

Kutztown University of Pennsylvania

<http://www.kutztown.edu/thekey>

**Student Code of Conduct
Sexual/Gender Based Offenses Policy¹
2019-2020**

Updated 09/10/2019

Members of the university community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to the university's attention, and a responding party is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are not repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

Kutztown University is committed to creating an environment free of sexual harassment for its students. Sexual harassment is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972. Title IX prohibits student-on-student sexual/gender-based misconduct and requires a prompt and equitable resolution of complaints. In addition, the Campus SAVE Act or Campus Sexual Violence Elimination Act (amendments to the Violence Against Women Act) require the University to have policies and training about not only sexual violence, but also other crimes including dating violence, domestic violence and stalking.

Sexual/gender based harassment of students, which includes acts of sexual violence (including, but not limited to, non-consensual sexual intercourse, non-consensual sexual assault, non-consensual sexual contact, sexual harassment and sexual exploitation) is a form of sex discrimination prohibited by Title IX and includes physical sexual acts: against a person's will, where a person is incapable of giving consent as a result of drug or alcohol use, or where an individual is unable to give consent due to an intellectual or other disability.

Sexual/gender-based misconduct will not be tolerated. The University will actively and expeditiously investigate any allegation of sexual/gender-based misconduct and if it is determined that misconduct has occurred, the University will take appropriate disciplinary action. Allegations of sexual harassment, other than allegations against a student for sexual/gender-based misconduct addressed in this policy, will be investigated pursuant to the

¹ The official policy is published in the KU student handbook, *The Key*; this standalone copy of the policy is made available as a reference. Please consult the official policy in the student handbook as needed.

process outlined in “The University Procedure” section of the *Kutztown University Sexual Harassment Policy and Procedures* (KU Policy DIV-007).

This document contains important policy information about the following:

- Title IX Coordinator
- Sexual/Gender Based Misconduct
- Consent to Sexual Activity
- The Importance of Preserving Evidence
- Rights of Complainants
- Rights of Respondents
- University as Complainant
- Reporting Incidents
- Requesting Accommodation & Interim Measures
- Responsible Employees
- Retaliation
- Student Conduct Process for Sexual/Gender Based Misconduct
- Steps in the Student Conduct Process
- Privacy of the Student Conduct Process
- Sanction Guidelines for Sexual/Gender Based Misconduct
- Federal Statistical Reporting Obligations
- Federal Timely Warning Reporting Obligations
- Sexual Violence: Risk Reduction Tips and Strategies

Title IX Coordinator

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 Fox, Esq. The role of the Title IX Coordinator and Deputy Title IX Coordinator is to oversee investigations involving sexual/gender-based offenses against students and 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.

The University’s Title IX Coordinator shall be kept informed of the proceedings and serve as a resource during the student conduct process. The Dean of Students Office shall provide the University’s Title IX Coordinator information containing, but not limited to, the disposition of the student conduct process, hearing, sanction(s), and/or decision(s) on appeal, if any.

Sexual/Gender Based Misconduct

Kutztown University prohibits all forms of sexual/gender-based misconduct, which include the following:

1. Non-Consensual Sexual Intercourse:

Non-Consensual Sexual Intercourse (or attempts to commit the same) includes all acts involving any penetration of a bodily cavity with a foreign object, tongue, digit, or genitalia, however slight, by a person upon another person, without consent and/or by physical force. Non-consensual sexual intercourse occurs when imposed under any of the following circumstances:

- a. When the complainant is incapable of giving legal consent for mental, developmental, or physical reasons and this fact is known or reasonably should have been known by the person committing the act; or
- b. When the act is committed without the person's explicit consent or is against the person's wishes. Non-consensual sexual intercourse incorporates any or all of the following: the use of force, threat, intimidation, coercion, duress, violence, or by causing a reasonable fear of harm; or
- c. When the complainant is incapable of consenting because of incapacitation as a result of alcohol and/or drug consumption or unconsciousness at the time of the act, and this fact is known or reasonably should have been known by the person committing the act.

