

SEXUAL VIOLENCE AND SEXUAL HARASSMENT SEXUAL MISCONDUCT POLICY

I. Summary

The term “sexual misconduct” is a broad term used to refer to all the prohibited sexual violence and sexual harassment behaviors under this policy. As used in this policy, sexual misconduct may also encompass criminal conduct under Pennsylvania and/or federal law. Additionally, sexual misconduct under this policy may result in civil and/or administrative legal consequences.

This Sexual Misconduct Policy (the “Policy”) and the Sexual Misconduct Grievance Procedures (the “Grievance Procedures”) supersede all other Pennsylvania Institute of Technology (“P.I.T.” or “College”) policies and grievance procedures to the extent they cover sex discrimination, sexual harassment or sexual violence. The Policy and the Grievance Procedures are effective August 10, 2020. The Policy and Grievance Procedures were designed to comply with the requirements of the recent Final Ruling issued by the United States Department of Education and the updated requirements from the Pennsylvania Department of Education.

II. Definitions

Consent – A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity. In order to be valid, consent must be knowing, voluntary, active, present and ongoing. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide consent due to intellectual or other disability or other condition.

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

When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination.

When determining whether a person has the capacity to provide consent, Pennsylvania Institute of Technology will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity. When determining whether consent has been provided, all the circumstances of the relationship between the parties will be considered.

Incapacitation- Incapacitation is defined as a state in which an individual cannot fully understand or comprehend the nature or context of their decisions and/or actions. An incapacitated person cannot, by definition, consent to sexual activity because they cannot understand or appreciate the “who, what, when, where, why, or how” of the sexual activity in question. Incapacitation may result from a person consuming a large amount of alcohol or other drugs, having a mental disability, being asleep or passed out, or being involuntarily physically restrained. Incapacitation is a state beyond intoxication.

A person cannot consent to sexual activity if they are incapacitated. An individual who engages in sexual activity when that individual knows or reasonably should know that the other person is physically or mentally incapacitated has violated the Comprehensive Policy. The intoxication of a respondent, such that the respondent may not have realized the incapacity of an affected party, does not excuse such a violation.

Intimate-Partner Violence – An act of violence or threatened act of violence by or against one person who is, or has been, involved in a sexual, dating, domestic, or other intimate relationship with another person. This includes:

1. Dating Violence – Violence, including but not limited to sexual or physical abuse, or the threat of such violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person. The existence of such a relationship will be determined based on the reporting party’s statement and other relevant information, taking into consideration the length of the relationship, the type of relationship, and the frequency of

interaction between the persons involved in the relationship.

2. Domestic Violence – Violence, including but not limited to sexual or physical abuse, or the threat of such violence, committed by a current or former spouse, or sexual or intimate partner; a person who is living as a spouse or who lived as a spouse; parents and children; other persons related by blood or marriage; or by someone with whom the person shares a child in common. Under the criminal laws of Pennsylvania certain offenses, including but not limited to, rape, aggravated assault, and stalking, can be deemed domestic violence depending on the relationship of the parties involved.

Sexual Assault – This includes the following:

Non-Consensual Sexual Penetration (Sexual Penetration Without Consent) Non-consensual sexual penetration is defined as any sexual penetration or attempted penetration, however slight, with any body part or object by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration or oral copulation (genital to mouth contact) no matter how slight the penetration and is investigated under Title IX.

Non-Consensual Sexual Contact is defined as any intentional sexual touching, however slight, with any body part or object by a person upon another person that is without consent and/or by force. Sexual touching includes intentional contact with the breasts, groin, or genitals, 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 made in a sexual manner and is investigated under Title IX. The Commonwealth considers **Sexual Contact Without Consent** as knowingly touching or fondling a person's genitals, breasts, buttocks, or anus, or knowingly touching a person with one's own genitals or breasts, when consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.

Statutory Sexual Assault – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or 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.

Sexual Exploitation Taking sexual advantage of another person or violating the sexual privacy of another when consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- Indecent exposure or inducing others to expose themselves when consent is not present;
- Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's consent.
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Sexual Harassment: The United States Department of Education broadly defines Sexual Harassment as unwelcome sexual, sex-based, and/or gender-based, verbal, written, online and/or physical conduct. Such infractions are

investigated under Title IX. The Pennsylvania Institute of Technology Sexual Misconduct Policy defines Sexual Harassment as unwelcome conduct of a sexual nature where either or both of the following are present:

1. Quid pro quo: Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment or education, including participation in any Pennsylvania Institute of Technology program and/or activity; or
2. Hostile Environment: Such conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from Pennsylvania Institute of Technology's education or employment programs and/or activities. The existence of a hostile environment is to be judged both objectively (meaning a reasonable person would find the environment hostile) and subjectively (meaning the impacted individual felt the environment was hostile).

A single, isolated incident of sexual harassment alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. Any such incidents will be investigated under Pennsylvania Institute of Technology's Sexual Misconduct Policy.

