The University of Scranton

SEXUAL HARASSMENT and
SEXUAL MISCONDUCT POLICY

August, 2015
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The University of Scranton
SEXUAL HARASSMENT and
SEXUAL MISCONDUCT POLICY

Sponsor:
Office of Equity and Diversity
Responsible Office:
Office of Equity and Diversity
Provisional approval: August 22, 2014
Continuous review through 2014-2015

1. PURPOSE AND SCOPE OF POLICY

A. POLICY STATEMENT

As a Catholic, Jesuit institution of higher learning, The University of Scranton is committed to providing an educational, residential and working environment that is free from gender and sex-based discrimination. Members of The University of Scranton (the “University”) community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which include sexual harassment, sexual assault, sexual exploitation, domestic violence, dating violence and stalking.

All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in a zero tolerance policy for sexual harassment and sexual misconduct. When an allegation of misconduct is brought to an appropriate University official’s attention, and a respondent is found to have violated this policy, the University will take prompt and effective steps reasonably calculated to end the misconduct, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define our community expectations and to establish a mechanism for determining when those expectations have been violated.

This policy applies to conduct that takes place while on University property, at University sponsored events and activities, and off-campus programs including but not limited to study abroad programs, internships, student teaching, athletic events and business travel. This policy also applies to off-campus conduct that violates the policy and has the effect of
interfering with or limiting one’s ability to participate in or benefit from a work-related or educational program or activity.

B. REASON FOR POLICY

The purpose of this policy is to provide The University of Scranton community with a clearly articulated set of behavioral standards, common definitions, and prohibited conduct. The policy is intended to guide students and employees who have experienced or been affected by sexual harassment or sexual misconduct, whether as a Complainant, a Respondent, or a third party.

We recognize that an individual may choose to self-identify as a victim or a survivor. For consistency in the policy, the University will use the term Complainant. When used in this policy, a Complainant refers to the individual(s) who may have experienced sexual harassment or sexual misconduct, regardless of whether that individual makes a report or seeks formal disciplinary action. A Respondent refers to the individual(s) who has been accused of sexual harassment or sexual misconduct. A third party refers to any other participant in the process, including a witness to the incident(s) and/or an individual who makes a report on behalf of someone else.

The purpose of this policy is to:

- Define sexual harassment and the forms of sexual misconduct that violate the standards of our community
- Identify resources and support for all members of the University community (students and employees)
- Identify the Title IX Coordinator and the scope of the role
- Provide information as to where a student or employee can obtain support or access resources in a confidential manner
- Provide information as to how a student or employee can make a report
- Provide information as to how a report against a student or an employee will be investigated, evaluated and adjudicated.

C. ENTITIES AFFECTED BY THIS POLICY

This policy applies to all members of the University community, including students, employees, guests and visitors.

All students and employees of the University are responsible for their actions and behavior, whether the conduct in question occurs on campus or in another location. As such, this policy applies to both on campus and off campus conduct as described in further detail below.
D. WEBSITE ADDRESS FOR THIS POLICY


E. COORDINATION WITH DISCRIMINATORY HARASSMENT POLICY FOR OTHER FORMS OF UNLAWFUL DISCRIMINATION

The University recognizes that discrimination and harassment related to an individual’s sex can occur in conjunction with conduct related to an individual’s race, color, ethnicity, national origin, religion, age, sexual orientation, disability or other protected characteristics. Targeting individuals on the basis of these characteristics is also a violation of University Policy. Under these circumstances, the University will coordinate the investigation and resolution efforts under the procedures outlined in this policy to address discriminatory or harassing conduct related to the targeted individual’s sex together with the conduct related to the targeted other protected characteristics.

F. COORDINATION WITH STUDENT CODE OF CONDUCT FOR ALLEGED MULTIPLE VIOLATIONS

When a complaint is made or charges are filed against a University student which alleges violations of the Student Code of Conduct in addition to an alleged violation of the Sexual Harassment and Sexual Misconduct Policy, and those alleged violations stem from the same event, course of conduct or related circumstances, all alleged violations will be processed, investigated and adjudicated under the procedures outlined in this policy rather than through the student conduct process outlined in the Student Code of Conduct.

II. NOTICE OF NON-DISCRIMINATION

The University is committed to providing a safe and nondiscriminatory environment for all students, employees, guests and visitors to our campus. The University does not discriminate on the basis of race, color, national origin, sex, disability, religion, age, veteran status, gender identity or expression, sexual orientation, or any other protected class.

