



# The University of Scranton

## SEXUAL HARASSMENT and SEXUAL MISCONDUCT POLICY

June 2019



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The University of Scranton  
**SEXUAL HARASSMENT and SEXUAL MISCONDUCT POLICY**

Office of Equity and Diversity

Responsible Office:

Office of Equity and Diversity

Approval by UGC and Cabinet: February 2019

## **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, intimate partner 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 a report of sexual harassment or sexual misconduct is brought to an appropriate University official’s attention, the University will take prompt and effective steps reasonably calculated to make any harassment or misconduct stop, eliminate a 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**

This policy provides 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, witness or other participant in the process.

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 with the University and/or with the police
- 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, and third parties (including independent contractors, vendors, visitors and guests). When used in this policy, employee generally refers to both staff and faculty members. Unless specifically noted, references to employee do not include student employees.

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 conduct on campus or in the context of an education or work program or activity. This includes off-campus conduct that has continuing adverse effects on campus, in the context of an education program or activity, or where the conduct has the potential to

adversely affect any member of the University of Scranton community. Education programs or activities include activities that take place during study abroad, internship programs and events for school clubs or organizations that occur off-campus, including athletic events.

**D. WEBSITE ADDRESS FOR THIS POLICY**

<http://www.scranton.edu/equity-diversity/docs/sh-sm-policy.pdf>

**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 defined in the University's Notice of Non-Discrimination below. 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 and/or gender 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.

**G. CONTACTS**

**Title IX Coordinator**

Elizabeth Garcia

Executive Director and Title IX Coordinator

Office of Equity and Diversity

Institute of Molecular Biology and Medicine, Suite 103

Phone: (570) 941-6645 E-mail: [elizabeth.garcia2@scranton.edu](mailto:elizabeth.garcia2@scranton.edu)

Website: [www.scranton.edu/diversity](http://www.scranton.edu/diversity)

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 support, resources and courses of action are available at the University;
- Available to advise any individual against whom a complaint may have been made about the process and to provide support and resources;
- 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.

### **Deputy Title IX Coordinators**

#### **Deputy Title IX Coordinator - Students**

Lauren Rivera

Assistant Vice President for Student Life and Dean of Students

Suite 201, The Patrick & Margaret DeNaples Center

Phone: (570)941-7680 E-mail: [lauren.rivera@scranton.edu](mailto:lauren.rivera@scranton.edu)

Website: [www.scranton.edu/dos](http://www.scranton.edu/dos)

#### **Deputy Title IX Coordinator - Employees**

Patricia Tetreault

Vice President for Human Resources

St. Thomas Hall, Suite 100

Phone: (570)941-7767 E-mail: [patricia.tetreault@scranton.edu](mailto:patricia.tetreault@scranton.edu)

Website: [www.scranton.edu/hr](http://www.scranton.edu/hr)

#### **Deputy Title IX Coordinator – Students and Employees**

Christine Black

Assistant Director

Office of Equity and Diversity

Institute of Molecular Biology and Medicine, Suite 103  
Phone: (570) 941-6645 E-mail: [christine.black@scranton.edu](mailto:christine.black@scranton.edu)  
Website: [www.scranton.edu/diversity](http://www.scranton.edu/diversity)

## **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, gender identity, gender expression or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

Links to relevant Federal laws are as follows:

<b>Title IX</b>	<a href="http://www.dol.gov/oasam/regs/statutes/titleix.htm">http://www.dol.gov/oasam/regs/statutes/titleix.htm</a> <a href="http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html">http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html</a>
<b>Clery Act</b>	<a href="https://ope.ed.gov/campussafety/#/">https://ope.ed.gov/campussafety/#/</a>
<b>FERPA</b>	<a href="http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html">http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html</a>



## VAWA

<https://www.ed.gov/news/press-releases/us-department-education-announces-final-rule-help-colleges-keep-campuses-safe>

### III. PRIVACY AND CONFIDENTIALITY

The University encourages the reporting of all incidents of sexual harassment and sexual misconduct and is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under the Sexual Harassment and Sexual Misconduct Policy. The University also is committed to providing assistance to help individuals make informed choices. With respect to any report under this Policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under the Sexual Harassment and Sexual Misconduct Policy:

**Privacy:** Privacy means that information will be shared only with University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University’s response to reports of prohibited conduct receive specific training about sharing and safeguarding private information in accordance with state and federal law. Further, the University will maintain as private, any accommodations or protective measures provided to the extent that maintaining such privacy would not impair the University’s ability to provide the accommodations or protective measures. For example, the existence of an academic accommodation must be revealed to a faculty member who must implement the accommodation.

**Confidentiality:** Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, and ordained clergy, all of whom may engage in confidential communications under Pennsylvania law. The University has designated individuals who have the ability to have privileged communications as “Confidential Employees.” When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) will not reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information or when a student requests assistance from the Confidential Employee in making a report. For example, information may be disclosed when an individual gives written consent for its disclosure or there is a concern that the individual will likely cause serious physical harm to self or others or, in the case of suspected abuse or neglect of a minor under the age of 18, where the law obligates the otherwise Confidential Employee to report to the proper authorities.

#### **IV. REPORTING INFORMATION**

The University has a strong interest in supporting those who have experienced sexual harassment, sexual assault, sexual exploitation, intimate partner violence and stalking and encourages all community members to report any incident of prohibited conduct. The University cannot take appropriate action unless the University is informed of the allegation.

An individual who reports sexual harassment or sexual misconduct, whether the Complainant or a witness, can be assured that all reports will be taken seriously, and that each individual will be treated with dignity and respect. Similarly, all participants in the process, including the Respondent, can expect to be treated fairly and respectfully.

Although the University has a strong interest in having individuals report sexual harassment and sexual misconduct, the University realizes that not every individual chooses to or is prepared to make a formal report for resolution. Each individual will decide if and how they choose to report and that decision may be influenced by a variety of factors. Even after making a report, a Complainant is not expected or required to pursue a specific course of action. It is an individual's decision to participate in a criminal process, the University process, both or neither.

##### **A. Emergency Services and Immediate Care**

The first priority for any individual is personal safety and well-being. The University encourages all individuals to seek immediate assistance from University Police (570-941-7777), the City of Scranton Police Department at 911 and/or a medical facility. This is the best way to address immediate safety concerns while allowing 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.

If you have experienced sexual misconduct, including sexual assault:

- **Preserve all evidence of the sexual assault or other form of sexual misconduct.**
  - Do not bathe, change or dispose of clothing, use the restroom, wash hands, brush teeth, eat or smoke.
  - If you are still at the location of the incident, do not clean anything.
  - Write down all the details you can recall about the incident and the perpetrator including any information related to previous concerning behavior or history.
  