Stalking – Engaging in a course of conduct or repeatedly communicating and/or committing acts toward another person under circumstances that demonstrate or communicate an intent:

1. to place the other person in reasonable fear of bodily injury; or
2. to cause substantial emotional distress to the other person.

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property.

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

Retaliation – Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. A finding of retaliation under this policy is not dependent on a finding that the underlying sexual misconduct occurred. The Pennsylvania Institute of Technology is required to keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures.

The Final Rule states that the exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement

III. Policy

Title IX, VAWA and Nondiscrimination Statement

Pennsylvania Institute of Technology prohibits any form of discrimination and harassment on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital or family status, medical condition, genetic information, veteran status, or disability in any decision regarding admissions, employment, or participation in a Pennsylvania Institute of Technology program or activity in accordance

with the letter and spirit of federal, state, and local non-discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, The Age Discrimination in Employment Act, The Americans with Disabilities Act and ADA Amendments Act, The Equal Pay Act, [any applicable local nondiscrimination ordinance] and the Pennsylvania Human Relations Act.

Pennsylvania Institute of Technology also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, as amended by the Violence Against Women Act (VAWA)

Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled.

Pennsylvania Institute of Technology has designated the Title IX Coordinator to coordinate Pennsylvania Institute of Technology's compliance with Title IX and VAWA and to respond to reports of violations. The College has directed the Director of Data and Information to coordinate compliance with the Clery Reporting related VAWA requirements.

Pennsylvania Institute of Technology will promptly and equitably respond to all reports of sexual misconduct in order to eliminate the misconduct, prevent its recurrence, and redress its effects on any individual or the community.

B. Scope of Policy

This policy applies to all on campus and off-campus conduct that is likely to have a substantial adverse effect on any member of Pennsylvania Institute of Technology's community. There is no time limit for reporting allegations of sexual misconduct, however, Pennsylvania Institute of Technology strongly encourages the prompt reporting of sexual misconduct to allow Pennsylvania Institute of Technology to respond promptly and effectively. If the reported respondent is not a member of Pennsylvania Institute of Technology community or is no longer associated with Pennsylvania Institute of Technology at the time of the report or at the time a resolution process is initiated, Pennsylvania Institute of Technology may be unable to conduct an investigation or take disciplinary action.

Please see the **Reporting Sexual Misconduct** section below to make a report of misconduct, discrimination and/or harassment, or to file a complaint.

C. Statement on Privacy and Confidentiality

Pennsylvania Institute of Technology is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Every effort will be made to protect the privacy interests of all individuals involved. Privacy, confidentiality and privilege have distinct meanings under this policy.

Privacy generally means that information related to a report of sexual misconduct will only be shared with a limited circle of individuals, including individuals who "need to know" in order to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not bound by confidentiality or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct, including advisors and witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties and will be asked to keep any information learned in an investigation meeting or hearing confidential, to the extent consistent with applicable law.

Certain individuals are designated as having confidentiality. For reports made to employees designated with having confidentiality, Pennsylvania Institute of Technology will respect the reporting party's expectations of privacy **to the extent permissible by law** while still ensuring compliance with other reporting obligations. For example, complaints involving minors are subject to mandatory reporting requirements.

Individuals designated as having confidentiality are required to report the nature, date, time and general location of an incident to the Title IX coordinator. Confidential resources will not share other information with the Title IX Coordinator or any other employee of Pennsylvania Institute of Technology without the express permission

of the disclosing party. Confidential resources can provide information about Pennsylvania Institute of Technology and off-campus resources, support services and other options. As noted above, because of the confidential nature of these resources, **disclosing information to or seeking advice from a confidential resource does not constitute a report or complaint to Pennsylvania Institute of Technology and will not result in a response or intervention by Pennsylvania Institute of Technology.** A person consulting with a confidential resource may later decide to make a report to Pennsylvania Institute of Technology and/or law enforcement. Please email KJsselman@pit.edu to make a report to a confidential resource.

Communication with certain individuals may be **privileged by operation of law and reports made to these individuals will not be shared with Pennsylvania Institute of Technology's Title IX Coordinator or law enforcement except in very limited situations, such as when failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law.** Please email LBlomgren@pit.edu to make a report to a privileged resource.

Pennsylvania Institute of Technology will generally respect a complainant's choice whether to report an incident to local law enforcement or initiate Pennsylvania Institute of Technology's sexual misconduct resolution process, unless Pennsylvania Institute of Technology determines that there is an overriding interest with respect to the safety or welfare of the Pennsylvania Institute of Technology community. Where a report involves suspected abuse of a child (an individual under the age of 18 at the time of the incident(s) as reported), all Pennsylvania Institute of Technology employees and volunteers are required to notify local police and the ChildLine run by the Pennsylvania Department of Human Services. All other members of the Pennsylvania Institute of Technology community are strongly encouraged to report suspected child abuse to law enforcement or the ChildLine.

