



Widener University

**Equal Opportunity, Harassment and  
Nondiscrimination Policy**

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# **POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION**

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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. The term ‘report’ and ‘allegation’ are used interchangeably and denote information provided to the University regarding conduct that may have violated this policy.

## **1. Statement of Purpose**

Widener University is committed to establishing and maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents the campus cultural norm. To that end, this policy prohibits sexual and gender-based harassment, sexual assault, sexual exploitation, relationship and interpersonal violence, stalking, and discrimination on the basis of sex, gender, pregnancy status, age, race, national origin or ethnicity, religion, disability, status as a veteran, sexual orientation, gender identity, marital status, or genetic information, or any other category protected by applicable law. The policy also protects against retaliation against an individual for making a report of conduct prohibited under this policy.

It is the responsibility of every member of the Widener University community to foster an environment free from prohibited conduct. All members of the community are encouraged to take reasonable and prudent actions to prevent or stop an act of prohibited conduct.

This policy is in compliance with applicable legal requirements, including Title IX of the Education Amendments of 1972; relevant provisions of the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and other applicable federal and Pennsylvania and Delaware state laws. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, Widener has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class. Widener values and upholds the equal dignity of all members of its community, and strives to balance the rights of the parties in what often is a difficult time for those involved.

## **2. 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 but not limited to students, regardless of enrollment status, student organizations, faculty, employees, guests, visitors, campers, members of the Board of Trustees, third party vendors, alumni/ae, etc. In this policy, the term “employee” includes all administrators, faculty, and staff unless the context indicates otherwise. This policy also applies to all Widener employees working at the Widener Partnership Charter School.

### **3. Title IX Coordinator**

The Title IX Coordinator<sup>1</sup> oversees implementation of the University’s Equal Opportunity, Harassment, and Nondiscrimination Policy. The Title IX Coordinator has the primary responsibility for coordinating Widener’s efforts related to investigation, resolution, and implementation of corrective measures and monitoring to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

The Title IX Coordinator heads the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and acts to ensure that all Widener representatives act with objectivity and impartiality and are assessed with respect to conflicts of interest and/or potential bias. 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 on All Campuses:**

**Alison Kiss Dougherty**

Associate Vice President and

Title IX Coordinator

Office of Human Resources

One University Place, Chester, PA 19013

610-499-1301

E-mail: [akdougherty@widener.edu](mailto:akdougherty@widener.edu)

#### **Deputy Title IX Coordinators:**

##### **For all students and employees:**

**Kevin Raport**

Assistant Director of Campus Safety

Old Main

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

610-499-4202

E-mail: [kjraport@widener.edu](mailto:kjraport@widener.edu)

**For the Chester campus:**

**Larissa Gillespie**

Associate Athletic Director

Schwartz Center

610-499-4434

E-mail: [lagillespie@widener.edu](mailto:lagillespie@widener.edu)

**Kortne Smith**

Program Coordinator, Multicultural Student Affairs

University Center

610-499-4413

E-mail: [kasmith1@widener.edu](mailto:kasmith1@widener.edu)

**Sharmane Walker**

Academic Advisor, Graduate Studies/Extended Learning

Kapelski Learning Center

610-499-4394

E-mail: [sswalker@widener.edu](mailto:sswalker@widener.edu)

**Rhonda Bates**

Assistant Director, Student Success and Retention

Pineapple House

610-499-1267

E-mail: [rmbates@widener.edu](mailto:rmbates@widener.edu)

**For the Delaware Law School campus:**

**Susan Goldberg**

Dean of Students

Delaware Law School

4601 Concord Pike

Wilmington, DE 19803

302-477-2173

E-mail: [slgoldberg@widener.edu](mailto:slgoldberg@widener.edu)

**For the Commonwealth Law School campus:**

**Randi Teplitz**

Assistant Dean, Student Services

3800 Vartan Way

Harrisburg, PA 17110

717-541-3962

E-mail: [rbteplitz@widener.edu](mailto:rbteplitz@widener.edu)

Inquiries may be made externally to:

**Office for Civil Rights (OCR)**

U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Customer Service Hotline #: 215-656-8541  
Facsimile: 202-453-6012  
TDD#: 877-521-2172  
E-mail: [OCR@ed.gov](mailto: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

## **4. 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.

**A. Formal, Non-confidential Reporting Options**

- Report directly to the Title IX Coordinator or Deputy Title IX Coordinators
- Report to Campus Safety at 610-499-4200
- Report online, using the ‘Report an Incident’ button at [widener.edu/titleix](http://widener.edu/titleix)

**B. On-Campus Confidential Resources**

- Report to the Health Center at 610-499-1183
- Report to the Counseling Center at 610-499-1261
- Report to athletic trainers.
- At the Delaware Law School, psychologist, Dr. Amy Dwinnell, at (302) 477- 2263

Please refer to [Section 13](#) for more detailed information on reporting options.

