



Kutztown University Policy DIV-007

Sexual Harassment

Kutztown University is committed to creating an environment free of sexual harassment for all its employees and students.

Harassment on the basis of sex may constitute a violation of Title VII of the U.S. Civil Rights Act of 1964, a violation of Title IX of the Education Amendments of 1972, and/or a violation of the Pennsylvania Human Relations Act, Section 5A.

Sexual Harassment by an administrator, faculty member, staff or student will not be tolerated. The University will actively and expeditiously investigate any allegation of sexual harassment, and if it is determined that sexual harassment has occurred, the University will take appropriate disciplinary action. An employee found to have engaged in misconduct constituting sexual harassment will be disciplined. Disciplinary actions could include: verbal warning, written reprimand, a requirement to attend counseling or training, suspension, or dismissal. A student found to have engaged in misconduct constituting sexual harassment will be disciplined, which may include dismissal from the university. Further, if a Kutztown University employee or student is sexually harassed by an off-campus vendor, the aggrieved party is encouraged to report this harassment to the Office of Social Equity.

Complainant: The person who is alleging the occurrence of sexual harassment.

Respondent: The person whose actions are alleged to have violated the sexual harassment policy.

CONFIDENTIALITY

In the interest of maintaining confidentiality, only parties to the complaint (i.e. complainant, respondent, witnesses, etc.) will participate in the investigation. Details of the complaint, as well as the names of the individuals connected to the investigation, will be disclosed only if necessary to protect the rights of any party involved or as otherwise required by law or collective bargaining agreement.

DEFINITION OF SEXUAL HARASSMENT

Sexual advances, requests for sexual favors, and/or other verbal or physical conduct that is pervasive or severe and objectively offensive may constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement; or
2. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such an individual; or
3. such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

SEXUAL VIOLENCE, DOMESTIC VIOLENCE, DATING VIOLENCE, & STALKING

In compliance with Title IX, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and the Violence Against Women Act, allegations of sexual violence, domestic violence, dating violence, and stalking will also be reported and investigated pursuant to this policy.

Where a complaint is filed against a Kutztown University non-student employee or off-campus vendor, pursuant to this policy, the complaint will be investigated by the Office of Social Equity. Where a complaint is filed against a student, the complaint will be investigated pursuant to the Student Code of Conduct Sexual Offenses Policy through the Dean of Students Office.

Sexual harassment of students, which includes acts of sexual violence (including, but not limited to, rape, sexual assault, sexual battery, and sexual coercion) is a form of sex discrimination prohibited by Title IX and includes physical sexual acts:

1. against a person's will;
2. where a person is incapable of giving consent as a result of his/her use of drugs or alcohol; or
3. where an individual is unable to give consent due to an intellectual or other disability.

Domestic violence includes asserted violent misdemeanor and felony offenses committed by:

1. The complainant's current or former spouse;
2. The complainant's current or former cohabitant;

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3. A person similarly situated under domestic or family violence laws; or
4. Anyone else against an individual protected under domestic or family violence laws.

Dating violence is defined as violence by a person who is or has been in a romantic or intimate relationship with the complainant. Whether such a relationship exists will be gauged by the length, type, and frequency of interaction between the complainant and respondent.

Stalking is defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

Federal law prohibits sexual harassment, including sexual violence, domestic violence, dating violence and stalking and requires a prompt and equitable resolution of complaints. Pursuant to Title IX, "responsible employees" must report incidents of alleged sexual violence, domestic violence, dating violence, and/or stalking to Public Safety and the Title IX Coordinator. A "responsible employee" is any employee who¹:

- 1) Has the authority to take action to redress sexual violence;
- 2) Has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or
- 3) A student could reasonably believe has this authority or duty.

Pursuant to this Policy, all Kutztown University employees are considered "responsible employees" consistent with the above. Exceptions to the reporting requirement are pastoral counselors and licensed campus professional counselors acting in their capacity as such and certified Heart at KU volunteers while on call. When a university "knows or reasonably should know" sexual violence has occurred, the university must investigate and take immediate action to eliminate sexual violence, prevent the recurrence of sexual violence, and redress the effects of sexual violence.