All Pennsylvania Institute of Technology proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX of the Education Amendments of 1972 ("Title IX"), Violence Against Women Act (VAWA), state and local law, and related Pennsylvania Institute of Technology policy. No information will be released from such proceedings, except as required or permitted by law and Pennsylvania Institute of Technology policy.

Pennsylvania Institute of Technology may share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions.

D. Prohibited Conduct

Pennsylvania Institute of Technology prohibits the following forms of conduct:

1. Sexual Assault including Sexual Penetration Without Consent, Sexual Contact Without Consent and Statutory Sexual Assault
2. Sexual Harassment
3. Sexual Exploitation
4. Intimate-Partner Violence, including Dating Violence and Domestic Violence
5. Stalking
6. Retaliation

This prohibited conduct can affect all genders, gender identities and sexual orientations. Some of these prohibited forms of conduct may also be crimes under Pennsylvania or federal law.

E. Free Expression and Academic Freedom

Pennsylvania Institute of Technology is firmly committed to free expression and academic freedom and to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community. Sexual misconduct, including retaliation, against members of Pennsylvania Institute of Technology are not protected expression nor the proper exercise of academic freedom. Pennsylvania Institute of Technology will consider principles of free expression and academic freedom in the investigation of reports of sexual misconduct or retaliation that involve an individual's statements or speech.

F. Alcohol and Drug Use Amnesty

The health and safety of every student at Pennsylvania Institute of Technology is of utmost importance. Pennsylvania Institute of Technology recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Pennsylvania Institute of Technology strongly encourages students to report incidents of sexual misconduct. A witness to or individual who experience sexual misconduct, acting in good faith, who discloses any incident of sexual misconduct to Pennsylvania Institute of Technology officials or law enforcement will not be sanctioned under Pennsylvania Institute of Technology's code of conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sexual harassment or sexual violence. Pennsylvania Institute of Technology may request the individual attend an approved alcohol or drug education program and without assessing any charges for such program. This amnesty provision also applies to student groups making a report of sexual misconduct. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

I. Pennsylvania Institute of Technology Reporting Sexual Misconduct

A. Reporting Options

Any individual, including a third party, may make a report concerning of sexual misconduct. Complainants and third-parties are encouraged to report sexual misconduct as soon as possible to allow Pennsylvania Institute of Technology to respond promptly and effectively.

A person who has experienced sexual misconduct under this policy, or a person who witnesses sexual misconduct under this policy, has the right to simultaneously file a complaint with Pennsylvania Institute of Technology and to pursue a criminal complaint with law enforcement. Victims and witnesses of sexual misconduct have the right to be assisted by Pennsylvania Institute of Technology in notifying law enforcement authorities of sexual misconduct or they can decline to notify such authorities. Pennsylvania Institute of Technology may, however, have a statutory reporting obligation when it becomes aware of certain factual allegations. Parties may also have options to file civil actions in court or with administrative agencies.

Pennsylvania Institute of Technology has designated the Title IX Coordinator to oversee complaints of sexual misconduct at Pennsylvania Institute of Technology. An individual who has experienced sexual misconduct has the right to choose whether to report the incident to Pennsylvania Institute of Technology's Title IX Coordinator, Kamira Evans, for investigation. Title IX officials are trained to work with individuals who report sexual misconduct and have knowledge about resources and services, both on and off campus, including the availability of supportive measures.

Please call or email Pennsylvania Institute of Technology's Title IX Coordinator at KEvans@pit.edu or file a complaint at www.my.pit.edu/titleix to set up a meeting if you have a complaint involving sexual misconduct. You can also call for general information.

The Title IX Coordinator, in consultation with the Title IX assessment team comprised of the Title IX Coordinator, the Associate Dean of Academics, and the Vice President for Administration, along with others (as necessary), will conduct an initial assessment of the conduct, the reporting party's desired course of action, and the necessity for any supportive or interim measures to protect the safety of the complainant or the community. The goal is to eliminate any hostile environment. If a report of misconduct discloses a serious or immediate threat to the campus community, Pennsylvania Institute of Technology will issue a timely notification to the community to protect the health or safety of the community. The timely notification will not include any identifying information about the complainant.

Please Note: **Title IX Coordinators are not a confidential source of support.** While they will address your complaint with sensitivity and will keep your information as private as possible, confidentiality cannot be guaranteed. For confidential resources, please contact KIsselman@pit.edu to make a report to a confidential resource.

Please Also Note: Making a report is different from filing a complaint. A report is defined as notification of an incident of sexual misconduct to the Title IX Coordinator/designee by any responsible employee or reporting person. A report may be accompanied by a request for (1) supportive or interim measures; (2) no further action; (3) a request to initiate an informal resolution process; and/or (4) the initiation of the formal complaint process. Filing a complaint

initiates the Pennsylvania Institute of Technology formal disciplinary process. (See Sexual Misconduct Resolution Process). Please see the section of this policy- **Statement on Privacy and Confidentiality** to learn more.