All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports.<sup>2</sup> 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 responsible employees and, unless they are confidential resources, will share a report with the Title IX Coordinator promptly. 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.

## 5. 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.

## 6. Time Limits on Reporting

There is no time limitation on reporting allegations to the Title IX Coordinator or the University. However, if the responding party is no longer subject to the University's jurisdiction and/or

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<sup>2</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to an allegation will be shared with a limited number of Widener employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University's response to allegations under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's FERPA policy. The privacy of employee records will be protected in accordance with the Office of Human Resources' policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The University has designated individuals who have the ability to have privileged communications as confidential resources. For more information about confidential resources, see page 18. When information is shared by an individual with a confidential resource, the confidential resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

significant time has passed, the ability to investigate, respond, and provide remedies may be more limited. Acting on allegations significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer resources and/or remedies, and/or engage in informal or formal action, as appropriate. When a significant time delay impacts the reporting of alleged misconduct, the University will apply the policy in place at the time of the alleged misconduct, and the procedures in place at the time the misconduct is reported, subject to revisions to policy required to be utilized by the then existing laws and regulations.

## **7. Discrimination Policy**

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.

## **8. Disability Discrimination and Accommodation Policy**

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.

### **9. 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.

### **10. Prohibited Discriminatory Harassment Behaviors**

#### **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, and/or
- persistent and/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.

## **B. *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.

To avoid potential conflicts of interest, favoritism, exploitation, harassment or breaches of professional standards, the University prohibits romantic or sexual relationships where there is supervision, direction, or control between parties.

For the purposes of this policy:

- "Supervisor" shall mean any person who has the authority and/or responsibility to hire, promote, evaluate, assign, or direct faculty or employees at the University.
- "Employee" shall mean any person employed by the University in any capacity, whether faculty or staff. Solely for the purposes of this policy, graduate or teaching

assistants shall be treated similar to employees when their relationship with a student entails any responsibility or authority for instructing, evaluating, assigning, or advising the student.

### ***Undergraduate Students***

No employee shall pursue, have, or maintain a romantic or sexual relationship with any undergraduate student.

### ***Graduate/Professional Students***

Any employee who has, or has had, a sexual or romantic relationship with a current graduate student is prohibited from exercising academic or professional authority over that graduate student.

### ***Employees***

Sexual or romantic relationships are prohibited between employees where there is a supervisory relationship or where one exercises professional authority over the other, including, but not limited to, promotion.

### ***Exceptions***

Upon request, the Provost, as to the faculty, and the Associate Vice President of Human Resources, as to staff, may grant exceptions to this policy if they determine that an otherwise prohibited relationship: 1) existed prior to the professional or academic relationship between the parties at the University; and 2) does not present a likelihood of abuse of power by exploitation of either party. Exceptions are evaluated on a case-by-case basis by the Provost or the Associate Vice President of Human Resources.

## **C. 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 Sections A and 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 Contact<sup>3</sup>**

Defined as:

- 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.

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<sup>3</sup> 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&subsctn=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>

#### **iv. Intimate Partner Violence**

Defined as verbal, physical, or emotional violence or abuse between those who are involved in, or have been involved in, an intimate interaction or relationship (commonly referred to as dating, domestic, or relationship violence.)<sup>4</sup>

#### **v. Stalking<sup>5</sup>**

Defined as:

- a course of conduct
- directed at a specific person
- that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress

#### **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.

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<sup>4</sup> 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/>

<sup>5</sup> This is the definition of stalking under the Violence Against Women Reauthorization Act. 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/>

- 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, Coercion, Consent, and Incapacitation<sup>6</sup>**

**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 and/or extent of the pressure someone uses to get consent from another. When someone makes clear 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<sup>6</sup> or request, but resistance is a clear demonstration of non-consent. The 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.

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<sup>6</sup> Pennsylvania does not have a statutory definition of consent applicable to criminal prosecutions for sex offenses. Delaware uses the following definition: "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.

**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.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations is guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**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.

## 11. Other Prohibited Civil Rights Offenses

### **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.<sup>7</sup>

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

- 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,

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<sup>7</sup> 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.

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 protected class.

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.

Sanctions for the above-listed "Other Civil Rights Offenses" behaviors range from reprimand through expulsion (students) or termination of employment. Please see complete list of sanctions on page 35.

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 Title IX Coordinator and students should contact the Assistant Dean of Student Conduct.

## **12. Retaliation**

Retaliation is defined as any materially adverse action taken because of a person's participation in a protected activity. Protected activity includes reporting an incident that may implicate this policy, participating in the resolution process, supporting a reporting or responding party, or assisting in providing information relevant to an investigation. 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.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

### **13. Confidentiality, Privacy, and Reporting of Offenses**

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 reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a reporting party has requested this information be shared. If a reporting party expects formal action on their allegations, reporting to any employee can connect them with resources to report crimes and policy violations, and these employees will immediately pass reports to the Title IX Coordinator, who 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
- On-campus athletic trainers
- Off-campus (non-employees):
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains

#### **B. Formal Reporting Options**

All University employees are responsible employees unless they fall under the “Confidential Reporting” section above. 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<sup>8</sup>, 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, or when the allegations involve serious or pattern employee misconduct, 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.