- **In cases of sexual assault, seek medical care as soon as possible.** Even if you do not have any visible physical injuries, you may be at risk of acquiring a sexually transmitted infection (women may also be at risk for pregnancy).
  - Contact information for local hospitals can be found in the Resources and Support Services section of this policy.
  - Ask the health care professional to conduct a Sexual Assault Forensic Exam (SAFE).

- If you suspect you were drugged, request collection of a urine or blood sample.

## **B. Report to the Police**

Sexual assault and other forms of sexual misconduct are not only University policy violations but may also be crimes. Individuals are encouraged, but not required, to report these crimes to the police. If an individual chooses, University officials will assist in contacting the police.

**The University of Scranton Police Department** – (570) 941-7888 or (570) 941-7777 for an emergency

**City of Scranton Police** - (570)348-4134 or 911 for an emergency

## **C. Report to the University**

Sexual harassment and sexual misconduct are prohibited by The University of Scranton and are violations of University policy. In an effort to support individuals as well as the campus community, the reporting options below will initiate a response process by the University. If you wish to speak with someone for confidential support, please see the confidential resources listed in this policy. Individuals are encouraged to directly report information regarding any incident of sexual harassment or sexual misconduct to any of the following reporting options\*:

### **Title IX Coordinator**

Elizabeth Garcia  
Executive Director and Title IX Coordinator  
Office of Equity and Diversity  
Institute of Molecular Biology and Medicine, Suite 103  
Phone: (570) 941-6645 E-mail: [Elizabeth.garcia2@scranton.edu](mailto:Elizabeth.garcia2@scranton.edu)  
Website: [www.scranton.edu/diversity](http://www.scranton.edu/diversity)

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Website: [www.scranton.edu/dos](http://www.scranton.edu/dos)

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Website: [www.scranton.edu/diversity](http://www.scranton.edu/diversity)

### **The University of Scranton Police Department**

Campus Parking Pavilion

Phone: 570-941-7777 (emergency) or 570-941-7888 (non-emergency)

Website: [www.scranton.edu/police](http://www.scranton.edu/police)

### **Online Anonymous Reporting**

The University of Scranton Police Silent Witness Program

Website: [www.scranton.edu/silentwitness](http://www.scranton.edu/silentwitness)

The Silent Witness Program should not be used for emergency or crisis situations needing an immediate law enforcement or medical emergency response.

### **\*Required Reporter Statement**

University policy provides that every employee (except those specifically identified as a “confidential” resource) who receives information of sexual harassment or sexual misconduct involving a student as a complainant, respondent or witness is required to share all relevant details (obtained directly or indirectly) with the Title IX Coordinator. Resident Assistants, Graduate Teaching Assistants, and Student Officers are also required reporters.

While students are encouraged to directly report information to the designated reporting options listed above, the University recognizes that a student may choose to share information regarding sexual harassment and sexual misconduct with other employees of the University (e.g. a Resident Assistant, faculty member, or coach). The University is committed to ensuring that all reports are shared with the Title IX Coordinator for consistent application of the Sexual Harassment and Sexual Misconduct Policy to all individuals and to allow the University to respond promptly and equitably to eliminate the prohibited conduct, prevent its recurrence and address its effects.

## **1. Time Frame for Reporting**

Individuals are encouraged to report sexual harassment and sexual misconduct 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 the Respondent is no longer a student or employee, the University will meet its Title IX obligation by providing reasonably available accommodations or interim measures for

a Complainant, assisting the Complainant in identifying external reporting options, and taking reasonably available 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.

## **2. Coordination with Law Enforcement**

To the extent permitted by applicable law, the University will cooperate with outside law enforcement investigations. However, outside law enforcement agencies do not investigate Title IX violations and will only respond to allegations of criminal behavior. Where the alleged conduct may also be a crime, the University encourages reporting to both the University *and* to an outside law enforcement agency. It is an individual's decision to participate in a criminal process, a University process, both or neither.

Because the goals and objectives of the University's Sexual Harassment and 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, Title IX proceedings generally move forward without regard to pending civil or criminal proceedings. Proceedings 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 resolution does not preclude or limit a student or employee's access to the state and federal justice systems.

If an individual 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 or designee to discuss options such as contacting outside 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 any violations of the Student Code of Conduct related to the guest's behavior.

## **3. Amnesty for Conduct Violations for Complainants and Witnesses**

The University encourages reporting and seeks to remove barriers to reporting by making the procedures for reporting transparent and straightforward, prohibiting retaliation, and providing amnesty for individuals who report prohibited conduct. The University will generally not seek to hold any student who reports sexual harassment or sexual misconduct accountable for their own conduct at or near the time of the event which may have constituted a violation of the Student Code of Conduct, provided that any such violations did not and do not place the health and safety of any individual at risk. This means, for example, that students reporting sexual harassment or sexual misconduct will generally not face disciplinary action due to the personal ingestion of alcohol or other drugs. The University may choose, however, to pursue educational remedies including assessment and counseling, for those individuals.

#### **4. Bystanders**

The University encourages all community members to take reasonable and prudent actions to prevent or stop sexual harassment, sexual assault, sexual exploitation, intimate partner violence, and stalking. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, reporting the incident to campus officials or seeking assistance from an individual in authority. Community members who chose to exercise this positive, moral obligation will be supported by the University and protected from retaliation.

The University provides ongoing training programs and opportunities for students and employees to learn more about bystander intervention.

#### **5. 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 or participated in good faith in a resolution process. The University recognizes that retaliation can take many forms and may be committed by or against an individual or a group. 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, sexual assault, sexual exploitation, intimate partner violence or stalking is entitled to protection from any form of retaliation following a good faith report, even if the report is not later substantiated.

#### **6. False Reports**

The University takes the validity of information very seriously as a charge of sexual harassment, sexual assault, sexual exploitation, intimate partner violence or stalking may have severe consequences. A good faith report that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant is found to have fabricated allegations intentionally or with malicious intent, the Complainant will be subject to discipline in the employment context (as an employee) or may be found in violation of the Dishonesty provision of the Student Code of Conduct (as a student). The Complainant's behavior may also violate state criminal statutes and civil defamation laws. Similarly, a Respondent or witness who is later proven to have intentionally given false information during the course of an investigation may be subject to disciplinary action.

### **V. RESOURCES AND SUPPORT SERVICES**

Various resources within the University and local community are available for individuals who have experienced sexual harassment or sexual misconduct of any kind. Regardless of which resource(s) an individual chooses to access, the situation will be handled with sensitivity and care to protect the privacy of the individual/s involved.

