

POLICY #1.38

Policy Name: Sexual Harassment (Title IX)

Policy Responsible Department: Human Resources

Effective Date: August 13, 2020

I. SCOPE

This policy applies to all Philadelphia College of Osteopathic Medicine (“PCOM” or “College”) faculty, staff, employees, students (collectively “Community Members”), and all volunteers, visitors, vendors, alumni and contractors (“Third Parties”).

II. POLICY STATEMENT

PCOM is committed to providing Community Members and Third Parties with an environment free from sexual harassment.

III. DEFINITIONS

Clear and Convincing Evidence Standard: Having confidence that a conclusion is based on facts that are highly probable to be true.

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent: An affirmative decision to engage in mutually agreed upon sexual activity and is given by clear words or actions. Consent may not be inferred from silence, passivity or lack of resistance alone. Furthermore, consent to one form of sexual activity does not imply consent to other forms of sexual activity and the existence of a current or previous dating, marital or sexual relationship is not sufficient to constitute consent to additional sexual activity. Assent shall not constitute consent if it is given by a person who, because of youth, disability, intoxication or other condition, is unable to lawfully give his or her or their consent.

Personal Support Counselors: Staff members who are employed by PCOM as a resource and support for all PCOM students. Reports of sexual harassment made to Personal Support Counselors are confidential to the extent permitted by law or trigger PCOM’s responsibility to issue a timely warning to incidents reported that are confirmed to pose a substantial threat of bodily harm or danger to Community Members.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Responsible Employees: All PCOM employees are considered responsible employees who are mandated to report any information they receive about instances of sexual harassment.

Sexual Harassment: Conduct on the basis of sex that meets one or more of the following: (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; (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 College's education program or activity. (3) Sexual Assault as defined in 20 U.S.C. 1092 (f) (6) (A) (V), dating violence as defined in 34 U.S.C. 12291 (a) (10), domestic violence as defined in 34 U.S.C. 12291 (a) (8), and stalking as defined in 34 U.S.C. 12291 (a) (30). See Appendix A for the Sexual Harassment conduct and definitions listed above.

IV. JURISDICTION

This policy applies to sexual harassment when the conduct occurs on campus or in connection with an officially College sponsored program or activity where the College has substantial control over the context which the sexual harassment occurred. The complainant must be, at the time of the complaint, participating or attempting to participate in a PCOM educational program. All conduct must occur within the United States.

V. TITLE IX PROVISIONS

Title IX of the Education Amendments of 1972 ("Title IX") prohibits discrimination on the basis of sex in any educational programs or activities that receive federal funding, whether they take place in the facilities of a school or at an event sponsored by the school at another location. The Office of Civil Rights of the US Department of Education ("OCR") is responsible for overseeing compliance with Title IX regulations to help institutions comply with its principles.

Questions regarding Title IX, including its application or concerns about noncompliance, should be directed to the Equity and Title IX Coordinator. In the absence of the Equity and Title IX Coordinator, questions and reports can be directed to a Deputy Coordinator, whose information can be found on <https://www.pcom.edu/title-ix/>. To contact the PCOM Title IX Coordinator:

Equity and Title IX Coordinator
4190 City Ave
Rowland Hall, Suite 144
Philadelphia, PA 19131
Email: titleixcoordinator@pcom.edu
Phone: (215) 871-6528

VI. REPORTING

A. Reporting to PCOM

Individuals who believe they have experienced or witnessed sexual harassment are encouraged to make a report to PCOM in good faith. Reports of sexual harassment may be made to the College via:

1. PCOM Hotline at 844-337-3613;
2. pcom.ethicspoint.com;
3. Completing the form at: pcom.edu/title-ix; or
4. Contacting the PCOM Equity and Title IX Coordinator or a Deputy Title IX Coordinator: Contacts can be found on the PCOM Title IX website: <https://www.pcom.edu/title-ix/>

Anonymous Reporting: Reports of sexual harassment may be made anonymously to PCOM through any of the above-listed means. To keep the report anonymous, do not include any identifying information (such as name, email, etc.). Because of the College's obligation to maintain a safe environment for all members of the College community, the College may pursue an investigation of an anonymous report to the extent possible. However, if the complainant wishes to remain anonymous, the College's ability to investigate and respond may be limited.