B. Electronic and Anonymous Reporting

You may also file a complaint about sexual misconduct using the appropriate links below. While anonymous complaints are accepted, Pennsylvania Institute of Technology's ability to address misconduct reported anonymously is significantly limited.

Individuals may use this <https://my.pit.edu/title-ix/> to electronically file a report of sexual misconduct with Pennsylvania Institute of Technology.

Individuals may also file a report electronically by email to: KEvans@pit.edu

An immediate auto-response email with information about resources and options will be sent in response to reports filed electronically. Submissions will receive a response from the Title IX Coordinator within two business days.

C. Criminal Reporting Options

Pennsylvania Institute of Technology does not have its own police force. However, employees of Pennsylvania Institute of Technology are obligated to promptly report incidents of sexual misconduct that also constitute criminal conduct of which they become aware during the scope of their employment to the Title IX Coordinator/designee, regardless of whether the individual who is making the report chooses to pursue criminal charges.

Off-Campus Resources List

- Emergency:
 - 9-1-1 (local law enforcement)
 - The Special Victims Unit – 215-685-3251
- 24-Hour Hotline/Organizations:
 - Women Organized Against Rape (Philadelphia): 215-985-3333
 - Women Against Abuse (Philadelphia): 1-866-723-3014
 - Delaware County Women Against Rape: 610-566-4342
 - “Menergy” Men’s Resource Center: 215-242-2235
 - Domestic Abuse Project of Delaware County: 610-565-6272
- Sexual Assault Medical Evaluation
 - Thomas Jefferson Hospital Emergency Room: 215-955-6840
 - Episcopal Hospital: 215-707-0800
 - Riddle Hospital Emergency Room: 484-227-3214
 - Crozer Chester Medical Center Emergency Room: 610-447-2188
 - Delaware County Memorial Hospital Emergency Room: 610-284-8400
 - Springfield Hospital: 610-328-8700
 - Mercy Fitzgerald Hospital Emergency Room: 610-237-4701
 - Taylor Hospital Emergency Room: 610-595-6480

A complainant may seek resolution through Pennsylvania Institute of Technology's informal or formal resolution process. A complainant may also seek to initiate a criminal complaint, independent of or parallel with any resolution process of Pennsylvania Institute of Technology's policy, definitions, and burden of proof may differ from Pennsylvania criminal law. Neither law enforcement's decision whether to prosecute, nor the outcome of any criminal prosecution, is determinative of whether sexual misconduct has occurred under this policy. In cases where there is a simultaneous law enforcement investigation, there may be circumstances when Pennsylvania Institute of Technology may need to temporarily delay its investigation while law enforcement gathers evidence. However, Pennsylvania Institute of Technology will generally proceed with its investigation and resolution of a complaint even during the time of a pending law enforcement investigation.

D. External Reporting Options

A person may also file a complaint with the U.S. Department of Education's Office for Civil Rights regarding an

alleged violation of Title IX by visiting <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or calling 1-800-421-3481 or emailing OCR.Philadelphia@ed.gov.

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

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

F. Reporting Obligations of the Pennsylvania Institute of Technology

All Pennsylvania Institute of Technology officials, employees (including student employees), and volunteers are considered “responsible employees” under Title IX and are obligated to report incidents of sexual misconduct of which they become aware to the Title IX Coordinator/designee, unless they serve in a role that makes such reports privileged or are recognized as providing a confidential resource (see Statement on Privacy and Confidentiality).

G. Assessment and Timely Warnings

The Title IX Coordinator/designee in consultation with the Title IX assessment team, the Clery Officer, and others (as necessary) will conduct an initial assessment of the conduct, the reporting party’s desired course of action, and the necessity for any interim measures or services to protect the safety of the complainant or the community. The goal is to eliminate any hostile environment. If a report of misconduct discloses a serious or immediate threat to the campus community, Pennsylvania Institute of Technology will issue a timely notification to the community to protect the health or safety of the community. The timely notification will not include any identifying information about the complainant.

V. Sexual Misconduct Resolution Process

A. Participant Roles

1. A **complainant** is the person who has been impacted by an alleged policy violation and has chosen to participate in the resolution process.
2. A **respondent** is the person who is alleged to have violated Pennsylvania Institute of Technology policy.
3. **Parties** is a term that refers to the complainant and the respondent collectively.
4. A **witness** is a person who has knowledge related to specific aspects of a case and may have reported such aspects to the institution.
5. An **advisor** is a support person who may be present to provide support to a complainant or respondent throughout an investigation and/or hearing provided the choice of advisor does not unduly delay the process. Advisors may not speak, write, or otherwise communicate with investigators, conduct administrators, hearing panel members, or appeal reviewers on behalf of the party being advised. Each party is responsible for coordinating and scheduling with their choice of advisor. A union representative may serve as an advisor, where applicable.
6. A **hearing panel** is a panel of three members of Pennsylvania Institute of Technology’s employee list. In general, a Title IX Hearing Panel will be convened to deal with alleged violations of the College’s Policy on Sexual Assault by a member of the PIT Community. In determining whether or not a Title IX Hearing Panel is appropriate, the Title IX Coordinator will consult with the complainant and such members of the professional staff of the College as circumstances indicate. The Panel will be convened in a timely manner, soon after a Title IX complaint has been investigated.
7. A **decision-maker** is the individual who facilitates the hearing panel and makes determinations of relevance.