## **A. Medical Support Services**

Medical Services in cases of sexual assault or other sexual misconduct are best handled by a hospital when an individual seeks assistance as soon as possible following the incident. Medical treatment and the ability to preserve evidence is available within blocks of the University campus. An individual *does not* need to provide health insurance information to the hospital for a Sexual Assault Forensic Exam.

### **Geisinger Community Medical Center**

1800 Mulberry St.  
Scranton, PA 18510  
(570) 969-8000

### **The Regional Hospital of Scranton**

746 Jefferson Ave.  
Scranton, PA 18510  
(570) 348-7951

### **Moses Taylor Hospital**

700 Quincy Ave.  
Scranton, PA 18510  
(570) 340-2900

If an individual visits a hospital for an exam, both the police and Women's Resource Center of Lackawanna County (WRC) should be notified by the hospital. The individual may choose whether or not to speak to the police and/or the WRC. If the individual chooses to speak to the police, he or she still has the option of whether or not to file charges against the individual accused. The WRC Advocate will be able to provide support and information through the process.

The University also provides confidential support and assistance through Student Health Services (570-941-7667) from 8:30 a.m.-5:00 p.m. Monday through Thursday and Friday 8:30 a.m.-4:30 p.m. during the academic year. Student Health Services is located at the corner of North Webster Avenue and Mulberry Street in the Roche Wellness Center.

## **B. Confidential Resources and Support Services**

An individual who desires confidentiality should make contact with one of the confidential resources/support services listed below. Information shared with a confidential resource does not have to be reported to the University, Title IX Coordinator or law enforcement for investigation unless the individual disclosing to the confidential resource later chooses to engage those resources or a legal exception exists.

**The University of Scranton Counseling Center** (570-941-7620) provides confidential counseling services to University students from Mon-Fri 8:30am-4:30pm during the academic year. The Counseling Center is located on the 6th floor O'Hara Hall, at the corner of Linden

and Jefferson. Upon request, the Counseling Center will provide counseling as well as referrals to agencies off-campus.

**Student Health Services** (570-941-7667) provides confidential medical support and assistance to University students from 8:30 a.m.-5:00 p.m. Monday through Thursday and Friday 8:30 a.m.-4:30 p.m. during the academic year. Student Health Services is located at the corner of North Webster Avenue and Mulberry Street in the Roche Wellness Center.

**Women's Resource Center of Lackawanna County** (570-346-4671) is a confidential, community-based agency serving those who have experienced sexual assault or other sexual misconduct. A counselor/advocate can be reached 24 hours a day. A WRC advocate is also available on campus. Please contact the WRC for the on-campus advocate's hours and location.

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

**The Employee Assistance Program (EAP)**, (1-800-327-2255) BalanceWorks, offers professional counselor services to employees, including confidential counseling in-person or over the phone for a variety of stressful issues including sexual harassment and misconduct. Member and group numbers may be found by visiting [www.scranton.edu/hr](http://www.scranton.edu/hr), click on Benefits > Additional Benefits > Employee Assistance Program.

### **C. Additional Resources and Support Services (Private but not Confidential)**

Regardless of which resource(s) an individual chooses to access, the situation will be handled with sensitivity and care to protect the privacy of the individual/s involved.

**Campus Ministries** (570-941-7419) is located the DeNaples Center, Suite 200 and offers pastoral support for students. Students may stop by the office and ask to speak to a priest or campus minister or schedule an appointment. Although Campus Ministries staff are not a confidential resource, ordained priests *acting in their pastoral capacity* are confidential and will not report to the Title IX Coordinator.

**The Jane Kopas Women's Center** (570-941-6194) is located in the DeNaples Center, Suite 205. The Center is a safe and comfortable gathering place for students that also provides educational programming, leadership development, resources, and referrals.

**www.scranton.edu/CARE** is a website maintained by the University which provides information and resources for those in our campus community who have experienced or witnessed sexual harassment or sexual misconduct.

**The Title IX Coordinator** (570-941-6645) is located in the Office of Equity and Diversity. This office located in the Molecular Biology Institute, Room 100, provides programs, resources, and support. The Title IX Coordinator, Elizabeth Garcia, is available to discuss any questions regarding the Sexual Harassment and Sexual Misconduct Policy, to assist an individual in accessing resources and support services and to facilitate the investigation and



resolution of reports of conduct that may violate the Sexual Harassment and Sexual Misconduct Policy.

**University Police** (570-941-7777) are available to coordinate with various resources to provide for the safety and well-being of the individual who experienced sexual assault or another form of sexual misconduct. This may include transporting a student to a hospital for medical care, assisting in obtaining a Protection from Abuse Order from the local court, and/or coordinating with appropriate legal authorities including the Lackawanna County District Attorney's Office and the Victim/Witness Unit.

**The Dean of Students/Deputy Title IX Coordinator** (570-941-7680), Lauren Rivera, is located in the DeNaples Student Center, Suite 201. The Dean of Students (or designee) meets with students to offer support and resource information, safeguard the larger University community, discuss formal reporting options, and review the Title IX investigation process. The following is an outline of the information, resources, and support provided by the Dean of Students ("Dean"):

- Assess Student Welfare, determining if immediate medical or other attention is necessary and/or desired.
- Triage the need for and provide information about support services and/or resources (either on- or off-campus). As part of this process, the Dean will refer the student to the law enforcement (if not already contacted) for an investigation and/or explanation of options if the student chooses. If the student chooses not to speak with University Police or local police, this request will be honored. If the Dean believes there is an *imminent danger* to the student or to the larger University community, the Dean will contact University Police.
- Provide information about and assistance in obtaining interim measures, including, but not limited to, no contact directives and academic support.
  - The Dean works closely with academic deans across the University to assist the student with academic concerns and issues that may arise as a result of a sexual assault or other sexual misconduct.
  - The Dean may issue a "no contact directive" preventing direct or indirect contact in cases where multiple students are involved. It is enforceable through the University's Student Code of Conduct.
  - The Dean also assists with housing accommodations in the event that involved students live in close proximity to or have classes with each other
- Discuss formal reporting options by reviewing the University's Sexual Harassment & Sexual Misconduct Policy and referring interested students to the appropriate police authority or community advocates to learn more about the criminal process.