**Failure of responsible 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 Associate Vice President of Human Resources for all other employees.**

### C. Privacy

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 CARE team. 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.

Privacy generally means that information related to a report of misconduct will only be shared with a limited group of people. The use of this information is limited to those University employees who "need to know" in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these

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<sup>8</sup> Aramark and ABM Industry Groups employees are not university employees.

individuals will be discreet and protect and safeguard the privacy of all individuals involved in the process.

#### **14. Federal Timely Warning Obligations**

Parties reporting sexual misconduct, intimate partner violence, and/or stalking should be aware that under the Clery Act, Widener University Coordinators must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will ensure that a reporting party'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. The release of the responding party's name to the general public is guided by FERPA.

#### **15. 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, by the Associate Vice President of Human Resources for all other employees, by the Assistant Dean of Student Conduct for students on the main campus, by the Assistant Dean of Student Affairs on the Delaware Law School campus, and the Assistant Dean of Student Affairs on the Commonwealth Law School campus.

#### **16. Amnesty for Reporting Party, Assistance Givers, and Witnesses**

The University community encourages the reporting of misconduct and crimes by reporting parties, assistance givers, and witnesses. Sometimes, reporting parties, assistance givers, 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 assistance givers and witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering reporting parties, assistance givers, and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students and others 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 and others 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.

## **17. 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, including 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 (FERPA).

## **18. Federal and State Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include all criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, 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. Campus Safety Authorities 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 reporting party and may be done anonymously. The University must also comply with the Pennsylvania Uniform Crime Reporting Act and college and University security regulations.

## RESOLUTION PROCESSES FOR ALLEGATIONS OF HARASSMENT, SEXUAL MISCONDUCT, AND OTHER FORMS OF DISCRIMINATION

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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.

These procedures, like the Policy, are global in scope. While they are informed by various laws (such as Titles VI, VII, and IX, as well as state law) and can be used to satisfy these laws, the procedures stand alone as the University's resolution mechanism for the conduct covered by the Policy, whether state or federal law applies or not. Law sets the floor for these procedures, but the University has determined the resolution mechanisms that are best suited to its community.

If, in the course of an investigation or 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. The additional allegations may be combined with a pending investigation or processed separately at the discretion of the Title IX Coordinator.

### **1. Overview**

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.

The responding party may admit responsibility for all or part of the alleged policy violations at any point during any resolution process. If the responding party admits responsibility for **all** alleged misconduct, the matter is referred to a Resolution Administrator who renders the determination that the responding party is in violation of University policy and determines appropriate sanctions and/or responsive actions in coordination with other appropriate administrator(s).

The appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the reporting party and the community.

If the responding party only admits to **part** of the alleged policy violations, then the Resolution Administrator finds the responding party in violation for the admitted violations, and the contested allegations will be resolved using Formal Resolution. Any applicable sanctions will be issued upon completion of the Formal Resolution process.

Upon receipt of an allegation or notice to the Title IX Coordinator of an alleged violation of the Policy, a prompt, preliminary inquiry will be conducted to determine if there is reasonable cause to believe this policy has been violated. If so, the University will initiate one of three responses:

- A remedial response because the reporting party does not want to proceed formally;
- An informal resolution; or
- A formal resolution, including an investigation, which is thorough, reliable, impartial, prompt, fair, and as private as possible.

## **2. Reporting Misconduct**

Any member of the community, guest, or visitor who believes that the EOHN Policy 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 guests and visitors, may contact Campus Safety to make a report. These individuals will in turn notify the Title IX Coordinator. The University's Title IX website also includes a reporting form at [https://cm.maxient.com/reportingform.php?WidenerUniv&layout\\_id=40](https://cm.maxient.com/reportingform.php?WidenerUniv&layout_id=40) which may serve to initiate the resolution process.

All employees (except those whom the University has designated as confidential) 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.

### 3. Advisors

Each party is allowed to have an advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available. While it is not advisable to choose as an advisor someone who is also a witness in the process, should a party decide to do so, the potential for bias and conflict-of-interest of the witness can and will be explored by the Resolution Administrator.

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), by completing an Advisor Designation and Authorization Form provided by the University. A party may elect to change advisors during the process and is not obligated to use the same advisor throughout. The party must provide timely notice to investigators if they change advisors at any time and complete a new Advisor Designation and Authorization Form.

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.

The advisor may be a friend, mentor, family member, attorney, or any other supporter a party chooses to advise and consult with them throughout the resolution process. The parties may choose advisors from inside or outside the campus community.