The University reaffirms its long-standing philosophy and principles of non-discrimination, non-harassment, and non-retaliation for protected characteristics for all members of the University community. This policy addresses discrimination on the basis of sex. Please see the University’s Discriminatory Harassment Policy for all other forms of unlawful discrimination.

The University does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sexual harassment, including sexual misconduct as defined in this policy, is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972. Title IX requires that
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act, and other applicable statutes.

This policy prohibits sexual harassment and sexual misconduct against all University community members, visitors and guests regardless of gender or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

III. PRIVACY AND CONFIDENTIALITY

A. STATEMENT OF PRIVACY AND CONFIDENTIALITY

The University is committed to maintaining the privacy of all parties. In any report, investigation, or resolution of an allegation of sexual harassment or sexual misconduct, every effort will be made to protect the privacy and confidentiality interests of the individuals involved in a manner consistent with the need for a thorough review of the allegation and the protection of the Complainant and broader University community.

The University encourages the reporting of all incidents of sexual harassment and sexual misconduct. The University will respect the privacy of the reporting individual and all individuals involved by handling each case with care and sensitivity and will make every reasonable effort to maintain confidentiality when requested in a manner that is consistent with its obligation to investigate in accordance with federal law. Given this responsibility, certain incidents may warrant investigation and resolution beyond the solution desired by the reporting individual. Where the University has received a report of sexual harassment or sexual misconduct, but the Complainant requests that his/her identity remain confidential or that the University not pursue an investigation, the University must balance this request in the context of its responsibility to provide a safe and non-discriminatory environment for all University community members.

At all times, the privacy of the parties will be respected and safeguarded. Information related to a report of sexual harassment or sexual misconduct will only be shared with those University employees who “need to know” in order to assist in the investigation and/or resolution of the complaint. All University employees who are involved in the review, investigation or resolution of a report receive training regarding the safeguarding of private information. When an incident of sexual harassment or sexual misconduct is reported to a University official and there is a potential for continued harm or danger to members of the campus community, the University must issue a timely warning to the campus. The University will only provide enough information to safeguard the campus community and will not disclose the personally identifying information of the reporting person.
**B. THE PRIVACY AND CONFIDENTIALITY OF VARIOUS RESOURCES**

Every member of the University community, except those listed as a “Confidential Resources” below, is required to report when they believe there has been a possible violation of the Sexual Harassment and Sexual Misconduct Policy. Institutions must clearly articulate who are “responsible employees” under Title IX for purposes of initiating notice and/or investigation, and those who have more discretion regarding how they act in response to notice of gender-based discrimination. Different members of the University community have different reporting responsibilities with respect to their ability to maintain confidentiality, depending on their roles at the University and University policy. When consulting campus resources, all parties should be aware of confidentiality, privacy and mandatory reporting in order to make informed choices.

On campus, some resources, defined as “Confidential Resources” can offer the Complainant confidentiality, sharing options and advice without any obligation to tell anyone unless the Complainant wants them to. Other resources, defined as “Responsible Employees” will take action when the Complainant report the Complainant’s situation to them and, in turn, ensure that the Title IX Coordinator or appropriate designee (the Dean of Students when a student is involved) is aware of the details of the report. All other University community members, including students, staff, and faculty who have not been specifically defined as either a Confidential Resource or a Responsible Employee, fall in the middle of these two extremes. While they are required to report to the Title IX Coordinator or appropriate designee (the Dean of Students when a student is involved) when they witness or receive a report of conduct that may violate the Sexual Harassment or Sexual Misconduct Policy, neither the University nor federal law requires them to divulge personally identifiable information that is shared with them except in certain circumstances, some of which are described below. In most instances, a person who experiences sexual harassment or sexual misconduct may seek assistance from these University community members without starting a formal process.

- **Responsible Persons - Private but Non-Confidential Reporting Options**

The University encourages the reporting of all incidents of sexual harassment and sexual misconduct. The University will respect the privacy of the reporting student and all individuals involved by handling each case with care and sensitivity and will make every reasonable effort to maintain confidentiality when requested in a manner that is consistent with its obligation to investigate in accordance with federal law. Given this responsibility, certain incidents may warrant investigation and resolution beyond the solution desired by the individual reporting the sexual harassment or sexual misconduct. Information will be shared, as necessary, in the course of the investigation, only with those people who need
to know. The Complainant are encouraged to speak to officials of the institution to make reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, campus police, and designated employees in Student Formation & Campus Life, the Office of Equity and Diversity, and Human Resources). The University considers these people to be “responsible employees.” In addition, faculty chairs, head coaches, student officers and resident assistants (RAs) are all considered to be “responsible employees”. Notice to them is notice to the institution. The Complainant has the right, and can expect, to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Reporting to a Responsible Employee means that only people who need to know will be told, and information will be shared only as necessary to conduct a thorough investigation. A list of those designated as “Responsible Persons” will be maintained on the Office of Equity and Diversity Website.

