

Procedure Title:	Sexual Harassment & Title IX Compliance
Policy Number:	ESU-PO-2013-002
Effective Date:	December 5, 2013
Review Date:	September 12, 2014
Division:	Office of the President
Responsible Office:	Office of the President

Procedure Summary:

Policy Procedure low specify the steps victims of sexual harassment, sexual violence and other forms of sexual misconduct should follow when a violation has occurred.

It includes detailed information about preserving evidence, reporting, accuser's options regarding the involvement of law enforcement and campus authorities, accuser's rights and university responsibilities related to protection, advocacy, and support for the accuser.

It also specifies the procedures and timelines for disciplinary action in cases of alleged sexual harassment, sexual violence and other forms of sexual misconduct.

Process:

Reporting Sexual Harassment, Sexual Violence and other forms of Sexual Misconduct

IF YOU ARE A VICTIM OF A SEXUAL ASSAULT AND ARE READING THESE PROCEDURES TO DETERMINE WHAT TO DO, PLEASE CONTACT THE ESU TITLE IX COORDINATOR AT 570-422-3463. REPORTS MAY ALSO BE FILED WITH UNIVERSITY POLICE (available 24/7) AT 570-422-3064.

Reporting: Prompt reporting is critical in instances where sexual harassment, sexual violence or other forms of sexual misconduct are suspected/alleged.

The University will make every effort to promptly investigate and resolve complaints governed by this policy.

Any student, faculty or staff member wishing to file a complaint under the ESU Sexual Harassment and Title IX compliance policy is encouraged to do so within 180 days of the incident.

University and affiliated entity employees, campus volunteers, student organization advisors and student employees receiving reports of sexual harassment, sexual violence and other forms of sexual misconduct are required to report such incidences to the University's designated authorities, including **the University Police, ESU Title IX Coordinator, Director of Diversity/Ombudsperson, or the Director of Human Resources Management.**

The university authority contacted will provide the appropriate guidance on procedures and additional action that may be required, including but not limited to assistance in notifying other university authorities or local/state police.

University Police must always be notified in cases of sexual violence and other forms of sexual misconduct when the alleged sex-based behaviors violate criminal laws.

However, the accuser always retains the right to determine if the police may pursue an investigation of the incident that could lead to the filing of criminal charges.

If consent to pursue the investigation is granted, the police will investigate the incident, gather appropriate information and evidence, and file criminal charges if they find through their investigation that the charges are appropriate.

Assaults committed off campus must be reported to the police entity in whose jurisdiction the incident occurred, if the accuser wishes to pursue criminal charges outside the University's conduct processes.

Directing Complaints: The university authorities identified above are the primary university contacts designated to receive reports, initiate investigations, and direct other processes aimed at resolution of complaints.

The guidelines that follow are identified to assist accusers in identifying the most prudent course of action based upon the status/role of the accused at the University.

All members of the University community who suspect or allege that a violation of the University Policy on Sexual Harassment and Title IX Compliance has been committed are encouraged to report the incident to one of the University's designated authorities.

- **Student against Student** - Report to Vice President for Student Affairs Office. Cases submitted through this avenue will be investigated and handled in accordance with the procedures outlined in the ESU Student Code of Conduct.
- **Student against Faculty or Staff member** – Report to Office of Diversity and Equal Opportunity. Cases submitted through this avenue will be investigated and handled in accordance with procedures described below. In cases where deemed appropriate or in the absence of the Director of Diversity/Ombudsperson, the President may designate another individual to receive the complaint and conduct processes aimed at resolution of the complaint.
- **Employee against Employee** - Report to Office of Diversity and Equal Opportunity. Cases submitted through this avenue will be investigated and handled in accordance with procedures described below. In cases where deemed appropriate or in the absence of the Director of Diversity/Ombudsperson, the President may designate another individual to receive the complaint and conduct processes aimed at resolution of the complaint.
- **Allegations against the Director of Diversity** – Report to the University Director of Human Resources Management. Cases submitted through this avenue will be investigated and handled by the Director of Human Resources.
- **Allegations against the University Director of Human Resources Management** – Report to the Office of University President. Cases submitted through this avenue will be handled by another individual designated by the President to receive the complaint and conduct processes aimed at resolution of the complaint.
- **Allegations against the University President** – Report of any complaint should be directed to the Office of the Chancellor for the Pennsylvania State System of Higher Education through the System Title IX Coordinator 717-720-4061 or vsanders@passhe.edu Dixon University Center, 2986 North Second Street, Harrisburg, PA 17110. Cases submitted through this avenue will be investigated and handled in accordance with Board of Governors policy.
- **Anonymous Complaints** – Report to the Office of Diversity and Equal Opportunity. The University will accept and attempt to investigate when anonymous complaints of sexual harassment, sexual violence and other forms of sexual misconduct are alleged, however the University has limited ability to bring such cases to resolution because of the inability to fully investigate.

