



Sexual Misconduct Policy

For Students, Faculty, Staff and Visitors

Table of Contents

I. POLICY STATEMENT AND JURISDICTION	2
II. TERMINOLOGY	3
III. REPORTING SEXUAL MISCONDUCT	10
IV. RESPONSIBILITY TO REPORT	11
V. CONFIDENTIALLY DISCLOSING SEXUAL MISCONDUCT	13
VI. COMPLAINANT AND RESPONDENT RIGHTS	17
VII. UNIVERSITY RESPONSE PROCEDURES	22
VIII. SANCTIONING	27
IX. APPEALS	29
X. RESOURCES.....	33

UNIVERSITY OF DELAWARE SEXUAL MISCONDUCT POLICY

I. POLICY STATEMENT AND JURISDICTION

The University of Delaware prohibits sex discrimination, sexual assault, sexual harassment, dating violence, domestic violence and stalking *by anyone on* University property. The University also prohibits such conduct committed by students, faculty, staff, volunteers, or vendors off University property, if:

1. The conduct was in connection with a University or University-recognized program or activity;
2. The conduct is alleged to have created a hostile environment for a member of the University community;
3. The respondent's conduct disrupts the normal functions and processes of the University and is egregiously offensive to the University's mission; or
4. The respondent's continued presence on campus poses a serious threat to persons or property regardless of where the conduct occurred.

This policy is intended to keep the University community free from sexual misconduct, which includes sex discrimination, sexual assault, sexual harassment, stalking, dating violence and domestic violence, and is designed to create and maintain a safe and non-discriminatory environment that protects the constitutional and civil rights of students, faculty and staff, as well as vendors, guests, visitors and volunteers, regardless of their sexual orientation or gender identity. Acts of discrimination and harassment undermine the University's mission by threatening the careers, educational experiences and well-being of those associated with the University. This policy expresses the University's opposition to sexual misconduct; assists the University in complying with federal, state and local mandates in relation to such conduct; and describes the method for responding to such behavior and its reoccurrence.

Anyone, including students, faculty, staff, administrators, vendors, guests, visitors or volunteers, may file a complaint of sexual misconduct with the University Title IX Coordinator, using the Sexual Misconduct Reporting Form available at udel.edu/sexualmisconduct/how-to-report/, regarding the conduct of University students, faculty, staff, administrators, vendors, guests, visitors or volunteers. While the University encourages complaints to be filed as soon as possible after an incident, there is no time limit on filing a complaint.

Title IX of the Education Amendments of 1972 ("Title IX") is a federal law that prohibits discrimination on the basis of sex or gender in the University's programs and activities. The

2013 Violence Against Women Reauthorization Act (the “VAWA”) amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) to include additional reporting, policy and education requirements for incidents of sexual assault, dating violence, domestic violence and stalking.

The University will respond to complaints or reports about conduct prohibited by this policy with measures designed to stop the behavior, eliminate such discrimination, prevent the recurrence of the prohibited conduct and remediate any adverse effects of such conduct on campus or in University-related programs or activities. [\[back to top\]](#)

II. TERMINOLOGY

The following definitions apply to terms used throughout this policy:

- A. Appellate Board** means the group of people available to hear appeals of decisions and sanctions in cases involving alleged violations of this policy by students or staff.
1. In a case involving a student respondent, the Appellate Board in each case is made up of a faculty member, a staff member, a student and a non-voting chairperson, who may be either a faculty or staff member. The student member is an undergraduate student if the respondent is an undergraduate student, a continuing education student or an English Language Institute student. The student member is a graduate student if the respondent is a graduate student.
 2. In a case involving a staff or administrator respondent, the Appellate Board in each case is made up of three staff members or administrators and a non-voting chairperson, who will also be a staff member or administrator.
 3. All members of the Appellate Board serving in any cases under this policy will be trained in adjudicating and reviewing cases involving alleged sexual misconduct.
- B. Complainant** means the person who allegedly has experienced the prohibited conduct, regardless of whether that individual makes a complaint or desires disciplinary action. A complainant may be a student, employee, faculty member, volunteer, vendor, visitor or guest, regardless of their sex, sexual orientation or gender identity.
- C. Confidential resource** means employees and volunteers in Student Health Services, Sexual Offense Support, Center for Counseling and Student Development, Student Wellness & Health Promotion and other licensed counselors employed by the University acting in that capacity.
- D. Consent** is an affirmative decision to engage willingly in mutually acceptable sexual activity given by clear words or actions. It is an informed decision made freely and

actively by all involved parties. In order for a sexual encounter to be consensual, each participant must agree to engage in each act of the encounter. All participants should make clear their willingness or lack of willingness to continue at each progression of the sexual interaction and should not make assumptions about consent during the sexual activity, as confusion or ambiguity may arise.

Consent may not be inferred from silence, passivity, lack of resistance or lack of active response alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Nor does a current or previous dating or sexual relationship constitute consent to sexual activity in every instance.

Either party may withdraw consent at any time during the sexual encounter. Once withdrawal of consent has been expressed by words or actions that indicate a clear desire to end sexual activity, all sexual activity must cease immediately.

Sexual conduct will be considered “without consent” if no clear consent, verbal or non-verbal, is given. This includes situations in which an individual’s ability to consent freely is taken away by another person or circumstance. Examples may include, but are not limited to, when an individual is incapacitated due to alcohol or drugs, passed out, fearful for the individual’s safety or the safety of others, physically forced, intimidated, coerced, mentally or physically impaired, threatened, or confined.

The use of alcohol or drugs can limit a person’s ability to give consent freely and clearly. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether or not consent has been freely and clearly given. The perspective of a reasonable person evaluating another person’s physical or verbal functions will be the basis for determining whether one should have known that the use of alcohol or drugs impaired that person’s ability to give consent. Being intoxicated or impaired by alcohol or drugs does not diminish one’s responsibility to obtain consent and is never an excuse for sexual misconduct.

The University’s definition of consent is different from the State of Delaware’s definition of “without consent” contained in 11 *Del. C.* §761(j). Members of the University community should be aware of the University’s definition of consent and understand this is the definition that will be used in any proceeding pursuant to this policy.

- E. Days** means business days when all University offices are open. This does not include weekends, holidays or inclement weather days when University offices are closed.
- F. Deputy Title IX Coordinators** means University employees designated to assist the University Title IX Coordinator in responding to reports of sexual misconduct, providing

training to employees and students and creating an environment free from sexual misconduct. The following individuals have been designated as Deputy Title IX Coordinators:

- For Undergraduate Students: Adam Cantley, Associate Dean of Students, 132 Hullihen Hall, University of Delaware, Newark, DE 19716, 302-831-8939, adamcan@udel.edu.
- For Faculty: Matthew Kinservik, Ph.D., Vice Provost for Faculty Affairs, 116 Hullihen Hall, University of Delaware, Newark, DE 19716, 302-831-2101, matthewk@udel.edu.
- For Graduate Students: Mary Martin, Ph.D., Associate Vice Provost for Graduate and Professional Education, 234 Hullihen Hall, University of Delaware, Newark, DE 19716, 302-831-8916, marym@udel.edu.
- For Athletics: Jennifer Judy, Sr. Associate Athletics Director, Student Services & Sport Administration/SWA126 Bob Carpenter Center, University of Delaware, Newark, DE 19716, 302-831-8610, jjudy@udel.edu.