- **Resources Who Can Maintain the Privacy of Your Personally Identifiable Information**

A Complainant can seek advice and support from certain persons and resources who are not required to tell anyone else private, personally identifiable information unless there is cause for fear for their safety, or the safety of others. These are individuals who the University has not specifically designated as “responsible employees” for purposes of putting the institution on notice. While every member of the University community is required to report when they believe there has been a possible violation of the Sexual Harassment and Sexual Misconduct Policy, neither the University nor the law requires them to divulge private, personally identifiable information that is shared with them except in certain circumstances where the incident reveals a need to protect the Complainant or other members of the community. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as most students, faculty and staff who have not been identified as “responsible employees”. If you are unsure of someone’s duties and ability to maintain your privacy, ask them before talking to them. They will be able to assist and direct you to the best resource for help.

If the Complainant’s personally identifiable information is shared, it will only be shared as necessary with as few people as possible, and all efforts will be made to protect privacy.

- **Confidential Resources**

If a student desires strict confidentiality, she or he should make contact with the University Counseling Center (570) 941-7620 which is located on the 6th floor of O’Hara Hall. The Counseling Center will provide University students with confidential counseling services. If
requested, the Counseling Center will provide counseling as well as referrals to agencies off-campus. Counseling Services are available Monday through Friday 8:30 a.m.-4:30 p.m.

In addition, confidential support can be offered by the following off campus resources which are not affiliated with the University of Scranton:

**Women’s Resource Center of Lackawanna County** is a confidential, community-based agency serving those who have experienced sexual assault. A counselor/advocate can be reached 24 hours a day by calling (570) 346-4671.

**National Sexual Assault Hotline** is a free, confidential national resource available 24 hours a day by calling (800) 656-HOPE or [online.rainn.org](http://online.rainn.org).

### C. FEDERAL TIMELY REPORTING OBLIGATIONS

Those who have experienced sexual misconduct should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that the person who experienced sexual misconduct will not have her/his name and other identifying information disclosed, while still providing enough information for the University community to make safety decisions in light of the danger.

### IV. PROHIBITED CONDUCT AND DEFINITIONS

#### A. SEXUAL HARASSMENT AND SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

1. Sexual Harassment
2. Sexual Assault
3. Sexual Exploitation
4. Domestic and Dating Violence
5. Stalking
6. Retaliation

1. **SEXUAL HARASSMENT** is defined as any unwelcome sexual or gender based conduct such as a sexual advance, request for sexual favors, or other verbal, non-verbal or physical conduct or communication of a sexual nature WHEN:

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1 For pertinent state statutes on the offenses covered under this policy please see Appendix A.
a) Submission to such conduct is an explicit or implicit condition of employment or academic success; or
b) Submission or rejection of such conduct is used as the basis for an employment or academic decision; or
c) Such conduct has the purpose or effect of
   1. Interfering with an individual's work or academic performance; or
   2. Denying or limiting an individual's ability to participate in or benefit from the University's work related and educational programs or activities; or
   3. Creating an intimidating or hostile working or academic environment.

The University also prohibits gender-based harassment, which may include acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

2. **SEXUAL ASSAULT** is defined as any non-consensual attempted or completed sexual intercourse (oral, anal, or vaginal) with a body part and/or object.

3. **SEXUAL EXPLOITATION** is defined as conduct that exploits another person in a sexual and non-consensual way, including, but not limited to non-consensual touching, fondling, or kissing, non-consensual voyeurism, non-consensual recording (audio or visual), non-consensual dissemination of recordings, allowing others to view sexual activities without the consent of all of the participants, exposure of one's body in an indecent or lewd manner, or sexual activity in public or semi-public places.

4. **DOMESTIC AND DATING\(^2\)** VIOLENCE is defined as abusive behavior, usually but not always involving a sexual or intimate relationship, used by one partner to gain or maintain control over another partner. Domestic or dating violence can be physical or sexual actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, falsely imprison, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound the other person.