## VI. INTERIM MEASURES (Protective Measures Following an Initial Report)

### A. Overview

Upon receipt of a report of sexual harassment or sexual misconduct, and potentially through the completion of any appeals, the University will take reasonable and appropriate interim measures to protect the parties involved and reduce any further risk for members of our campus community. The Title IX Coordinator, Deputy Title IX Coordinator or designee, will contact the parties and remain available to ensure that safety and emotional and physical well-being concerns are being addressed. Interim measures may be imposed at any time regardless of whether formal disciplinary action is sought by the Complainant or the University in order to ensure the preservation of the Complainant's educational experience and the overall University environment. Interim measures will be kept private, to the extent that maintaining the privacy would not impair the ability of the University to provide the interim measures.

A Complainant or Respondent may request an administrative no contact or other protection, or the University may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader University community, and/or the integrity of the process. A decision to arrange for such administrative no contact or other protection need not be based on a finding of responsibility, and shall not be interpreted as a finding of fault. Interim Measures are initiated based on information gathered during a report and are not intended to be permanent resolutions; hence, they may be amended or withdrawn as additional information is gathered.

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 student on Interim Suspension. Pending resolution of the complaint, the individual may be denied access to campus. During Interim Suspension, a student may or may not continue their coursework as outlined in the Interim Suspension letter. Similarly, the University may determine a leave of absence for an employee or other interim remedies as necessary and appropriate.

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.

### B. Range of Measures

Interim measures will be implemented at the discretion of the University, and will be established by the Title IX Coordinator and the **Central Review Team** (see pg. 21). Potential remedies, which may be applied to the Complainant and/or the Respondent, include but are not limited to:

- Instituting an Administrative Directive for No-Contact between involved parties
- Limiting an individual's access to certain facilities or activities pending resolution
- Referring to counseling and health services

- Referring to the Employee Assistance Program
- Providing education and advisories to the community
- Altering the housing situation of the reporting or responding party
- Offering adjustments to academic deadlines, course schedules, etc.
- Providing academic support services, such as tutoring
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation assistance to the hospital
- Issuing interim suspensions pending an investigation and determination
- Any other measure which can be tailored to the involved parties to achieve the goals of the University's policy

## VII. PROHIBITED CONDUCT AND DEFINITIONS

### A. SEXUAL HARASSMENT AND SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO<sup>1</sup>:

1. **Sexual or Gender Based Harassment**
2. **Sexual Assault**
3. **Sexual Exploitation**
4. **Intimate Partner Violence (Domestic and Dating Violence)**
5. **Stalking**
6. **Retaliation**

#### 1. SEXUAL OR GENDER-BASED HARASSMENT

**Sexual Harassment** is defined as any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in (a) and/or (b) below are present.

**Gender-based Harassment** is defined as harassment based on gender, sexual orientation, gender identity or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (a) and/or (b), below, are present.

- i. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic success, or participation in any University programs and/or activities or

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<sup>1</sup> For pertinent state statutes on the offenses covered under this policy please see Appendix A.

- is used as the basis for University decisions affecting the individual (often referred to as “*quid pro quo*” harassment); or
- ii. Such conduct has the purpose or effect of creating a hostile environment. A “hostile environment” exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University’s education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:
    1. The frequency, nature and severity of the conduct;
    2. Whether the conduct was physically threatening;
    3. The effect of the conduct on the Complainant’s mental or emotional state;
    4. Whether the conduct was directed at more than one person;
    5. Whether the conduct arose in the context of other discriminatory conduct;
    6. Whether the conduct unreasonably interfered with the Complainant’s educational or work performance and/or University programs or activities; and
    7. Whether the conduct implicates concerns related to academic freedom.

**Sexual and gender-based harassment can take many forms:**

- It can occur between equals (e.g., student-to-student, staff-to-staff, faculty member to faculty member, visitor/contractor to staff) or between persons of unequal power status (e.g., supervisor to subordinate, faculty member to student, coach to student-athlete).
- It can be committed by or against an individual, an organization or group.
- It can be committed by an acquaintance, a stranger, or someone with whom the Complainant has an intimate or sexual relationship.
- It can occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- It can include physical conduct, verbal conduct, visual conduct, written conduct and electronic conduct.

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:

- i. non-consensual touching, fondling, or kissing,
- ii. causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity,
- iii. non-consensual voyeurism (e.g., watching private sexual activity without the knowledge of all of the participants, from a hidden location or through electronic means),
- iv. allowing others to view sexual activities without the consent of all of the participants,
- v. non-consensual recording or photographing of private sexual activity and/or a person's intimate parts (audio or visual),
- vi. non-consensual dissemination or posting of images or recordings of private sexual activity and/or a person's intimate parts,
- vii. exposure of one's body in an indecent or lewd manner,
- viii. sexual activity in public or semi-public places,
- ix. prostituting another person, or
- x. knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge

4. **INTIMATE PARTNER VIOLENCE (DOMESTIC AND DATING<sup>2</sup>VIOLENCE)** is defined as any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence includes threatening or causing physical harm or engaging in other conduct that endangers the health or safety of an intimate partner. It may involve one act or an ongoing pattern of behavior. Intimate Partner Violence can encompass a broad range of behavior, including, but not limited to threats, assault, property damage, violence or threat of violence to one's partner or to the family members or friends of the partner.

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 that place such other person in reasonable fear

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<sup>2</sup> Intimate Partner Violence includes "dating violence" and "domestic violence," as defined by the national Violence Against Women Act (VAWA). Consistent with VAWA, the University will evaluate the existence of an intimate relationship based upon the Complainant's statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

of bodily injury or cause substantial emotional distress to such other person. Stalking includes the concept of cyber – stalking, a particular form of stalking in which electronic media is 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. **RETALIATION** is defined as acts or words taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in that protected activity. Protected activity includes an individual's good faith: (i) participation in the reporting, investigation or resolution of an alleged violation of this Policy; or (ii) opposition to policies, practices, or actions that the individual reasonably believes are in violation of the Policy. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. 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. CONSENT AND RELATED CONCEPTS: Incapacitation, Alcohol, Intimate Partner Violence**

**Consent:** The expectations of our community regarding sexual misconduct are 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 a positive exchange of words or actions that indicate a willingness to participate freely and voluntarily in mutually agreed upon sexual activity. 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 is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in sexual activity. Relying on non-verbal communications can lead to misunderstandings. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. The existence of a dating relationship between persons (including past sexual relations), by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutually

understandable communication that clearly indicates a willingness to engage in sexual activity. Silence, passivity, lack of resistance or lack of active response alone--without actions demonstrating permission--cannot be assumed to show consent.

Either party may withdraw consent at any time. Withdrawal of consent must also be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

Consent is not effective if it results from the use of physical force, threat of physical force, intimidation, coercion, incapacitation or any other factor that would impact an individual's ability to exercise their own free will to choose whether or not to have sexual contact.