B. Reporting to Law Enforcement

In the event of an emergency, including physical danger or physical injuries, which require immediate attention, an individual should call 911 for immediate help. In addition to emergency or urgent reporting via 911, reports may be made to law enforcement as follows:

Philadelphia, PA:

Philadelphia Special Victims Division (PA)
(215) 685-3251 or the precinct where the incident occurred.

Suwanee, GA:

Gwinnett County Police Department (GA)
(770) 513-5700

Moultrie, GA:

Moultrie Police Department (GA)
(229) 985-3131

A report to law enforcement does not trigger notification to PCOM. If a complainant wishes to report an incident to law enforcement and PCOM, please refer to PCOM reporting options listed in Section VI (A) of this policy.

C. Reporting to Outside Agencies

A person may file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), Office for Civil Rights (OCR) of the U.S. Department of Education, the Department of Justice, and/or the appropriate state agency in either Georgia or Pennsylvania.

State and Local

Philadelphia Commission on Human Relations:
601 Walnut Street, Suite 300 South, Philadelphia, PA, 19106
phcr@phila.gov
Ph: 215-686-4670

Georgia Commission on Equal Opportunity:
7 Martin Luther King, Jr. Dr. SE, Suite 351 – Agriculture Building,
Atlanta, GA 30334
Ph: 800-473-6736

Pennsylvania Human Relations Commission (PHRC):
101 S. Second Street, Suite 300
Harrisburg, PA 17101
Ph: 717-787-4410

Equal Employment Opportunity Commission (EEOC):

Georgia:
100 Alabama Street SW, Suite 4R30
Atlanta, GA 30303
Ph: 800-669-4000

Pennsylvania:
801 Market Street, Suite, 1300
Philadelphia, PA 19107-3127
Ph: 800-669-4000
pdocontact@eoc.gov

Department of Education - Office of Civil Rights (OCR):

Georgia:

61 Forsyth Street S.W., Suite 19T10
Atlanta, GA 30303-8927
Ph: 404-974-9406
OCR.Atlanta@ed.gov

Pennsylvania:

100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Ph: 215-656-8541
OCR.Philadelphia@ed.gov

Assistant Secretary for Civil Rights Office for Civil Rights:

National Headquarters
U.S. Department of Education
Lyndon Baines Johnson Dept. of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
Fax: 202-453-6012
TDD: 800-877-8339
OCR@ed.gov

D. Timely Warnings

Individuals who experience sexual harassment should be aware that the College must issue immediate timely warnings of incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to Community Members. The College will make every effort to protect confidentiality to the maximum extent possible, while still providing enough information for Community Members to make safety decisions in light of the circumstances.

E. Student Amnesty for Violation of Alcohol and/or Drug Use

To encourage the reporting of sexual harassment, PCOM will not discipline student complainants, respondents, or witnesses for their personal consumption of drugs or alcohol at or around the time of the alleged conduct, where such consumption did not place at risk the health or safety of another person. The College also has the discretion to grant amnesty for other minor conduct violations by student complainants, respondents, and

witnesses at or near the time of an incident, where granting amnesty is likely to encourage reporting or a more complete response from a party or witness during an investigation. Amnesty decisions regarding minor conduct violations will be made by the Equity and Title IX Coordinator in consultation with the Chief Compliance Officer. PCOM may impose educational remedies to address and prevent incidents of drug or alcohol use, or in response to minor conduct violations, including in instances where amnesty has been granted.