Post Incident Actions in Cases of Sexual Assault:

Medical Evaluation Recommended: It is best to get to the hospital or University Health Center within 5 days of an assault to be evaluated.

Even if there are no physical injuries, the accuser may be at risk for sexually transmitted diseases, and in some cases, pregnancy.

Evidence can deteriorate over time, and a forensic examination will preserve collected evidence.

Even if the accuser is uncertain whether to make a police report, evidence can be collected for use at a later date.

Crime Victim Compensation will cover the hospital exam in most cases and it is not reported on family insurance.

If the accuser is not able to get to a hospital immediately, medical care may still be needed and the accuser may be referred to the ESU University Health Center if more than 5 days have passed since the assault and no legal actions are planned.

Preservation of Physical Evidence Recommended: Prior to a forensic exam, the accuser is advised not to shower, bathe, douche, or brush their teeth.

All the clothing worn at the time of the assault should be saved and each article of clothing placed in a separate paper bag.

Plastic bags should not be used.

The accuser should not disturb anything in the area where the assault occurred, so that officers handling the investigation can obtain any additional physical evidence that may be available at the site.

The accuser should write down as much information as can be remembered about the assault and the accused.

If the accuser believes that they were given a date rape drug, advise them not to urinate until they are seen in the ER.

If the accuser cannot wait, advise them to collect the urine in a clean container with a lid and take it to the ER with them.

Access to Crisis and Follow up Counseling: Victim counselors are available to accusers of sexual assault even if they choose not to go to the hospital.

Calls for access to a crisis counselor can be made to the 24 hour hotline managed by Women's Resources of Monroe County (see resources on page 4).

For student accusers, ESU Counseling and Psychological Services (CAPS) is an option for care. Counselors are available on campus M-F, 8-4:30, and there is always an on-call counselor available on evenings and weekends.

If the aforementioned options are not of interest to the accuser, private counseling may be available through their own health insurance plan.

Confidential Employees: Confidential employees are members of the University staff and faculty who may work with accusers of sexual assault but are not required to report information shared about a sexual assault with the Title IX Coordinator or the University Police.

ESU's confidential employees include the psychologists in Counseling and Psychological Services (CAPS) and all employees of ESU's University Health Center.

The V.O.I.C.E. Center on campus is staffed by a victim advocate provided by Women's Resources of Monroe County.

She is also able to maintain confidentiality about assault reported to her.

Confidentiality: The University has a duty to investigate reports of sexual violence and sexual misconduct whether or not criminal charges are filed.

The obligation to investigate means that there will be University officials who will need to know the identity of students who are the subjects of reports of sexual assault and misconduct.

The University will make every effort to limit the scope of information that is shared or disclosed so as to respect student privacy concerns.

The University, however, cannot guarantee confidentiality.

Informal Resolution Procedure in Cases of Sexual Harassment: The Office of Diversity & Equal Opportunity has primary responsibility for resolving sexual harassment complaints.

The Director of Diversity/Ombudsperson or his or her designee may elect to initiate the informal resolution procedure at the time of filing either an oral or written complaint with the Office of Diversity & Equal Opportunity.

Informal resolution procedures may involve efforts to mediate a resolution between the accuser and accused (this option is not available where the accuser is a student).

Informal resolution procedures afford all interested persons an opportunity to respond and submit information and documentation regarding the allegations.

The internal investigation process may vary on a case by case basis, but will include: acknowledging the receipt of the accuser within ten (10) business days (notwithstanding extenuating circumstances); providing an explanation of the process and anticipated time frame for action; and notifying the accused of the complaint and providing an opportunity to respond to the allegations.

No formal findings or discipline will result from the informal resolution procedure.

If informal resolutions procedures are unsuccessful at resolving the allegations, the Director of Diversity/Ombudsperson may initiate a formal complaint procedure to reach a determination on the merits of the allegations.

Formal Complaint Procedures:

Formal Processes for Resolution of Student on Student Complaints: All violations of the university policy on sexual harassment, sexual violence and other sexual misconduct are considered major violations of the student code of conduct and therefore must be heard in accordance with the Formal Hearing Process outlined in the Student Code of Conduct ([ESU Student Handbook](#)).

The timeline for resolution of cases submitted to the Student Conduct Office is approximately 60 class days from the date the initiating report is filed.

Student vs. student cases must always be handled through the formal hearing process, and the university has adopted the preponderance of evidence as the standard of evidence in its student conduct processes.

Formal Processes for Resolution of cases involving non-students: The following guidelines will apply if the informal resolution procedure is not elected or if the parties are unable to reach a satisfactory resolution:

The Office of Diversity & Equal Opportunity will acknowledge complaints filed or allegations of sexual harassment, sexual violence or other forms of sexual misconduct brought to its attention within ten (10) business days (notwithstanding extenuating circumstances), informing the accuser of the process and anticipated time frame for action.