Prior to engaging in sexual activity, each participant should ask oneself the question, "has the other person consented?" If the answer is 'no' or "I'm not sure," then consent has not been demonstrated and does not exist. An individual who initiates sexual activity should be able to explain the basis for his/her belief that consent existed.

**Coercion:** Coercion is the use or attempted use of pressure and/or oppressive behavior, including express or implied threats, intimidation, or physical force, which places a person in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct cannot amount to coercion unless they wrongfully impair the others' freedom of will and ability to choose whether to engage in sexual activity. Coercion also includes administering or pressuring another to consume a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.

**Incapacitation:** An individual who is incapacitated cannot consent to sexual activity. Incapacitation is the inability, temporarily or permanently, to give consent, communicate consent, or express unwillingness, because an individual is mentally and/or physically helpless, unconscious, asleep, or unaware that the sexual activity is occurring. Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness, intoxication or impairment. In assessing the impact of incapacitation, the University will consider whether a Respondent knew or should have known that the Complainant was incapacitated based on objectively and reasonably apparent indicators of incapacitation.

**Alcohol or other drugs:** The University considers sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and drugs impair a person's decision making capacity, awareness of consequences, and ability to make informed judgements. Because alcohol or 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 used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction because they lack the capacity to reasonably understand the situation. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication or impairment. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the safest course of action is to forgo or

cease any sexual contact or activity. Being intoxicated or impaired by drugs or alcohol does not diminish an individual's responsibility to obtain informed and freely given consent.

## **VIII. REVIEW, INVESTIGATION AND RESOLUTION OF COMPLAINTS**

### **A. CENTRAL REVIEW TEAM TO ASSIST IN 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 may include: the Title IX Coordinator, the Assistant Director of the Office of Equity and Diversity, the Dean of Students, the Vice President 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 (unless defined as a "confidential resource").

The members of this team and/or their designees 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.

### **B. TIME FRAME FOR RESOLUTION**

The University will make every effort to resolve all reports (through the imposition of sanction or final remedies) within 60 days. The time allotted for the Appeal process is not included in the 60 days. However, any time period expressed in this policy, including the 60 days, may be extended for good cause and with written notice to the parties of the delay and the reason for the delay. Good cause may exist for a variety of factors, including the complexity of the circumstances of each case, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate reasons.

Best efforts will be made to complete the process in a timely manner by balancing the principles of thoroughness and fundamental fairness with promptness. Where the Respondent is a second semester senior, the University may withhold that student's University degree pending conclusion of the process.

### **C. 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.

#### **D. 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, friend, attorney or other person chosen by each party. While the support person may confer quietly with the Complainant or Respondent to provide advice or support, the support person cannot speak on behalf of the Complainant or Respondent or otherwise actively participate in, or disrupt the meetings. A support person may not be a material witness to the matter being investigated. No copies of written materials or any other evidence will be given to a support person, although the parties may share such information with a support person as necessary to assist them in the proceedings.

#### **E. RIGHT TO UNION REPRESENTATION FOR FULL-TIME FACULTY**

When a full-time faculty member is named as a respondent, they may choose to have a Faculty Affairs Council (FAC) representative present, in addition to a support person, at any point in the process where a personal appearance is necessary in accordance with Appendix C. (Faculty Right to Representation Sheet). When the faculty member is notified of an inquiry, the Title IX Coordinator will attach Appendix C to the notification. If the inquiry proceeds to the Formal Investigatory Process, the Faculty Affairs Council Chair will be notified that a formal investigation will proceed by the Title IX Coordinator in writing. The Title IX coordinator will not inform the Chair of FAC of the name of the faculty member.

### **IX. COMPLAINT RESOLUTION PROCEDURES**

#### **A. 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 make a report under the Sexual Harassment and Sexual Misconduct Policy which will initiate a review of the complaint as outlined in this section.

The University's response to allegations of misconduct under this policy is pursued in multiple stages: report, assessment, investigation, resolution and appeal. 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.

Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator and the Central Review Team, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate the harassment, prevent its recurrence, and address its effects. The Title IX Coordinator will only consult with members of the Central Review Team and others that “need to know” in order to implement procedures under this policy.

Upon receipt of a report, the Title IX Coordinator or designee will conduct an initial Title IX Inquiry. The goal of this Title IX Inquiry is to provide an integrated and coordinated response to reports of sexual harassment and sexual misconduct. The Inquiry will consider the nature of the report, the safety of the individual and of the campus community, the Complainant’s expressed preference for resolution, and the necessity for any interim measures to protect the safety of the Complainant or the community.

Following the initial Title IX Inquiry, the University may, at the discretion of the Title IX Coordinator: 1) seek Voluntary Resolution that does not involve disciplinary action against a Respondent; or, 2) seek Formal Resolution by initiating an Investigation and Determination to determine if disciplinary action is warranted.

Each resolution process is guided by the principles of fairness and respect for all parties. Any individual who violates these standards will be held accountable for their behavior through a process that protects the rights of both the Complainant and the Respondent. Resources are available for both students and employees, whether as Complainants, Respondents or witnesses, to provide support and guidance throughout the investigation and resolution of the complaint.

## **B. Title IX Inquiry**

When a report is made, the Title IX Coordinator will conduct an initial Title IX Inquiry. Even where 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 Title IX Inquiry is to review the report and seek to reach a resolution that will eliminate any harassment, prevent its recurrence, and address its effects. The first step of the Title IX Inquiry will usually be a preliminary meeting between the Complainant and appropriate member of the Central Review Team. In the course of this Title IX Inquiry, the University will consider the interest of the Complainant and the Complainant’s expressed preference for manner of resolution. Where possible and supported by an assessment of the facts and circumstances, the University will seek action consistent with the Complainant’s request.

As part of the initial assessment of the facts, the University will:

- Assess the nature and circumstances of the report
- Address immediate physical safety & emotional well-being

- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement
- Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence
- Notify the Complainant of the importance of preservation of evidence
- Enter the report into the University's crime log, if applicable, as required by the Clery Act
- Assess the reported conduct for the need for a timely warning under the Clery Act
- Provide the Complainant with information about on-and off-campus resources
- Notify the Complainant of the range of interim measures available
- Provide the Complainant with an explanation of the procedural options, including voluntary resolution and formal resolution
- Inform the Complainant and Respondent they may have a support person or their choosing to assist them throughout the investigation and resolution of the complaint, and that the support person may accompany them to any meeting or proceeding under this policy.
- Assess for pattern evidence or other similar conduct by the Respondent/s
- Explain the University's policy prohibiting retaliation

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, and the University has sufficient information to determine the best course of action.