2. Non-Consensual Sexual Conduct:

- a. **Sexual Assault:** Sexual assault (or attempts to commit the same) is the imposition of non-consensual sexual conduct (excluding non-consensual sexual intercourse) however slight, with any object, by a person upon another person, without consent and/or by physical force. It includes, but is not limited to caressing, fondling, or touching a person's genitalia, buttocks, or breasts. It shall also be considered sexual assault when the complainant is compelled to caress, fondle, or touch the respondent's or another person's genitalia, buttocks, or breasts.
- b. **Sexual Contact:** Any non-consensual, intentional bodily contact (or attempts to commit the same) in a sexual manner, though not involving contact with/of/by

breasts, buttocks, groin, genitals, mouth or other orifice, however slight, with any object, by a person upon another person, without consent and/or by physical force.

3. Sexual Harassment:

Any prohibited behavior defined under the Kutztown University Sexual Harassment Policy (DIV-007):

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:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement; or
- b. 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
- c. 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.

4. Sexual Exploitation:

Taking non-consensual sexual advantage of another: Sexual exploitation includes, but is not limited to, prostituting another student, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over another person, the non-consensual recording, photographing, or transmitting of identifiable images of private sexual activity and/or intimate body parts (including genitalia, groin, breasts or buttocks), knowingly allowing another person to surreptitiously watch otherwise consensual sexual activity, engaging in non-consensual voyeurism, knowingly transmitting or exposing another student to sexually transmitted infection or diseases without the knowledge of the student, exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals, and sexually based stalking and/or bullying.

5. Dating Violence, Domestic Violence, Stalking or Other Related Behaviors:

- a. Dating Violence: 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.

- b. Domestic Violence: Violent offenses committed by the complainant's current or former spouse, the complainant's current or former cohabitant, a person similarly situated under domestic or family violence laws, or anyone else against an individual protected under domestic or family violence laws.
- c. Stalking: The repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and safety of another person that has the effect of intimidating another person.

Other related behaviors, such as harassment, physical abuse, threats, intimidation, or bullying that fall under the Harm to Others standard or other standards of the *Student Code of Conduct* may be applied in addition to any of the above offenses.

Consent to Sexual Activity

Consent:

Consent to sexual activity, known as effective consent, is words or actions indicating permission to engage in mutually agreed upon sexual activity. Effective consent must be informed, voluntary and represented clearly by actions or words. Effective consent to sexual activity may not: be gained by force, the threat of force, coercion or intimidation; be gained when a person is incapacitated as a result of physical (i.e. substance use) or developmental conditions and that fact is known or should reasonably be known by another; or as otherwise defined under the definition of Non-Consensual Sexual Intercourse.

- Consent to sexual activity may be withdrawn at any time.
- Consent to one form of sexual activity does not equate consent to another form of sexual activity.

Force:

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent.

Coercion:

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When

someone makes clear to you that he/she does not want sex, that he/she wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Incapacitation:

A person cannot consent if he/she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “No.”

The Importance of Preserving Evidence

If a complainant goes to the hospital, local or campus police may be called, but the complainant is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a complainant but will not obligate the complainant to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the complainant decide later to exercise it.

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault or rape must be collected from the complainant’s person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe someone has sexually assaulted you, you should go to the hospital emergency room, before washing yourself or your clothing. **The nearest hospital to the University with a SANE (Sexual Assault Nurse Examiner) is Reading Hospital & Medical Center.** The hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault,

bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

The **HEART at KU** program (Healing Environment Response Team; Call 844-789-SAFE or Text: “SAFE BERKS” to 20121) under the direction of *SafeBerks*, is available on call 24 hours a day, 7 days a week. Services provided by *HEART at KU* & *SafeBerks* are available to all people who have been sexually assaulted and/or who have suffered relationship violence. Public safety, residence hall staff, or health center nurses are able to assist you in contacting these advocates. HEART advocates can:

- Offer support to the complainant (if requested) during initial interviews by police on campus.
- Accompany the complainant to the hospital for testing and treatment, if needed, or decide to have SafeBerks meet the student at the hospital to offer support during testing.
- Distribute resource information concerning referral services available to the complainant and offer information concerning access to those services.