Complainants are encouraged, but not required, to file a report with the Department of Public Safety and/or any other law enforcement agency. Kutztown University Public Safety employees must notify complainants of their right to file an administrative Title IX sex discrimination complaint with the university in addition to, and independent of, the criminal complaint. The university's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the university of its independent Title IX obligation to investigate a complaint. Complainants should take every precaution to preserve evidence as proof of sexual violence, domestic violence, dating violence, and stalking offenses.

Absent unusual circumstances, within sixty (60) days of a complaint of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking being filed, the Dean of Students Office, in the case of allegations against a student, or the Office of Social Equity, in the case of allegations against a non-student employee or off-campus vendor, will seek to conclude the investigation and will notify the parties, in writing, there has been a resolution of the

¹ United States Department of Education Office for Civil Rights (2014, April 29) Questions and Answers on Title IX and Sexual Violence. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

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complaint. Where a complainant reports an alleged incident of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, the outcome of the complaint will be determined based on a preponderance of the evidence (i.e., it is more likely than not a violation has occurred). Depending on the nature of the allegation, the university may be required to notify law enforcement in order to protect the university community. Pending the resolution of the complaint, based on the circumstances, the university may be required to take or enforce remedial measures to prevent further contact between the parties. In addition, training and education are available to prevent the recurrence of sexual harassment, sexual violence, domestic violence, dating violence, and stalking.

Pursuant to Title IX requirements, the university's Title IX Coordinator is Mr. Jesus A. Peña, Esq., and the Deputy Title IX Coordinator is Ms. Jacqueline C. Fox, Esq. The role of the Title IX Coordinator is to oversee investigations involving sexual harassment, sexual violence, domestic violence, dating violence, and stalking of students and employees to ensure university-wide compliance with Title IX. The offices of the Title IX Coordinator and Deputy Title IX Coordinator are located in the Office of Social Equity, Old Main A Wing, and either may be reached by telephone at (610) 683-4700 or by e-mail at socialequity@kutztown.edu.

CONSENSUAL RELATIONSHIPS

A personal, amorous or non-academic relationship may interfere with the faculty/student relationship and may violate standards of conduct expected of all faculty by the university. Personal, amorous or non-academic relationships should not be permitted to interfere with or compromise the academic integrity of the faculty/student relationship.

Sexual relations between a faculty member and a current student of that faculty member is determined by the university to be inappropriate and/or unethical. This determination also applies to relations between a graduate student and an undergraduate student when the graduate student has supervisory academic responsibility for the undergraduate. Furthermore, the determination also applies to relations between a current student and an administrator, coach, advisor, program director, counselor, or residential staff member who has supervisory responsibility for the student.

As with the faculty/student relationship, this policy also covers employee/employee consensual relationships. An employee with professional responsibility or supervision of another employee who has real or potential power and authority over that individual in a variety of roles including, but not limited to, supervisor, mentor, committee member, etc., shall not abuse that power.

Absent contradictory evidence, an amorous or sexual relationship between individuals where one possesses or appears to possess authority or power over another is presumed to be exploitative and shall constitute unprofessional conduct. The consensual nature of such a relationship does not necessarily constitute a defense to a charge of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, or related unprofessional conduct especially when the indirect result of the relationship creates a hostile workplace or academic environment.

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Therefore, any faculty member or employee in a supervisory role who enters into a sexual relationship with a student or another employee, enters into that relationship with risk. These persons will be subject to scrutiny if a complaint of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, is leveled against the faculty member by a student or against the “supervisory person” by the “subordinate person” or if a third party brings a complaint.

RESPONSIBILITIES

Each dean, department chairperson, and/or administrative supervisor is responsible within his/her respective area for the implementation, dissemination, and explanation of this policy. Assistance in accomplishing these tasks may be obtained by contacting the Office of Social Equity. It is the obligation of each student, faculty member, and staff member to adhere to this policy.

This policy applies to all individuals on campus regardless of sex. Men may not sexually harass women, women may not sexually harass men, women may not sexually harass women, and men may not sexually harass men.

FALSE COMPLAINTS

Any person who knowingly files a false complaint may be subject to disciplinary action, including dismissal from the university.

THE UNIVERSITY PROCEDURE

STEP 1: All charges of sexual harassment, sexual violence, domestic violence, dating violence, and stalking must be referred to the Office of Social Equity.