G. Employee means anyone employed by the University, including but not limited to, faculty and staff, part-time and full-time employees and student workers in their capacity as an employee.

H. Evidence – information, specific and relevant to the alleged incident, presented to the investigator in support of the position of either the complainant or the respondent. Information such as character information and citations to outside authorities should not be included, as that information will not aid the investigator in their decision making process.

I. Faculty Member or Faculty means any full- or part-time professor, associate professor, assistant professor or instructor.

J. Interim measures mean steps the University may take before the final outcome of an investigation to ensure equal access to its education programs and activities and to protect the complainant and the rest of the campus community as necessary. Interim measures may include, but are not limited to:

1. providing support services to the complainant;
2. separating the complainant's and respondent's academic, living or work situations;
3. ordering the respondent not to have any contact with the complainant;

4. providing increased security at the locations or activities where misconduct occurred;
5. offering escort services to the complainant;
6. placing the respondent on an interim suspension from housing or the entire campus; and
7. other measures as determined on a case-by-case basis.

Interim measures remain in place until the case has been investigated and resolved or until lifted by the appropriate University official or designee. The decision about whether particular interim measures are appropriate and when they should be lifted will be made by:

1. the Dean of Students or designee when the respondent is an undergraduate student;
2. the Associate Vice Provost for Graduate and Professional Education or designee if the respondent is a graduate student;
3. the Vice Provost for Faculty Affairs or designee if the respondent is a faculty member;
4. the Director, Employee Relations or designee if the respondent is a staff member; and
5. the Title IX Coordinator or designee if the respondent is a volunteer, visitor or vendor.

K. Investigator means an appropriately trained professional, who may or may not be a University employee, who reviews and investigates reports of sexual misconduct under this policy. The investigator(s) will be impartial and unbiased, will disclose any real or reasonably perceived conflicts of interest to the Title IX Coordinator as soon as such conflicts are discovered by the investigator and will have training in investigating and evaluating conduct under this policy.

L. Offenses prohibited by this Policy

Sexual misconduct is a term used to encompass a variety of behaviors described below. Sexual misconduct may be committed by anyone, including but not limited to, an intimate partner, a friend, an acquaintance, a supervisor, a faculty member, or a stranger. Anyone can be a victim or perpetrator of sexual misconduct, regardless of their sex,

sexual orientation or gender identity. Sexual misconduct can occur when perpetrator and victim are different sexes or the same sex. Sexual misconduct can involve conduct that occurs on campus, off-campus, or via electronic means, including online, by social media, or by text. Sexual misconduct may include the following:

1. **Sex discrimination** means adverse treatment of an individual based on sex, gender, gender identity or gender expression, rather than individual merit.
2. **Sexual harassment** means unwelcome verbal, nonverbal or physical conduct of a sexual nature when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement;
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or
 - c. such conduct is:
 - i. sufficiently severe or pervasive to alter an individual's working or academic conditions;
 - ii. creates a hostile or abusive working, living or academic environment; or
 - iii. is sufficiently severe or pervasive to limit an individual's ability to participate in or benefit from an educational program or activity.

Factors which may be considered include the frequency of the unwelcome conduct; its severity; whether it is physically threatening or humiliating; and whether it unreasonably interferes with an individual's work or academic performance.

Sexual harassment can include other acts of sexual misconduct.

3. **Sexual assault** means physical sexual acts committed when consent is not received, a person is physically forced, intimidated or coerced into a sexual act, or when a person is physically or mentally unable to give consent.
4. **Domestic violence** means any act of violence, including but not limited to physical violence, sexual assault and psychological violence, committed or threatened to be committed by:
 - a. A current or former spouse of the victim;

- b. A person with whom the victim shares a child in common;
- c. A person who is cohabiting with or has cohabited with the victim in a romantic relationship; or
- d. A family member of the victim with whom the victim resides or has resided.

5. Dating violence means any act of violence, including but not limited to physical violence, sexual assault and psychological violence, committed or threatened to be committed by a person who has been involved in a social relationship of either a romantic or intimate partner nature with the victim. When determining whether the relationship rises to the level required for dating violence, the nature of the relationship, length, type and frequency of interaction will be considered.

6. Stalking means purposely and repeatedly engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

M. Remedial measures are measures that may be implemented as part of the sanctioning to ensure the hostile environment experienced by the complainant has been addressed. Such measures may include providing an escort to ensure safe movement around campus; ensuring the complainant and respondent do not share classes, work spaces or extracurricular activities; reassignment of residence halls; tutoring or other academic support; arranging for extra time to complete or re-take a class or withdraw from a class without academic or financial penalty; job reassignment; targeted training for a group of students, faculty or staff; and other remedies that can be tailored to the needs of the parties and the University.

N. Respondent means the person who allegedly committed a violation of this policy. A respondent may be a student, employee, faculty member, volunteer, vendor or other individual on campus.

O. Retaliation means any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this policy, filing an external complaint raising concerns under this policy, participating in an investigation under this policy or opposing in a reasonable manner an action believed to constitute a violation of this policy. Retaliation can take many forms, including violence, threats or intimidation.

P. Sanctioning Panel means the group of people that will decide the appropriate sanctions in cases brought against students under this policy. The Sanctioning Panel in each case will consist of one faculty member, one staff member, one student and a non-voting staff

member from the Office of Student Conduct, who will provide administrative assistance to the Sanctioning Panel. The student member will be an undergraduate student if the respondent is an undergraduate student, a continuing education student or an English Language Institute student. The student member will be a graduate student if the respondent is a graduate student. All members of the Sanctioning Panel serving in any cases under this policy will be specially trained in adjudicating, sanctioning and reviewing cases involving alleged sexual misconduct.

- Q. Staff member or administrator** means any non-faculty University employee, whether part-time or full-time, temporary or permanent, exempt or non-exempt.
- R. Student** is any individual who is currently enrolled, was enrolled within the previous two terms or is eligible to enroll for the next term. The word "student" as used throughout this Policy includes Student Organizations. [“Term” is defined as an academic session in which classes are offered. This includes traditional semesters (Fall and Spring) as well as special sessions (Winter and Summer).]
- S. Supervisor** means the complainant’s or the respondent’s immediate manager, if the complainant or respondent is a University employee.
- T. Support person** means a person advising or providing support to the complainant or respondent throughout the processing of a sexual misconduct complaint. A support person may be anyone who is not a party to or witness in the case. Attorneys may serve as support persons for the complainant and the respondent. The role of the support person will be limited as discussed in [Section VI.G](#). The University will maintain a list of University employees trained in handling sexual misconduct cases who have volunteered to serve as support persons for complainants or respondents.
- U. University Title IX Coordinator or Title IX Coordinator** means that official or designee. The Title IX Coordinator will be informed of all complaints or reports of sexual misconduct and oversees the University’s response to such complaints or reports to ensure compliance with Title IX and response requirements under the Clery Act. The Title IX Coordinator will also identify and address any patterns or systemic problems revealed by sexual misconduct complaints or reports.