Rights of Complainants

The following rights of a complainant in sexual/gender-based misconduct will be afforded in all University student conduct procedures:

1. Report sexual/gender-based misconduct to the Kutztown University Department of Public Safety and Police Services, the Dean of Students Office, Title IX Coordinator, and/or local police for adjudication in both or either jurisdiction. A complainant is encouraged, but not required, to report allegations of sexual misconduct, dating violence, domestic violence or stalking to the Department of Public Safety and Police Services and/or off-campus law enforcement.
2. Receive consideration for amnesty for conduct violations (i.e. alcohol policy) related to the same incident in question;
3. Provide input on whether or not to move forward with Student Code of Conduct charges and/or participate in a student conduct hearing;

4. Have every effort made to respect a student's privacy;
5. Contact supportive agencies such as a rape crisis center;
6. Be free from intimidation or harassment by the alleged respondent or others;
7. Request a change of on campus living, working and/or transportation arrangements, academic schedules and/or other schedules and/or those of the respondent, if reasonably available, by the Dean of Students Office and/or Title IX Coordinator;
8. Have a "no-contact" and/or "stay away" directive issued to one or both parties of a complaint by Dean of Students Office and/or Title IX Coordinator;
9. Select an advocate of choice to accompany the student through all University student conduct processes;
10. Protection against discussion of non-relevant, past sexual history during the hearing;
11. Have the option to remain physically present during the entire student conduct hearing and participate fully in the hearing, including the opportunity to present evidence and witnesses;
12. Be informed simultaneously, in writing, of the outcome of the hearing, the potential for appeal by either party, the final disposition of appeal, if applicable, and when the results become final;
13. Have the case decided by the preponderance of evidence (i.e. it is more likely than not the sexual offense occurred);
14. Make up any academic work missed while participating in student conduct or criminal proceedings related to the incident in question.

When filing a complaint, the complainant will receive a copy of this policy, which sets forth the rights and procedures governing complaints. The process for addressing complaints against a student under this policy is governed by the student conduct procedures defined in the *Document on Student Rights & Welfare* and incorporates specific provisions of this policy specific to sexual/gender-based offenses.

Rights of Respondents

Consistent with the rights of students charged with student misconduct as defined and enumerated in Article IV of the *Document on Student Rights & Welfare*, the respondent is also entitled to select an advocate of choice to accompany him/her through all University student conduct processes. Respondents have the right to participate fully in the hearing, present evidence and witnesses during the hearing, and be informed of the outcome of the hearing, the potential for appeal by either party, the final disposition of appeal, if applicable, and when the results are final.

When responding to a complaint, the respondent will receive a copy of this policy, which sets forth the rights and procedures governing such complaints. The process for addressing complaints against a student under this policy is governed by the student conduct procedures defined in the *Document on Student Rights & Welfare* and incorporates provisions of this policy specific to sexual/gender-based offenses.

University as Complainant

In some cases, in which a complainant chooses not to pursue charges of sexual/gender-based misconduct against a student, the University may elect to proceed as the complainant, based upon the circumstances of a particular case. In such instances, the University may pursue charges without the complainant's agreement or cooperation.

Reporting Incidents

When consulting campus resources, all parties should be aware of confidentiality, privacy and mandatory reporting in order to make informed choices about reporting incidents of sexual misconduct, dating violence, domestic violence or stalking. On campus, some resources can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other resources are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them.

In cases where the sexual/gender-based misconduct is reported, the Title IX Coordinator, Dean of Students Office and/or other appropriate university official will conduct a prompt, impartial, good faith investigation concerning the allegations.

In cases where students who desire that details of an incident be kept confidential, students may speak with on- or off-campus mental health counselors, or off-campus rape crisis resources who can maintain confidentiality. Conversely, reports submitted to and/or received by the Title IX Coordinator or other responsible employee will include the identity of those involved including

the identity of the complainant for the appropriate follow up and investigation (see *Responsible Employees* section below). Counselors are available to help a student and can be seen on an emergency basis (during a crisis). Confidentiality only applies when the counselor is licensed and acting in his or her professional capacity when speaking with the complainant. In addition, a student may speak, on- and off-campus, with members of the clergy and chaplains, who will also keep reports made to them confidential.