All participants have the responsibility to be truthful with the information they share at all stages of the process. Any individual who knowingly or intentionally provides false information as part of a report or investigation under this policy may be subject to discipline. This provision does not apply to a good faith report that is not substantiated or proven by a preponderance of the evidence.

B. Conflict of Interest

Parties have the opportunity to raise the issue of a potential conflict of interest within two (2) days of being advised of the identity of the investigator, panel member, or appeal reviewer. The Title IX Coordinator/designee will determine whether a conflict of interest exists. No investigator, panelist, or appeal reviewer will make findings or determinations in a case in which they have a conflict of interest.

C. Burden of Proof

The burden of proof refers to who has the responsibility of showing a violation has occurred. It is always the responsibility of Pennsylvania Institute of Technology to satisfy the burden of proof. The respondent does not have the burden to prove that a violation did not occur. Respondents may decide not to share their side of the story or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from Pennsylvania Institute of Technology and does not indicate responsibility. Additionally, the Title IX Investigation Committee shall not make an adverse inference against a respondent for the respondent's refusal to participate in an investigation or hearing, nor will respondent's refusal to participate result in increased sanctions if the respondent is found responsible for the accusations.

D. Standard of Proof

Pennsylvania Institute of Technology uses the **preponderance of the evidence standard** in investigations of complaints alleging sexual misconduct and any related violations. This means that the investigation determines whether it is more likely than not that a violation of the policy occurred.

E. Timeline for Resolution

Pennsylvania Institute of Technology will resolve all cases in a prompt and timely manner, however, the timeline will vary based on the circumstances of the case, including breaks in the academic calendar, availability of the parties and witnesses, scope of the investigation, need for interim actions, and unforeseen or exigent circumstances. The parties will be periodically updated on the status of their case.

F. Title IX Outreach

Upon receipt of a report of sexual misconduct, the Title IX coordinator/designee will provide resources and support information by contacting the potential complainant and offering an initial meeting between the reporting party and the Title IX coordinator/designee. The initial meeting is optional and the reporting party may decline. The purpose of the initial meeting is for the Title IX/designee to gain a basic understanding of the nature and circumstances of the report and provided information about resources, supportive measures, and resolution options to the reporting party.

G. Initial Inquiry

Pennsylvania Institute of Technology will conduct a preliminary inquiry to determine if the allegations, if true, would rise to the level of a violation of Pennsylvania Institute of Technology's policy. The possible next steps include the following: (1) A decision to close the case when insufficient evidence exists to move forward or because the allegation, even if proven, would not violate Pennsylvania Institute of Technology policy; (2) Informal Action (see below); or (3) Formal Resolution (see below).

H. Interim and Supportive Measures

When Pennsylvania Institute of Technology becomes aware of an allegation of sexual misconduct and the complainant or other affected parties, including the respondent, request interim or supportive measures, Pennsylvania Institute of Technology will take appropriate supportive and interim measures to protect affected parties, to assist the parties, and to protect against retaliation. Pennsylvania Institute of Technology may also take interim measures to protect the Pennsylvania Institute of Technology community at large.

1. Supportive Measures. The following are examples, but not an exhaustive list, of supportive measures:
 - a. Making appropriate changes to academic programs, including changes in class schedule, accommodations to permit the affected party to take an incomplete or drop a course or courses without penalty, permitting the affected party to attend a class via virtual meeting software (e.g. ZOOM) or other alternative means, providing an academic tutor, or extending deadlines for assignments;
 - b. Changing an employee's work assignment or schedule;
 - c. Providing the affected party with an escort to and from class or campus work location;
 - d. Arranging appropriate transportation services to ensure safety;
 - f. Providing information on available counseling services through the counseling center or other appropriate office, or referral to an off-campus agency;
 - g. Assisting the affected party in obtaining medical and other services, including access to rape crisis centers;
 - h. Assistance with filing a criminal complaint and/or seeking an order of protection; and/or
 - i. Enforcing a protection from abuse order.

Supportive measures will be individualized and appropriate based on the information available, making every effort to avoid depriving any student of their education or impacting employment. The measures needed by each party may change over time, and parties should communicate with Pennsylvania Institute of Technology throughout the resolution process to ensure the supportive measures are effective.