5. **STALKING** is defined as a course of conduct (more than once) directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Examples of stalking include following the person without proper authority or repeatedly communicating with another person, under circumstances which place such other person in reasonable fear of bodily injury or cause substantial emotional distress to such other person. Stalking includes the concept

\(^2\) The definition, protocols, and practices of dating vary; however, for the purposes of this policy, dating is defined as people engaged in activities as a form of courtship. Whether there was such a relationship will be gauged by its length, type and frequency of interaction.
of cyber –stalking, a particular form of stalking in which electronic media are used to pursue, harass, or to make repeated unwanted contact with another person in an unsolicited fashion. Stalking may involve persons who are known to one another or have an intimate or sexual relationship, or may involve persons not known to one another.

6. **RETAIATION** is defined as acts or attempts to retaliate or seek retribution against anyone involved in or connected to an allegation and/or resolution of sexual harassment or sexual misconduct.

**B. POLICY EXPECTATIONS WITH RESPECT TO SEXUAL MISCONDUCT - CONSENT**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent is a positive exchange of words or actions that indicate a willingness to participate freely and voluntarily in mutually agreed upon sexual activity. Consent can only be given when there is equal power between the involved parties. The use of force, threats of force, intimidation, or coercion do not constitute consent. Neither the existence of a dating relationship between persons (including past sexual relations) nor silence indicate consent. Effective consent cannot be given under the following circumstances:

1. A person is physically or mentally incapacitated, including when the incapacitation stems from alcohol or other drugs;
2. A person is unconscious;
3. A person is asleep; and/or
4. A person is under the age of consent (16 in Pennsylvania).

Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent. Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sexual activity. Because alcohol or other drug use can place the capacity to consent in question, sober sexual activity is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “No.”
V. REPORTING

The University has a strong interest in supporting those who have experienced sexual harassment or sexual misconduct and encourages all individuals or third party witnesses to report any such incident of harassment or misconduct. The University cannot take appropriate action unless a Responsible Employee of the University is informed of the allegation.

An individual who reports sexual harassment or sexual misconduct, referred to as a Complainant for the purposes of this policy, can be assured that all reports will be taken seriously, and that each individual will be treated with dignity, respect, and in a non-judgmental manner. Similarly, an individual accused of sexual harassment or sexual misconduct, referred to as a Respondent for the purposes of this policy, can expect to be treated fairly and respectfully.

Despite the University’s strong interest in having individuals report allegations of sexual harassment and sexual misconduct, the University realizes that not every individual is prepared to make a formal report for resolution. Each individual will decide if and how she/he chooses to report and that decision may be influenced by a variety of factors. Individuals are not expected or required to pursue a specific course of action.

There are confidential resources available through the University for both students and employees. There are also off campus confidential resources available to all individuals. Information shared with these confidential resources will not be reported to the University. See Confidential Resources.

All reports of sexual harassment and sexual misconduct will be handled as privately as possible. The information reported will be shared only with those University employees who will assist in the investigation and/or resolution of the complaint. See Statement of Privacy and Confidentiality.

A. EMERGENCY REPORTING OPTIONS

The first priority for any individual should be personal safety and well-being. The University encourages all individuals to seek assistance from emergency services, local law enforcement and/or a medical facility immediately after an incident of sexual misconduct. This is the best option to ensure safety, security and the preservation of evidence.

On campus incident from cell phone call: 570-941-7777.
On campus building phones or call boxes only dial: 7777.
Off campus incident emergency services call: 911

All individuals are encouraged to make a prompt report to law enforcement and/or seek immediate medical treatment in response to an incident in order to address immediate safety concerns and allow for the preservation of evidence and an immediate investigative response. The University will assist in these reporting options by providing transportation to
the hospital, coordination with local law enforcement, and information about the University’s resources and complaint processes.

B. UNIVERSITY REPORTING OPTIONS

The University recognizes that a student or employee may choose to report sexual harassment or sexual misconduct to any responsible employee of the University. For example, a student may choose to confide in a resident advisor, a faculty chair, or a coach. An employee may choose to confide in a supervisor. While a report may come in through many sources, the University is committed to ensuring that all reports are shared with a central review team which ensures consistent application of the policy to all individuals and allows the University to respond promptly and equitably to stop the harassment, prevent its recurrence and eliminate its effects. This central review team is led by the Title IX Coordinator who assists in the review, investigation and resolution of the report. Members of this interdepartmental team include, as appropriate: the Title IX Coordinator, the Dean of Students, the Associate VP for Human Resources, and others as may be necessary. University policy provides that any employee who receives a report of sexual harassment, misconduct or intimate partner violence share the report with a member of this team.