How/Where to Report an Incident

Students are encouraged to report sexual/gender-based misconduct (non-consensual sexual intercourse, non-consensual sexual assault, non-consensual sexual contact, sexual harassment, sexual exploitation, and/or dating violence, domestic violence and stalking) to the Department of Public Safety and Police Services immediately either by the individual or through a University staff member for criminal investigation and/or reporting.

Students are also encouraged to report sexual/gender-based misconduct (non-consensual sexual intercourse, non-consensual sexual assault, non-consensual sexual contact, sexual harassment, sexual exploitation, and/or dating violence, domestic violence or stalking) to the Dean of Students Office and Title IX Coordinator for an administrative investigation.

University employees should immediately report information regarding any sexual/gender-based misconduct (non-consensual sexual intercourse, non-consensual sexual assault, non-consensual sexual contact, sexual harassment, sexual exploitation, and/or dating violence, domestic violence or stalking) to the Department of Public Safety and Police Services and to the Title IX Coordinator.

To file a report concerning sexual or gender-based misconduct involving students, use the following online form or contact one of the offices below:

Sexual Misconduct & Intimate Partner Violence Report Form:

- https://cm.maxient.com/reportingform.php?KutztownUniv&layout_id=1
 - The report form is also available at www.kutztown.edu/studentconduct

Public Safety & Police Services

Old Main, B wing (Basement Level)

Emergencies: 610-683-4001

Non-Emergencies: 610-683-4002

Web: <http://www.kutztown.edu/publicsafety>

Dean of Students Office

119 Stratton Administration Center
Phone: 610-683-1320
Web: <http://www.kutztown.edu/studentconduct>

Title IX Coordinator
Office of Social Equity
Old Main, A Wing
Phone: 610-683-4700
Web: <http://www.kutztown.edu/social-equity>

What Happens After I Report an Incident?

The complainant will be informed of medical services, counseling services and advocacy services available both on- and off-campus by Public Safety and Police Services. The complainant may have another person accompany him/her through the process. Kutztown University Department of Public Safety and Police Services employees should 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 student conduct and 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.

Upon receiving a complaint, the Dean of Students Office will provide a copy of this policy to the complainant and review the student's rights in sexual/gender-based misconduct investigations including support/advocacy services and interim measures that may need to be implemented. The Dean of Student's Office will also advise both parties on the investigation/student conduct process including the rights of both parties.

The Office of Social Equity will respond to questions about, or allegations of, sexual harassment by persons who are in authority over a student such as a faculty member, staff, or employer.

Absent unusual circumstances, within sixty (60) to ninety (90) days of a complaint of a sexual/gender based misconduct being filed, the Dean of Students Office, in the case of allegations against a student for sexual/gender based misconduct, or the Title IX Coordinator, in the case of allegations against a non-student employee or off campus vendor for sexual/gender based misconduct, will attempt to conclude the student conduct process/investigation and will notify the parties that there has been an outcome to the complaint. An individual may also

contact the Department of Education's Office of Civil Rights for additional information regarding Title IX at the following website: <http://www2.ed.gov/about/offices/list/ocr/index.html>.

Requesting Accommodations & Interim Measures

Even if you do not choose to report (i.e., to off campus police or Kutztown University Public Safety and Police Services), there are options available to you, if requested and reasonably available. As noted in the *Rights of Complainant* section of this policy, students may request **living, academic, working**, and/or **transportation accommodations** through the Dean of Students Office or the Office of Social Equity. Students may also request additional protective interim measures such as a “**no contact**” order which is enforceable under the *Student Code of Conduct*. If a student meets with an intake officer in the Dean of Students Office these options will be reviewed with the student at that time but may also be requested by directly contacting the following offices:

Dean of Students Office

119 Stratton Administration Center

Phone: 610-683-1320

Web: <http://www.kutztown.edu/studentconduct>

Title IX Coordinator

Office of Social Equity

Old Main, A Wing

Phone: 610-683-4700

Web: <http://www.kutztown.edu/socialequity>

Responsible Employees

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 who:

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 University 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.²

Retaliation

It is a violation of the *Student Code of Conduct* and University policy to retaliate against any person making a complaint of sexual or gender-based misconduct or against any person cooperating in the investigation, including witnesses, of any allegation of such misconduct. Retaliation is defined as any adverse action that causes a tangible academic or employment detriment to an individual for engaging in a protected activity. Retaliation may include but is not limited to intimidation, threats, harassment, and other adverse action threatened or taken against any such complainant or third party. Retaliation should be reported immediately to the Title IX Coordinator and/or the Dean of Students Office.

