



Policy Title	Interim Policy Prohibiting Sexual Harassment and Sexual Misconduct
Policy Category	Ethics, Integrity, and Legal Compliance
Policy Approval Date	November 4, 2016 (Original approval date)
Policies Superseded	Policy Prohibiting Sexual Misconduct, Relationship Violence, and Stalking
Responsible Office(s)	Vice President of Finance and Administrative Services
Related Policies	Interim Non-Discrimination and Non-Harassment Policy
Procedure	Interim Procedures for Resolution of Complaints under the Non-Discrimination and Non-Harassment Policy and the Policy Prohibiting Sexual Harassment and Sexual Misconduct
Frequency of Review	1 year
Date of Revision	August 14, 2020

If you believe you are the victim of Sexual Harassment or Sexual Misconduct, you are encouraged to immediately seek medical attention and/or assistance from law enforcement. Emergency resources are available from the following:

University Department of Public Safety

- The Department of Public safety is available 24-hours a day, year-round
- In an emergency, call 215-572-2999 or x2999 from any campus phone
- For all other calls, call 215-572-2800 or x2800 from any campus phone

Cheltenham Township Police Department

- Emergency: 911
- Phone: 215-885-1600
- Location: 8230 Old York Road, Elkins Park, PA 19027

Abington Memorial Hospital

- Phone: 215-481-2000 (24-hour dispatcher)
- Location: 1200 Old York Rd, Abington, PA 19001

I. GLOSSARY

- *Advisor* means a person chosen by a party or appointed by Arcadia University (the “University”) to accompany the party to meetings related to the Formal Grievance Process, to advise the party on that process, and to accompany the party to the hearing, if any, including conducting cross-examination, if applicable.

- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, Sexual Misconduct, or Retaliation for making a report to the University or participating grievance process.
- *Confidential Resource* means an employee or campus organization who/that is not a Mandated Reporter of notice of Sexual Harassment, Sexual Misconduct, and/or Retaliation (irrespective of that person's status as a Campus Security Authority under the Clery Act). Some off-campus organizations are also Confidential Resources. These organizations are listed below in Section VI.
- *Day* means a business day (Monday through Friday) when the University is open.
- *Education Program or Activity* means locations, events, or circumstances where Arcadia exercises substantial control over both the Respondent and the context in which the Sexual Harassment or Sexual Misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Arcadia.
- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged, and whether the conduct violated Arcadia's policies.
- *Formal Complaint* means a document submitted or signed by the Complainant or signed by the Director of the Office of Equity and Civil Rights (OECR)/Title IX Coordinator alleging a Policy violation by a Respondent and requesting that the University investigate the allegation(s). A Formal Complaint may be filed with the Director of OECR/Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in Section IV. It must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint. If a form is submitted that does not meet this standard, the Director of OECR/Title IX Coordinator will contact the Complainant to ensure that, if the individual's intent is to file a Formal Complaint, it is filed correctly. (Wherever the Director of OECR/Title IX Coordinator is referenced herein, such reference shall be construed to include that individual's designee.)
- *Formal Grievance Process* means an investigation and, if applicable, hearing which occurs after a Formal Complaint is filed.
- *Hearing Officer/Panel* refers to those who have decision-making and sanctioning authority within the University's Formal Grievance Process.
- *Investigator* means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the University, including student Resident Assistants, who is obligated by this Policy to share knowledge, notice, and/or reports of Sexual Harassment, Sexual Misconduct, and/or Retaliation with the Director of OECR/Title IX Coordinator.
- *Notice* means the Director of OECR/Title IX Coordinator or a Mandated Reporter witnesses or hears about Sexual Harassment, Sexual Misconduct, and/or Retaliation from a Complainant or third party, or receives complaints of Sexual Harassment, Sexual Misconduct and/or Retaliation, verbally, in writing, or by any other means.