Students or employees are encouraged to directly report information regarding any incident of sexual harassment or sexual misconduct to: The University of Scranton Police Department, the Title IX Coordinator, the Dean of Students (for complaints against students), or the AVP for Human Resources (for complaints against employees) as specified below:

C. TIME FRAME FOR REPORTING

Individuals who have experienced sexual harassment or sexual misconduct are encouraged to report immediately in order to maximize the University’s ability to respond promptly and effectively. The University does not, however, limit the timeframe for reporting. If any party involved in a complaint is no longer a student or employee, the University will still take steps to meet its Title IX obligation by taking steps to end the harassment, prevent its recurrence, and address its effects. Those steps may be limited if the Respondent is no longer affiliated with the University.

D. COORDINATION WITH LAW ENFORCEMENT

To the extent permitted by applicable law, the University will cooperate with outside investigators. However, outside law enforcement agencies do not respond to Title IX violations, and will only respond to allegations of criminal behavior. As a result, the University encourages reporting to both the University itself and to an outside law enforcement agency, if the alleged sexual misconduct may also be a crime.

Because the goals and objectives of the University’s Sexual Harassment and Sexual Misconduct Policy differ from those of the civil and criminal justice systems, under circumstances which give rise both to violations of the Sexual Harassment and Misconduct Policy and to violations of local, state or federal law, University investigation and adjudication generally move forward without regard to pending civil or criminal proceedings. Adjudication
under the University’s Sexual Harassment and Misconduct Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. On-campus adjudication does not preclude or limit a student’s or employee’s access to the state and federal justice systems.

If a Complainant reports sexual harassment or sexual misconduct committed by an individual who is not a member of the University community, the Complainant can speak with the Title IX Coordinator, the Dean of Students, the AVP of Human Resources or the University of Scranton Police Department to discuss options such as contacting other law enforcement authorities and/or removing the individual(s) from campus. If an individual accused of violating this policy is a guest, the host may be held accountable for his or her guest’s behavior.

E. BYSTANDERS

The University encourages all Community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who chose to exercise this positive, moral obligation will be supported by the University and protected from retaliation.

F. STATEMENT AGAINST RETALIATION

It is a violation of University policy to retaliate in any way against a student or employee because he or she raised allegations of sexual harassment or sexual misconduct. The University recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Respondent or third party may also be the subject of retaliation by another individual, including the Complainant. The University will take immediate and responsive action to any report of retaliation and may pursue disciplinary action as appropriate.

An individual reporting sexual harassment or sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is not later substantiated.

G. FALSE REPORTS

The University takes the validity of information very seriously as a charge of sexual harassment or sexual misconduct may have severe consequences. A good faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual harassment or sexual misconduct. However, when a Complainant is found to have fabricated allegations with malicious intent or in bad faith, the Complainant will be subject to discipline in the employment context and/or in violation of the Student Code of Conduct for students.
VI. INTERIM MEASURES

Upon receipt of a report and potentially through the completion of any appeals, the University will take interim measures to protect the parties involved if necessary and appropriate. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the University.

A Complainant or Respondent may request separation or other protection, or the University may choose to impose interim measures at its discretion to ensure the safety and/or wellbeing of all parties, the broader University community and/or the integrity of the process. A decision to arrange for such separation or other protection need not be based on a finding of responsibility, and shall not be interpreted as a finding of fault.

Where the report of sexual harassment or sexual misconduct poses an ongoing risk of harm to the safety or wellbeing of an individual or members of the campus community, the University may place an individual on Interim Suspension as defined fully in the Student Code of Conduct.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The University will take immediate and responsive action to enforce a previously implemented measure.

VII. REVIEW, INVESTIGATION AND RESOLUTION OF COMPLAINTS

A. ROLE OF THE TITLE IX COORDINATOR

The role of Title IX Coordinator is currently held by Jennifer LaPorta, Executive Director of the Office of Equity and Diversity.