The University will take appropriate steps to protect the complainant and any witnesses from retaliation by the respondent. The respondent will be informed 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 not to communicate directly with the complainant regarding the sexual/gender-based misconduct claim as this may be perceived as an attempt to discourage the complainant from pursuing the complaint.

Student Conduct Process for Sexual/Gender Based Misconduct

The process for filing charges against a student by a University community member as well as the process and rights of students responding to an allegation of student misconduct, including sexual/gender based misconduct, is defined in the *Document on Student Rights and Welfare* (DSRW) as published in the student handbook, *The Key* (<http://www.kutztown.edu/TheKey>). The DSRW defines in detail the procedural due process guarantees and rights of the respondent, the student conduct hearing process and the appeal process available to both parties. Additional rights of students in cases of sexual/gender-based offenses are enumerated above and are

² Kutztown University Sexual Harassment Policy (DIV-007)

designed to ensure both parties have access to the same rights in such cases including the right to an advocate, right to appeal and the right to be present and fully participate in a student conduct hearing. In addition to regular training provided to conduct boards and hearing officers, specific training regarding the adjudication of sexual/gender-based misconduct cases and this policy will also be provided to hearing authorities.

There shall be no attempt at mediation to resolve complaints alleging sexual violence such as non-consensual sexual intercourse, non-consensual sexual assault, stalking, dating violence, or domestic violence.

In campus hearings, legal terms like “guilt” and “innocence” are not applicable, but the university never assumes a student is in violation of university policy. The university will consider the concerns and rights of both the complainant and the respondent. Campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources. The university reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students’ rights and personal safety.

Steps in the Student Conduct Process

- Once an incident is reported to the Dean of Students Office, initial outreach will be sent within approximately 1-3 business days inviting the complainant to schedule an intake meeting to provide policy and resource information.
- At an intake meeting, the complainant will be provided a copy of this policy, advised of available support services and informed of their rights. Additionally, the following information will be reviewed:
 - Any immediate safety needs of the complainant.
 - Appropriate referrals to medical care, depending on when the crime was reported.
 - Assist the complainant with reporting sexual or gender-based violence to the Department of Public Safety and Police Services and/or local police, if requested.
 - Information regarding on and off campus mental health and advocacy services.
 - Information about advocacy and support services available through the Healing Environment and Response Team (HEART) through SafeBerks.
 - Options for living, academic, transportation and/or working accommodations.
 - Options for interim measures including if a “no contact” directive should be issued which would be applicable to both parties.
 - The need to implement other interim measures such as facility restrictions and/or interim suspensions, as appropriate.

