WCU
WEST CHESTER UNIVERSITY

UNIVERSITY POLICY

# Sexual Harassment and Misconduct Policy (non-Title IX)

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## Purpose and Scope

West Chester University (WCU) is committed to equality of opportunity and freedom from unlawful discrimination for all its students and employees. Sexual harassment/misconduct is a form of unlawful discrimination based on sex and will not be tolerated in any form by faculty, staff, students, contractors, or vendors. The definitions and procedures outlined in this policy will be followed when a non-student brings allegations of sexual harassment or misconduct against a non-student respondent. When a student is the complainant or respondent, the procedures in the Sexual Misconduct Policy will be followed.

## Definitions

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other harassing conduct of a sexual nature. Sexual harassment occurs when:

1. Submission to the unwelcome conduct of a sexual nature is made either explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity;
2. Submission to or rejection of the unwelcome conduct of a sexual nature by an individual is used as the basis for an academic or employment related decision affecting such an individual;
3. The unwelcome conduct of a sexual nature is sufficiently severe, persistent, or pervasive as to substantially limit or interfere with an individual's work, educational performance, participation in extra-curricular activities, or equal access to the University's resources and opportunities; or
4. Such conduct creates an intimidating, hostile, or abusive living, working, or educational environment.

Sexual violence or misconduct is a form of sexual harassment. Sexual misconduct includes Regulatory and Non-Regulatory Dating Violence, Regulatory and Non-Regulatory Domestic Violence, Regulatory and Non-Regulatory Sexual Assault, Regulatory and Non-Regulatory Stalking, and Sexual Exploitation. For complete and current definitions on these terms, please see the full Sexual Misconduct Policy.

## Policy Statement

It is a violation of policy for any member of the University community to engage in sexual harassment/misconduct, or to take retaliatory action against an individual for reporting sexual harassment/misconduct. Consequences of sexual harassment/misconduct may include

termination of the relationship with the University. Retaliatory actions against persons filing a complaint of sexual harassment/misconduct, opposing sexual harassment/misconduct, or participating in the investigation of a complaint, are also prohibited. Acts of retaliation shall constitute misconduct subject to disciplinary action and should be reported to the Director of Equal Opportunity and Compliance.

All members of the University community are responsible for ensuring that their conduct does not sexually harass any other member of the University community.

This policy is not intended to interfere with the protections afforded by law to freedom of speech. Additional information, including additional examples of what constitutes sexual harassment/misconduct, is available from the Office of Equal Opportunity and Compliance (EQOC).

**Policy Framework**

Training Requirements

All employees in a supervisory role should attend (in person or virtual) harassment/misconduct prevention training with the Office of EQOC every two years.

Reporting requirements

Any individual having information about a member of the University community engaging in a specific act or a pattern of behavior which falls within the above definition of sexual harassment/misconduct must report the matter to the Director of EQOC.

University employees, except those identified in the Sexual Misconduct Policy as employees who serve in a role that makes such reports privileged or are recognized as providing a confidential resource, are required to provide the name of the recipient of any sexually harassing behavior to the Director of EQOC.

Supervisors of faculty and staff have the further responsibility of preventing and eliminating sexual harassment/misconduct within the areas of their authority. If supervisors have information about alleged acts of sexual harassment/misconduct by someone whom they supervise, they must take immediate steps to ensure the matter is addressed and brought to the attention of the Director of EQOC. Failure by supervisors to report the alleged acts of sexual harassment/misconduct may result in disciplinary proceedings. If a manager addresses an issue with an employee which may reference sexually harassing behavior or misconduct, the Director of EQOC should be notified.

Faculty members and staff employees are required to inform the Director of EQOC whenever they become aware of behavior they believe to be sexual harassment/misconduct.

Investigation Responsibilities and Requirements

Overall responsibility for the implementation of the sexual harassment and sexual misconduct policy has been assigned to the Office of EQOC. Any individual having suggestions, problems, complaints, or grievances with regard to sexual misconduct is encouraged to contact the office at 114 West Rosedale Avenue or by phone at 610-436-2433. If a member of the West Chester University Community feels that they have been the subject of sexual misconduct or harassment, the matter should be brought to the attention of the Office of EQOC. If a complaint alleges sexual harassment/misconduct by an employee of the Office of EQOC or the Office of the President, the complaint will be investigated by a party external to the University. All procedures may be performed virtually.