At all times, the University will correspond directly with the parties and not through any third party, regardless of whether the advisor is an attorney.

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:

- Menergy at <http://www.menergy.org/>
- Philadelphia Bar Association at <https://www.philadelphiabar.org/page/HomePage>
- Delaware County Lawyer Referral Service at <https://www.delcobar.org/public/lawyer-referral/>

Reporting parties may wish to contact organizations such as:

- The National Center for Victims of Crime at <http://www.victimsofcrime.org>, which maintains the Crime Victim's Bar Association.
- Women's Law Project at <https://www.womenslawproject.org/>
- The Victim Rights Law Center at <http://www.victimrights.org>

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 their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Title IX Coordinator, investigators, or resolution administrators.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation. 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 replaced by a different advisor.

The University expects that the parties may wish to have the University share documentation related to the allegations with their advisors. Parties may share this information directly with their advisor or other individuals, if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third 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.

#### **4. Preliminary Inquiry**

Following receipt of notice or a report of alleged misconduct, the Title IX Coordinator, or their designee, will conduct a preliminary inquiry to determine if there is reasonable cause to believe this policy has been violated. The preliminary inquiry is typically 1-5 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 a 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 a 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 refer the matter for alternate resolution options.

As necessary, the University reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party, usually to protect the community in situations that evidence a compelling safety risk.

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 available resolution processes
- 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

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(s) will be resolved through one of the processes discussed briefly here and in greater detail below:

- **Informal Resolution** – typically used for less serious offenses and only when both parties agree or the responding party is willing to accept responsibility for a violation, including acceptance of any remedies arising from informal resolution.
- **Formal Resolution** – investigation and resolution by a trained Resolution Administrator, subject to appeal and final determination. Remedies to restore those impacted will be implemented upon a finding of policy violation.

If informal resolution is desired by both parties and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation. Informal 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 both parties. The University aims to complete all investigations within a sixty to ninety (60-90) business 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. Other appeal options do not apply.

## **5. Interim Remedies/Actions**

The University will offer and implement appropriate and reasonable responsive, supportive, and/or protective measures to reporting and responding parties upon notice of alleged harassment, discrimination, and/or retaliation.

These interim actions are intended to support both the reporting and responding parties; protect and preserve access to educational and employment programs and activities; address the short-term effects of harassment, discrimination, and/or retaliation; protect the safety of all parties; and prevent further violations. These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering campus housing situation
- Altering work arrangements for employees
- Safety planning
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations (No Contact Orders) 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 on-campus presence/ongoing activity of the responding party or student organization whose behavior is in question.

In cases in which an interim action/suspension is imposed, the student, employee, or two (2) representatives from a student organization will be given the option to meet with the Title IX Coordinator or their designee prior to such action/suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the action/suspension should not be implemented. The Title IX Coordinator, in consultation with the Provost, Senior Vice President for Administration and Finance, or the Dean of Students, as applicable, may implement or stay an interim action/suspension or administrative leave and determine its conditions and duration. Violation of an interim action/suspension or administrative leave under this policy will be grounds for discipline which may include expulsion or termination. Interim actions/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 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 reporting and responding parties.

The University will maintain as private any interim actions or protective measures, provided privacy does not impair the University's ability to provide the interim actions or protective measures.

## **6. Informal Resolution Process**

Informal Resolution is used when:

- The parties agree to resolve the matter through conflict resolution; or
- When the responding party accepts responsibility for violating policy; or
- When the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Formal Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Formal Resolution process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University. The University will obtain voluntary, written confirmation that the reporting and responding parties wish to resolve the matter through Informal Resolution.

### **Conflict Resolution**

Conflict Resolution is an informal process, such as mediation or restorative practices, by which a mutually-agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate conduct and is encouraged as an alternative to the Formal Resolution process to resolve conflicts. Conflict Resolution is not the primary resolution mechanism used to address reports of violent conduct of any kind or in other cases of serious violations of policy, and is not used as a stand-alone resolution in cases of sexual violence. Both parties must consent to the use of Conflict Resolution.

Additionally, the Title IX Coordinator determines if Conflict Resolution is appropriate based on: the willingness of the parties, the nature of the conduct at issue, and the amenableness of the conduct to Conflict Resolution. In a Conflict Resolution meeting, a trained administrator or third-party facilitates a dialogue with the parties to an effective resolution, if possible. For students, the Title IX Coordinator will consult with the 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 maintains records of any resolution that is reached, and failure to abide by the accord may result in appropriate responsive/disciplinary actions.

Both parties will be notified of the outcome of Conflict Resolution. Notification will be made in-person, emailed to the parties' University-issued email account, or mailed to the local or permanent addresses of the parties as indicated in official University records. Once delivered in-person, emailed, and/or mailed, notice will be presumptively delivered.

## **7. Formal Resolution Process**

### **General Information**

Formal Resolution can be pursued for any conduct for which the responding party has not accepted responsibility that constitutes conduct covered by this policy at any time during the process. Formal Resolution starts with a formal investigation.