In order to ensure the effective handling of all incidents of sexual harassment, sexual violence, domestic violence, dating violence, and stalking, this policy requires that all such reports be directed to the same office on campus, namely the Office of Social Equity. At this first stage of the procedure, the individual or individuals who alert(s) the Office of Social Equity of a possible incident might not be the actual aggrieved party. Both the complainant and the respondent may be accompanied by an advisor, who is a member of the campus community, when meeting with Office of Social Equity staff.

A potentially aggrieved party may bring a complaint of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking to a supervisor, department chair or dean, who, in turn, shall refer the complainant to the Office of Social Equity.

In the event there are two or more complainants and/or two or more persons (respondents) charged with sexual harassment, sexual violence, domestic violence, dating violence, and/or

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stalking in the same set of circumstances, the Director of Social Equity or his/her designee within the Office of Social Equity, will decide whether the complaint will be handled jointly or separately. For purposes of this document, the phrases “the complainant” and/or “the respondent” may be plural.

The role of the Director of Social Equity, or his/her designee within the Office of Social Equity, in this procedure is to serve as a fact finder. The Director of Social Equity, or his/her designee within the Office of Social Equity, must act in such a manner as to ensure that all parties to a complaint are protected by appropriate due process and confidentiality. Should the Director of Social Equity be accused of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, the Provost will act in his/her place. Should the University President be accused of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, the matter will be referred to the Pennsylvania State System of Higher Education, Office of the Chancellor.

STEP 2: The complainant meets with a representative from the Office of Social Equity.

The purpose of this meeting is to discuss the complaint, to gather information, and to provide the complainant a copy of this policy, which sets forth the rights and procedures governing complaints. At this initial meeting, the Director of Social Equity, or his/her designee within the Office of Social Equity, clarifies for the complainant whether or not the allegations may constitute sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking. The Director of Social Equity, or his/her designee within the Office of Social Equity, then reviews the appropriate complaint procedure for the benefit of the complainant. Complainants are not required to file a written complaint.

STEP 3: The complainant will receive additional clarification regarding university procedures regarding the alleged violation and general information regarding counseling.

If requested by the complainant, the Director of Social Equity, or his/her designee within the Office of Social Equity, will provide general guidance for the complainant in order to:

- (a) clarify the nature of the alleged violation.
- (b) review the university’s complaint procedure.
- (c) review the complainant’s responsibilities of filing a written or oral complaint.
- (d) give guidelines for what a written complaint should contain, in the event the complainant chooses to file his/her complaint in writing.
- (e) apprise the complainant, in writing, of counseling, health, mental health, advocacy, and other relevant services.
- (f) apprise the complainant, in writing, of possible remedial actions with respect to changing transportation, academic, residence, or working situations, if reasonably available.

STEP 4: The complainant files a complaint.

A complainant may file a complaint either orally or in writing. The complainant will be given the opportunity to provide the names of any witnesses and/or documentation in support of his/her complaint.

In the event that a complainant does not wish to file a signed complaint him or herself, the Director of Social Equity, or his/her designee within the Office of Social Equity, will prepare a written statement with the following information: the names of the complainant and the respondent, a short description of the alleged violation as stated by the complainant, and the date(s) of the alleged violation. Whether the complainant submits a written complaint or the Office of Social Equity prepares a written statement, the allegations will be investigated.

STEP 5: The Director of Social Equity must decide on an appropriate course of action regarding the complaint.

There are two possible courses of action following the filing of a complaint:

- A) Based on the complainant's written or spoken account of alleged harassment, sexual violence, domestic violence, dating violence, and/or stalking, the Director of Social Equity, or his/her designee within the Office of Social Equity, determines there is insufficient reason to proceed with a complaint and counsels the complainant regarding this decision. In this case, the investigation would stop at this point and the complainant would be notified of the decision of the Office of Social Equity.
- B) Based on the complainant's account of alleged harassment, sexual violence, domestic violence, dating violence, and/or stalking and a finding of sufficient reason to proceed, the Director of Social Equity, or his/her designee within the Office of Social Equity, will promptly initiate an impartial fact-finding investigation.

STEP 6: The respondent is notified of the complaint.

Absent unusual circumstances, within 14 calendar days of a complaint being filed, the Office of Social Equity will notify the respondent that a complaint of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking has been filed against him/her. Depending on the circumstances, the respondent will be notified either orally or in writing. If the notification is in writing, for reasons of confidentiality, the notification will be mailed to the respondent's home address, unless the respondent is a student who resides on campus. Furthermore, if the notification is in writing, it will be sent by certified mail so that only the respondent can sign for it personally.