The University Title IX Coordinator is Susan L. Groff, Ed.D., Director of Institutional Equity and University Title IX Coordinator, 305 Hullahen Hall, Newark, DE 19716, (302) 831-8063, titleixcoordinator@udel.edu.

- V. Vendor** means a company or individual providing goods or services on the University campus or to the University community through a contractual relationship with the University.

W. Visitor or Guest means an individual who is not officially affiliated with the University but is present on campus either independently or as the guest of a University employee or student.

X. Volunteer means an individual who is not employed by the University but is providing goods or services on the University campus or to the University community, at the request of or with the authorization of the University, without receiving compensation from the University. [\[back to top\]](#)

III. REPORTING SEXUAL MISCONDUCT

A. To the University Title IX Coordinator

Any person who believes they have been a victim of, have witnessed or otherwise wish to report an incident of sexual misconduct should contact the University Title IX Coordinator, Susan L. Groff, Ed.D., 305 Hullihen Hall, Newark, DE 19716, (302) 831-8063, titleixcoordinator@udel.edu or submit a Title IX Reporting Form available at udel.edu/sexualmisconduct/how-to-report/

Upon receipt of a report that contains the identity of the complainant, the University Title IX Coordinator will:

- ensure that the complainant is aware of rights and resources available to them;
- inform the complainant of the availability of interim measures and the strict prohibition against retaliation;
- advise the complainant of the additional reporting options for an incident of sexual misconduct, including the option to report or not to report to law enforcement;
- inform the complainant of the University's Sexual Misconduct Policy;
- describe the University's sexual misconduct investigation process; and
- determine whether an investigation is appropriate, based on the complainant's wishes and the safety of the overall campus community.

The Title IX Coordinator will not report an incident of sexual misconduct to the police, unless federal or state law or University policies (for example, mandatory reporting of child abuse) require such an incident to be reported or unless the incident poses a serious safety risk to the campus community.

As discussed below, there are times when the Title IX Coordinator may determine that an investigation is necessary even if a formal complaint has not been made or if the complainant requests that no investigation or disciplinary action occur. If the Title IX Coordinator determines that an investigation is appropriate, the Title IX Coordinator will advise the complainant and assign an investigator to conduct the investigation pursuant to [Section VII](#) below. The University will use reasonable efforts to prevent any retaliation against the complainant.

B. To the University Police Department or Other Law Enforcement Agency

A report of sexual misconduct may be filed with the University Police Department (“UDPD”), if the alleged misconduct occurred on campus, or other law enforcement agency, if the alleged misconduct occurred off campus, for a criminal investigation. Filing a report of sexual misconduct with a law enforcement agency, including UDPD, does not preclude the complainant from also filing a report with the University Title IX Coordinator, and filing a report with the University Title IX Coordinator does not preclude a complainant from also reporting the incident to a law enforcement agency, including UDPD. If a report of sexual misconduct is made to both the University Title IX Coordinator and a law enforcement agency, the University will, to the extent possible, coordinate its investigation with the law enforcement agency to minimize the burden on the complainant, respondent and witnesses. However, the University may need to delay its fact investigation for up to 10 days while the police are conducting their fact investigation. [\[back to top\]](#)

IV. RESPONSIBILITY TO REPORT

All members of the University community have a responsibility to make the University a safe and supportive environment for everyone. This responsibility includes reporting safety or security concerns and crimes or policy violations, including sexual misconduct.

In an emergency situation, members of the University community should immediately call 911 to report any crime or other incident that poses a risk of harm to the University community.

Any University employee, to include student employees, who is not a confidential resource under this policy and who witnesses, is advised of or learns about an alleged incident of sexual misconduct **must promptly notify** the University Title IX Coordinator of the incident by email, telephone or using the Title IX Reporting Form available at udel.edu/sexualmisconduct/how-to-report/.¹ The employee must report to the University

¹ These reporting obligations are different from the reporting obligations of a Campus Security Authority (“CSA”) under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f).

Title IX Coordinator all relevant details about the alleged sexual misconduct known to the employee or shared with them.

Any employee who learns about a sexual misconduct report will respect the privacy of the complainant. The employee will inform only those who need to know, which will include the University Title IX Coordinator. The employee and the University Title IX Coordinator will not share information about the alleged incident with law enforcement without the complainant's consent, unless the employee has a duty under University policy, federal or state law (*e.g.*, mandatory reporting of child abuse) to report such an incident to law enforcement or unless the complainant has already reported the incident to law enforcement.

The fact that a report is given to the University Title IX Coordinator does not necessarily mean the University will undertake an investigation into the allegations. The University Title IX Coordinator will ensure that the complainant is aware of rights and resources available to them. These include:

- the right to be accompanied to meetings about the incident with up to two support people;
- the availability of confidential resources both on and off campus;
- the availability of medical assistance both on and off campus;
- the availability of interim measures;
- the strict prohibition against retaliation;
- the available reporting options for an incident of sexual misconduct, including the option to report or not report the incident to law enforcement; and
- a copy of this policy or a link to its location on the website, which includes a description of the University's sexual misconduct investigation process.

Employees should make every effort to inform a complainant of the employee's Title IX reporting obligations before the complainant reveals any specific information. If the complainant wishes to maintain confidentiality, they should be encouraged to speak with one of the University's confidential resources, as discussed below.

The only time a University employee does not have to report an alleged incident of sexual misconduct is if that employee is the victim of such misconduct, although the University encourages those employees to report such incidents.

Requesting Confidentiality or Anonymity after Reporting an Incident: How the University Will Consider the Request and Respond

If the complainant requests that the University not pursue an investigation or asks that their name be held in confidence, the University Title IX Coordinator will weigh each request very carefully. Among the factors the University will consider in assessing a complainant's request are:

- whether the sexual misconduct was perpetrated with a weapon;
- whether the respondent has been identified as a respondent in another alleged incident of sexual misconduct;
- the age of the complainant;
- whether the University possesses other means to obtain relevant evidence (for example, if the University has surveillance camera footage that shows the incident, the University may be able to proceed without the involvement of the complainant); and
- whether the University has credible evidence that the respondent has committed one or more prior violations of the sexual misconduct policy.

The University Title IX Coordinator will advise the complainant if the University intends to proceed with the investigation against the complainant's wishes. If the complainant requests that the University inform the respondent that the complainant asked the University not to investigate or seek discipline, the University will do so and inform the respondent that the University made the decision to go forward with the investigation. [\[back to top\]](#)

V. CONFIDENTIALLY DISCLOSING SEXUAL MISCONDUCT

Several offices and individuals on campus are designated as confidential resources for members of the University community who wish to discuss an incident of sexual misconduct without or before reporting it to the Title IX Coordinator. Individuals who are not prepared to make a report or who may be unsure how to label what happened to them, but seek information and support, are encouraged to contact a confidential resource. As discussed below, some of these confidential resources do not report any information to the University Title IX Coordinator (professional, licensed counselors and pastoral counselors who provide mental health counseling at the University) and others (Student Health Services and Sexual Offense Support) report non-identifying information about violations of this policy to the Title IX Coordinator for tracking purposes only.