- *Notice of the Outcome* is the document sent to the Complaint(s) and Respondent(s) detailing the decision maker's finding regarding whether Respondent(s) violated this Policy, and the sanctions imposed on Respondent as a result of this violation.
- *Parties* includes the Complainant(s) and Respondent(s), collectively.
- *Protected Activity*: an individual reported, filed a Formal Complaint, or participated in an investigation, proceeding, or resolution of an allegation of conduct prohibited by this Policy.
- *Resolution* means the result of an informal process or Formal Grievance Process.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment, Sexual Misconduct, or Retaliation for engaging in a Protected Activity.
- *Resolution* means the result of an informal process or Formal Grievance Process.
- *Retaliation* means a student, employee, or the University may take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has engaged in Protected Activity under this Policy.
- *Sanction* means a consequence imposed by the University on a Respondent who is found to have violated this Policy.
- *Sexual Harassment* is an umbrella term including the offenses of Sexual Harassment, sexual assault, stalking, dating violence, and domestic violence. *See* Section XII (A).
- *Sexual Misconduct* is an umbrella term that encompasses sexual exploitation, discriminatory harassment based on sex as is defined in Section XII(B), and attempts of sexual assaults, domestic violence, or dating violence.
- *Title IX Coordinator* is the official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator throughout this Policy may also encompass a designee of the Title IX Coordinator for specific tasks.
- *Title IX Regulations* are rules published on May 19, 2020 by the United States Department of Education Office of Civil Rights specifying how recipients of Federal financial assistance covered by Title IX must respond to allegations of Sexual Harassment consistent with Title IX's prohibition against sex discrimination.¹
- *Title IX Team* refers to the Director of OECR/Title IX Coordinator, any Deputy Title IX Coordinators, Investigators, and hearing officers.

II. SCOPE

This Policy applies to all students,² staff members, faculty members, prospective students and employees,

¹ See the final Title IX Regulations [here](#).

² For the purpose of this Policy, the University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the University.

and trustees of the University, as well as volunteers, guests, visitors, and independent contractors.

The core purpose of this Policy is the prohibition of Sexual Harassment, Sexual Misconduct, and Retaliation. When an alleged violation of this Policy is reported, the allegations may be subject to resolution using the University's processes detailed in the [Interim Procedures for Resolution of Complaints under the Non-Discrimination and Non-Harassment Policy and the Policy Prohibiting Sexual Harassment and Sexual Misconduct](#), ("Interim Procedures") determined by the Director of OECR/Title IX Coordinator. Arcadia seeks to create an educational and working environment that is free from Sexual Harassment and Sexual Misconduct. Please see the [Office for Sexual and Gender-Based Violence Prevention & Education website](#) for more information about Arcadia's efforts and its commitment to a safe environment for all community members.

If the alleged conduct reported via a Formal Complaint falls within the U.S. Department of Education Office of Civil Rights' Title IX Regulations' definition of Sexual Harassment (see Section XII(A)), occurred within Arcadia's Education Program or Activity, and occurred within the United States, Arcadia will use the hearing procedures provided in **Appendix A** of the [Interim Procedures](#), which are consistent with 34 CFR 106.45 (which describes the hearing procedures required by the Title IX regulations). Arcadia may only use these procedures if the Complainant is participating or attempting to participate in Arcadia's Education Program or Activity at the time the Formal Complaint is signed/filed. If the alleged conduct falls outside of the definition of Sexual Harassment but would meet the definition of Sexual Misconduct, or could constitute Sexual Harassment but occurs outside of Arcadia's Education Program or Activity (for example, in an off-campus building) or outside of the United States, Arcadia will use the hearing procedures provided in **Appendix B** (for student Respondents) or **Appendix C** (for employee Respondents) of the [Interim Procedures](#).

A Formal Grievance Process will only be undertaken if the Respondent is a student or employee. When the Respondent is a student or employee, the grievance processes provided in Appendix B or Appendix C, as appropriate, may be available regardless of the status of the Complainant, who may or may not be an Arcadia community member.

If the Respondent is unknown or is not an Arcadia student or employee, that person's conduct will be addressed as appropriate. The Director of OECR/Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options, as appropriate, and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. In addition, the University may take other actions, as appropriate, to protect the Complainant against third Parties, such as barring individuals from University property and/or events.

When the Respondent is enrolled in or employed by another institution of higher education, the Director of OECR/Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Director of OECR/Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences Sexual Harassment or Sexual Misconduct in an externship, study abroad program, or other environment external to the University where policies and procedures of the facilitating or host organization may give recourse to the Complainant.