At the conclusion of the Title IX Inquiry, the Title IX Coordinator will determine the appropriate manner of resolution, which may include Voluntary Resolution or the initiation of a Formal Resolution (Investigation and Determination) to determine if disciplinary action is warranted. It is at the discretion of the Title IX Coordinator to determine which method of resolution is appropriate, although the wishes of the Complainant are strongly considered (as discussed below). Any individual wishing to explore alternative resolution methods is encouraged to discuss these options with the Title IX Coordinator or designee.

Where the Complainant requests that their identity not be shared with the Respondent or that the University not pursue an investigation, the University must consider this request in the context of the University's responsibility to provide a safe and non-discriminatory environment for all University community members. The University, through the Title IX

Coordinator, will take all reasonable steps to investigate and respond to the complaint consistent with the request not to share identifying information or to pursue an investigation. Under these circumstances, the Complainant's request will be balanced against the following factors:

- The seriousness of the conduct;
- The respective ages and roles of the Complainant and Respondent;
- Whether the Respondent has a history of prior arrests, is the subject of prior reports and/or complaints related to any form of sexual harassment or sexual misconduct, or has any history of violent behavior;
- The right of the Respondent to receive notice and relevant information before disciplinary action is sought;
- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual misconduct or other violence;
- Whether the Respondent has a criminal record or prior conduct violations (at the University or elsewhere) indicating a history of sexual misconduct, violence and/or patterned behavior;
- Whether the Respondent threatened further sexual misconduct or other violence against the student or others;
- Whether the sexual misconduct was committed by multiple individuals;
- Whether the circumstances suggest there is an increased risk of future acts of sexual misconduct under similar circumstances;
- Whether the sexual misconduct was perpetrated with a weapon;
- Whether the sexual misconduct was facilitated through the use of "date rape" or similar drugs or intoxicants;
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence); and,
- The Respondent's right to receive information if such information is maintained in an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 C.F.R. Part 99.

The University will take all reasonable steps to investigate and respond to the report consistent with the request not to share identifying information or pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the University is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Central Review Team will inform the Complainant about the chosen course of action, which may include the University seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

At the conclusion of the Title IX Inquiry, the Complainant will receive notice of the determination of how the University plans to proceed. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University seeks action that would impact a Respondent, such as protective measures that restrict the Respondent's movement on campus and/or the initiation of the Voluntary or Formal Process for resolution.

## **C. Voluntary Resolution**

Voluntary Resolution is designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Voluntary Resolution is utilized only when the Title IX Coordinator or designee has determined this is a suitable option for resolving the report, and both the Complainant and Respondent agree to use the process.

Where the Title IX Inquiry concludes that Voluntary Resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational, extracurricular and employment activities at the University and to eliminate a hostile environment. Examples of such protective remedies may include imposition of Administrative Directives for No-Contact, accommodations to residential or academic environments, targeted or broad-based educational programming or training, supported direct communication with Respondent and/or indirect action by the Title IX Coordinator or designee. Depending upon the form of Voluntary Resolution, it may be possible for the Complainant to maintain anonymity.

Voluntary resolution may include mediation with a member of the Office of Equity and Diversity, Student Life, Human Resources or the Office of the Provost. However, a Complainant will never be compelled to engage in mediation, to directly confront the Respondent, or to participate in any form of Voluntary Resolution. 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, either party may request to end Voluntary Resolution and initiate the Formal Process.

Sexual assault reports cannot be resolved using this process. All sexual assault reports not resolved through a Title IX Inquiry must be considered through the Formal Process.

## **D. Formal Resolution (Investigation and Determination)**

### **1. Overview of Investigation**

Where the initial Title IX inquiry concludes that disciplinary action may be appropriate, based on the request of the Complainant or the University's determination that an investigation should be pursued based on the potential risk of harm or threat to public safety, the Title IX Coordinator will initiate an investigation. The investigation is designed to provide a fair, objective and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

Throughout the investigation and resolution, a Complainant or Respondent may have a support person of their choosing present at any meeting or proceeding.

Information gathered during the investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the University campus community, and inform appropriate measures designed to end the misconduct, prevent its recurrence and address its effects.

## **2. Notice of Investigation**

Both the Complainant and the Respondent will receive written notice that an investigation has been initiated. The notice will include a summary of the complaint, the potential policy violations at issue, the name and contact information of the assigned Investigator(s) and an overview of the investigation procedures.

## **3. Investigator(s)**

The University will designate an Investigator(s) who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The Investigator(s) may be a trained employee of the University or an external investigator engaged to assist the University in its fact gathering or both. The University will typically use a single Investigator or team of two investigators with one individual having primary responsibility for the investigation. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest.

## **4. Investigative Steps**

The Investigator(s) will conduct the investigation in an appropriate manner in light of the circumstances of the case. The Investigator(s) will coordinate the gathering of information from the Complainant, the Respondent and any other individuals who may have information relevant to the determination. The Investigator(s) may consider prior or subsequent conduct that is relevant to evaluating the current conduct. Investigative interviews may be audio-recorded and notes of the interview maintained by the University at least until the parties have had the opportunity to review and comment on the draft investigation report. The Investigator(s) will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate and as described more fully below. The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information.

## **5. Complainant and Respondent Interviews**

The Investigator(s) will interview the Complainant and Respondent separately. Each party will be asked to participate in an initial interview and may be asked to participate in a follow up interview(s) as needed.

## **6. Other Sexual History**

The sexual history of a Complainant or Respondent will never be used to prove character or reputation. An investigation under this policy may consider prior or subsequent sexual history between the parties if the Investigator(s), with the agreement of the Title IX Coordinator, determines that there was a prior or ongoing relationship between the Complainant and the Respondent and the Investigator(s) is asked to determine whether consent was sought and given. As noted in other sections of the policy, whether someone consented on a prior or subsequent occasion is not evidence that the person consented on this occasion, and consent must be sought and given each time. Any prior or subsequent sexual history between the parties will only be used to help understand the manner and nature of communications between the parties and the context of the relationship.

If the Investigator(s) and Title IX Coordinator determine that prior or subsequent sexual history should be considered, both the Complainant and Respondent will be notified and have the opportunity to provide any additional relevant information to the Investigator(s).