F. Mandated Reporting by PCOM Employees, Faculty and Staff

The College considers all faculty, staff and employees to be Responsible Employees who are mandated to promptly report to the Equity and Title IX Coordinator or Chief Compliance Officer any information they receive about sexual harassment in violation of this policy. Responsible Employees who become aware of conduct prohibited by this policy that occurs on a PCOM campus or in an officially College sponsored program or activity must report promptly to the Equity and Title IX Coordinator the names of the parties and any witnesses, as well as the date, time, location, and nature of the incident. The faculty, staff or employee should only report what they know and should not investigate on their own. Failure to make a mandated report as a Responsible Employee may result in disciplinary action.

Personal support counselors, employed by PCOM, may be limited in their ability to make reports to the Equity and Title IX Coordinator due to their licensure requirements.

G. Retaliation

Retaliation against an individual for making an allegation of sexual harassment, for cooperating in an investigation of a complaint or for not cooperating in the investigation of a complaint is prohibited and a violation of this policy. Retaliation and intimidation can take many forms, including but not limited to, continued abuse or violence, threats and intimidation. Any individual or group of individuals, not just a complainant or respondent, can engage in retaliation. Anyone who believes that they have been retaliated against for making a complaint or for cooperating in an investigation or hearing should immediately contact the Equity and Title IX Coordinator, a Deputy Title IX Coordinator, or the Chief Compliance Officer.

VII. REPORTING AND INTAKE

1. Upon receipt of a report of alleged sexual harassment, the College will address safety concerns that may be present and provide the complainant with information for on and off-campus resources. The complainant will also be provided an overview of the College's procedures for resolving allegations covered by this policy.
2. The Equity and Title IX Coordinator or designee conducting the intake process will discuss with the complainant preliminary details about the alleged misconduct to assess whether the matter falls within the College's jurisdiction.
3. The Equity and Title IX Coordinator or designee will communicate to the complainant in writing the decision regarding next steps for informal or formal procedures, in addition to offering supportive measures.

VIII. ADVISORS

Both complainants and respondents may have an advisor attend any informal or formal resolution process. Advisors are expected to make themselves available for scheduled interviews and meetings, though the College may, in its discretion, take into consideration reasonable scheduling difficulties of an advisor. Advisors who become disruptive during the process will receive a warning and may be asked to leave interviews or meetings.

If either party does not have an Advisor, the College will provide one upon written request to the Equity and Title IX Coordinator.

IX. SUPPORTIVE MEASURES

1. Upon receipt of a report of sexual harassment, the College may provide reasonable and appropriate supportive measures designed to preserve the safety of all parties involved and the College community as a whole, maintain the integrity of the investigative and resolution process, and deter possible retaliation. The College may provide supportive measures regardless of whether the student seeks to engage in the College's internal processes. Any supportive measures will be coordinated by the Equity and Title IX Coordinator. Such remedies may include, but are not limited to, "no contact" orders and changes in academic schedule. Other options may be considered as appropriate and feasible. Any remedies approved will

be reviewed and modified as conditions warrant. All supportive measures are non-punitive and non-disciplinary.

2. Individuals who have experienced or witnessed sexual harassment are encouraged to seek emotional support as soon as possible, either on or off-campus. On-campus resources for students include personal support counselors on each campus, who can be accessed by contacting the Student Affairs Office. Community members can also access Carebridge Counseling Services, 24 hours a day, 7 days a week. Counselors are trained to provide crisis intervention and provide referrals for longer-term care as necessary. Carebridge can be reached at: 800-437-0911 or online at myliferesource.com, access code: R5SAF.

Community Resources are available to support PCOM Community members:

Moultrie, GA:

MOSAIC: mosaicgeorgia.org
866-900-6019 (24 hour hotline)

Philadelphia, PA:

Victim Services Center, victimservicescenter.org
888-521-0983 (24 hour hotline, Montgomery County)

WOAR – Philadelphia Center Against Sexual Violence
woar.org
215-985-3333 (24 hour hotline, Phila. County)

Suwanee, GA:

The Haven: valdostahaven.org
800-334-2836 (24 hours hotline)

X. COMPLAINANT AND RESPONDENT RIGHTS SUPPORT GUIDELINES

PCOM will provide both the complainant and respondent a list of their rights and support guidelines while engaged in reporting and resolution process associated with this policy. Where it is alleged that a Third Party committed sexual harassment, a complaint may be made to the Equity and Title IX Coordinator, who will evaluate the complaint in consultation with the Chief Compliance Officer to determine appropriate steps.