Jennifer LaPorta
Office of Equity and Diversity
Jennifer.laporta@scranton.edu
(570) 941-6645

The Title IX Coordinator oversees the University’s central review, investigation and resolution of reports of sexual harassment and sexual misconduct under the University’s complaint processes and coordinates the University’s compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual Harassment and sexual misconduct;

- Knowledgeable and trained in state and federal laws that apply to matters of sexual Harassment and sexual misconduct, as well as University policy and procedure;
Available to advise any individual who believes that he/she has been sexually harassed about what courses of action are available at the University;

Available to advise any individual against whom a complaint may have been made about the process;

Available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence; and

Responsible for monitoring full compliance with all requirements and timelines specified in the complaint procedures.

B. CENTRAL REVIEW TEAM FOR INVESTIGATION AND RESOLUTION

Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to a central review team which ensures consistent application of the policy to all individuals and allows the University to respond promptly and equitably to eliminate harassment, prevent its recurrence and eliminate its effects. This central team, led by the Title IX Coordinator, assists in the review, investigation and/or resolution of the report. Members of this interdepartmental team include: the Title IX Coordinator, the Dean of Students, the AVP for Human Resources, and others as may be necessary. University policy provides that any employee who receives a report of sexual harassment or misconduct must share the report to a member of this team. The members of this team oversee the resolution of reported harassment or misconduct through the University’s complaint processes. The process followed will be determined by the role of the Respondent. Each process is guided by the same principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation and resolution of the complaint.

C. TIME FRAME FOR RESOLUTION

The investigation and resolution of all reports will generally be completed within 60 days. Extenuating circumstances may arise that require the complaint process to extend beyond 60 days. In the event that the investigation and resolution exceed this time frame, the University will notify all parties of the need for additional time and best efforts will be made to complete the process in a timely manner.

D. OFF-CAMPUS LAW ENFORCEMENT OR CRIMINAL INVESTIGATION

The University encourages Complainants to pursue criminal action for behaviors that may also constitute crimes under Pennsylvania law. The University, through the University of Scranton Police Department, will assist a Complainant in making a criminal report and will cooperate with local law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations are not determinative of whether
sexual misconduct, for purposes of this policy, has occurred. In other words, conduct may constitute a violation under this policy even if law enforcement agencies decline to prosecute or if a Respondent has been found not guilty in the legal system.

E. SUPPORT PERSON

During any stage of the Complaint process where a personal appearance is necessary, the Complainant and the Respondent have the right to have a support person present if they so choose. The support person may be a member of the University community, a family member or other person chosen by each party. The support person cannot participate in the Complaint process or speak on behalf of the Complainant or Respondent.

F. COMPLAINT PROCESS

1. Overview of Options

The University is committed to providing all members of the University community with a safe place to live and learn. Consistent with this priority, the University will respond promptly and equitably to all allegations of sexual harassment and sexual misconduct. Any individual may bring an allegation under the Sexual Harassment and Sexual Misconduct Policy which will trigger a review of the complaint as outlined in this section.

The University’s response to allegations of misconduct under this policy is pursued in three stages: report, review or investigation, and resolution. At each of these stages, the University is committed to maintaining fairness for all parties and to balancing the needs and interests of the individuals involved with the safety of the community as a whole.

A complaint may be resolved by any of the following methods:

(1) A Title IX inquiry in response to a Complainant’s request to not pursue formal resolution through the University’s Sexual Harassment and Misconduct Policy Resolution Process;

(2) Voluntary Resolution;

(3) Invoking the University’s Sexual Harassment and Misconduct Policy Resolution Process.

2. Review and Investigation:

As outlined in this policy, an individual may report to any University employee, who will ensure that the information is shared with members of the central review team, which includes the Title IX Coordinator, the Dean of Students, and the AVP of Human Resources. The University is committed to ensuring that all reports are referred to the central review team which ensures consistent application of the policy to all individuals and allows the University to respond promptly and equitably to eliminate harassment, prevent its recurrence and eliminate its effects. Members of this central review team will conduct or oversee an investigation that is
thorough, fair and impartial. The University’s responsibility to review all allegations of sexual harassment and sexual misconduct exists regardless of whether that review culminates in additional investigation or goes through the Resolution Process, and exists independently of the criminal justice process. The incident will be investigated in a manner that ensures fairness to all parties involved, and, will include measures necessary to provide for the safety of the individual and of the University community. See Interim Measures.

In every report of sexual harassment or sexual misconduct, the University will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, the investigation may continue depending on a variety of factors, such as the request of the Complainant not to proceed and the risk posed to the any individual or the campus community by not proceeding. If the Investigation proceeds, the Respondent will be notified, in writing, within five days of the decision to commence a full investigation. If the Respondent is a full time faculty member, the Faculty Affairs Council Chair will be notified at that time in writing that a Complaint has been filed.