If a complainant wants to maintain confidentiality by disclosing only to a confidential resource and not reporting to the University, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the respondent. These counselors and advocates will still assist the complainant in receiving other necessary protection and support, such as advocacy, academic support or accommodations, disability, health or mental health

services and changes to living, working or class schedules. The University's ability to provide these protections and supports may be limited, however, if the complainant does not want to pursue an investigation and disciplinary action against the respondent.

A complainant who initially requests confidentiality may later decide to file a complaint with the University or report the incident to law enforcement and have the incident fully investigated.

A. Professional and Pastoral Counselors

Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of the University community will not report any information to the Title IX Coordinator without a complainant's written permission. This protection also extends to individuals who work or volunteer in these offices, including front desk staff and students. The following are the professional and pastoral counselors on the University campus:

Center for Counseling and Student Development (for students only)

261 Perkins Student Center

Newark, DE 19716

Phone: (302) 831-2141

Website: www.udel.edu/counseling/

Student Wellness & Health Promotion²(for students only)

231 South College Avenue

University of Delaware

Newark, DE 19716

Phone: (302) 831-3457

Website: www.udel.edu/studentwellness/

HMS Health Advocates (for employees only)

Employee Assistance Program for UD Employees

1-800-343-2816

www.hmsincorp.com

Nurse Managed Health Care (for students and employees)

STAR Campus – 540 S. College Ave., Suite 130

² Licensed substance abuse and relationship violence counselors have statutory privilege and do not have to share any information with the Title IX Coordinator. Not all counselors at Student Wellness & Health Promotion have this level of privilege. Other counselors may have to provide anonymous reports of incidents to the Title IX Coordinator.

University of Delaware
Newark, DE 19716
Phone: (302) 831-3195
Website: <http://sites.udel.edu/nmhc/>

B. Student Health Staff and Sexual Offense Support

Individuals who work or volunteer in Student Health Services or Sexual Offense Support, including front desk staff and students, can talk to a complainant without being required to reveal any personally identifying information to the University Title IX Coordinator. A complainant can seek assistance and support from these individuals without the possibility of triggering a University Title IX investigation.

While maintaining the complainant's confidentiality, these individuals or their offices must report the nature, date, time and general location of an incident of sexual misconduct to the University Title IX Coordinator. This limited report – which includes no information that would directly or indirectly identify the complainant – helps keep the University Title IX Coordinator informed of the general nature and extent of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem and formulate appropriate campus-wide responses, but such a report will not trigger an investigation by the University Title IX Coordinator. A complainant can choose to have non-professional counselors and advocates report all information about an incident that may prompt an investigation by the Title IX Coordinator.

The following is contact information for Student Health Services and Sexual Offense Support:

Student Health Services (for students only)

Laurel Hall
University of Delaware
Newark, DE 19716
Phone: (302) 831-2226
Website: www.udel.edu/shs/

Sexual Offense Support (SOS)- (for students and employees)

University of Delaware
231 South College Avenue
Newark, DE 19716
Phone: (302) 831-1001 (UD Helpline 24/7/365. The clinician will take a first name and phone number and have the advocate call you back within 10 minutes)
Website: www.udel.edu/sos/

NOTE: While these professional counselors, medical professionals and advocates may maintain a complainant's confidentiality in the University setting, they may have other reporting or disclosure obligations under state law, including mandatory reporting of child abuse, situations in which the patient or client presents a danger to themselves or others and responding to subpoenas compelling document production or testimony at trial or in a deposition.

C. Other Methods of Disclosure

Complainants have other opportunities to disclose incidents of sexual misconduct as well, some of which may preserve confidentiality and others may not.

1. Anonymous Reporting

The University provides anonymous reporting mechanisms through the University Police Department, <http://www.udel.edu/police/forms/submit-a-tip.html>, and through an EthicsPoint Compliance Hotline, <http://www.udel.edu/compliance/>. If identifying information for the complainant is provided through either reporting mechanism, the University Title IX Coordinator will ensure that the complainant is aware of rights and resources and determine whether an investigation is appropriate, based on the complainant's wishes and the safety of the overall University community.

2. Take Back the Night and other similar events

Public awareness events such as Take Back the Night, candlelight vigils, protests, survivor speakouts or other forums in which complainants disclose incidents of sexual misconduct are not considered notice to the University of sexual misconduct for purposes of triggering its obligation to investigate any particular incidents. The University will make an effort to provide information about Title IX rights and available resources at these and other similar events.

3. Off-campus Counselors and Advocates

Off-campus counselors, advocates, pastoral counselors, and health care providers, if permitted by state law, will generally maintain confidentiality and not share information with the University unless the complainant specifically requests the disclosure and signs a consent form authorizing the release of information. Like on campus confidential resources, these off-campus resources may have other reporting or disclosure obligations under state law, including mandatory reporting of child abuse, situations in which the patient or client presents a danger to themselves or others and responding to subpoenas compelling document production or testimony at trial or in a deposition. [\[back to top\]](#)

VI. COMPLAINANT AND RESPONDENT RIGHTS

A. Complainant Rights

A complainant in a sexual misconduct report is entitled to:

1. Be treated with respect by all University officials;
2. Be notified of available counseling, mental health, medical and legal services both on campus and in the community;
3. Interim measures, which may include changing living arrangements on campus or receiving reasonable academic or workplace accommodations;
4. Be free of any form of retaliation and free to report such retaliation for disciplinary action;
5. Obtain a campus restraining or no-contact order against the respondent;
6. Notify or not notify law enforcement of the complaint;
7. Decide whether or not to file a formal complaint with the Title IX Coordinator;
8. Be accompanied by up to two support persons throughout the process, including at any interviews;
9. An adequate, reliable, impartial and prompt investigation of the allegations conducted within a reasonable period of time after the complaint is filed;
10. Receive written notice of the date, time and location of any interview scheduled with the investigator;
11. Be kept informed of the status of the investigation, to the extent possible;
12. Review all documents that are made available to the respondent;
13. Meet with the investigator and present information on their own behalf, identify witnesses or other third parties who might have relevant information and identify or provide relevant documents or other information the complainant believes may be helpful to the investigation;
14. Have past unrelated behavior excluded from the investigation process;
15. Question the selection of the investigator and the person(s) deciding the sanction on the basis of a conflict of interest or demonstrated bias;
16. Be notified of the outcome and sanction(s), as appropriate, in writing, as soon as possible and at the same time as the respondent;
17. Initiate an appeal of the finding or sanction;
18. Participate in the appeal process, if initiated by the respondent; and
19. Waive any of the rights contained herein.