XI. RESOLUTION PROCESS

A. Informal Resolution Process

The informal resolution process is not applicable when a formal written complaint is brought against an employee by a student.

In some instances, complainants who believe they have experienced sexual harassment may wish to take action regarding the conduct, by means other than a formal resolution process. Either party may request, or the Equity and Title IX Coordinator may suggest, use of the informal resolution process. Informal resolution may encompass a range of conflict resolution strategies including but not limited to arbitration and mediation. Informal resolution can result in disciplinary measures as an outcome.

To proceed with the informal resolution process, the complainant must first submit a formal written complaint. All parties must provide voluntary, written consent to the informal resolution process. The Equity and Title IX Coordinator will provide written notice regarding the allegations, the requirements of the informal resolution process, and details on the outcome of the process and record retention. PCOM retains the option to conduct the informal resolution process internally or through an outside third party.

At any point in the informal resolution process either party may withdraw from the informal process by notifying the Equity and Title IX Coordinator in writing and reconvene under the formal resolution process.

B. Formal Resolution Process

1. **Review of the Formal Complaint:** The Equity and Title IX Coordinator will review the formal written complaint to determine if the complaint falls under jurisdiction of Title IX. If the Equity and Title IX Coordinator determines that the complaint does not fall under Title IX, the Chief Compliance Officer will be notified to assess for PCOM Code of Conduct or policy violations, as applicable. PCOM follows the Department of Education requirements related to mandatory and permissive dismissal, refer to the 2020 Title IX Federal Regulations for further information:
<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
2. **Notices to the Parties:** If the Equity and Title IX Coordinator determines that the College will move forward with an investigation. The Equity and Title IX Coordinator will notify the parties in writing of the College's decision to move forward with an investigation. The parties will be informed of the allegation(s) that will be investigated. Notice will also be provided stating that the burden of proof falls on the College, that the standard of evidence will be applied correctly

and there is a presumption of innocence during the formal resolution process.

3. **Investigation:** If warranted, the Equity and Title IX Coordinator will designate at least one trained investigator to conduct an investigation of the complaint, who may be a Deputy Coordinator, or another qualified investigator. The parties will have an equal opportunity to identify witnesses and provide relevant evidence. The investigator will interview the party's relevant witnesses. The identified investigator will objectively evaluate all relevant evidence without prejudice of the facts at issue. The investigator will protect each party's privacy by requiring written consent before using medical, psychological, or similar treatment records during the investigation.

At the conclusion of the investigation, the investigator will prepare an investigative, written report that describes the investigation and material information obtained. Prior to the finalization of the investigative report, the complainant and the respondent will be afforded time to review the draft report, along with relevant, admissible, non-privileged evidence and have 10 (ten) business days to provide a written response. The investigator will consider these responses in the final report. The written response from the parties will be included with the final report from the investigator. The investigator's final report may include a reply to the parties written response. The investigator will create a final report and provide the parties, and their advisors, access to the final report and relevant, admissible, non-privileged evidence 10 (ten) business days prior to the start of the hearing.

4. **Hearing:** A live hearing will be scheduled at a mutually agreeable time for all parties. PCOM will conduct live hearings in person or can host the hearings through virtual means, if requested by either party. The live hearing will occur where each party can be present with their advisor. The live hearing will be recorded and saved for seven years per the Department of Education retention requirements.

The hearing will include a head decision maker who will ask the questions of each party throughout the live hearing, except for cross examination. The head decision maker will determine relevancy of all questions and evidence. Both the complaint and the respondent will have an opportunity to cross examine the other party. The questions for cross examination will be asked by each party's advisor during the hearing.

During the live hearing, questions regarding a complainant's prior sexual history will not be allowed as part of any questioning or cross examination.

