meaning that they hear all allegations of discrimination, harassment, and retaliation, but also may address, based on evidence gathered by the investigators, any additional alleged policy violations that are discovered or arise during the Administrative Resolution process. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the Resolution Administrator believes is relevant and credible may be considered, including history and pattern evidence. The Resolution Administrator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Resolution Administrator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party.

While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the Resolution Administrator with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

Neither the Resolution Administrator nor investigators are obliged to meet with character witnesses, but investigators will accept up to two (2) letters supporting the character of each of the parties.

The Resolution Administrator will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

The responding party may choose to admit responsibility for all or part of the alleged policy violations at any point during the investigation or Administrative Resolution process. If the responding party admits responsibility, the Title IX Coordinator will render a determination that the individual is in violation of university policy.

If the responding party admits the violation, or is found in violation by the Resolution Administrator following consideration of the investigators' report, the Resolution Administrator, in consultation with the Title IX Coordinator and others as appropriate, will determine an appropriate sanction or responsive action, will implement it, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct.

The Resolution Administrator will inform the parties of the final determination within three (3) days of the resolution. Notification will be made in writing and may be delivered in person. If the notification is not delivered in person, it will be mailed to the local or permanent address of the parties as indicated in official university records and e-mailed to the parties' university-issued e-mail account. Once mailed, e-mailed, or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result to the extent that the university is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the university is permitted to share under state or federal law. The notice will also include information on when the results are considered by the university to be final, any changes that occur prior to finalization, and any appeals options that are available.

c. Sanctions

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the reporting party and the community

d. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal written statement that the behavior was unacceptable and a warning that further infractions of any university policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Probation:** A written reprimand for violation of the Student Code of Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any university policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at the university. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Title IX Coordinator.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend university-sponsored events. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Title IX Coordinator.

- **Withholding Diploma:** The university may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Organizational Sanctions:** Deactivation, de-recognition, loss of all privileges (including university registration), for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the university may assign any other sanctions as deemed appropriate.

e. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Administrative leave with pay
- Administrative leave without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, the university may assign any other sanctions as deemed appropriate.

f. Withdrawal or Resignation While Charges Pending

Students: Should a student decide to leave and/or not participate in the resolution process, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the university unless all sanctions have been satisfied.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status.

g. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within three (3) days of the delivery of the written finding of the Resolution Administrator. Extensions on this filing deadline may be granted upon request, at the discretion of the Title IX Coordinator. Any party may appeal the findings and/or sanctions only on the grounds described below:

- A procedural error or omission occurred that significantly impacted the outcome of the resolution process (e.g., substantiated bias, material deviation from established procedures, finding not supported by the preponderance of the evidence, etc.)
- To consider new evidence, unknown or unavailable during the original resolution process or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the university has designated for offenses under this policy and the cumulative record of the responding party.

For students, appeals are heard by the Associate Provost and Dean of Students. For employees, other than faculty, appeals are heard by the Chief Human Resources Officer. Faculty appeals are heard by the Provost, who may consult with the Faculty Affairs Committee.

The appeals officer will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above and such a decision is final. The party requesting the appeal must show that the grounds for an appeal request have been met and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds. If new grounds are raised, the original appealing party will be permitted to submit a

written response to these new grounds within three (3) days. These response or appeal requests will be shared with each party.

Where the appeals officer finds that at least one of the grounds for appeal is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals officer are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegations. In most cases, appeals are confined to a review of the written documentation or record of the investigation, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original Resolution Administrator. Rather, an appeal is an opportunity for appeals officers to consider whether the evidence presented constitutes grounds for reconsideration of the original decision.
- Appeals granted based on new evidence should normally be remanded to the Resolution Administrator for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, heard by the appeals officer.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator or the Coordinator's designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Title IX Coordinator will confer with the appeals officer, incorporate the results of any remanded grounds, and forward a written decision on the appeal to all parties within three (3) days of the resolution of the appeal or remand.
- Where appeals result in no change to the finding or sanction, that decision is final. Where an appeal results in a new finding or sanction, rather than a remand, that finding or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.
- All parties will be informed in writing within three (3) days of the outcome of the appeal and in accordance with the standards for notice of outcome as defined above.