B. Respondent Rights

A respondent in a sexual misconduct report is entitled to:

1. Be treated with respect by all University officials;

2. Be informed of the policy (or policies) alleged to have been violated, the sanction to be applied if the respondent agrees the allegations are accurate and the process for disputing the allegation(s) or recommended sanction(s);
3. Be notified of available counseling, mental health, medical and legal services both on campus and in the community;
4. Be free of any form of retaliation and free to report such retaliation for disciplinary action;
5. An adequate, reliable, impartial and prompt investigation of the allegations conducted within a reasonable period of time after the complaint is filed;
6. Be accompanied by up to two support persons throughout the process, including at any interviews;
7. Be kept informed of the status of the investigation, to the extent possible;
8. Review all documents that are made available to the complainant;
9. Have past unrelated behavior excluded from the investigation process;
10. Receive written notice of the date, time and location of any interview scheduled with the investigator;
11. Question the selection of the investigator and the person(s) deciding the sanction on the basis of a conflict of interest or demonstrated bias;
12. Meet with the investigator and present information on their own behalf, identify witnesses or other third parties who might have relevant information and identify or provide relevant documents or other information the respondent believes may be helpful to the investigation;
13. Refuse to answer any question or make any statement if also facing criminal charges;
14. Be notified of the outcome and sanction(s), as appropriate, in writing, as soon as possible and at the same time as the complainant;
15. Initiate an appeal of the finding or sanction;
16. Participate in the appeal process, if initiated by the complainant; and
17. Waive any of the rights contained herein.

C. First Amendment and Academic Freedom Protections

The University is committed to free expression and academic freedom. We are equally committed to creating and maintaining an environment free from discrimination and harassment for all members of the University community. Members of the University community are free to examine and discuss all questions of interest to them and to express their opinions. Academic freedom is the freedom to teach, to conduct research and other scholarly or creative activities, and to publish or otherwise disseminate the results, even if the conclusions are unpopular or contrary to public opinion.

Nothing in this policy is meant to infringe upon the First Amendment rights of University employees and students. Nor is this policy meant to infringe upon academic freedom

protections set forth in the Faculty Handbook and in the Collective Bargaining Agreement between the University and the American Association of University Professors (AAUP). The University will consider First Amendment rights and academic freedom protections in the consideration and investigation of reports of sexual misconduct.

D. Protection from Retaliation

The University will take all appropriate steps to ensure that a person who in good faith reports or complains about sexual misconduct or who participates in a sexual misconduct investigation will not be subjected to retaliation by the respondent or by anyone else with knowledge of the underlying report. The University will also take all appropriate steps to ensure that the respondent will not be subjected to retaliation by the complainant or anyone else with knowledge of the underlying report.

Anyone who believes they are experiencing retaliation is strongly encouraged to report that to the University Police, the University Title IX Coordinator or any other University official so appropriate action can be taken.

E. Confidentiality

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, complainants and respondents are not restricted from discussing and sharing information with others who may support or assist them in presenting their case.

Medical and counseling records are privileged and confidential documents that parties will not be required to disclose.

F. Amnesty

The University grants amnesty to students who may have violated the Code of Conduct's alcohol and drug Policy, <http://www1.udel.edu/amnesty/>, when they became a victim of sexual misconduct. Therefore, no alcohol or drug charges are applied to students who report that they were under the influence of alcohol or drugs when the sexual misconduct took place.

G. Support Person

The complainant and respondent each have the opportunity to be accompanied by up to two support persons to any meeting related to the review of the reported sexual misconduct, which may include a union representative consistent with applicable collective bargaining agreements. The complainant and respondent may also choose to proceed without a support person or with only one support person. Support persons may be attorneys, but support persons may not stand in place of either the complainant or respondent, act as legal counsel for a party or otherwise actively participate in any of the proceedings.

The complainant and respondent must inform the investigator of the identity of the support person(s) they plan to bring to an interview or other meeting at least 3 business days prior to such interview or meeting.

The support person is expected to have reviewed this policy and be aware of their obligations prior to the meeting or interview. If a support person fails to comply with this policy or is otherwise disruptive to the process, the investigator may ask that support person to leave the room and continue with the interview without the support person present.

H. Expectations Regarding Participation by the Parties

In the event that a complainant chooses not to participate in an interview or declines to provide information requested by the investigator, the University may proceed with the investigation or dismiss the complaint. Written notice of such dismissal will be provided to the complainant and respondent.

In the event the respondent chooses not to participate in an interview or declines to provide information requested by the investigator, the investigator will proceed with the investigation and reach a decision based on the available information.

Any person who knowingly and maliciously makes a false statement in connection with a complaint under this policy may be subject to disciplinary action. Making a good faith report of sexual misconduct that is not substantiated is not considered a false statement.

I. References to University Officials

References to University officials, including the Title IX Coordinator, the Chief Human Resources Officer, the Provost, Vice Presidents or Deans, shall include that official or designee.

J. Concurrent Investigation

If a report is made to both law enforcement and to the University Title IX Coordinator, a concurrent investigation may take place. The University, however, may delay its Title IX investigation for a limited time while the law enforcement agency is conducting its fact gathering. Even in situations with a concurrent investigation, the University will use its best efforts to complete its process within 60 days of the date of the report or complaint.

K. Standard of Proof

The standard of proof in all sexual misconduct cases will be preponderance of the information. This standard requires the investigator to conclude that it is more likely than not that the respondent committed sexual misconduct in order for there to be a finding of responsible. Under this standard, individuals are presumed not responsible for sexual misconduct unless a preponderance of the information obtained during the investigation supports a finding of responsible.

This standard of proof differs from the higher standard used in criminal cases, beyond a reasonable doubt. Therefore, there could be instances when the criminal justice system declines to prosecute a case criminally but a finding of responsible is reached under this Sexual Misconduct Policy.

L. Policy Interpretation and Revisions

Any questions regarding the policy should be addressed to the University Title IX Coordinator, who is responsible for updating and interpreting this Sexual Misconduct Policy. The Title IX Coordinator may extend any time limits or deadlines set forth in this policy, with appropriate notice to the complainant and respondent.

The University conducts regular reviews and updates to this policy. The University may, due to legal or institutional need, make changes to the Sexual Misconduct Policy at any time as deemed appropriate by University officials. The Sexual Misconduct Policy posted at www.udel.edu/sexualmisconduct is the current and active version. [\[back to top\]](#)

VII. UNIVERSITY RESPONSE PROCEDURES

Upon receipt of a report of sexual misconduct, the University will generally proceed as described below.

A. Services

If the identity of the complainant has been disclosed to the Title IX Coordinator, the complainant will be offered appropriate support, advised of available resources, including the availability of interim measures and University employees who have volunteered to serve as support persons to complainants in sexual misconduct cases, and notified of applicable University policies. Available resources can be found at www.udel.edu/sexualmisconduct.

The University will take appropriate steps to prevent or address retaliatory conduct following a report of sexual misconduct.

B. Interim Measures

The University may implement interim measures as appropriate for the individuals involved and the overall University community. Interim measures may include:

- interim suspension of the respondent from the University;
- removal of the respondent from University housing;
- separation of the complainant's and respondent's academic, living or work situations;
- ordering the respondent not to have any contact with the complainant;
- providing transportation or parking accommodations for the complainant;
- offering escort services for the complainant; and
- other measures designed to eliminate any hostile environment created by the alleged sexual misconduct.

The interim measures may remain in place until the end of any appeal process (at which time the interim measures may become permanent measures) or may be modified at any time if appropriate as determined by the appropriate University official.

If the respondent is placed on interim suspension, the University will use its best efforts to proceed as quickly as possible with the investigation, while respecting its Title IX and due process obligations.