## **7. Witness Interviews**

The Investigator(s) will make a good faith effort to contact and interview any relevant witnesses identified by the parties or in the documentation, including those no longer at the University. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The Investigator(s) may also interview any other individual he or she finds to be potentially relevant to the allegations of the complaint. The Investigator(s) will inform each witness or other individual interviewed that they are prohibited from retaliating against the Complainant and Respondent or other witnesses, and request that the witnesses respect the privacy of the parties and the integrity of the process.

## **8. Experts**

The Investigator(s) may contact any expert they determine is necessary to ascertain the facts related to the complaint. An expert witness may be contacted for an informal consultation or for a professional opinion regarding information learned from the investigation.

## **9. Document/Records Review**

In addition to reviewing any documents submitted by the Complainant and Respondent, the Investigator(s) will try to obtain such other physical or medical evidence relevant to the investigation as the Investigator(s) determines, in their judgment, to be necessary, including but not limited to documents, police records, electronic or other records of communications between the parties or witnesses, records or other relevant information. In obtaining such information, the Investigator(s) will comply with applicable laws and University policies. A party's medical or mental health records are confidential under law. If a party voluntarily decides to share such records with the Investigator(s), the relevant portions of the records will be shared with the opposing party and included in the investigation report.

## **10. Site Visits**

The Investigator(s) may visit relevant sites or locations and record observations through written or electronic documentation, such as videos or photographs.

## **11. Consolidation of Investigation and Consideration of Other Conduct by a Respondent**

The Investigator(s) and Title IX Coordinator have the discretion to consolidate multiple reports against a Respondent into one investigation if the evidence related to each incident would be relevant in reaching a determination in the other incident. In addition, in gathering the facts, the Investigator(s) may consider similar prior or subsequent allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant

Evidence of an occurrence or occurrences of sexual or other relevant behavior so distinctive and so closely resembling either party's version of the alleged encounter as to tend to prove a material fact, including whether consent was sought or given, may be admissible. Where there is evidence of a pattern of similar conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a policy violation, this information may be deemed relevant to the determination of policy violation or a credibility determination. The determination of relevance will be based on an inquiry of whether the previous or subsequent incident was substantially similar to the conduct cited in the report or indicates a pattern of behavior and substantial conformity with that pattern. Where there is a prior finding of a policy violation by the Respondent for a similar act of prohibited conduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and assigning of a sanction

## **12. Concurrent Law Enforcement Investigation**

If there is a concurrent criminal investigation, at the reasonable request of law enforcement, the University may agree to defer its Title IX fact-gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the Complainant and Respondent regarding Title IX rights, procedural options and the implementation of interim measures to assure the safety and well-being of all affected individuals. The University will promptly resume its fact-gathering following the initial criminal investigation.

## **13. Investigation Report**

### a. Contents of Report

At the conclusion of the investigation, the Investigator(s) will prepare a written investigation report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts, and analyzes the relevant facts determined through the investigation, referencing any supporting documentation or statements. The investigation report may include summaries of interviews with the Complainant, Respondent, third-party witnesses, experts, and any other individuals with relevant information, photographs of relevant sites or physical evidence, electronic records and forensic evidence.

In preparing the report, the Investigator(s) will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Investigator(s) may redact information that is irrelevant, more prejudicial than probative, or immaterial. The



Investigator(s) may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

#### b. Review of Investigation Report

Before the report is finalized, the Complainant and Respondent will be given the opportunity to review the information that will be used in reaching a determination of whether the policy has been violated. This includes the investigative fact finding information but does not include the investigators credibility determinations, findings and recommendations. Consistent with FERPA or safety concerns, identifying information about the Complainant or witnesses may be redacted at the discretion of the Title IX Coordinator. A Complainant and Respondent may submit any additional comment or evidence to the Investigator(s) within five (5) days of being notified of the opportunity to review the report. A Complainant and Respondent may also raise concerns about the inclusion of any evidence, even if relevant, that the party believes may be more harmful than probative.

Upon receipt of any additional information or comments by the Complainant or Respondent, or after the five (5) day comment period has lapsed without comment, the Investigator(s) will prepare the final investigation report. In completing the report, the Investigator(s), in consultation with the Title IX Coordinator, will also determine whether any information included in the report should be excluded and make the appropriate adjustments. The final report will include the investigator(s) credibility determinations, findings and recommendations regarding whether a violation of the SHSM policy or other policies being reviewed has occurred based upon a preponderance of the evidence standard.

### **14. Determination**

The Title IX Coordinator or designee will assign the matter to a Determination Panel to determine whether a violation of policy has occurred. The Determination Panel members have received appropriate training to participate as informed and impartial decision-makers. The Determination Panel consists of three employees chosen from a pool of trained professionals from Student Life, Human Resources, Equity and Diversity and other trained faculty and staff. All evidence submitted to the Determination Panel, including the investigation report, is redacted for personally identifiable information to protect the privacy of the parties involved and to protect against conflict or bias.

The Determination Panel will review the final investigation report to determine whether: (1) the investigation was conducted in a fair, impartial and reliable manner; (2) the information is sufficient to support the factual findings; and (3) there is a rational basis, **applying a preponderance of the evidence standard**, for the recommended finding(s) of responsibility or no responsibility for violation of policy.

Although the Determination Panel will not interview witnesses or take testimony or new evidence, its review of the information submitted by the Investigator(s) should be independent – a fresh look. The Panel may go beyond the Investigative Report and review any underlying evidence submitted that it believes is relevant to the determinations it must

make. The Determination Panel will ultimately make a determination accepting the recommendation(s) of the Investigator(s), rejecting the recommendation(s) of the investigator(s) and/or specifying specific issues that need further investigation.

## **15. Sanctions**

If a Respondent is found responsible for a violation of policy, the matter will be referred to the appropriate sanctioning authority to determine the imposition of a sanction designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the Catholic and Jesuit educational mission of the University and its and Title IX obligations. Sanctions and interventions may also serve to promote safety or deter individuals from similar future behavior.

In determining a sanction, the sanctioning authority will provide the Complainant, the Respondent (and other affected parties at the discretion of the sanctioning authority) with the opportunity to provide a written impact or mitigation statement for consideration and/or to meet in person. The sanctioning authority will also consult with the Title IX Coordinator or designee with respect to sanction and remedy.

The sanctioning authority may impose any sanction deemed appropriate after consideration of all of the relevant information. Sanctions may be imposed individually or a combination of sanctions may be imposed. The determination of sanctions is based upon a number of factors, including: the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by Respondent; the impact of the violation on the community, its members, or its property, any previous conduct violations, and any mitigating or aggravating circumstances.

