

ADMINISTRATIVE POLICIES

# AD91 Discrimination and Harassment and Related Inappropriate Conduct

Policy Status: Active

Subject Matter Expert:

Suzanne Adair, 814-863-0471, sca917@psu.edu

Policy Steward: Senior Vice President and Chief of Staff

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## PURPOSE

To establish the University's policy prohibiting discrimination and harassment in all forms, and retaliation related to reports of such conduct. This policy specifically prohibits discrimination and/or harassment against any person because of their actual or perceived age, race, color, ancestry, national origin, sex, sexual orientation, gender, gender identity, physical or mental disability, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, marital or family status, pregnancy, pregnancy-related conditions, genetic information or political ideas.

This policy is a companion to University Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85), which sets forth the University's policy on sexual harassment under Title IX. The federal Title IX regulations, effective August 14, 2020, and addressed in University Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85), defines Sexual Harassment as: (1) quid pro quo ("this for that") behavior; (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; and (3) Clery Act crimes, including sexual assault, dating violence, domestic violence, or stalking (commonly known as Violence Against Women Act or VAWA crimes). In addition, the conduct must have occurred within the United States, either on Penn State property or off campus in a Penn State-sanctioned educational program or activity, which includes only those locations, events, or circumstances over which the University exercises substantial control over both the accused and the context in which the sexual harassment occurs.

Reports or formal complaints of prohibited conduct which may constitute sexual assault, dating violence, domestic violence, or stalking, as defined in AD85, but that do not fall within the jurisdictional guidelines of the federal Title IX regulations listed above, will be addressed under this Policy ([AD91 \(https://policy.psu.edu/policies/ad91\)](https://policy.psu.edu/policies/ad91)) and the appropriate procedures, linked below. For resources and reporting information on Title IX sexual harassment, please refer to Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85).

## **POLICY STATEMENT**

The University is committed to equal access to programs, facilities, admission, and employment for all persons. It is the policy of the University to maintain an environment free of harassment and free of discrimination against any person because of their actual or perceived age, race, color, ancestry, national origin, sex, sexual orientation, gender, gender identity, physical or mental disability, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, marital or family status, pregnancy, pregnancy-related conditions, genetic information or political ideas. Discriminatory conduct and harassment violate the dignity of individuals, impedes the realization of the University's educational mission, and will not be tolerated.

This policy shall not be construed to restrict academic freedom at the University, nor shall it be construed to restrict constitutionally protected expression.

Conduct prohibited by this policy may also violate applicable federal and state law. Additional information about how to pursue or report a violation of this policy, is set forth below.

## **CONDUCT PROHIBITED BY THIS POLICY ("Prohibited Conduct")**

**Discrimination.** Conduct of any nature that denies an individual the opportunity to participate in or benefit from a University program or activity, or otherwise adversely affects a term or condition of an individual's employment, education, or living environment, because of the individual's actual or perceived age, race, color, ancestry, national origin, sex, sexual orientation, gender, gender identity, physical or mental disability, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, marital or family status, pregnancy, pregnancy-related conditions, genetic information or political ideas.

**Harassment.** Behavior consisting of physical or verbal conduct, including Acts of Bias, that is sufficiently severe or pervasive such that it substantially interferes with an individual's employment, education or access to University programs, activities or opportunities and would detrimentally affect a reasonable person under the same circumstances. Harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or the use of slurs or other derogatory language/statements in reference to others. Whether the alleged conduct constitutes prohibited Harassment depends on the totality of the particular circumstances, including the nature, frequency, and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved. Harassment also includes conduct, excluding conduct of a physical or sexual nature, which occurs within a romantic or intimate relationship when it would have the effect on a reasonable person of creating fear, isolation, or unreasonable power or control over access to resources, education, or work.

**Gender-based harassment.** Verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on actual or perceived sex, sex-stereotyping, sexual orientation, or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

**Sex-based harassment.** Unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or (2) such conduct is sufficiently severe, persistent, *or* pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities (hostile environment).