A complainant's decision to maintain confidentiality or not to pursue an investigation may severely limit the University's ability to implement interim measures.

C. Decision to Proceed

When a report is made, the Title IX Coordinator will conduct a preliminary assessment to determine whether the alleged conduct, as presented by the report, would present a potential violation of this policy and whether further action is warranted based on the alleged conduct. The Title IX Coordinator may consult with a team of advisors to make this determination and may contact the complainant, or if the report was made by a third party, the third party for additional information. A complainant's decision to maintain confidentiality or not to pursue an investigation or a third party's refusal to give identifying information about a complainant or respondent will severely limit the University's ability to respond to the alleged sexual misconduct.

The Title IX Coordinator may determine:

- No further action is necessary and the matter will be closed; or
- Further action is warranted, but only if the complainant chooses to pursue the complaint and participate in the University's process; or
- Further action is warranted whether or not the complainant chooses to participate in the process.

The Title IX Coordinator's decision will be communicated to the complainant. The University Title IX Coordinator will determine the most effective method of reviewing and addressing the concerns raised by the sexual misconduct report. In all cases, the University will respond to the report in a prompt, thorough, fair, impartial and effective manner.

If the Title IX Coordinator determines that the conduct, as alleged by the complainant, does not meet the threshold of violating this policy, the matter still may be a violation of another University policy. The complainant may then have other avenues of assistance available, including reporting the matter to the Office of Student Conduct, the Graduate Office, the Office of Human Resources, law enforcement, Residence Life and Housing or a supervisor.

D. Informing the Respondent

If the decision is made to investigate the report, the Title IX Coordinator will meet with the respondent to provide information about the complaint and the process. The respondent will be advised in advance of this meeting that he or she may be accompanied to this and any other meeting regarding the complaint or investigation by up to two support persons. If the

respondent is a member of a collective bargaining unit at the University, respondent will be advised, in advance of the meeting, of their right to be accompanied to the meeting by a union representative as well as one additional support person.

During the meeting, the respondent will be given in writing a copy of: the complaint, which will outline the incident(s) on which the complaint is based; this Sexual Misconduct Policy or the link to it on the website; and a list of resources available to the respondent, including University employees who have volunteered to serve as support persons to respondents in sexual misconduct cases. In addition, the respondent will be advised of the rights of respondents in cases brought under this policy and the investigation process will be explained to the respondent. The respondent will also be advised of any interim measures implemented that affect the respondent, including but not limited to the entry of a no contact order, a ban from campus or a ban from the residence halls.

E. Investigation

If the Title IX Coordinator determines that an investigation is appropriate, the University will conduct a thorough fact-finding investigation by one or more investigators assigned by the Title IX Coordinator. The investigator(s) will be charged with investigating the complaint and reaching a finding of responsible or not responsible for the charges in the complaint in consultation with the Title IX Coordinator. If the matter involves students, and the investigator(s) discover violations that may also violate the University's Student Code of Conduct during the investigation, the investigator(s) will share that information with the Office of Student Conduct to review and take action as deemed appropriate. If the matter involves faculty or staff members, and the Investigator(s) discover(s) potential violations of other University policies during the investigation, the Investigator(s) will share that information with the Chief Human Resources Officer and/or the Vice Provost for Faculty Affairs, as applicable, to review and take action as deemed appropriate. Once the investigator(s) learn of other potential violations of the Sexual Misconduct Policy and/or other University policies, the complainant and/or the respondent will be notified, as applicable.

The investigation will include the investigator(s) meeting separately with the complainant (if the complainant is participating in the investigation), the respondent and relevant witnesses. As discussed in [Section VI.G.](#), the complainant and the respondent may each be accompanied to these meetings by up to two support persons. The investigator will review any other information deemed relevant to the report and investigation and to which the investigator has access. This may include surveillance camera footage, photographs, documents, text messages, social media postings, electronic mail messages or other materials provided to the investigator by any person participating in the process or otherwise obtained by the investigator. The investigator will give the complainant and respondent the opportunity to present questions they believe should be asked of the other party and witnesses and the

opportunity to respond to statements made by others, if deemed appropriate by the investigator. At any time during the course of an investigation, the complainant, respondent or any witnesses may provide a written statement, other supporting materials or identify other potential witnesses regarding the reported sexual misconduct.

The University will complete its review of the complaint within a reasonable time period. If the investigator believes that the review will take longer than 30 calendar days, he or she shall inform the University Title IX Coordinator and the parties to the complaint.

If at any time during the course of the investigation the complainant withdraws from participating in the process, the University may proceed with the investigation without the complainant's participation or may determine that it is appropriate to dismiss the charges.

F. Findings of the Investigation and Notification

The burden of proof rests with the complainant and a finding must be based on the preponderance of the information available to the investigator(s). This means in order to find the respondent responsible for sexual misconduct, the investigator(s) must conclude that it is more likely than not that the respondent violated the University's sexual misconduct policy. If the investigator(s) cannot reach such a conclusion, then the finding must be not responsible. If the investigator(s) concludes that the complainant filed the report falsely or maliciously, then disciplinary action may be taken by the University against the complainant.

Draft Report

When the investigator(s) completes the investigation, he or she will prepare a draft written report. The draft report will include the following sections:

- The investigator's charge;
- Relevant policies;
- Identification of the persons interviewed;
- Summary of the information collected; and
- Summary of the statements made by the complainant, the respondent and any witnesses; and
- A summary of the facts to date

The investigator(s) will provide the draft report to the Title IX Coordinator, who will then advise the complainant and respondent by email that the draft report is available for their review. The complainant and respondent may contact the Title IX Coordinator to make an appointment, accompanied by their support persons if desired, to review a copy of the investigator's draft report, which may be redacted as necessary to protect the privacy

interests of the complainant, respondent or other witnesses. The parties and their respective support persons may review the draft report in the presence of the Title IX Coordinator and take notes on the content, but may not copy or photograph the draft report or take a copy with them.

Opportunity to Respond to the Draft Report

No later than seven days after the notice of the availability of the investigator's draft report is sent to the parties, the complainant and respondent may each provide to the investigator(s) a written response to the investigator's report, limited to five typewritten, double-spaced pages with 12-point font and 1-inch margins. The response may include, but is not limited to, additional questions the parties believe should be asked of the other parties or witnesses, new evidence they believe is relevant, and the impact the situation has had on them. The written response may not include citations to outside authorities or character evidence.

Final Report

After the earlier of (i) the receipt of the parties' written submissions or (ii) the seven day period has passed, the investigator will prepare the final report, which will include a finding of responsible or not responsible on each alleged violation of this Policy. The final report, along with the parties' written responses to the draft report, will be delivered to the Title IX Coordinator. The final report may be redacted as necessary to protect the privacy interests of the complainant, respondent or other witnesses.

The final outcome derived from the report of the investigator(s) will be shared with the parties at the same time in writing via email to include information about next steps as well as an invitation to review the final report. The parties and their respective supports persons may review the final report in the presence of the Title IX Coordinator and take notes on the content, but may not copy or photograph the draft report or take a copy with them. ***Finding of Responsible***

If the investigator(s) finds the respondent responsible for violating the sexual misconduct policy, the complainant and respondent may meet with the Title IX Coordinator to discuss the finding and learn about the next steps in the process. During this meeting, the parties may request the opportunity to speak separately with the person(s) deciding the sanctions.