Where the University has received a report of sexual harassment or sexual misconduct, but the Complainant requests that his/her identity remain confidential or that the University not pursue an investigation, the University must balance this request in the context of its responsibility to provide a safe and non-discriminatory environment for all University community members. The University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited by the request for confidentiality. Under these circumstances, the University will weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment, the respective ages and positions of the Complainant and the Respondent and whether there have been other harassment complaints against the Respondent.

At all times, the University will seek to respect the request of the Complainant, and where it cannot do so, the University will consult with the Complainant and keep him/her informed about the chosen course of action.

The University may designate an investigator of its choosing. Investigators will typically be chosen from among a pool of investigators from the Office of Equity and Diversity, Student Formation & Campus Life and Human Resources. Depending upon the circumstances, up to two investigators may be assigned to conduct an investigation. As described in the Privacy and Confidentiality section, all University investigations will respect individual privacy concerns.

The first step of an investigation will usually be a preliminary interview of the Complainant. The University will then seek to collect additional information relevant to the report. This may include, but is not limited to, interviewing the Respondent and any other individuals who may have information relevant to the determination, and gathering evidence available. An investigation may also include consideration of prior allegations of, or findings of responsibility for, sexual harassment or misconduct by the Respondent.
An investigation will typically range from one to four weeks, although this time frame may be extended as necessary to achieve thorough and reliable gathering of the relevant facts. Information gathered during the review or investigation will be summarized in an “Investigation Report” and used to evaluate the appropriate course of action, provide for the safety of the individual and the University campus community, and impose remedies as necessary to address the effects of the alleged conduct. If the report proceeds to a Determination Panel, information gathered during the investigation will be summarized and presented to the Determination Panel in an “Investigation Report” for its consideration and evaluation in reaching a determination of responsibility under this policy.

The Investigative Report will include: (1) the Complainant’s allegations; (2) the Respondent’s reply to the allegations or suspected violations; (3) a summary of information provided by witnesses, documents, or other information obtained during the investigation; (4) a description of the investigation process; (5) findings of fact; (6) credibility determinations; and (7) the investigator’s recommendation of whether the policy has been violated based upon a “preponderance of the evidence”.

3. **RESOLUTION**

The resolution of sexual harassment or sexual misconduct allegations may take three forms:

- **Title IX Inquiry (Resolution Made Without the Participation of Complainant)**

The University is dedicated to assisting individuals who may have experienced sexual harassment or sexual misconduct by helping them to recover and restore a sense of self and wholeness. Complainants are encouraged, but never required, to participate in the University’s investigation and hearing process so that the facts of each report can be explored and responsible parties held accountable for their misconduct, if warranted. Where an allegation of sexual misconduct also appears to meet the criteria of a criminal offense, such as rape or sexual assault, Complainants are also encouraged to pursue criminal charges against an alleged offender.

If a Complainant chooses not to participate in the University’s response, a Title IX inquiry and review will still move forward. The purpose of this inquiry is to review the report and seek to reach a resolution that will eliminate any harassment, prevent its recurrence, and address its effects. When a Complainant requests that the resolution process not proceed beyond an initial review to a full investigation and Determination Panel, the University will make every reasonable effort to comply with that request. There may be circumstances, as identified above, when the University decides to proceed with a full investigation and Determination Panel despite the request of a Complainant. The Complainant, however, will not be required to participate in the process.

If the University is satisfied that the matter can be resolved without invoking a full investigation and Determination Panel, the University will inform the Complainant in writing of the outcome of the initial review and any action taken by the University. In cases where the Complainant has been notified that a report is proceeding beyond an initial review, the Respondent will also be notified in writing.
• **Voluntary Resolution**

Voluntary resolution will be utilized only when the Title IX Coordinator or her/his designee has determined this is a suitable option for resolving the concern, and both the Complainant and Respondent agree to use the process. Voluntary resolution is used where, based upon the conduct at issue, the likely outcome of a Determination Panel would not alter a student’s or an employee’s status with the University. Amicable and respectful discussion must be honored by all parties throughout the process.