III. POLICY STATEMENT

The University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from Sexual Harassment, Sexual Misconduct, and Retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the Education Program or Activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of Sexual Harassment, Sexual Misconduct, or Retaliation. The University values the dignity of all persons and strives to balance the rights of the Parties during what is often a difficult time for all those involved.

The Office of Equity and Civil Rights is responsible for enforcing this Policy on behalf of the University and has Interim Procedures available to do so. This Policy does not address Discrimination, Harassment, or Bias Incidents as defined in and governed by the [University's Interim Non-Discrimination and Non-Harassment Policy](#).

This Policy is intended to meet the University's obligations under Title IX of the Education Amendment of 1972; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by Violence Against Women Reauthorization Act of 2013 (VAWA), with respect to its application to sex and gender-based misconduct; Title VII of the Civil Rights Act of 1964 (Title VII) with respect to its application to sex and gender-based misconduct; and other related and applicable law, including Pennsylvania's Act 16 of 2019.

IV. TITLE IX COORDINATOR

The Director of OECR serves as the University's Title IX Coordinator and oversees implementation of the Policy Prohibiting Sexual Harassment and Sexual Misconduct. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, and resolution of Complaints, and implementation of supportive measures (described in Section VII) to stop, remediate, and prevent Sexual Harassment, Sexual Misconduct, and Retaliation as prohibited under this Policy.

Inquiries concerning alleged violations of this Interim Policy, the Interim Procedures, compliance, and information should be directed to the **Director of the Office of Equity and Civil Rights/Title IX Coordinator**:

Nora Nelle
777 Limekiln Pike, Suite 112
Glenside PA 19038
nellen@arcadia.edu
215-517-2659

The University has also designated several Deputy Title IX Coordinators, whose responsibilities are overseen by the Director of OECR/Title IX Coordinator. Deputy Title IX Coordinators are also knowledgeable and trained on the Policy and related Procedures, and available to advise any individual about the courses of action available. Deputy Title IX Coordinators are available in the following offices:

- **Deputy Title IX Coordinator and Associate Dean of Students:** Dian Taylor-Alleyne, 215-572-2932, taylor-alleyne@arcadia.edu, Kuch Center, 450 S. Easton Road, Glenside, PA 19038

- **Deputy Title IX Coordinator and Head Coach, Women's Field Hockey & Lacrosse:** Erin Livingston, 267-620-4856, livingse@arcadia.edu, Kuch Center, 450 S. Easton Road, Glenside, PA 19038
- **Deputy Title IX Coordinator and Director of Student Services, The College of Global Studies:** Tim Barton, 215-572-4070, bartont@arcadia.edu, Larsen Hall, 450 S. Easton Road, Glenside, PA 19038
- **Deputy Title IX Coordinator and Director of Health, Safety, and Security, The College of Global Studies:** Maureen Gordon, Larsen Hall, Gordonm@arcadia.edu, 215-572-2900, 450 S. Easton Road, Glenside, PA 19038
- **Deputy Title IX Coordinator and Employee/Labor Relations Specialist:** Hector Figueroa, figueroah@arcadia.edu, 782 Limekiln Pike, Glenside, PA 19038
- **Deputy Title IX Coordinator and Director of the Office of Institutional Diversity** (To be assigned)

The University has also classified all employees, including student Resident Assistants, as Mandated Reporters. Staff in the Counseling Center and the Health Center are Confidential Resources, and are therefore excluded from this group.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Customer Service Hotline #: (215) 656-8541
Facsimile: (215) 656 8605
Email: OCR.Philadelphia@ed.gov
Web: <http://www.ed.gov/ocr>

V. INDEPENDENCE AND CONFLICT OF INTEREST

The Director of OECR/Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Director of OECR/Title IX Coordinator oversees all resolutions under this Policy and the related Procedures. The members of the Title IX Team are trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Director of OECR/Title IX Coordinator, contact the Chief Financial Officer, Joan Singleton, at 215-572-2943 or singletonj@arcadia.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Director of OECR/Title IX Coordinator.