Sex-based harassment also includes:

- **Dating Violence** as defined in University Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85). Dating Violence includes sexual or physical abuse, or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
- **Domestic Violence** as defined in University Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85).
- **Sexual Assault** as defined in University Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85). For the purposes of this policy, Sexual Assault includes actual or attempted Sexual Penetration or other Sexual Contact with another individual without Consent.
- **Stalking** as defined in University Policy [AD85 \(https://policy.psu.edu/policies/ad85\)](https://policy.psu.edu/policies/ad85). Stalking includes stalking accomplished through electronic means.

**Sexual Exploitation.** Taking sexual advantage of another for one's benefit or to benefit or advantage anyone other than the one being exploited, by (a) viewing, possessing, producing, or distributing child pornography; (b) non-consensual recording, disseminating, or copying of images, photography, video, or audio recording of sexual activity or nudity conducted in a private space; (c) knowingly exposing another person to a sexually transmitted infection, or sexually transmitted

disease, without their awareness; (d) prostituting, or promoting or soliciting the prostitution of, another person; or (e) use of dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual contact or sexual activity.

**Retaliation**, as defined in University Policy AD67 (<https://policy.psu.edu/policies/ad67>), is also prohibited by this policy and may subject the individual who retaliates in violation of this or other University policy to discipline or sanctions.

## POLICY TERMS AND DEFINITIONS

**Act of Bias.** Refers to behavior that is motivated by bias against or hatred toward other individuals or groups based on actual or perceived age, race, color, ancestry, national origin, sex, sexual orientation, gender, gender identity, physical or mental disability, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, marital or family status, pregnancy, pregnancy-related conditions, genetic information or political ideas. An Act of Bias is considered an aggravating factor when a violation of University policy has been established and therefore will typically result in a more significant sanction(s).

**Consent.** Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent must be informed, freely given and mutual. If intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes incapacitation due to alcohol or drug consumption, or being asleep or unconscious, where the respondent knew or reasonably should have known that the person was incapacitated. Inducement of incapacitation of another with the intent to affect the ability of an individual to consent or refuse to consent to sexual contact almost always, if not always, negates consent. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions consist of an affirmative, unambiguous, conscious decision by each participant to engage in mutually agreed-upon sexual activity. Consent can be limited, meaning consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent is revocable, meaning consent can be withdrawn at any time. Thus, consent must be ongoing throughout a sexual encounter. Whether a person has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

**Sexual Penetration.** Any contact or intrusion, however slight, between the sex organ or anus of one person and any part of the body of another person or by any object. Sexual Penetration includes oral sex.

**Other Sexual Contact.** Includes, but is not limited to kissing, fondling, and/or intentional contact, above or below clothing, with intimate body parts, such as breasts, buttocks, groin, genitals, or other body parts that under the circumstances a reasonable person would know that the other person regards to be an intimate body part. Sexual Contact includes causing a person to touch an intimate body part of another person, causing a person to touch their own intimate body part, and contact with intimate body parts made with bodily fluids.

## REPORTING INCIDENTS OF DISCRIMINATION OR HARASSMENT OR CONDUCT OTHERWISE PROHIBITED BY THIS POLICY

The University encourages anyone who becomes aware of possible Prohibited Conduct to immediately report such Prohibited Conduct to the appropriate individuals or offices, as set forth below.

If there is any danger to person or property, individuals are strongly encouraged to first report the incident to the applicable police or public safety department.