- Review the student conduct process, including input from the complainant regarding moving forward with student conduct charges and/or to participating in an investigation and/or student conduct hearing.
- In most instances where an investigation is required or requested by the complainant, a notice of investigation will be sent to the respondent with 1-5 business days from when the formal complaint was filed.
- Upon completion of the investigation, a report will be provided to the Title IX Coordinator in approximately 15-20 business days for review and approval of charges.
- Upon Title IX Coordinator review, both parties to the complaint will be notified of next steps. If charges are warranted, both parties will meet separately with a case officer at a preliminary briefing within 2-7 business days.
- At separate preliminary briefings, the respondent and complainant will be provided an opportunity to review the investigation report. The respondent will have the opportunity to accept or deny the allegations; the complainant will be informed of the respondent's response to the charges.
- If the respondent accepts responsibility for the alleged student conduct violations at the preliminary briefing, the student will be issued sanctions and both parties will be simultaneously notified of the outcome, in writing, within approximately 2-5 business days.
- If the respondent denies responsibility for any or all of the alleged student conduct violations at the preliminary briefing, a hearing will be scheduled and all parties will be notified of a hearing date in writing in approximately 2-5 business days.
- Absent unusual circumstances, a hearing will occur in approximately 10-15 business days from the date of scheduling. At the hearing, both parties to the complaint will have equal opportunity to present information, question witnesses and have an advocate of choice attend the hearing. With respect to questioning, "Direct questioning of complainant and respondent by either party will not be permitted."³ In such cases, questioning is permitted but will be directed to and facilitated by the conduct board. The university also retains the discretion to provide accommodations of its own hearing procedures when it concludes that the accommodation is warranted by the situation.
- Following the hearing, the university will simultaneously inform the complainant and respondent, in writing, of the outcome of the hearing within approximately 5-10 business days from the hearing date.
- Both the respondent and complainant will be provided information regarding their right to appeal within 5 business days from the date of notification. If an appeal is submitted by one party, the other party will be notified and provided an opportunity to review the appeal and submit a response as part of the appeal process.

³ Document on Student Rights & Welfare, Article IV.H.5

- Regardless of the outcome, the university will enforce the retaliation policy of the *Sexual/Gender Based Offenses Policy* and *Student Code of Conduct* as well as any on-going interim measures (e.g. no contact orders) that remain in place.

Privacy of the Student Conduct Process

In the interest of maintaining and respecting the privacy of participants in cases of sexual/gender-based misconduct, only parties to the complaint (i.e. complainant, respondent, witnesses, etc.) and third parties expressly permitted by University policy (i.e. advocates) will participate in the student conduct process/investigation. Details of the complaint, as well as the names of the individuals connected to the student conduct process/investigation, will be disclosed only as required or permitted by law or University policy.

Kutztown University neither encourages nor discourages the further disclosure of the notice of the final outcome of the student conduct process/investigation by either the complainant or the respondent in cases of sexual/gender-based misconduct.

Sanction Guidelines for Sexual/Gender Based Misconduct

The determination of a sanction for a sexual/gender-based offense should be proportionate to the severity of the violation in question. Consistent with the *Document on Student Rights & Welfare* (Article IV.I.11), consideration of a student's previous disciplinary history may also be considered a factor in sanctioning, if such a record exists. Non-consensual sexual intercourse is considered an egregious violation; therefore, suspension or dismissal of a student found responsible for such a violation is an option in all sanctioning determinations or recommendations by authorized hearing authorities and University officials. Given the wide range of violations under non-consensual sexual conduct, sexual harassment, dating violence, domestic violence or stalking, broader sanction parameters will be considered including but not limited to, disciplinary probation, deferred suspension, suspension or dismissal. All sanctions for student conduct cases, including sexual/gender-based misconduct, are incident and student specific and not considered proscriptive.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual/gender-based misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but information must be passed along to campus law enforcement for publication

in the annual Campus Security Report. The information to be shared includes the date, the location of the incident, and the type of incident. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. This reporting protects the identity of the complainant and may be done anonymously. Additional information regarding Clery Act reporting or the annual Campus Security Report may be found online at the following website: <http://www.kutztown.edu/Clery>.

Federal Timely Warning Reporting Obligations

Complainants of sexual/gender-based misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. If such notice is required, the university will not disclose a complainant's name or other identifying information while still providing enough information for community members to make safety decisions in light of the danger.

Sexual Violence: Risk Reduction Tips and Strategies

With no intention to blame the complainant, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below, suggestions to avoid a non-consensual sexual act being committed against you are also offered:

1. If you have limits, make them known as early as possible.
2. Tell a sexual aggressor "NO" clearly and firmly.
3. Try to remove yourself from the physical presence of a sexual aggressor.
4. Find someone nearby and ask for help.
5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help reduce your risk for a complaint of sexual misconduct being made against you:

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
2. Understand and respect personal boundaries.
3. Don't make assumptions about consent; about someone's sexual availability; about whether a person is attracted to you; about how far you can go or about the person's physical and/or mental ability to consent. If there are any questions or ambiguity then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if the state is self-inflicted.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.