Reports of Sexual Harassment, Sexual Misconduct, or Retaliation committed by the Director of OECR/Title IX Coordinator should be reported to the Chief Financial Officer, Joan Singleton, at 215-572-2943 or singletonj@arcadia.edu. Reports of Sexual Harassment, Sexual Misconduct, or Retaliation committed by any other Title IX Team member should be reported to the Director of OECR/Title IX Coordinator.

VI. NOTICE/REPORTS/FORMAL COMPLAINTS OF SEXUAL HARASSMENT, SEXUAL

MISCONDUCT, AND/OR RETALIATION, AND CONFIDENTIAL RESOURCES

The University is committed to treating all members of the community with civility, dignity, empathy, and respect. Any individual affected by Sexual Harassment, Sexual Misconduct, or Retaliation, whether as a Complainant, a reporter, a Respondent, or a third party, will be provided with resources, information, and options. The University recognizes that deciding whether to make a report and choosing how to proceed can be difficult decisions. Accordingly, the University encourages any individual who has questions or concerns to seek the support of campus and/or community resources which can provide guidance in making decisions, information about available resources and procedural options, and assistance to any party in the event that a report and/or resolution under this Policy is pursued. Individuals are encouraged to use all available resources, regardless of when or where the incident occurred.

A. Emergency Resources

The University encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of Sexual Harassment or Sexual Misconduct in order to ensure preservation of evidence for the purposes of seeking criminal or civil remedies, or in case an individual would like to make a Formal Complaint to the University. Seeking assistance from these resources can ensure preservation of evidence for the purposes of seeking criminal or civil remedies, or in case an individual would like to make a Formal Complaint to the University. The University will provide coordination with law enforcement, information about the University's resources and complaint processes, as applicable, and transportation to the hospital.

Options for Contacting Public Safety/Law Enforcement

Contact Public Safety and/or local law enforcement if you are in any immediate danger.

Arcadia University Department of Public Safety

The Department of Public safety is available 24-hours a day, year-round
In an emergency, call 215-572-2999 or x2999 from any campus phone
For all other calls, dial 215-572-2800 or x2800 from any campus phone

Cheltenham Township Police Department

Emergency: 911
Phone: 215-885-1600
Location: 8230 Old York Road, Elkins Park, PA 19027

Options for Seeking Medical Attention

Abington Memorial Hospital

Phone: 215-481-2000 (24 hours a day, seven days a week)
Location: 1200 Old York Road, Abington, PA 19001

A medical provider at Abington Memorial Hospital (“AMH”) can provide emergency and/or follow-up medical services and provide a forum to discuss any healthcare concerns related to the incident in a confidential medical setting. AMH can conduct a medical exam through a Sexual Assault Nurse Examiner (“SANE”). A medical exam will treat any injury or trauma and address concerns about sexually transmitted infections and pregnancy.

The University encourages individuals to bring a support person for accompaniment during the exam. Public Safety is also available to transport you to a medical exam.

There is a limited window of time following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any course of action. However, preserving evidence may assist in proving that an alleged crime occurred or in obtaining a Protection from Abuse Order from a judge. The decision to seek medical attention at AMH and to gather any evidence will remain confidential and will preserve the full range of options to seek resolution through the criminal legal system and/or the University’s complaint processes. In Pennsylvania, an individual can submit to a medical exam anonymously.

Preservation of Evidence

The Director of OECR/Title IX Coordinator will inform the Complainant, when applicable, of the importance of preserving evidence by informing the Complainant of the following actions:

1. Seek forensic medical assistance at the hospital, ideally within 120 hours of the incident (sooner is better)
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if they do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

For more information about evidence preservation, please contact the following organizations:

Victim Services Center of Montgomery County, Inc. 1- 888-521-0983 (24-hour crisis line)
325 Swede St.
Norristown, PA 19401
(610) 277-0932
www.victimservicescenter.org

Laurel House – 1-800-642-3150 (24-hour Hotline)
180 W. Germantown Pike #2
East Norriton, PA 19401
610-277-1860
Laurel-house.org

Women Organized Against Rape - 215-985-3333 (24-hour Hotline)
One Penn Center
1617 JFK Boulevard, Suite 800
Philadelphia, PA 19103
215-985-3315

Additional Options for Students:

Student Health Services

Phone: 215-572-2966 or x2966 from any campus phone
Location: Heinz Hall, Ground floor

Student Health Services (“SHS”) is staffed by certified nurse practitioners, part-time physicians, and secretarial support. Students are assessed and treated for illness and injuries by nurse practitioners with physician consultation and referral when necessary. Sexual health information, including STI testing, counseling and birth control options are available through SHS.