The investigator's report, along with the responses to the draft report, will be forwarded to the appropriate sanctioning authority, depending on the status of the respondent, as set forth in [Section VIII](#). A finding of responsible may be appealed after the sanctioning decision is made.

Finding of Not Responsible

If the investigator(s) finds the respondent not responsible for violating the sexual misconduct policy, the complainant and the respondent may meet separately with the Title IX Coordinator to discuss the finding and learn about appeal rights. The complainant may appeal the investigator's decision as set forth in [Section IX](#). Based on the information in the investigator's final report, other university policies may have been violated. In these cases, the Title IX coordinator will refer the investigator's report to the appropriate University official for review and action as deemed appropriate. [\[back to top\]](#)

VIII. SANCTIONING

If the respondent is found responsible for any violations of this policy, the University will initiate a sanctioning process designed to eliminate the misconduct, prevent its recurrence and remedy its effects. Sanctions may also serve to promote safety or deter individuals from engaging in similar behavior in the future. For students found responsible, the sanctions can range from written reprimand up to and including expulsion. For faculty and staff found responsible, the sanctions can range from written reprimand up to and including termination of their employment. Vendors, volunteers, visitors or guests found responsible can be banned from campus.

Remedial measures to ensure the hostile environment experienced by the complainant has been eliminated will be decided on a case-by-case basis. Such measures may include providing an escort to ensure safe movement around campus; ensuring the complainant and respondent do not share classes, work spaces or extracurricular activities; reassignment of residence halls; tutoring or other academic support; arranging for extra time to complete or re-take a class or withdraw from a class without academic or financial penalty; job reassignment; targeted training for a group of students, faculty or staff; and other remedies that can be tailored to the needs of the parties and the University.

A. Student Respondent

Sanctioning Panel

If the respondent is a student, the investigator's final report, along with the parties' responses to the draft report, will be provided to the Office of Student Conduct immediately, which will assign an impartial Sanctioning Panel within 5 days. Members of the Sanctioning Panel may speak with the investigator(s), the Title IX Coordinator and the Dean of Students while considering the appropriate sanction(s). In addition, the complainant and respondent may request to speak separately with the Sanctioning Panel and will be permitted to be accompanied by their respective support persons during such meeting.

Once a decision has been reached by majority rule by the Sanctioning Panel, the Office of Student Conduct will issue a letter to the respondent and complainant, with copies to the Title

IX Coordinator and the Title IX Investigator, sharing the result and sanctions in a manner appropriate to honor due process and privacy considerations. The notification will include information about the appeal process.

Potential Sanctions and Remedial Measures

The sanctions may include any sanctions contained within the Student Guide to University Policies, <http://www1.udel.edu/stuguide/16-17/code.html> , including a combination of disciplinary sanctions, educational sanctions and remedial measures. Disciplinary sanctions may range from reprimand to expulsion from the University. There may also be educational sanctions, such as reflection papers or attendance at relevant seminars. In addition, sanctions may include remedial measures, similar to interim measures, which will remain in place for as long as the University believes is appropriate. The severity of the sanction will depend on a number of factors, including the nature of the offense and the respondent's prior disciplinary history.

B. Staff Member or Administrator Respondent

If the respondent is a staff member or administrator, the investigator's written report, along with the responses to the draft report, will be provided to the respondent's Vice President or highest-level supervisor to determine the appropriate sanctions or corrective actions. The Vice President or highest-level supervisor will speak with the investigator(s) and the Title IX Coordinator and may speak with the complainant and respondent while considering the appropriate sanction. The complainant, respondent, investigator and Title IX Coordinator will receive simultaneous written notice of the sanctioning decision. The notification will include information about the appeal process.

The sanctions may include a combination of disciplinary sanctions, educational sanctions and remedial measures. Disciplinary sanctions may range from oral reprimand to termination of employment. The severity of the sanction will depend on a number of factors, including the nature of the offense and the respondent's prior disciplinary history.

C. Faculty Respondent

If the respondent is a faculty member, the investigator's written report, along with the responses to the draft report, will be provided to the Dean of the College in which the respondent is primarily employed. The Dean will determine the appropriate sanctions or corrective actions. The Dean will speak with the investigator(s) and the Title IX Coordinator and may speak with the complainant or the respondent while considering the appropriate sanction. The complainant, respondent, investigator and Title IX Coordinator will receive simultaneous written notice of the sanctioning decision. The notification will include information about the appeal process.

The sanctions may include a combination of disciplinary sanctions, educational sanctions and remedial measures. Disciplinary sanctions may range from oral reprimand to termination of employment. The severity of the sanction will depend on a number of factors, including the nature of the offense and the respondent's prior disciplinary history.

D. Vendor or Volunteer Respondent

If the respondent is a vendor or volunteer, the investigator's written report will be provided to the Vice President or Dean of the unit or college that retained or authorized the vendor or volunteer. The Vice President or Dean will speak with the investigator(s) and the Title IX Coordinator and may speak with the complainant and respondent while considering the appropriate sanction, which could include banning the vendor or volunteer from the University campus in its entirety. The complainant, respondent, investigator and Title IX Coordinator will receive simultaneous written notice of the sanctioning result. The notification will also include information about the appeal process.

E. Visitor or Guest Respondent

If the respondent is a visitor or guest or someone without any direct affiliation with the University, the investigator's written report will be provided to the Title IX Coordinator. The Title IX Coordinator will speak with the investigator(s) and may speak with the complainant and respondent while considering the appropriate sanction, which could include banning the visitor or guest from the University campus in its entirety. The complainant, respondent, investigator and Title IX Coordinator will receive simultaneous written notice of the sanctioning result. The notification will also include information about the appeal process.

[\[back to top\]](#)

IX. APPEALS

The complainant and respondent both have the opportunity to seek an appeal of the investigator's decision and the sanction(s). The avenue of appeal will depend on the employment or student status of the respondent. In any request for an appeal, the burden of proof lies with the party requesting the appeal. The appeal must allege one or more of the following reasons:

1. The factual findings on which the final decision is based are clearly erroneous, meaning that they are not supported by any credible evidence in the record;
2. The decision is contrary to new information not known at the time of the investigation or sanctioning process;
3. Evidence of bias or prejudice by the investigators or the person or panel imposing the sanction;
4. Procedures were not followed during the process; or
5. One or more of the sanctions imposed are inappropriate or unreasonable.

The failure of the University to adhere to notice requirements or time periods shall not be cause for dismissal nor grounds for appeal unless such failure materially prejudiced the party submitting the appeal.

1. Student Respondent

The complainant or respondent may appeal the investigator's decision and/or sanctions by submitting an appeal request to the Office of Student Conduct in writing within 5 days of the date on which the finding of not responsible or the sanctioning decision was sent.

The appeal request:

1. Must be computer printed and is limited to five double-spaced pages with one-inch margins and a 12-point font; and
2. Should be limited to the facts of the matter that was investigated and the application of this policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board in its decision making process.