STEP 7: The Director of Social Equity meets with the respondent.

Absent unusual circumstances, within 14 calendar days of having received notification of the complaint, the respondent must meet with the Director of Social Equity, or his/her designee within the Office of Social Equity, to discuss the complaint. The respondent will be given the

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opportunity to respond to the allegations and provide any and all defenses, as well as the names of any witnesses and/or documentation in his/her defense.

The University will take every precaution to protect the complainant and any witnesses from retaliatory action by the respondent. Retaliation is defined as any adverse action, which causes a tangible academic or employment detriment to an individual for engaging in a protected activity. In fact, the respondent will be informed he/she is not to retaliate against the complainant in any way nor against any other person connected to the complaint as that action may result in a separate disciplinary action. Further, the respondent will be informed he/she is not to communicate directly with the complainant regarding the claim of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking as this may be perceived as an attempt to discourage the complainant from pursuing the complaint. The Office of Social Equity will attempt to resolve the complaint informally, if appropriate. If the complaint is not resolved informally, a formal investigative process will follow.

STEP 8: The Office of Social Equity seeks to resolve the complaint and/or to mediate a solution.

The Director of Social Equity, or his/her designee within the Office of Social Equity, may choose to meet with the complainant, absent unusual circumstances, within 7 days of having met with the respondent. Upon meeting with the respondent and the complainant, the Director of Social Equity, or his/her designee within the Office of Social Equity, will seek to resolve the complaint. One of two outcomes is possible:

(a) The Director of Social Equity, or his/her designee within the Office of Social Equity, is satisfied the respondent will make appropriate changes in his/her behavior. The Director of Social Equity, or his/her designee within the Office of Social Equity, meets with the respondent to counsel the respondent about resolution of the complaint (e.g. removing inappropriate pictures from a conspicuous location). A record of the resolution would be signed by the respondent and would be kept in the Office of Social Equity for three years. The Office of Social Equity will inform the complainant the matter has been resolved, without providing detailed information about the resolution.

(b) A mediated solution could be achieved which is satisfactory to the complainant and the respondent. A record of the resolution would be kept in the Office of Social Equity for three years.

(c) If the complaint involves an allegation of sexual violence, domestic violence, dating violence, or stalking, there shall be no attempt at mediation, as mediation will not be an option to resolve such complaints. Instead, the matter shall be referred to Public Safety, if not already reported, and/or resolved as set forth below.

STEP 9: Action by the University President and Final Disposition of the Complaint.

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If the complaint cannot be resolved as set forth in Step 8, the Director of Social Equity, or his/her designee, will continue the investigation to its conclusion. A report containing any and all factual findings will be submitted to the University President or his/her designee. Upon receiving the report, the President or his/her designee, will decide what action will be taken, including, but not limited to, the dismissal of the complaint or the imposition of discipline. The decision of the President or his/her designee shall be final.

All records of the formal process, including the decision of the President or his/her designee, will be kept in the Office of Social Equity for three years. In the event of an adverse ruling against the respondent, a copy of the decision of the President or his/her designee, shall be placed in the respondent's personnel file. The complainant will receive a letter from the Director of Social Equity stating there has been a resolution of the complaint, without providing specific details regarding the resolution.

TRAINING

Employee and student training as to the contents of this policy is available on an annual basis throughout the year, both in person and electronically. Additionally, Kutztown University employees are required to participate in this training on an annual basis.

POLICY DISSEMINATION

A current hard copy of this policy is available in the following locations: the student handbook, The Key; the President's Office; the Office of Social Equity; the Department of Public Safety; the Dean of Students Office; the Women's Center; and the university Library's collection. Hard copies of this policy may be obtained from the Office of Social Equity.

An electronic copy of this policy is available in the following locations: the Kutztown University website under "Policies"; the Office of Social Equity webpage under "Links of Interest"; the Dean of Students Office webpage; the Student Conduct webpage using the Title IX link under "News, Notes & Links"; the Housing and Residential Services Office webpage under "About Us" in the "Services and Policies" section; the Women's Center webpage under "Resources"; and the Athletics webpage under "Compliance."

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