In Formal 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 investigator(s), any additional alleged

policy violations that are discovered or arise during the Formal 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.

Neither the Resolution Administrator nor the investigator(s) 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.

### **Notice**

If Formal Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the reporting and responding parties upon commencement of the Formal Resolution Process. This facilitates the parties' ability to prepare for the interview and to identify and choose an advisor to accompany them.

Notification will include:

- A copy of this policy;
- A summary of the allegations including (if known) the identity of the parties involved;
- The precise misconduct being alleged;
- The date and location of the alleged incident(s);
- The specific policies implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions/responsive actions that could result;
- The reporting and responding parties may request to inspect and review evidence obtained;
- Advise each party that they may have the assistance of an advisor of their choosing present for all interviews and meetings;
- When applicable, a statement informing the parties of the provision in the University's Policy that prohibits knowingly making false statements, including knowingly submitting false information during the resolution process; and
- A statement that determinations of responsibility are made at the conclusion of the process;

Notification will also note that the University presumes the responding party is not responsible for the reported misconduct unless and until the evidence supports a different determination.

Updates on this notice may be made as the investigation progresses and more information is available.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, emailed to the parties' University-issued email account, or mailed to the local or permanent addresses of the parties as indicated in official University records. Once delivered in-person, emailed, and/or mailed, notice will be presumptively delivered.

### **Resolution/Investigation Timeline**

The University will make a good faith effort to complete the resolution process within a sixty to ninety (60-90) business day time period, including appeals, which can be extended, as necessary, for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Investigations are completed as expeditiously as administratively possible, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. The time for the investigation may depend on whether students, faculty or other campus community members are not present due to a school break or holiday.

### **Delays in the Process and Interactions with Law Enforcement**

The University may undertake a short delay in its investigation (several days to weeks) if circumstances require. Such circumstances include, but are not limited to, concurrent law enforcement activity, the need for language assistance, the absence of parties and/or witnesses, and/or accommodation for disabilities or health conditions. The University will communicate, in writing, the anticipated duration of the delay and reason to the parties and provide the parties with status updates, if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Widener will implement interim actions as deemed appropriate.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **Appointment of Investigator(s)**

Once the decision is made to commence a formal investigation, the Title IX Coordinator will appoint an internal or external investigator, usually within two (2) business days of determining that an investigation should proceed.

## **Investigation Process**

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.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

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.

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.

The University will typically take the following actions, if not already completed, and not necessarily in the following order:

- Provide written notice to each party in advance of any interview or hearing with sufficient time to prepare for meaningful participation;
- Provide each party and appropriate officials with timely and equal access to any information that will be used during informal and formal meetings and interviews, including the identity of potential witnesses;
- 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;
- Allow each party the opportunity to suggest witnesses and questions they wish the investigators to ask of the other party and witnesses;
- When interview transcripts are not available, provide the parties and witnesses an opportunity to review and verify the investigator's summary notes from their respective interviews and meetings.
- If and when additional/material alterations to allegations arise, communicate this promptly to the parties. This notice will provide the parties with a summary of the additions to/alterations of the allegations, as well as any changes to the policies implicated.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.

Investigator(s) and/or the Title IX Coordinator will provide advanced notice of such meetings, with rare exception.

- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting and responding parties throughout the investigation;
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence, copies of which are to be included in an appendix to the report. The report will include a thorough credibility assessment of all the parties and witnesses.
- Prior to the conclusion of the investigation, provide the parties a copy of the draft investigation report, including all analysis and credibility assessment.
- Provide the parties with an equal opportunity to inspect and review the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a responsibility determination, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.
- Provide each party with a full and fair opportunity to respond to the investigation report in writing, usually ten (10) business days.
- May choose to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- Incorporate relevant elements of the parties' written responses into the final investigation report, make any changes needed, and finalize the report. The final report is then shared with all parties and the Title IX Coordinator.
- The Title IX Coordinator will provide the Resolution Administrator with a copy of the final investigation report, complete with all relevant evidence, the parties' submitted responses, and any relevant subsequent materials, documentation, communications, etc.
- Within five (5) business days of receiving the investigation report, the Resolution Administrator, based upon a preponderance of the evidence, will contemporaneously inform the parties of the finding.
- Both parties are given the opportunity to submit an impact statement to the Resolution Administrator, in writing, within three (3) days of receipt of the notice of findings.
- Following expiration of the three-day period within which to file impact statements, the Resolution Administrator will issue to the responding party a determination of sanctions, if applicable, and contemporaneously issue to the reporting party a notice of any sanctions to be imposed upon the responding party to the extent that the University is permitted to share according to federal or state 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 appeal options that are available.