5. **Determination:** At the conclusion of the hearing, the head decision maker will review all information and decide using a clear and convincing evidence standard whether the respondent is responsible or not responsible for the allegations.
6. **Sanctions:** If a determination is made that the respondent is responsible for a policy violation, appropriate sanctions will be imposed on the respondent. Violations of this policy may result in the imposition of a full range of sanctions up to and including separation and dismissal.
7. **Written Notice of Outcome and Remedies:** Within five (5) business days of the date of the determination decision, PCOM will provide the parties with concurrent written notice of the outcome of the live hearing. The notice of outcome will include an explanation of how and why the decision maker reached their conclusions. The complainant will receive notice of any sanctions imposed on the respondent that directly relate to the complainant. Following the outcome, further supportive measures may be put into place.
8. **Appeal Procedure:** Either party may file a written appeal within five (5) business days of the date of the written outcome on one of the following grounds: (a) there was a procedural irregularity that affected the outcome of the matter; (b) there is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter (c) The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. The written appeal should be sent to the Equity and Title IX Coordinator who will coordinate the appeals process with the appeals officer. The Equity and Title IX Coordinator will notify the other party that an appeal has been filed and provide the other party with three business days to respond, if desired. The appeals officer will decide the appeal within 10 business days of the date of the written appeal. The Equity and Title IX Coordinator will provide concurrent written notice of the outcome of the appeal to both parties within this time frame. The decision of the appeal officer is the final decision of the College.

The College must provide an opportunity for an appeal to both parties when a formal complaint is dismissed. A party may go

through the above outlined appeal process after the dismissal of a formal complaint.

- C. **Temporary Process Delays:** If at any time the complaint, respondent or PCOM needs to, in good faith, delay the proceedings; timely notification will be made to all parties regarding the need for suspension of the informal or formal resolution process. Such reasons may include but are not limited to: the absence of a party, a party’s advisor or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. A plan for resuming the process will be communicated in a timely manner to all parties.

- D. **Disability and Religious Accommodations:** Complainants, respondents, or witnesses who require disability and/or religious accommodations to participate in the formal or informal resolution procedures under this policy, or to make a report, should notify the Equity and Title IX Coordinator, who also serves as PCOM’s ADA/Section 504 Coordinator. Individuals in need of accommodation should ensure that sufficient notice is provided to the Equity and Title IX Coordinator to permit the evaluation of the request and related documentation.

- E. **Conflicts of Interest:** Any concerns regarding conflicts of interest for administrators designated to execute aspects of this policy should be brought to the attention of the Equity and Title IX Coordinator, the Chief Compliance Officer, or the Chief Human Resources Officer. Any administrator or the supervisor of any administrator with responsibilities for implementing this policy may designate another administrator to carry out those responsibilities, where necessary, to address a conflict of interest.

<u>Review Date</u>	<u>Reviewer</u>	<u>Revision</u>
August 13, 2019	President Cabinet	
February 28, 2020	Human Resources	February 28, 2020
August 12, 2020	Cabinet	Updates to comply with Final Rule

APPENDIX A
Sexual Harassment Conduct and Definitions

Sexual Harassment: Conduct on the basis of sex that meets one or more of the following: (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; (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 College's education program or activity. (3) Sexual Assault as defined in 20 U.S.C. 1092 (f) (6) (A) (V), dating violence as defined in 34 U.S.C. 12291 (a) (10), domestic violence as defined in 34 U.S.C. 12291 (a) (8), and stalking as defined in 34 U.S.C. 12291 (a) (30).

The below conduct and definitions are provided for reference. If there is a discrepancy between the definitions below and the definitions as stated in the current applicable regulation, the College will apply the definition as stated in the current applicable regulation.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Sexual Assault: Sex Offenses that include Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.

- *Rape (Except Statutory Rape)*- The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- *Sodomy*—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- *Sexual Assault With An Object*—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- *Fondling*—The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- *Incest*—Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- *Statutory Rape*—Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Stalking: is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.