Sex and gender-based harassment should be reported to the Title IX Coordinator via one of the following methods:

1. Fill out the form on the [Title IX website \(http://titleix.psu.edu/filing-a-report/\)](http://titleix.psu.edu/filing-a-report/)
2. Contact the Title IX Coordinator directly, via telephone or email:

Amber Grove, Title IX Coordinator  
227 West Beaver Avenue, Suite 212  
State College, PA 16801  
814-867-5088

Email: [titleix@psu.edu](mailto:titleix@psu.edu) (<mailto:titleix@psu.edu>)

All other forms of potential discrimination and harassment should be reported as follows:

Reporting all other forms of potential discrimination and harassment

<b>For Conduct Committed by</b>	<b>Report To</b>	<b>Contact Information</b>
Students or Student Organizations	Office of Sexual Misconduct Reporting & Response	(814) 867-0099  <a href="mailto:titleix@psu.edu">titleix@psu.edu</a> ( <a href="mailto:titleix@psu.edu">mailto:titleix@psu.edu</a> )
	Office of Equal Opportunity and Access (formerly the Affirmative Action Office)	(814) 863-0471, <a href="mailto:oeoa@psu.edu">oeoa@psu.edu</a> ( <a href="mailto:oeoa@psu.edu">mailto:oeoa@psu.edu</a> )
Employees or third parties	Office of Human Resources, Employee Relations Division	(814) 865-1412
	Office of Ethics and Compliance	(814) 867-5088, <a href="mailto:psoc@psu.edu">psoc@psu.edu</a> ( <a href="mailto:psoc@psu.edu">mailto:psoc@psu.edu</a> )

Students, employees, or third parties affiliated with the Department of Intercollegiate Athletics

The relevant offices identified above or the Athletics Integrity Officer

(814) 865-0722

[athleticsintegrity@psu.edu](mailto:athleticsintegrity@psu.edu)  
(<mailto:athleticsintegrity@psu.edu>)

Students, employees, or third-parties at the Penn State College of Medicine

George Blackall, Assistant Dean for Student Development and Director, Office for a Respectful Learning Environment

(717) 531-6148

[gfb3@psu.edu](mailto:gfb3@psu.edu) (<mailto:gfb3@psu.edu>)

## **ANONYMOUS REPORTING**

Anyone may make an anonymous report of Prohibited Conduct (<https://secure.ethicspoint.com/domain/media/en/gui/55078/>) by contacting the Ethics and Compliance Hotline at 1-800-560-1637.

For more information on anonymous reporting, please see <https://psuethicsandcompliance.tnwreports.com/> (<https://psuethicsandcompliance.tnwreports.com/>) and [hotline.psu.edu](https://hotline.psu.edu). (<https://universityethics.psu.edu/penn-state-hotline>)

## **FREE EXPRESSION AND ACADEMIC FREEDOM**

The University is committed to its long-standing tradition of academic freedom and free expression. The University is an institution whose members may express themselves, while protecting and respecting the rights of others to learn, to conduct research, and to carry out the essential functions of the University free from interference or obstruction. When addressing complaints of violations of this policy, the University will take all permissible actions to respond appropriately while respecting the rights of free expression and academic freedom. See AC64 (<https://policy.psu.edu/policies/ac64>), AD47 (<https://policy.psu.edu/policies/ac47>) and AD51 (<https://policy.psu.edu/policies/ad51>).

## **EXTERNAL COMPLAINTS**

The University encourages all individuals with a pertinent complaint to follow the process in this Policy. However, individuals may always choose to make a discrimination complaint directly with outside agencies, including, but not limited to, the Office for Civil Rights of the U.S. Department of Education based in Philadelphia, the U.S. Equal Employment Opportunity Commission, the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice, or the Pennsylvania Human Relations Commission, Harrisburg Regional Office. Contact information for these agencies can be found at the Office of Equal Opportunity and Access' website.

## **EMPLOYEE and THIRD-PARTY PROCEDURES FOR REPORTS OF NON-TITLE IX SEXUAL AND GENDER HARASSMENT AND OTHER FORMS OF DISCRIMINATION**

The procedures for assessment, investigation, determination and appeal of non-Title IX reports of sexual and gender-based harassment and other forms of discrimination filed against employees and third parties are located on the Office of Equal Opportunity and Access' website (<https://affirmativeaction.psu.edu/welcome/discrimination-complaints/discrimination-and-harassment-resolution-procedures/>).