To process an allegation of sexual harassment or sexual misconduct not falling under the Title IX regulations, the individual, accompanied by an advocate if they wish, must process the complaint through the Office of EQOC. Knowingly false or malicious accusations may result in disciplinary action.

In order to conduct a formal investigation which may result in discipline of a University employee, there must be first-hand information by the complainant or a witness who is available and willing to be identified and interviewed by the investigator(s). In determining whether a third-party complaint should be formally investigated, the following factors need to be evaluated: (1) is the reporter of the complaint submitting reliable facts or sufficient information; (2) does the report contain the name and contact information for the alleged complainant; (3) is there sufficient detail in the report to determine whether the allegations fall within the realm of sexual harassment/misconduct; and (4) has the report been brought forward in a timely manner.

Complaints should be filed up to 180 days after the alleged act or behavior. However, it is in the best interest of all to conduct a timely review of the circumstances of the alleged harassing behavior; accordingly, Complainants are urged to contact the Office of EQOC as soon as possible. The Complainant also has the option of pursuing formal complaints through the following public agencies responsible for enforcing the laws against sexual harassment within the time frames listed:

- PA Human Relations Commission (215) 560-2496 180 days
- U.S. Dept. of Education, Office for Civil Rights (215) 656-8541 180 days
- Equal Employment Opportunity Commission (215) 440-2600 300 days

When consideration is being given to accepting a complaint beyond 180 days, management will provide the appropriate collective bargaining unit representative either oral or written notification, giving the collective bargaining unit representative the opportunity to respond within a reasonable time period.

The University has a legal obligation to investigate informal or anonymous reports of sexual harassment/misconduct to the extent feasible and make Complainants and Respondents aware of the resources available to them, while striving to respect privacy and confidentiality. The University's obligation to protect the safety of its students and to record statistics may not permit complete confidentiality, but the University shall take the necessary measures to ensure that the information shared is limited to those individuals required to know.

It is not usually possible to conduct a formal investigation of anonymous reports of sexual harassment/misconduct, or in situations where a Complainant requests confidentiality or asks that the complaint not be pursued. However, the University has a responsibility to take action to prevent harassment/misconduct. In the event of anonymous reports of sexual harassment/misconduct, or if the Complainant asks that a complaint not be pursued, reasonable steps will be taken to respond consistent with the request for confidentiality, which may include meeting with the alleged Respondent to provide notification of the allegations and the possible repercussions if a formal complaint is brought forward. The Director of EQOC may recommend voluntary sexual harassment/misconduct training for an individual or a work unit.

The Complaint Process for Non-Title IX Sexual Harassment or Misconduct

The process below only applies for complaints filed against non-students for sexual harassment or misconduct not regulated by Title IX of the Educational Amendment of 1972. This would include, but is not limited to, allegations in violation of Titles VI and VII of the Civil Rights Act of 1964. **If a Student is the Respondent, the procedures outlined in the Sexual Misconduct Policy will be followed.**

Employees, whether Complainants (the person or persons injured by the action) or Respondents (the person or persons who allegedly performed the action), have the right to be assisted in all aspects of the complaint procedure by their union representative. The Complainant also has the right to be assisted in all aspects of the complaint procedure by an advocate should they desire to do so. If an employee elects to be represented by their union, the union representative will receive copies of all written notifications during the complaint process. Employees equally have the right not to be represented by their union. This decision rests solely with the employee. The employee should provide the office with their union representatives name, if applicable, to the Office of EQOC within 10 business days of receiving notification of an allegation. The role of the representative is limited to the advice and counsel of their principals only. Representatives cannot question, answer, or provide advice during an interview or hearing. However, parties can request a brief recess to consult their representative.