A copy of the acknowledgment letter will be forwarded to the appropriate manager.

The accused will be provided with a copy of the written complaint, a copy of this procedure and the corresponding policy, a sample response form, and an explanation of the process and anticipated time frame for action.

The accused will be provided with an opportunity to respond and submit information and documentation responding to the accuser within ten (10) business days.

The Office of Diversity and Equal; Opportunity will date stamp receipt of the accused's response.

The formal complaint process will include an investigation, the scope of which will be determined by the Director of Diversity/Ombudsperson.

Investigations will include, but are not limited to, accessing and reviewing records and interviewing the accuser, the accused and others who may have relevant information.

The investigation is not intended to interfere with any rights of an individual under state or federal law, nor rights under an applicable collective bargaining agreement.

Upon completion of the investigation report, the accuser(s) and the accused will be given the opportunity to review the Investigation Report (note taking is permitted, photocopying is prohibited).

Both the accuser(s) and the accused will have the opportunity to respond in writing in the Investigation Report in ten (10) business days.

The Director of Diversity/Ombudsperson will make a preliminary determination as to whether the complaint, if proven, would constitute a violation of this policy.

The investigation report will be forwarded to the appropriate Vice President or the President for final determination of whether a violation of this policy has occurred.

Within ten (10) business days, the Vice president will send a determination letter to the accusers(s) and the accused.

Copies of the determination letters will be given to the Director of Diversity/Ombudsperson.

If there is insufficient information to warrant a finding of a violation of this policy, the accuser and the accused will be notified by the appropriate Vice President or the President that no violation of this policy has occurred and the complaint will be closed.

If the appropriate Vice President or the President determines that a violation of this policy has occurred, appropriate discipline may be initiated.

The University will make every effort to ensure the sexual harassment immediately stops and does not recur.

The accuser will be informed of the corrective measures taken to prevent such recurrences.

If it appears that there may be a violation of another University policy, the Director of Diversity/Ombudsperson will refer the matter to the appropriate Vice President or the President.

Additional Rights: Individuals are encouraged to use the complaint procedures in this policy but are not required to do so and may choose to pursue other civil and legal options.

University employees may choose to pursue the complaint through their appropriate collective bargaining agreement grievance procedures.

Students and employees may choose to make use of the procedures of external agencies listed below.

Managers are encouraged to pursue matters through the University's Merit Principles procedure before proceeding to an external agency.

The procedures set forth in this policy are not intended to interfere with any legal rights provided under the statutes of the Commonwealth of Pennsylvania or the United States of America. In addition, the procedures set forth in this policy are not intended to interfere with any rights an employee may have under their appropriate collective bargaining agreement.

Forms:

[Sexual Misconduct Procedure Checklist](#)

Related Procedures:

[Sexual Harassment Procedures](#)

Other Relevant Information:

N/A

Contacts:

External Agencies:

Pennsylvania Human Relations Commission
Riverfront Office Center
1101-1125 S. Front Street, 5th Floor
Harrisburg, PA 17104-2515
Tel: 717-787-9784
Text Telephone (TT/TTY): 717-787-7279
Web: <http://www.phrc.state.pa.us/>

Equal Employment Opportunity Commission
801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
Tel: 215-440-2606
Text Telephone (TT/TTY): 1-800-669-6820
Web: <http://www.eeoc.gov>

U.S. Department of Education
Office for Civil Rights, Philadelphia Office
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107
Tel.: 215-656-8541
Fax: 215-656-8605
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

University Contacts

Vice President for Student Affairs and Title IX Coordinator
Room 121, Reibman Administration Bldg.
Tel.: 570-422-3463

Assistant Vice President for Student Affairs and Deputy Title IX Coordinator
403 Normal Street
Tel.: 570-422-2863

University Police
Hemlock Suites
Smith Street, Ground Floor
Tel.: 570-422-3064
Fax: 570-422-3677
911 (Emergencies)

Director of Diversity/Ombudsperson
Room 115, Reibman Administration Bldg.
Tel.: 570-422-3656

Counseling & Psychological Services
Flagler Metzgar Center, 2nd Floor
Tel.: 570-422-3277

Director of Human Resources Management
Room 105, Reibman Administration Bldg.
Tel.: 570-422-3422

University Health Services
Flagler-Metzgar, 1st Floor
Tel.: 570-422-3553

Women's Center Office
411 Normal Street
Tel.: 570-422-3378

VOICE Center
411 Normal Street
Tel.: 570-422-3225

Office of Accessible Services Individualized for Students (OASIS)
Rm. 341 Hoeffner Science and Technology Center
Tel.: 570-422-3954
Fax: 570-422-3898