Voluntary resolution may include mediation with a member of the Office of Equity and Diversity, Student Formation & Campus Life, Human Resources or the Office of the Provost. The success of voluntary resolution requires that the meeting(s) include honest and candid dialogue, input from the parties involved, an acknowledgement and understanding of responsibility by the parties involved, and a resolution that is agreed upon by all participants. The resolution achieved in each incident will be based upon the specific incident under consideration.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. If the parties are unable to agree on the outcomes of the voluntary resolution proceeding, any party may request that the matter be resolved through the Determination Panel. If information is shared that clearly suggests that this policy’s definition of sexual harassment or sexual assault has been violated, then the voluntary resolution process must end immediately and the Determination Panel process initiated.

Sexual assault allegations cannot be resolved using this process. All sexual assault allegations not resolved through a Title IX inquiry, as above, must be considered by a Determination Panel.

• **Determination Panel**

For all other allegations of sexual harassment or sexual misconduct a full investigation takes place, an Investigation Report is issued and a Determination Panel is convened. The Investigator makes a recommendation regarding whether it is more likely than not that the Sexual Harassment and Sexual Misconduct Policy has been violated based upon a “preponderance of the evidence”. The three person Determination Panel will consist of three employees chosen from a pool of trained professionals from Student Formation & Campus Life, Human Resources, Equity and Diversity and other trained faculty and staff. The Determination Panel makes a determination of whether a student or employee violated The Sexual Harassment and Sexual Misconduct Policy and/or any other applicable University policies based upon the investigative report and materials submitted by the investigator.

4. **Sanctions**

A student found responsible for sexual harassment and/or misconduct will face a minimum sanction of disciplinary probation up to and including expulsion.
An employee found responsible for sexual harassment and/or misconduct will face appropriate disciplinary and corrective actions up to and including termination from employment. Such corrective actions may also include any educational, remedial or corrective actions as warranted.

Sanction determinations for students will be made by the Vice Provost for Student Formation and Campus Life. Sanction determinations for employees will be made by the Provost or Supervising Vice President in consultation with The AVP of Human Resources.

5. **Notice of Outcome and Sanctions**

The University will communicate the outcome and any sanction(s) to the Complainant and Respondent in writing within five (5) business days of the sanction determination.

6. **Appeals**

The outcome or sanction can be appealed by either party within five (5) business days from the time of notification of the decision. The appeal may be based only on one or more of the following grounds:

- Procedures set forth in the Sexual Harassment and Sexual Misconduct Policy were not followed;
- New or relevant information, not available at the time of the determination, has arisen;
- The sanctions imposed were excessively harsh or excessively lenient for the violation.

Appeals must be in writing and submitted to the Vice Provost for Student Formation and Campus Life (for students) or the AVP for Human Resources (for employees). The appeal will be referred to an Appeal Panel chosen from a pool of trained professionals from Student Formation & Campus Life, Human Resources, Equity and Diversity and other trained faculty and staff. The appeal will typically be completed within ten (10) days.

The appeal shall consist of a plain, concise, and complete written statement of the grounds for the appeal. The designated University official to whom the appeal was submitted shall determine whether grounds for appeal have been met and, if so, convene the Appeal Panel.
APPENDIX A

Pennsylvania State Legal Definitions related to the University’s Sexual Harassment and Sexual Misconduct policy:

§ 3121. Rape

A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

(1) By forcible compulsion.

(2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.

(3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.

(4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

(5) Who suffers from a mental disability which renders the complainant incapable of consent.

3123. Involuntary deviate sexual intercourse

A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

(1) by forcible compulsion;

(2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;

(4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;

(5) who suffers from a mental disability which renders him or her incapable of consent; or

124.1. Sexual assault.

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that
person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

3125. Aggravated indecent assault

(a) Offenses defined.--Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

(1) the person does so without the complainant's consent;

(2) the person does so by forcible compulsion;

(3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;

(5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;

(6) the complainant suffers from a mental disability which renders him or her incapable of consent;

(7) the complainant is less than 13 years of age; or

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Aggravated indecent assault of a child.--A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.

3126. Indecent assault

(a) Offense defined.--A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

(1) the person does so without the complainant's consent;

(2) the person does so by forcible compulsion;
(3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;

(5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;

(6) the complainant suffers from a mental disability which renders the complainant incapable of consent;

(7) the complainant is less than 13 years of age; or

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

3127. Indecent exposure

(a) Offense defined.--A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

(b) Grading.--If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the second degree.

§ 2709.1. Stalking.

(a) Offense defined.--A person commits the crime of stalking when the person either:

(1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or

(2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.