## **STUDENT PROCEEDINGS FOR REPORTS OF NON-TITLE IX SEXUAL AND GENDER HARASSMENT AND OTHER FORMS OF DISCRIMINATION**

The procedures for assessment, investigation, adjudication, and appeal of reports of non-Title IX sexual and gender-based harassment and other forms of discrimination or harassment involving student respondents will be the same as those utilized for Title IX sexual and gender-based harassment and are located in AD85 (</policies/ad85>).

## **SANCTIONS**

Against Students: Disciplinary sanctions for student violations of this policy will be imposed in accordance with the Penn State Student Code of Conduct. Sanctions range from formal warning, conduct probation, suspension, and expulsion. In addition, other administrative sanctions may include exclusion, housing reassignment, loss of housing, and/or loss of privileges. The University reserves the right to impose other sanctions and/or educational, reflective, and restorative outcomes in addition to the administrative sanctions listed above in response to the specific circumstances of a case.

Against Employees: Disciplinary sanctions for employee violations of this policy, which may range from a disciplinary warning to termination from the University, will be imposed in accordance with applicable University policies. Disciplinary sanctions may include one or more of the following measures:

- Termination from the University
- Unpaid suspension
- Restrictions from all or portions of campus
- Change in working facility
- Mandated education
- Written reprimand in personnel file
- Removal from classroom teaching
- Tenure revocation
- Withhold salary increase (from one to several years)
- Removal of endowed chair
- Removal of emeritus status
- Removal of graduate school status

- Termination of research project funding
- Removal from administrative position

## FURTHER INFORMATION

For questions, additional detail, or to request changes to this policy, please contact the Affirmative Action Office.

## CROSS REFERENCES

Office of Equal Opportunity and Access website (<https://affirmativeaction.psu.edu/>)

Office of Sexual Misconduct Reporting & Response (<https://studentaffairs.psu.edu/titleix>)

Penn State College of Medicine Web Site (<http://www.pennstatehershey.org/web/college/home>)

Sexual Harassment and Assault Reporting and Education (SHARE) (<http://titleix.psu.edu/>)

[AC64 \(/policies/ac64\)](/policies/ac64) - Academic Freedom

[AD47 \(/policies/ac47\)](/policies/ac47) - General Standards of Professional Ethics

[AD51 \(/policies/ad51\)](/policies/ad51) - Use of Outdoor Areas for Expressive Activities

[AD67 \(/policies/ad67\)](/policies/ad67) - Disclosure of Wrongful Conduct and Protection From Retaliation

[AD85 \(/policies/ad85\)](/policies/ad85) - Title IX Sexual Harassment

Most Recent Changes:

- August 17, 2023 - Editorial changes, updated procedure followed for student-related cases, name change for Office of Sexual Misconduct Prevention and Response to Office of Sexual Misconduct Reporting and Response, name change for Affirmative Action Office to Office of Equal Opportunity and Access.

Revision History (and effective dates):

- January 4, 2023 - Updated name and contact information for Title IX Coordinator.
- August 19, 2022 – Editorial changes, updated prohibited conduct, added terms and definitions, name change for *Office of Student Conduct* to *Office of Student Accountability & Conflict Response*.
- December 13, 2021 - Updated name of Title IX Coordinator.
- June 21, 2021 - Editorial changes. Changed Proceedings to Procedures in title: Employee and Third-Party Procedures for Reports of Non-Title IX Sexual and Gender Harassment and Other Forms of Discrimination. Updated link in this same section.
- February 11, 2021 - Editorial changes. Reference to HR64 changed to AC64.
- December 7, 2020 - Updated link to Affirmative Action website in Cross References section.
- August 14, 2020 - Editorial changes to reflect language required by new Title IX regulations.
- August 24, 2018 - Editorial changes to update personnel information for the Title IX Coordinator and the Athletics Integrity Officer.
- May 14, 2018 - Editorial changes to update hyperlinks.
- August 22, 2017 - Title IX Coordinator and Deputy Title IX Coordinator personnel changes.



- September 29, 2016- New Policy. Verbiage addressing general discrimination and harassment and related inappropriate conduct has been moved from AD85 to create this new policy.

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