In general, the imposition of sanctions will take effect immediately and will not be stayed pending the resolution of an appeal. In *exceptional circumstances*, a sanction may be stayed pending an appeal if irreparable harm to the Respondent would result otherwise. This rare exception is considered only upon petition by the Respondent and is at the discretion of the Title IX Coordinator. An example of an exceptional circumstance may be a sanction of suspension or expulsion imposed at the end of a semester, during finals or just before a graduation ceremony.

**Sanction determinations for students** will be made by the *Vice President for Student Life* or their designee. A student found responsible for sexual harassment and/or misconduct will face a minimum sanction of disciplinary probation up to and including expulsion. The range of sanctions and sanctioning philosophy are detailed in the student sanctioning guidelines attached as Exhibit B. Such actions may also include developmental, educational, remedial or corrective actions as warranted

**Sanction determinations for employees** will be made by the *Provost (for faculty) or Supervising Vice President (for staff and administrators)* in consultation with the Vice President for Human Resources. An employee found responsible for sexual harassment and/or misconduct will face appropriate disciplinary and responsive action including, but not limited to, training, referral counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination from employment<sup>3</sup>. Such actions may also include developmental, educational, remedial, or corrective actions as warranted.

## **16. Notice of Outcome**

Both the Respondent and Complainant will simultaneously receive written notice of the outcome, the sanction and the rationale for both. To provide notice of outcome, University-issued e-mail is the primary means of communication. An alternative method of notice may include through the U.S. Mail or equivalent mailing to the local or permanent address of the individual as indicated in official University records.

The notice of outcome will also provide each party with their appeal options.

The University may also notify appropriate University officials of the sanction, such as Chief of the University Police Department, residence life staff and/or coaches, as necessary, to implement the outcome and/or sanctions.

## **17. Appeal**

The outcome and/or sanction can be appealed by either party within five (5) business days from the time of notification of the decision. A review of the matter will be prompt and narrowly tailored to stated appeal grounds. The limited grounds for appeal are as follows:

- New information that could materially affect the findings of the Determination Panel and was not reasonably available through the exercise of due diligence at the time of the investigation;
- A deviation from University policy or procedures that materially affected the outcome; and
- Sanction is excessively harsh or lenient.

Appeals must be in writing and submitted to the Vice President for Student Life or their designee (for students) or the Vice President for Human Resources (for employees). The appeal shall consist of a plain, concise, and complete written statement of the grounds for the appeal. Dissatisfaction with the outcome of the investigation is not grounds for appeal.

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<sup>3</sup> Termination proceedings for faculty will proceed in accordance with Appendix III of the Faculty Handbook: Procedures Relating to Dismissal of Faculty Members

The designated University official to whom the appeal was submitted shall determine whether grounds for appeal have been met and, if so, refer the Appeal to the Title IX Coordinator to convene the Appeal Panel. The Title IX Coordinator will provide the other party notice of the Appeal and the opportunity to respond in writing to the Appeal. Any response to the Appeal must be submitted within five (5) days from notice of the Appeal.

The Title IX Coordinator will convene an Appeal Panel chosen from a pool of trained professionals from Student Life, Human Resources, Equity and Diversity and other trained faculty and staff. The appeal will typically be completed within ten (10) business days.

In any request for an appeal, the burden of proof lies with the party requesting the Appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeal is not a new review of the underlying matter.

In most cases Appeals are confined to a review of the written documentation or record of the original investigation and determination and relevant documentation regarding the grounds for Appeal. This is not an opportunity for the Appeal Panel to substitute its judgment for that of the original reviewing body merely because of disagreement with the finding or sanctions. Appeals decisions are to be deferential to the original reviewing body, making changes to the finding only where there is clear error based on the stated appeal grounds.

- In the case of Deviation from University Policy or Procedure, the Appeal Panel must determine if there was a material deviation that may have affected the outcome and, if so, ask that a new investigation occur from the point that the procedural deviation took place.
- In the case of New Information that could materially affect the findings of the Determination Panel, the Appeal Panel may affirm findings and determinations or recommend that the case be returned to the Determination Panel to assess the weight and effect of the new information and render a determination after considering the new facts.
- In the case of Sanctions Excessively Harsh or Lenient, the Appeal Panel may affirm sanctions or change the sanctions proportionate to the severity of the violation and within the philosophy and range of the appropriate sanctioning guidelines.

## **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

#### **3124.1. 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.

### **3131. Unlawful dissemination of intimate image**

(a) Offense defined.--Except as provided in sections 5903 (relating to obscene and other sexual materials and performances), 6312 (relating to sexual abuse of children) and 6321 (relating to transmission of sexually explicit images by minor), a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.

### **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.



**APPENDIX B**  
**Sanctioning Guidelines For Students**

[CLICK HERE](#)

(<https://www.scranton.edu/studentlife/studentaffairs/student-conduct/external-links/sanctioning-guidelines.pdf>)

## **APPENDIX C**

### **Faculty Right to Representation (Weingarten Rule)**

All full-time faculty members at The University of Scranton have the opportunity to invoke the right to have a union officer present during any meeting or investigatory interview in which there is a reasonable expectation that the meeting may result in discipline, termination, or a change in working conditions. Examples of such meetings or interviews are when a faculty member is named as a respondent as part of an investigation under The University of Scranton Sexual Harassment and Sexual Misconduct Policy or when the disciplinary procedure is invoked (Appendix III or XI of the Faculty Handbook). This right is based on the U.S. Supreme Court in the 1975 in *NLRB v. J. Weingarten, Inc.* case.

#### **How should I inform my union representative(s) that I want them to represent me?**

If you are asked to attend a meeting in which discipline is a reasonable outcome and you would like to have a Weingarten representative present, simply call or email a FAC officer (it does not have to be the chair of FAC).

#### **What can the union representative do for me?**

Please see the FAC website ([scrantonfac.org](http://scrantonfac.org)) or contact a FAC officer for more information.

#### **What if I don't want a union representative at first, but then change my mind?**

Full time faculty members have the right to request union representation at any stage of the investigatory process. To invoke Weingarten rights, the faculty member should simply say: "If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative (officer), be present at this meeting.

Until my representative arrives, I choose not to participate in this discussion."

#### **What if I want a union representative at first, but then change my mind?**

If a full time faculty member requests that a union representative be present during an investigatory interview, but later refuses representation, the union representative must leave.

#### **What if I request union representation and the administration refuses?**

Once Weingarten rights are invoked, the employer may not refuse to allow the union representative to be present. If this occurs, the full time faculty member has the right to remain silent and should contact a union officer.

#### **Can I suffer any harm to asking for union representation?**

No. It is unlawful for an employer to discipline an employee for requesting a Weingarten representative.