### **Resolution Administrators/Appeal Officers**

The Resolution Administrator and Appeal Officer depend on the role of the responding party and, for students, the campus they attend. The appropriate Resolution Administrator will finalize and present the findings to the parties, without undue delay between notifications, as set forth below:

<b>Role of Responding Party</b>	<b>Resolution Administrator</b>	<b>Appeal Officer</b>
Student on Main Campus	Assistant Dean of Students	Dean of Students
Student at Delaware Law School	Assistant Dean for Student Affairs	Dean, Delaware Law School
Non-Faculty Employee, All Charter School Employees	Assistant Vice President of Finance and Administration	Chief Diversity Officer
Faculty	Associate Provost, Graduate Studies and Extended Learning	Provost
Student at Commonwealth Law School	Associate Dean for Academic Affairs	Dean, Commonwealth Law School

### **Role and Participation of Witnesses**

Witnesses (as distinguished from the parties) who are faculty, students, or staff of the University are expected to cooperate with and participate in the University’s investigation and Resolution Process. Failure of such witness to cooperate with and/or participate in the investigation or Resolution Process constitutes a violation of policy and may warrant discipline.

Though not preferred, 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 investigator determines 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.

### **Evidentiary Considerations in the Investigation**

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding of responsibility does not consider:

- Incidents not directly related to the possible violation, unless they evidence a pattern;

- The sexual history of the parties (though there may be a limited exception made in regard to the sexual history between the parties or when evidence regarding the reporting party's sexual history is offered to prove that someone other than the responding party engaged in the reported misconduct); or
- The character of the parties.

### **Recording of Interviews**

No audio or video recording of any kind by the parties is permitted during investigation meetings or other proceedings associated with the resolution process. The University reserves the right to record the proceedings by stenographic means, on magnetic tape, or digital means, at its discretion.

## **8. 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
- Any other information deemed relevant by the Resolution Administrator
- The need for sanctions/responsive actions to bring an end to the 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
- The impact on the parties

The sanctions will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by outside authorities.

### **Student Sanctions**

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

- **No Further Action.** This sanction is interpreted to mean that although a violation has been established, discussion with the investigator and/or student conduct administrator has been sufficient in and of itself and further action is not deemed necessary. However, the violation is still noted in the records of the Office of Student Conduct.
- **Written Official Warning.** In instances of minor violations, students may be warned in writing of the possible consequences of continuing such behavior and written conditions regarding future behavior may be attached when appropriate.

- **Removal from Living Unit/Eviction.** The primary effect of this sanction is to preclude continued residence in a particular living unit. This may affect a student's status.
- **Assignment to Alternate Housing.**
- **Limitation of Access to Designated University Housing Facilities and Other Campus Facilities by Time and Location.**
- **Constructive or Educational Task(s).** The student is assigned a task that benefits the individual, campus, or community. This task is assigned as a condition of another sanction, such as disciplinary probation. Tasks must be reviewed by the Office of Student Conduct. Examples of tasks include educational papers, educational classes, attendance at educational programs or relevant community meetings, substance abuse education, alcohol education programs, or community service.
- **Counseling Center Referrals.** Counseling sessions are occasionally necessary for students who violate University policy. The purpose of engaging in counseling is for the student to further assess their behavior and attitude in certain areas of their life.
- **Medical/Health Center Referrals.**
- **Psychological/Psychiatric Screenings, Evaluations, and/or Clearances.**
- **Restriction of Communication with Named Individuals or Groups within the University Community.**
- **Requirement to Secure Advance Authorization to Engage in a Specified Activity.**
- **Removal from Student Organization Office or Athletic Team.** This sanction is levied when it is thought that a student should not serve as a public representative of the University. Removal can be either temporary or permanent.
- **Rescission, withdrawal, or termination of University scholarships, grants, loans, employment, or other financial aid.**
- **Disciplinary Probation.** This sanction implies a middle status between good standing at the University and suspension or dismissal. Students are permitted to remain enrolled under certain stated conditions, depending upon the nature of the violation and the potential educational value that may be derived from such conditions. Probation usually extends over a stated period, during which it is clearly understood that further disciplinary measures (up to and including expulsion) will follow if the terms of probation are violated. Probation is a final warning to students to conduct themselves as responsible members of the University community. Students who are on disciplinary probation may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree.
- **Suspension.** This sanction is involuntary separation from the University for a specific period of time after which a return may be possible. It differs from dismissal only in that it implies a stated time when return will be possible. Suspension may extend to a semester or academic year or a designated date (e.g., when a stated condition has been met). Students

suspended for disciplinary reasons cannot transfer into Widener using any credits earned during suspension. A student who is on suspension at the time of commencement events may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree. The student may not be a registered student, be present on the campus, or attend any University-sponsored event for any reason whatsoever for a specified period of time.