Upon receipt of the appeal request, the Director of Student Conduct or designee will send a copy of the request to the non-appealing party (or parties), the investigator, the Title IX Coordinator, the Sanctioning Panel and any other person deemed appropriate by the University. These individuals may submit a response, limited to five double-spaced pages with one-inch margins and a 12-point font, to the Office of Student Conduct within 5 business days of the date on which the appeal was sent.

The written appeal, responses received from all appropriate parties and all documentation contained within the investigator's file and the respondent's disciplinary file will be reviewed in a closed meeting by the Appellate Board. At its discretion, the Appellate Board may speak to the investigator(s), the Title IX Coordinator, the Sanctioning Panel or the parties, who may be accompanied by their respective support persons. The Appellate Board may disregard all pages beyond the five-page limit or reject the entire appeal if it contains character information or citations to authorities outside the University.

The Appellate Board, by majority vote, may decide to:

1. Sustain or deny the appeal;
2. Change the sanction(s) applied;
3. Delay a final review of the appeal to receive additional information regarding specific issues raised in the appeal. Responses may be solicited from the complainant, the respondent, the investigator, the Title IX Coordinator, the Sanctioning Panel and any relevant witnesses;

4. Direct the Title IX Coordinator to conduct a new investigation, or allow the complainant or respondent to have the case handled beginning at any specific stage of the investigation or sanctioning process.

The Appellate Board's decision, except any decision reached as the result of a re-investigation initiated as a due process violation, is final and will be implemented immediately by the University. The Appellate Board will offer a brief written explanation for its decision on appeal. The complainant, the respondent, the investigator, the Title IX Coordinator and the members of the Sanctioning Panel will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the student's disciplinary file and will be maintained in the Office of Student Conduct in accordance with the retention policy, as defined in the Student Guide to University Policies.

A decision reached as a result of a re-investigation initiated because of a due process violation will be subject to all appeal options as described above.

2. Staff Member or Administrator Respondent

The complainant or respondent may appeal the investigator's decision and/or sanctions by submitting a request in writing to the Chief Human Resources Officer ("CHRO") and the Title IX Coordinator within 5 days of the issuance of the finding of not responsible by the investigator or the sanctioning decision. The appeal request:

1. Must be computer printed and is limited to five double-spaced pages with one-inch margins and a 12-point font; and
2. Should be limited to the facts of the matter that was investigated and the application of this policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board in its decision making process.

Upon receipt of the appeal request, the Title IX Coordinator will send a copy of the request to the non-appealing party (or parties), the investigator(s) and, if appropriate, the person who issued the sanction and the Director of Employee Relations. These individuals may submit a response, limited to five double-spaced pages with one-inch margins and a 12-point font, to the CHRO and the Title IX Coordinator within 5 business days of the date on which the appeal was sent.

The Appellate Board, by majority vote, may decide to:

1. Sustain or deny the appeal;
2. Change the sanction(s);
3. Delay a final review of the appeal to receive additional information regarding specific issues raised in the appeal. Responses may be solicited from the complainant, the

- respondent, the investigator, the Title IX Coordinator, the Dean who determined the sanctions and any relevant witnesses; or
4. Direct the Title IX Coordinator to conduct a new investigation, or allow the complainant or respondent to have the case handled beginning at any specific stage of the investigation or sanctioning process.

The written appeal, responses received from all appropriate parties and all documentation contained within the investigator's file will be provided to the Appellate Board and reviewed by it in a closed meeting. At its discretion, the Appellate Board may speak to the investigator(s), the Title IX Coordinator, the individual who issued the sanction or the parties, who may be accompanied by their respective support persons. The Appellate Board may disregard all pages beyond the five-page limit or reject the entire appeal if it contains character information or citations to authorities outside the University.

The complainant, respondent, investigator(s), Title IX Coordinator, Vice President issuing the sanction (if applicable) and the Director of Employee Relations (if applicable) will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the employee's disciplinary file and will be maintained in accordance with the University's document retention policies.

3. Faculty Member Respondent

If the Dean's decision is termination, the termination procedures set forth in the Faculty Senate Committee on Faculty Welfare and Privileges, and as stated in Article 5.10 in the Collective Bargaining Agreement, <http://facsen.udel.edu/Sites/FWP%20Cte/FWP-Policy-Final-Version-As-Amended-During-January-12-2015-Faculty-Senate-Meeting.pdf>, shall apply.

If the Dean's decision is something other than termination or if the finding by the investigator is not responsible, the complainant, if a member of the faculty, or respondent may appeal the investigator's decision and/or sanctions by following the procedures set forth in the Faculty Senate Committee on Faculty Welfare & Privileges, Part II, which will then issue an advisory opinion to the Provost. Such a request to the Faculty Senate Committee on Faculty Welfare & Privileges must be made within 5 days of the issuance of the finding of not responsible by the investigator or the sanctioning decision.

If the complainant is not a faculty member, he or she may appeal a finding of not responsible or the Dean's sanctioning decision, if it is something other than termination, to the Provost within 5 days of the issuance of the finding of not responsible by the investigator or the sanctioning decision. The appeal request:

1. Must be computer printed and is limited to five double-spaced pages with one-inch margins and a 12-point font; and

2. Should be limited to the facts of the matter that was investigated and the application of this policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board in its decision making process.

Upon receipt of the appeal request, the Title IX Coordinator will send a copy of the request to the non-appealing party (or parties), the investigator(s) and, if appropriate, the Dean who issued the sanction and the Vice Provost for Faculty Affairs. These individuals may submit a response, limited to five double-spaced pages with one-inch margins and a 12-point font, to the Provost and the Title IX Coordinator within 5 business days of the date on which the appeal was sent. The Provost may disregard all pages beyond the five-page limit or reject the entire appeal if it contains character information or citations to authorities outside the University.

The Provost may decide to:

1. Sustain or deny the appeal;
2. Change the sanction(s);
3. Delay a final review of the appeal to receive additional information regarding specific issues raised in the appeal. Responses may be solicited from the complainant, the respondent, the investigator, the Title IX Coordinator, the Dean who determined the sanctions and any relevant witnesses; or
4. Direct the Title IX Coordinator to conduct a new investigation, or allow the complainant or respondent to have the case handled beginning at any specific stage of the investigation or sanctioning process.

If the Provost decides to increase the sanction to termination, then the termination procedures set forth in the Faculty Welfare and Privileges Procedures will be followed. Otherwise, the Provost's decision, except any decision reached as the result of a re-investigation initiated as a due process violation, is final and will be implemented immediately by the University. The complainant, respondent, investigator(s), Title IX Coordinator, Dean (if applicable) and Vice Provost for Faculty Affairs (if applicable) will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the faculty member's disciplinary file and will be maintained in accordance with the University's document retention policies.

[\[back to top\]](#)

X. RESOURCES

The University provides a number of resources and support services for students, faculty and staff dealing with sexual misconduct. These include medical assistance, confidential support, workplace accommodations and housing or academic modifications. For a complete list, please visit www.udel.edu/sexualmisconduct.

[\[back to top\]](#)