Emergencies are seen immediately by SHS staff during hours of operation. After-hours emergencies and those emergencies that cannot be handled at SHS are sent to area hospitals using private transportation or ambulance as necessary.

Additional Options for Employees:

Employee Assistance Program (free confidential counseling for Arcadia employees)
Carebridge
1-800-437-0911
www.myliferesources.com

B. Mandated Reporting

All employees of the University (including student Resident Assistants), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Director of OECR/Title IX Coordinator all known details of a report made to them in the course of their employment.

All of the below-listed individuals will maintain confidentiality when acting within the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor, or when required to disclose by law or court order.

On-campus Confidential Resources for Students

- Arcadia University Counseling Services
Heinz Hall, Ground Floor
215-572-2967
- Arcadia University Student Health Services

Heinz Hall, Ground Floor
215-572-2966

Confidential Resource for Employees

- Employee Assistance Program- Carebridge (free confidential counseling for Arcadia employees)
1-800-437-0911
www.myliferesources.com

Off-campus Confidential Resources for Students and Employees

Abington Memorial Hospital - 215-481-2000 (24-hour dispatcher)
HIV/AIDS and STI Testing

Medical exams

“Morning-after” pregnancy prevention

Sexual assault exam*

* *These exams do not obligate you to file criminal charges. Evidence is stored by law enforcement to preserve the chain of evidence. Additionally, under Pennsylvania law, these exams can be submitted anonymously.*

Pennsylvania Victims Compensation Assistance Program - 1-800-233-2339
www.pccd.state.pa.us (click on “Victim Services” tab)

National Domestic Violence Hotline - 1-800-799-SAFE (7223) OR 1-800-787-3224 (TTY)

Victim Services Center of Montgomery County, Inc. 1 - 888-521-0983 (24-hour crisis line)

325 Swede St.

Norristown, PA 19401

(610) 277-0932

www.victimservicescenter.org

Laurel House – 1-800-642-3150 (24-hour Hotline)

180 W. Germantown Pike #2

East Norriton, PA 19401

610-277-1860

Laurel-house.org

Women Organized Against Rape - 215-985-3333 (24-hour Hotline)

One Penn Center

1617 JFK Boulevard, Suite 800

Philadelphia, PA 19103

215-985-3315

Woar.org

Legal Aid of Southeastern Pennsylvania (Toll free helpline 1-877-429-5994)

625 Swede Street
Norristown, PA 19401
610-275-5400
Lasp.org

Religious and Spiritual Advisors

Rev. Beth Lyon (United Church of Christ) 215-887-1819
Pastor Henrik Sonntag (St. Paul’s Lutheran Church) 215-884-3005
Rev. Joseph Brandt (St. Luke’s Roman Catholic Church) 215-572-0128
Rabbi Saul Grife (Beth Tikvah-B’nai Jeshurun) 215-836-5677

Complainants may want to carefully consider whether they share personally identifiable details with non-Confidential Resources/Mandated Reporters, as those details must be shared by the Mandated Reporter with the Director of OECR/Title IX Coordinator. Mandated Reporters must promptly share *all* details of behaviors implicated by this Policy that they observe or have knowledge of, even if not reported to them directly by a Complainant, Respondent, or third-party.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Director of OECR/Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the University.

Mandated Reporters can remind individuals affected that a report to the Director of OECR/Title IX Coordinator does not generally require the individual to take any specific action and that individuals can receive supportive measures without seeking an informal process or the Formal Grievance Process.

Failure of a Mandated Reporter, as described above in this Section, to report an incident of Sexual Harassment or Sexual Misconduct of which they become aware is a violation of this Policy and can be subject to disciplinary action.

When a Mandated Reporter has engaged in Sexual Harassment, Sexual Misconduct, or other violations of this Policy, they have a duty to report their own actions. The University is not on notice of such actions when such an individual fails to report themselves, unless on notice by other means.