- **Dismissal.** This sanction is involuntary separation from the University for an indefinite period of time but, minimally, one (1) academic year, after which time the student must apply for readmission to the University. Students dismissed for disciplinary reasons cannot transfer into Widener using any credits earned during the dismissal period. A student who has been dismissed may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree. The student may not be a registered student, be present on the campus, or attend any University-sponsored event for any reason whatsoever unless officially granted re-entry to the University.
- **Expulsion.** This sanction is permanent, involuntary separation from the University. A student who has been expelled may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree. The student may not ever again be a registered student, be present on campus, or attend any University-sponsored event.
- **Withholding the Degree.** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in the Code of Student Conduct, including the completion of all sanctions imposed. All students must comply with all University policies in order to receive their degree and must resolve all outstanding charges of misconduct before being approved for graduation. The University reserves the right at all times to withhold a degree from a student who has completed academic requirements but who is subject to disciplinary action or other sanctions.
- **Revocation of Admission and/or Degree.** Admission to or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining admission or a degree, or for serious violations committed by a student prior to admission or graduation. Students are advised that an offer of admission may be revoked by the University at any time without implementing the procedures or affording the rights set forth in this Code, if it is deemed by the University to be in the best interests of the University, the University community, or the student to do so.

## Employee Sanctions

Responsive actions for an employee (faculty or staff) 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

## **9. Withdrawal/Resignation While Charges Pending**

### **Students**

Should a student decide to permanently withdraw from the university 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.

If the student only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process will continue and that student is not permitted to return to the University unless and until all sanctions have been satisfied. During the resolution process, the University may put a hold on a responding student's transcript or place a note on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

### **Employees**

Should an employee resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination. The employee who resigns with unresolved allegations pending is not eligible for rehire with the University, and the records retained by the Title IX Coordinator will reflect that status.

## **10. 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 letter of the determination of findings (if a finding of no violation is made) or the determination of sanctions (if a finding of a violation is made) to the parties. 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.)
- 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 in the submitted appeal request.
- 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 on the main campus, appeals are heard by the Dean of Students. For students at the Delaware and Commonwealth Law Schools, appeals are heard by the respective Deans of the Law Schools. For non-faculty employees, including all employees working at the Widener Partnership Charter School, appeals are heard by the Chief Diversity Officer. University faculty appeals are heard by the Provost.

The Appeal 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 one or more of the appeal grounds have been met and the other party or parties may, but is/are not obligated to, show the grounds have not been 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 of receiving a copy of the appeal, and/or bring their own appeal on separate grounds within the original appeal timeframe. 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. Any response or appeal request will be shared with each party.

Where the Appeal 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 Appeal 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 merely because they disagree with the finding and/or sanctions.

- Appeals granted based on new evidence should normally be remanded to the original Resolution Administrator for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, heard by the Appeal Officer.
- Sanctions imposed as the result of the informal or formal resolution process are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - NOTE: For students, graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute extraordinary circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will confer with the Appeal 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. The letter of outcome for the appeal will be shared with the parties without significant time delay between notifications.
- The letter of outcome for the appeal will specify the finding on each alleged policy violation, any sanctions that may result which 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 letter will also include information that this is a final result.
- 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.
- In rare cases where a procedural error cannot be cured by the original Resolution Administrator (as in cases of bias), the Appeal Officer may recommend a new investigation and/or resolution process, including a new Resolution Administrator. The results of a new 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.

## 11. 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 individual and/or community
- Permanently alter the housing situation of the responding or reporting party (resident student or resident employee,) 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 if no policy violation is found.

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

## **12. 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 Title IX Coordinator.

## **13. Records**

In implementing this policy, records of all allegations, investigations, formal and informal resolutions, and hearings will be kept for seven (7) years by the Title IX Coordinator in the Title IX database. The University will also retain all materials used to train Title IX Coordinator, investigators, and decision-makers.

## 14. Statement of the Rights of the Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials;
- The right to receive a detailed notice of investigation, once the University has decided to pursue a formal investigation, which contains the identity of the parties involved, the date and location of the alleged incident, the specific misconduct alleged, and the policies implicated by the alleged misconduct;
- The right to timely written notice of any material adjustments to the allegations (e.g. additional incidents or allegations, additional reporting parties, unsubstantiated allegations) and any attendant adjustments needed to clarify potential policy violations implicated;
- The right to be informed in advance, when possible, of any public release of information regarding the allegation(s) or underlying incident(s);
- The right to not have any personally identifiable information released to the public, without their consent, except to the extent permitted by law;
- 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 not be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right to not 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 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 University-implemented 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 party or others;
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report or investigation,