**Procedures**

*Initiating the Process*

The process begins when the Director of EQOC receives a report of a violation of WCU policy relating to sexual harassment or misconduct not covered by Title IX regulations. The Complainant should provide sufficient factual information to permit the Director to make an initial assessment of violation. The Director will determine if any supportive measures should be applied. Following the initial assessment, the Director may take any of the following actions:

- If the Director determines that the report, even if substantiated, would not rise to the level of a policy violation; the nature and circumstances of the report do not make it appropriate for an investigation; or, after consultation with the Complainant about the Complainant's preferences regarding participation, the Director determines that there will be insufficient information to investigate the matter, the Director may dismiss the complaint. The Complainant will be advised of the dismissal and of any other recourse that might be appropriate.
- If the Director determines that the report is outside the scope of the sexual harassment or sexual misconduct policies and/or most appropriately handled by another office, the Director may refer the report to another office for review.
- If the Director determines that the report would, if substantiated, constitute a violation of policy, the Director will advise the Complainant of the types of processes available.
- If the Complainant chooses not to move forward, or if the Complainant is anonymous, the Director may notify the Respondent of the information reported and the possible repercussions if a formal complaint is brought forward. The Director may schedule a meeting with the Respondent (and their representative, if desired by the Respondent) to pass on this information, answer questions, and provide assistance. The Director may recommend voluntary training for an individual or a work unit. The reported information will be maintained by the Office of EQOC for a period of 7 years. However, no written record will be forwarded to a student's education file or to an employee's official personnel file.

*The Complaint*

To move forward with an informal or formal process, the allegations of the report must be reduced to writing in a written complaint. The Complainant may provide this themselves or the Director of EQOC may assist the Complainant in writing the complaint. The Director may also bring a complaint themselves if circumstances warrant an investigation independent of participation by the Complainant.

The Office of EQOC reserves the ability to consider whether a violation can be reviewed if it is reported outside the 180-day period for filing a complaint. Factors that affect that consideration include the following:

- Amount of time beyond 180 days,
- Whether the alleged behaviors may represent a violation of the University's Sexual Harassment Policy,
- The severity of the allegations,
- The University risk for failing to address the allegations, and
- Whether the allegations represent a possible pattern of behavior for the respondent.

*Notification Procedure for Respondent*

1. The Director of EQOC will send notification to the Provost's office (for faculty) or Division Head (for other staff).
2. The Provost or Division Head will send a notification letter to the Respondent that summarizes the complaint.
3. When a formal investigation is to be conducted against a faculty member, Article 42 of the APSCUF collective bargaining agreement will also govern.

If the Complainant is a student enrolled at the time in the class of the Respondent, they may request that notification be delayed until after the completion of the semester or until final grades in the class have been assigned. The Director of EQOC will make this determination.

Investigations may take place at any time in the resolution process after notification to the Respondent at the discretion of the Director of EQOC. The fact-finding procedure is not intended to interfere with any legal rights an employee or student has under the statutes and other laws of the Commonwealth of Pennsylvania or the government of the United States of America, or an employee's collective bargaining agreement.

*Choice of Process by Complainant*

There are two types of complaint-resolution mechanisms: a formal process that involves investigation and possible conduct proceedings, and an informal process that may or may not involve investigation and less formal procedures. The Complainant initiates the formal or informal process after filing the written complaint with the Office of EQOC.

*Informal Process*

The informal process includes efforts to mediate a resolution upon which both the Complainant and Respondent can agree. The informal process is not available to resolve allegations that an employee sexually harassed a student.

Upon receipt of the complaint, notification to the Respondent of the allegations, the Complainant's desire for mediation, and the Respondents' concurrence to the informal process, the Director of EQOC may facilitate a resolution or appoint a mediator(s) and notify the parties of the mediator(s) identity. Mediation occurs by mutual consent, therefore, at any stage of the mediation process either party can withdraw from the informal process.

1. The mediation may be conducted by separate discussions with the parties or in meetings with both parties present, depending on the circumstances and the mediator's best judgment.
2. If either party chooses to withdraw from the mediation process, the Director will move forward with the formal complaint process.
3. At the conclusion of the mediation, the mediator(s) will provide a written statement of the resolution agreed to by both parties to the Director. The informal resolution process may recommend the following types of outcomes, where appropriate: facilitating an agreement between the parties, separating the parties, referring the parties to counseling programs, conducting targeted educational and training programs, and mediation.
4. If the parties involved in the informal resolution process fail to reach a mutually agreeable outcome for the alleged conduct, the allegation will be resolved via the formal investigation process.
5. The Director will send a written summary of the outcome to the parties.
6. If the Director determines that there is a need, the formal process may be initiated on behalf of the University at any time.
7. All written summaries of the informal complaint process will be maintained by the Office of EQOC for a period of 7 years. No written record will be forwarded to the employee's official personnel file and a successful informal resolution will not result in disciplinary proceedings.
8. Completed informal resolutions are binding and may not be appealed.