It is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they may do so.

Only a report to the Director of OECR/Title IX Coordinator will trigger the University’s obligation to respond to an allegation of Sexual Harassment or Sexual Misconduct.

When the Title IX Coordinator receives a report of Sexual Harassment or Sexual Misconduct from a Mandated Reporter, the Director of OECR/Title IX Coordinator will in all cases where the Complainant is identified, contact the Complainant to: (1) discuss the availability of supportive measures (See Section VII); (2) ask about the Complainant’s wishes with respect to supportive measures; (3) inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and (4) explain to the Complainant the process for filing a Formal Complaint.

C. Formal Complaints

Notice of Formal Complaints of Sexual Harassment, Sexual Misconduct, and/or Retaliation may be made to the University using any of the following options :

1. File a Formal Complaint with, or give verbal notice to, the Director of OECR/Title IX Coordinator:

Director of the Office Equity and Civil Rights and Title IX Coordinator

Nora Nelle

777 Limekiln Pike, Suite 112, Room 111

Glenside PA 19038

nellen@arcadia.edu

215-517-2659

Office Hours: Monday through Friday, 8:30am to 5:00pm

Outside of business hours, the office may be contacted at the email and phone number above. In the case of an emergency, contact Public Safety at 215-572-2999.

Deputy Title IX Coordinators are also available during business hours to receive Notice or Formal Complaints, which will then be communicated to the Director of OECR/Title IX Coordinator.

- **Deputy Title IX Coordinator and Associate Dean of Students:** Dian Taylor-Alleyne, 215-572-2932, taylor-alleyne@arcadia.edu, Kuch Center, 450 S. Easton Road, Glenside, PA 19038
- **Deputy Title IX Coordinator and Head Coach, Women's Field Hockey & Lacrosse:** Erin Livingston, 267-620-4856, livingse@arcadia.edu, Kuch Center, 450 S. Easton Road, Glenside, PA 19038
- **Deputy Title IX Coordinator and Director of Student Services, The College of Global Studies:** Tim Barton, 215-572-4070, bartont@arcadia.edu, Larsen Hall, 450 S. Easton Road, Glenside, PA 19038 and
- **Deputy Title IX Coordinator and Director of Health, Safety, and Security, The College of Global Studies:** Maureen Gordon, Larsen Hall, gordonm@arcadia.edu, 215-572-2900, 450 S. Easton Road, Glenside, PA 19038
- **Deputy Title IX Coordinator and Employee/Labor Relations Specialist:** Hector Figueroa, figueroah@arcadia.edu, 782 Limekiln Pike, Glenside, PA 19038
- **Deputy Title IX Coordinator and Director of the Office of Institutional Diversity** (To be assigned)

Notice may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Director of OECR/Title IX Coordinator.

2. Anonymous Reporting

Anonymous reports can also be made through the University's **Campus Conduct Hotline Reporting System**. Such reports can be made online or over the phone. Please note that while reports to the Campus Conduct Hotline can be anonymous, the University cannot

assure that the information disclosed will be kept confidential, and the anonymity of the report may limit the ability of the University to respond.

D. When a Complainant Does Not Wish to Proceed

An individual can provide notice or otherwise report Sexual Harassment or Sexual Misconduct without choosing to file a Formal Complaint. In cases in which the Complainant chooses not to file a Formal Complaint or otherwise requests that no formal action be taken and the circumstances allow the University to honor that request, the University will offer supportive measures to the Complainant and the community, but will not otherwise pursue formal action. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

The University will promptly review and respond to all reports of Sexual Harassment and Sexual Misconduct in an integrated, consistent manner that treats everyone with dignity and respect. The University will approach each report with an earnest intent to understand the perspective and experiences of each individual involved in order to ensure fair and impartial evaluation and resolution.

If a Complainant does not wish for their name to be shared or does not wish for an investigation to take place, they may make such a request to the Director of OECR/Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state and federal law. The Director of OECR/Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Director of OECR/Title IX Coordinator may sign a Formal Complaint to initiate a Formal Grievance Process upon completion of an appropriate risk assessment.