- In rare cases where a procedural error cannot be cured by the original investigator(s) and/or Resolution Administrator (as in cases of bias), the appeals officer may recommend a new investigation and/or Administrative Resolution process, including a new Resolution Administrator. The results of a new Administrative Resolution process can be appealed, once, on any of the three applicable grounds for appeals.
- In cases where the appeal results in reinstatement to the university or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

h. Long-Term Remedies/Actions

Following the conclusion of the resolution process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects, and prevent their recurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently alter the housing situation of the responding party (resident student or resident employee (or the reporting party, if desired))
- Permanently alter work arrangements for employees
- Provide campus escorts
- Conduct climate surveys
- Recommend policy modifications
- Provide transportation accommodations
- Implement long-term contact limitations between the parties
- Offer adjustments to academic deadlines, course schedules, etc., in consultation with appropriate academic administrators and faculty

At the discretion of the Title IX Coordinator, long-term remedies may also be provided even when the responding party is found not responsible.

The university will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the university's ability to provide the actions or protective measures.

i. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All responding parties are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Resolution Administrator. Failure to abide by these conduct sanctions, responsive actions, and corrective actions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion, and/or termination from the university and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Resolution Administrator.

j. Records

In implementing this policy, records of all allegations, investigations, resolutions, and appeals will be kept by the Title IX Coordinator for a period of seven (7) years following a person's departure from the university.

k. Statement of the Rights of the Parties

Statement of the Reporting Party's rights:

- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to university officials;
- The right to be informed in advance, when possible, of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by university officials;
- The right to have university policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;

- The right not to be discouraged by university officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by Campus Safety and other campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing, or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
 - Change of an on-campus student's housing to a different on-campus location;
 - Assistance from university support staff in completing the relocation;
 - Transportation accommodations;
 - Arranging to dissolve a housing contract and pro-rating a refund;
 - Exam (paper, assignment) rescheduling;
 - Taking an incomplete in a class;
 - Transferring class sections;
 - Temporary withdrawal;
 - Alternative course completion options.
- The right to have the university maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided

confidentiality does not impair the university's ability to provide the accommodations or protective measures;

- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, prior to a finding by the Resolution Administrator;
- The right to be informed of the names of all witnesses whose information will be used to render a finding, in advance of that finding, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to have reports addressed by investigators and Resolution Administrators who have received annual sexual misconduct training;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings and/or interviews that are closed to the public;
- The right to petition that any university representative in the process be recused on the basis of demonstrated bias or conflict-of-interest;
- The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
- The right to submit an impact statement, in writing, to the Resolution Administrator following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed of the outcome and sanction of the resolution process, in writing, without undue delay between the notifications to the parties;

- The right to be informed, in writing, of when a decision by the university is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the university.

Statement of the Responding Party's rights:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to university administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by university officials;
- The right to have university policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation, the applicable policies and procedures, and possible sanctions;
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, prior to the finding by the Resolution Administrator;
- The right to be informed of the names of all witnesses whose information will be used to render a finding, prior to final determination, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports addressed by investigators and Resolution Administrators who have received annual training;

- The right to petition that any university representative be recused from the resolution process on the basis of demonstrated bias and/or conflict-of-interest;
- The right to meetings and interviews that are closed to the public;
- The right to have an advisor of their choice to accompany and assist throughout the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to provide an impact statement, in writing, to the Resolution Administrator following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process, in writing, without undue delay between the notifications to the parties;
- The right to be informed, in writing, of when a decision of the university is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the university.

7. Disabilities Accommodation in the Equity Resolution Process

Widener University is committed to providing qualified students, employees, or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process at the university. Students needing such accommodations or support should contact the Director of Disabilities Services, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation. Employees or others needing accommodations or support should contact the Office of Human Resources.

8. Revision

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The university reserves the right to make changes to this document at any time as

necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the university web site and through campus-wide email distribution, with appropriate date of effect identified), and consultation with the Faculty Affairs Committee when possible, upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form. This policy supercedes all previous discrimination, harassment, and sexual misconduct policies.

The Widener University Faculty Handbook and the Law School Promotion, Retention, and Tenure Guidelines shall not be applicable to cases processed under this policy. No rights, procedures, or processes contained therein or in any subsequent or similar faculty governance document shall apply to cases governed by this policy. To the extent that the Faculty Handbook, the Law School Promotion, Retention, and Tenure Guidelines, or similar documents are inconsistent with this policy, this policy shall govern.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

This policy and procedure was implemented on June 7, 2016.