2. Interim Measures

- a. No Contact Orders - When respondent is a student employee or volunteer of the institution, the complainant has the right to request Pennsylvania Institute of Technology issue a "no contact order" under which continued intentional contact with the complainant would violate this policy. No contact orders may be issued for both the complainant and the respondent, as well as other individuals as appropriate.
- b. Interim Suspension - In exceptional circumstances where it is determined that a respondent is a continuing threat to the health and safety of the community, Pennsylvania Institute of Technology may seek an emergency interim suspension of a student or take similar emergency measures against an employee, consistent with applicable Pennsylvania Institute of Technology policy and collective bargaining agreements. For students who are given an interim suspension Pennsylvania Institute of Technology will convene a hearing within 10 working days, unless extenuating circumstances warrant an extension, in which case a hearing shall be provided at the earliest possible date.

3. Process for Review of Interim Measures

- a. For students who are given an interim suspension, Pennsylvania Institute of Technology will convene a hearing within 10 working days, unless extenuating circumstances warrant an extension, in which case a hearing shall be provided at the earliest possible date.
- b. For interim measures involving employees, Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy

GRIEVANCE POLICY AND INVESTIGATIVE PROCESS

Pennsylvania Institute of Technology ensures their investigators are free of bias and do not pre-judge the respondent's culpability before a full investigation and evaluation of the evidence.

Pennsylvania Institute of Technology is committed to a consistent, transparent grievance process for resolving formal complaints of sexual harassment. To that end, Pennsylvania Institute of Technology will:

- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule.
- Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

To use P.I.T.'s Grievance Procedures, an aggrieved employee, faculty member or student should meet with the Title IX Coordinator, as soon as possible after the alleged act of sexual misconduct or retaliation to discuss the complaint. Employees and faculty members who have experienced conduct they believe is contrary to this Policy have an obligation to make a prompt report or file a prompt complaint. In any case, there is no time limit for students to make a complaint. Nevertheless, students should understand that incidents should be reported as soon as possible when memories, information and evidence is fresh. The longer a student waits to file a complaint, the more difficult it might be for the College to obtain evidence and conduct a thorough, impartial and reliable investigation.

Time frame to complete an investigation

Pennsylvania Institute of Technology will respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. To that end, Pennsylvania Institute of Technology will offer supportive measures to the complainant.

- The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

A note about Sexual Harassment Allegations:

The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator.

The Final Rule affirms that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school's education program or activity against a person in the United States, the Final Rule **clarifies that the school must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.**

Once a complaint of sexual misconduct has been made, the Title IX Coordinator will meet with the Complainant as soon as reasonably possible to determine if any interim actions are immediately required, and then begin an investigation within five (5) calendar days of the initial complaint.

The investigation shall be completed within twenty-eight (28) days after it begins, if reasonably possible. Within ten (10) calendar days of the completion of the investigation, the Title IX Coordinator shall, as Hearing Coordinator, schedule a live hearing for all parties.

The decision-maker will provide the findings of the hearing, including any sanctions to all required parties within.

These time frames may vary depending on the complexity of the investigation and the severity and extent of the alleged sexual misconduct. For any investigation that cannot comply with these time frames, the Title IX Coordinator shall promptly inform both parties of any revised time frames and the reasons for any delay. In cases when the accused faces criminal charges or is the subject of a criminal investigation, the College may need to briefly delay temporarily the fact-finding portion of a sexual misconduct investigation while the police are gathering evidence. But once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges) the College will promptly resume and complete its fact-finding of its investigation.

Contents of Complaint

To ensure a prompt and thorough investigation, the complainant should provide as much of the following information as possible:

- The name, department, and position and any other identifying information of the person or persons allegedly causing the sexual misconduct or retaliation.
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses.
- The alleged effect of the incident(s) on the student's ability to enjoy the programs and activities or the educational opportunities of the College or on the employee's or faculty member's position, salary, benefits, promotional opportunities, or other terms or conditions of employment.
- The names of other students or employees or faculty members who might have been subject to the same or similar sexual misconduct or retaliation.
- Any steps the complainant has taken to try to stop the sexual misconduct or retaliation (although no steps are required to have been taken to file a complaint).
- Any other information the complainant believes to be relevant to the alleged sexual misconduct.

Investigation

An investigation into the complaint shall be conducted by or under the direction of the Title IX Coordinator. The investigation may include any of the following determined by the Title IX Coordinator in his/her discretion based on the nature of the complaint: interviews of the parties involved, interviews of any witnesses, the gathering of other relevant information and any other steps necessary to thoroughly investigate the allegations. Mediation will never be used for complaints of sexual harassment or sexual violence. The Title IX Coordinator shall issue an investigatory report to the appropriate College Executive Leadership.

To comply with this regulation, Pennsylvania Institute of Technology will:

- Investigate all allegations of sexual misconduct to determine if it is likely that a Title IX violation has taken place
- Send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint
- Ensure that the burden of gathering evidence and burden of proof remains with Pennsylvania Institute of Technology, not on the parties.
- Provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Will not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders").
- Ensure that both parties must have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.
- Send written notice of any investigative interviews, meetings, or hearings.
- Send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- Send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.

As mandated by the ruling, Pennsylvania Institute of Technology will dismiss allegations of conduct that do not meet the Final Rule's definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.