The Director of OECR/Title IX Coordinator's decision will be based on results of the risk assessment that show a compelling risk to health and/or safety that requires the University to pursue the Formal Grievance Process to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Arcadia may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Director of OECR/Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Director of OECR/Title IX Coordinator executes the Formal Complaint, they do not become the Complainant. The Complainant is still the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the University's ability to remedy and respond to notice/reports may be limited if the Complainant does not participate in the grievance process.

If the Complainant elects not to sign a Formal Complaint, they can change that decision if they decide to pursue a Formal Complaint at a later date.

VII. SUPPORTIVE MEASURES

The University will offer and implement appropriate and reasonable supportive measures, that do not burden the other party, upon notice of alleged Sexual Harassment, Sexual Misconduct, and/or Retaliation by a Complainant.

Supportive measures are individualized services, accommodations, and other assistance that the University offers and may put in place, without fee or charge. Supportive measures are designed to restore or preserve equal access to the University's Education Program or Activity, protect the safety of all Parties and the University's educational environment, and/or deter Sexual Harassment, Sexual Misconduct, and/or Retaliation, without being punitive or disciplinary in nature or unreasonably burdening the other party.

When the Director of OECR/Title IX Coordinator receives a report of possible Sexual Harassment or Sexual Misconduct—regardless of whether that report is made by the Complainant, a witness, or other party or is provided to the Title IX Coordinator by a Mandated Reporter—the Director of OECR/Title IX Coordinator will contact the Complainant (1) to discuss the availability of supportive measures and (2) to explain that supportive measures are available with or without filing a Formal Complaint.

Supportive measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the University community.

The Title IX Coordinator will ultimately serve as the point of contact for any individual requesting supportive measures.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures or, where applicable, to comply with the U.S. Department of Education's Title IX Regulations.

These actions may include, but are not limited to:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus
- Imposition of a University no-contact directive³
- Imposition of a University no-trespass directive
- Rescheduling of exams and assignments
- Providing alternative course completion options
- A change in class schedule or transferring sections, including the ability to drop a course without penalty and, when possible, without any impact on financial aid
- A change in work schedule or job assignment
- A change in student's University housing assignment
- Assistance from University staff in facilitating University housing relocation

³ Violations of no-contact directives will be referred to appropriate student or employee conduct processes for enforcement.

- Financial aid-related services
- A voluntary leave of absence
- Providing an escort to promote safe movement between classes and activities
- Providing medical services
- Providing academic support services, such as tutoring
- A change of office space
- Any other accommodation which can be tailored to the involved individuals to achieve the goals of this Policy

Each case is different and not all such actions will be available in every case.

VIII. PROMPTNESS

The University acts reasonably promptly once it has received a Formal Complaint. Formal Complaints typically take ninety (90) business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid undue delays to the extent such delays are within its control.

Any time the general timeframes for resolution outlined in Arcadia's Procedures will be delayed, Arcadia will provide written notice to the Parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

IX. PRIVACY

The University will preserve the privacy of reports.⁴ The University will not share the identity of any individual who has made a report or Formal Complaint of Sexual Harassment, Sexual Misconduct, or Retaliation; any Complainant; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g or FERPA implementing regulations, 34 CFR part 99; as required by law; or to carry out the purposes of 34 CFR Part 106. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA. Typically, the University officials who will "need to know" will include, but not be limited to: the Title IX Team; Student Affairs or Human Resources, as applicable; and the Office of the General Counsel. The University may contact students' parents or guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually, to the extent reasonable, consult with the student first before doing so.

⁴ For the purpose of this Policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a notice/report or Formal Complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution thereof. All employees who are involved in the University's response to reports under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's FERPA Compliance Policy. The privacy of employee records will be protected in accordance with Arcadia's personnel policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those between a patient and mental health providers and medical care providers, as well as attorneys, clergy, and spouses. For more information about Confidential Resources, see Section XIV. When information is shared with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the Clergy Act.

When responding to a report of conduct allegedly in violation of this Policy, the University will assess a Complainant's request for confidentiality consistent with Subsection VI(D) "When a Complainant Does Not Wish to Proceed."

Mandated Reporting is addressed more specifically below in Section VI(B).