*Formal Process*

A Complainant may initiate formal procedures. Formal procedures, which may result in a disciplinary proceeding, include a fact-finding and review process.

After accepting a written formal complaint, the Director for EQOC will appoint an investigator. When appropriate, as determined by the Director, two investigators may be assigned to a case. The parties will be notified of the investigator's identity. Investigators are specifically trained and impartial faculty or staff. The investigator's role is to investigate complaints and make findings of fact pertaining to the complaint.

1. The investigation generally includes interviews with the parties, any relevant witnesses, and a review of relevant documents (text messages, emails, etc.). Participants in an investigation are advised that maintaining confidentiality is essential to protect the integrity of an investigation. At any time during the investigation, the investigator may

recommend to the Director that interim measures be provided to the Complainant, Respondent or witnesses. Violations of these interim measures may be considered a separate violation of policy.
2. During an investigative interview, the interviewee is expected to answer the question, not his or her representation.
3. Parties and union representatives are not allowed to record interviews.
4. The investigator(s) will take notes during the interview and provide each participant with a summary of the interview for the purpose of review. Any substantive changes to the content after the review by the participant may be noted in the final report.
5. The investigation shall be completed as promptly as possible, and in most cases within fifty (50) business days of the date of the formal complaint. A total of two attempts (by email, text, or phone) will be made to schedule investigative interviews. This includes attempts to schedule with the presence of a union representative or legal representative. Failure to respond to scheduling requests will result in proceeding with the investigation without input from that individual.
6. At the conclusion of the investigation, the investigator will prepare a written report that includes a statement of the allegations and issues, identification of facts, reviewed evidence, a determination of whether the alleged actions may have violated University policy using the preponderance of evidence standard, and any recommendations.
7. The investigator will submit the report to the Director of EQOC. The Director will formulate an opinion as to whether there has been a violation of University policy.

If it the opinion of the Director that there is not enough evidence to warrant a finding of Sexual Harassment or Sexual Misconduct, the Complainant and the Respondent will be notified of this decision, and the case will be closed. The Office of EQOC, however, maintains the right to refer the case to other appropriate University officials if it appears that there may be violations of other University policies.

If it is the opinion of the Director of EQOC that there is reasonable cause to believe that the University's Sexual Harassment or Sexual Misconduct Policy has been violated, the Director will forward the investigative report and the Director's opinion to the appropriate manager who will follow their disciplinary procedures. For confidentiality purposes, the Respondent is not entitled to a copy of the investigative report but will be advised of the findings.

The manager will utilize the existing University pre-disciplinary conference (PDC) procedures ensuring that the Respondent employee has the opportunity to be represented, if so desired, by their union representative during the PDC. At the PDC, the Respondent will have an opportunity to rebut the findings of the investigator's report and the Director's opinion. After completing the pre-disciplinary conference, the manager (in consultation with the Associate Vice President for Human Resource Services and other University officials, as needed) will determine if discipline is appropriate and what level of discipline should be imposed. Possible disciplinary actions for violation of the University's Sexual Harassment or Sexual Misconduct Policy include oral or written reprimand, suspension, or termination of employment. The manager is not bound by the

opinion of the Director of EQOC and retains the right to make a final determination. Disciplined employees will have the right to appeal or grieve management's decision to the extent provided in the appropriate policy or collective bargaining agreement.

The Complainant will receive notification of the final disposition of the complaint. If the Complainant finds the resolution or disciplinary action unsatisfactory, they may pursue the complaint with the appropriate external agencies.

**References**

This policy is in compliance with federal and state laws, including Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendment of 1972, Section 504 of the Rehabilitation Act, and the Americans With Disabilities Act of 1990 (as amended).

*For questions about this policy, individuals should contact the Vice President for the Division for Access, Compliance, and Engagement or the Office of Equal Opportunity and Compliance.*

**Reviewed by:** Office of Equal Opportunity and Compliance

**Policy Owner:** Vice President – Division for Access, Compliance, and Engagement (ACE)

**Approved by:**

Dr. Tracey Robinson, Vice President for the Division of Access, Compliance, and Engagement
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