either 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
  - Change of an employee's work environment (e.g., reporting structure, office relocation)
  - Transportation accommodations
  - Visa/immigration assistance
  - Arrange to dissolve a housing contract and pro-rating a refund
  - Reschedule or adjust exam, paper, assignment(s)
  - Take an incomplete in or withdraw from a class (may be retroactive)
  - Transfer class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus Safety escorts
  - 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 private, provided privacy does not impair the University's ability to provide the accommodations or protective measures;
  - The right to be fully informed of relevant University policies and procedures as well as the nature and extent of all alleged violations ;
  - The right to ask the investigator(s) to identify and question relevant witnesses, including expert witnesses;
  - The right to provide the investigator(s) with a list of questions that, if deemed relevant and appropriate by the investigator(s), may be asked of any party or witness;
  - The right to know the relevant evidence obtained, and to respond to that evidence on the record;
  - A fair opportunity for the parties to provide the investigator(s) with their account and have that account be on the record;
  - 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, where relevant;
  - The right not to have irrelevant prior sexual history or character admitted as evidence;
  - The right to regular updates on the status of the investigation and/or resolution;
  - The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant evidence available and used to produce the

investigation report, subject to the privacy limitations imposed by state and federal law, prior to the resolution, and the right to have usually ten (10) business days to review and to respond to the report prior to the resolution process;

- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record;
- The right to have reports addressed by investigators, Title IX Coordinators, and Resolution Administrators who have received at least eight (8) hours of relevant annual 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 and/or conflict-of-interest;
- The right to bring a victim advocate or advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process;
- The right to the use of the preponderance of the evidence standard to make a finding after an objective evaluation of all relevant evidence;
- 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 in a written notice of outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale thereof (including an explanation of how credibility was assessed), delivered 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, and any changes to the sanction to occur before the decision is finalized;
- The right to be informed of the opportunity to appeal the finding(s) and/or sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a resolution that provides fair process, as defined in these procedures.

## 15. Revision

These policies and procedures supersede any previous policy(ies) addressing discrimination, harassment, and sexual misconduct and will be reviewed and updated annually by the Title IX Coordinator in consultation with other University administrators. 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.

During the resolution process, 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), 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 laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

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 policies and codes, generally.

This policy and procedure was originally implemented on June 7, 2016, and last revised on October 1, 2019.

## **APPENDIX A**

### **Examples of Prohibited Conduct**

#### **Sexual Harassment**

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with them in exchange for a good grade. This constitutes Sexual 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 graphic, sexually-oriented jokes around campus to an email list they created, even after being asked to stop. Because of these jokes, one email list recipient avoids the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are repeatedly displayed in a professor's office 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, in the presence of other employees.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. She inquires about 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 partner to the clear discomfort and frustration of the partner, turning the former partner into a social pariah on campus.
- 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.

#### **Sexual Misconduct**

Some examples of sexual misconduct include:

1. Chris has recently transitioned from male to non-binary, but primarily expresses as a woman. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo, and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being trans, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. He explains to Chris that he is not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now

that they have transitioned. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether he likes Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus, and sees Dr. Mukembo at the bar. Chris tries to buy him a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether he is sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

**Chris is responsible for violating the Sexual Harassment policy. Chris is engaging in unwelcome conduct of a sexual nature. Being kissed, repeatedly, by someone you have told not to kiss you is persistent conduct that would be objectively offensive to a reasonable person. Whether it is severe enough to create a hostile environment depends on whether Dr. Mukembo experiences a tangible employment detriment from the conduct, but being outed and falsely accused of improper relationships with students is certainly severe enough to create a hostile work environment on the basis of sex for Dr. Mukembo.**

2. 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 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would never had 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 Institution 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 were unreasonable and that he coerced Amanda into performing unwelcome sexual touching upon him. When sexual activity is coerced, it is forced. Consent is not valid when forced. Sexual contact without consent is sexual misconduct.**

3. Jiang is a junior at the Institution. Belinda is a sophomore. Jiang comes to Belinda's residence hall room with some mutual friends to watch a movie. Jiang and Belinda, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Belinda are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Belinda. Belinda, who was abused by a baby-sitter when she was five, and avoids sexual relations as a result, 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, Belinda has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Belinda 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 sexual activity. Here, Jiang had no verbal or non-verbal mutually understandable indication from Belinda that she consented to sexual intercourse. 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.**

4. 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 apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. They remove each other's clothes 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 came to again. When Kevin runs into John the next day, he thanks him for the great 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 sexual activity. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, that he seemed physically ill, and that he appeared to pass out during sex.**

## **Intimate Partner Violence**

Some examples of intimate partner violence include:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend.
- An ex threatens to out her former girlfriend as a lesbian if she doesn't give the relationship another chance.
- An undergraduate student consistently gaslights their trans partner for things that the graduate student is insecure about them self.
- 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.

## **Stalking**

Some examples of stalking include:

- Students A and B were friends with benefits. Student A wanted a relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered his social media accounts were being accessed and things were being posted, snapped, and messaged as if they were from him, but they were not. Whoever accessed his account posted a picture of a penis, making it look as if he had sent out a picture of himself, though it was not his penis. This caused him considerable embarrassment and social anxiety. He changed his passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on his phone and a keystroke recorder on his laptop, both of which were being used to transmit his data to a third party.
- 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 tutor's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

## **Retaliation**

Some examples of retaliation include:

- 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.