- Pennsylvania Institute of Technology may, at leadership's discretion, consolidate formal complaints where the allegations arise out of the same facts.
- If it is determined that a Title IX violation has taken place, and it is appropriate, parties will be offered the opportunity to participate in an Informal Resolution.
 - If an Informal Resolution is offered and desired by all parties involved, Pennsylvania Institute of Technology will facilitate the process.
 - If an Informal Resolution is not appropriate or desired, Pennsylvania Institute of Technology's Formal Resolution Process will be followed.

Privacy:

- Pennsylvania Institute of Technology endeavors to protect the privacy of a party's medical, psychological, and similar treatment records. PIT cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.

Investigated allegations can either result in an Informal or Formal Resolution.

I. Informal Resolution

Informal resolution involves a mutual agreement by the parties to resolve the matter by mutual agreement.

Pennsylvania Institute of Technology, in its discretion, may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution.

Informal resolution may take place at any time prior to a decision being issued in a hearing or a respondent taking responsibility. The informal resolution process will be conducted by the Title IX Coordinator/designee. Both the complainant and the respondent have the right to end the informal resolution process at any time. Any informal resolution must be acceptable to the complainant, the respondent, and the Title IX Coordinator/designee.

If a resolution is reached, the complainant and the respondent shall be notified in writing, and the Title IX Coordinator/designee will confer with appropriate parties to memorialize the agreed upon resolution and any consequences for non-compliance in a memorandum. This memorandum will be included in the respondent's student record. If no agreement is reached within a reasonable time, the Title IX Coordinator /designee shall proceed with the formal resolution process.

Informal resolution may not be used when formal resolution is desired by a reporting party or where the Title IX Coordinator/designee has determined that Pennsylvania Institute of Technology needs to proceed with an investigation

Informal resolution does not result in findings related to responsibility. Pennsylvania Institute of Technology will never require, as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.

Similarly, Pennsylvania Institute of Technology will never require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. Pennsylvania Institute of Technology will never offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

J. Formal Resolution

The Formal Resolution process is:

1. Notification to Respondent - If a case is referred for formal resolution, the respondent will be notified of the alleged misconduct and given an opportunity to respond. The notification will include the allegations, identities of the parties involved, the specific section(s) of Pennsylvania Institute of Technology's policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the incident (if known). This notice will be given before any initial interview. Pennsylvania Institute of Technology may modify the list of policies allegedly violated based on additional information learned during investigation.

2. Acceptance of Responsibility - Prior to the conclusion of a sexual misconduct investigation, the respondent may elect to take responsibility for the prohibited conduct by contacting the Title IX Coordinator/designee in writing. The Title IX Coordinator/designee will issue a brief outcome determination summarizing the allegations and stating the respondent has accepted responsibility and refer the matter to the appropriate office for sanctioning. Following the determination of sanctions, parties may appeal the sanctions but not the finding(s) of responsibility.

3. Investigation - For investigations of respondents who are employees Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy and relevant collective bargaining agreements.

For investigations of respondents who are students Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy.

4. Hearing- For hearings for respondents who are employees Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy and relevant collective bargaining agreements.

For hearings for respondents who are students Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy.

5. Sanctioning - For sanctions for respondents who are employees Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy.

For sanctions for respondents who are students Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy.

K. Hearing Process for Formal Resolutions in Title IX Cases

The Department of Education's Final Ruling regarding Title IX cases require a live hearing to determine a formal complaint's outcome. In keeping with the ruling, Pennsylvania Institute of Technology will have a panel of three participants conducting the hearing, with one individual being the decision-maker.

- The decision-maker cannot be the same person as the investigator or Title IX coordinator.

Pennsylvania Institute of Technology's Hearing Panel will be:

- Three- person
- Comprised of a diverse group of faculty/staff,
- Selected by senior leadership – NOT Title IX
- Rotating schedules for hearings or ad hoc scheduling

The Title IX Coordinator will be the Hearing Coordinator. The Hearing Coordinator will:

- Essential to setting up trainings, smooth hearings, and logistics of hearing (e.g., conference room/zoom meeting, recording, etc.)
- Sends hearing notices/charging decision letters to parties
- Puts hearing files together for panelists
- schedules hearings
- coordinates parties and witnesses to testify
- Reads instructions to panel and documents such
- Post-hearing:
 - notifies parties of decision,
 - sets up sanctions hearing should there be a "responsibility finding," and facilitates the appeal process

Advisors:

An **advisor** is a support person who may be present to provide support to a complainant or respondent throughout an investigation and/or hearing provided the choice of advisor does not unduly delay the process. Advisors may not speak, write, or otherwise communicate with investigators, conduct administrators, hearing panel members, or appeal reviewers on behalf of the party being advised. Each party is responsible for coordinating and scheduling with their choice of advisor. A union representative may serve as an advisor, where applicable. Pennsylvania Institute of Technology shall give both complainants and respondents equal opportunity to have an advisor present. The advisor may be present and participate in Title IX proceedings. Pennsylvania Institute of Technology places restrictions on the role of advisors during the hearing process, and only allows advisors to participate in cross examination, as allowed and required.

Advisors are permitted to ask the other party and any witnesses all relevant and follow up questions. Issues of relevance will be determined by the decision-maker.

Neither the complainant or the respondent can “fire” an assigned advisor during the hearing; however, if the party correctly asserts that the assigned advisor is refusing to conduct cross examination on the party’s behalf,” then Pennsylvania Institute of Technology is obligated to provide the party an advisor to perform that function. This can be either through counseling the assigned advisor on their role and how to perform said role or postponing the hearing to assign a different advisor.

If a party does not have their own advisor of choice at the live hearing, Pennsylvania Institute of Technology will provide (at no fee or charge) an advisor of the school’s choice.

Live Hearings:

At the live hearing, the decision-maker(s) must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Additional Requirements include:

- Allowing cross-examination during the live hearing, with limits:
 - No direct questioning by the parties. The party’s advisor of choice must conduct questioning; an attorney may be the chosen advisor. If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school’s choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
 - Pennsylvania Institute of Technology has a rotating advisor pool for complainants and respondents to choose from.
 - Questions must be relevant. Before allowing a question to be answered, the decision-maker over the hearing must determine whether the question being asked is relevant and provide an explanation if any question is deemed not relevant.
 - Questions relating to a complainant’s prior sexual history are deemed not relevant, unless offered to prove someone else was responsible for the alleged conduct, or if related to the complainant’s prior sexual behavior with the respondent and are offered to prove consent.
 - The Final Rule provides rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
 - The parties may be placed in separate rooms, with technology facilitating the hearing, as long as the decision-maker and parties can simultaneously see and hear the party or witness responding to the questions
 - If a party or witness does not submit to live cross-examination, the decision-maker cannot rely on any statement made by that party or witness when making the decision about the respondent’s responsibility
 - Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
 - Cross examination must be done by an advisor. Parties must never personally question each other.
 - Cross examinations must be done, directly, orally, and in real time.

Written Determination and Decisions

- The decision-maker will issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

Dismissal of Formal Complaint

Pennsylvania Institute of Technology may, at the leadership's discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Pennsylvania Institute of Technology will give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.

L. Appeal

The complainant or respondent may appeal the hearing outcome and/or sanction(s).

For appeals by parties who are employees Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy and relevant collective bargaining agreements.

For appeals by parties who are students Pennsylvania Institute of Technology will follow applicable requirements in Pennsylvania Institute of Technology policy.

In the event sanctions were imposed, it shall be in the discretion of the Title IX Coordinator/designee and the sanctioning office whether the sanctions shall be implemented or stayed pending resolution of an appeal.

The limited grounds for appeal are as follows:

Pennsylvania Institute of Technology must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:

- procedural irregularity that affected the outcome of the matter
- newly discovered evidence that could affect the outcome of the matter, and/or
- Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.
- New information that could affect the outcome of the matter and was not reasonably available through the exercise of due diligence at the time of the hearing below;
- A deviation from Pennsylvania Institute of Technology policy or procedures that materially affected the hearing outcome or sanctions; and
- The sanction is too harsh or too lenient.

Pennsylvania Institute of Technology may offer an appeal equally to both parties on additional bases.

VI. Rights/Responsibilities

A. Reports and complaints have different meanings. An individual has a right to make a report of sexual misconduct to Pennsylvania Institute of Technology, which may be accompanied by request for supportive measures. An individual also has a right to make a complaint of sexual misconduct, which is a request to initiate Pennsylvania Institute of Technology's an informal resolution process or a formal disciplinary process, which includes an investigation and may proceed to a formal hearing.

B. Prior to the conclusion of a sexual misconduct investigation, the reporting party may request to withdraw the complaint by contacting the Title IX Coordinator/designee in writing. He or she will determine whether to close the case or conclude the investigation without the complainant's continued participation.

C. An individual also has the right to report sexual misconduct to law enforcement, separate and apart from any report or complaint made to Pennsylvania Institute of Technology.

D. At the time a report is made, the reporting party does not have to decide whether to file a complaint or make a report of sexual misconduct to law enforcement.

E. An affected party has the right to request supportive measures from Pennsylvania Institute of Technology, which may include interim contact restrictions.

F. The reporting party has the right to seek medical treatment to address physical and mental health and to preserve evidence.

G. A report may become a formal complaint, either initiated by the reporting party or Pennsylvania Institute of Technology depending on the outcome of the Title IX assessment. To file a complaint, please contact the Title IX Coordinator/designee.

VIII. Training Information

As mandated, Pennsylvania Institute of Technology will:

- Conduct bias-free training and make training materials publicly available.
- Retain training materials for seven years.
- Train students, faculty, and staff on revisions to Institution's policy and procedures.

IX. Revision History

Last Revised August 10, 2020