X. TIME LIMITS ON REPORTING

There is no time limitation on providing notice/reports to the Director of OECR/Title IX Coordinator or filing Formal Complaints. However, if the Respondent is no longer subject to the University's jurisdiction (e.g. is not enrolled as a student at, or employed by, the University) and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/reports or Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy and/or procedures which was in effect at the time of the relevant incident) is at the discretion of the Director of OECR/Title IX Coordinator, who may document allegations for historical or future reference, offer supportive measures, and/or initiate informal or formal process by signing a Formal Complaint, as appropriate.

When a notice/report or Formal Complaint is affected by significant time delay, Arcadia will typically apply the policy which was in place at the time of the alleged conduct and the procedures which are in place at the time of the notice/report or Formal Complaint. Such decisions are within the sole discretion of the Director of OECR/Title IX Coordinator.

XI. ONLINE HARASSMENT AND MISCONDUCT

This Policy is written and intended to be interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited herein, when otherwise consistent with this Policy and Procedures.

While the University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will attempt a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from using the ease of transmission and/or anonymity of the Internet or other technology to harm others.

XII. PROHIBITED CONDUCT

As noted, the University is committed to providing a learning and working environment that is free from Sexual Harassment, Sexual Misconduct, and Retaliation. Such behaviors pose a threat both to individual members of the University community and to the community collectively. They represent a fundamental failure to recognize and respect the intrinsic worth and dignity of others and are contrary to our values and standards. They are against University policy and may also constitute criminal conduct under local, state, or federal laws (or a combination thereof).

The University will respond accordingly, considering both the severity of the alleged offense and the threat the conduct poses to the community. Sexual Harassment and Sexual Misconduct encompass a broad spectrum of conduct and are defined as follows.

A. Sexual Harassment

The United States Department of Education requires the University to use a specific definition of Sexual Harassment which it views as prescribed by Title IX of the Education Amendments of 1972 (“Title IX”). If the alleged conduct reported meets the Title IX definition of Sexual Harassment, Arcadia will use the hearing procedures in **Appendix A** of the [Interim Procedures](#).

Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation, gender identity, and/or gender expression of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, each of which is defined by OCR as follows.

Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

1. Sexual harassment, defined as:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the University’s Education Program or Activity⁵

OR

“Quid Pro Quo,” when:

- a. an employee of Arcadia,
 - b. conditions, implicitly or explicitly, the provision of an aid, benefit, or service of Arcadia,
 - c. on an individual’s participation in unwelcome sexual conduct.
2. Sexual assault, defined as any sexual act directed against another person, without the consent of that person, including instances where the person is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following, as defined for purposes of the FBI’s Uniform Crime Reporting (NIBRS) program:
 - a. Rape: The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical

⁵ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

incapacity (it should be noted that individuals of any gender identity could be Complainants under this definition);

b. Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

c. To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

d. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, “private body parts” includes breasts, buttocks, or genitals, whether clothed or unclothed);

e. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

f. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

3. Dating violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

1. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

- i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- ii. Dating violence does not include acts covered under the definition of domestic violence.

4. Domestic violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by:
 1. a current or former spouse or intimate partner of the Complainant,
 2. a person with whom the Complainant shares a child in common, or
 3. a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner,

4. a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of applicable state law, or
5. any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the applicable state.

To categorize an incident as Domestic violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

5. Stalking, defined as:
 - a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person,
 - d. that would cause a reasonable person to
 - i. fear for the person's safety, or
 - ii. fear for the safety of others, or
 - iii. suffer substantial emotional distress.

For the purposes of this definition—

- a. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

The University reserves the right to impose any level of Sanction, ranging from a reprimand up to and including expulsion and/or termination, as appropriate, for any offense under this Policy.

B. Other Sexual Misconduct

As noted, the conduct defined above as Sexual Harassment is prohibited by Title IX. The University also prohibits additional conduct of a sexual nature, defined as Sexual Misconduct. Sexual Misconduct, as an umbrella category, includes sexual exploitation, discriminatory harassment, and attempted sexual assault, domestic violence, or dating violence, each of which is defined as follows. If the alleged conduct reported meets the definition of Sexual Misconduct, Arcadia will use the hearing procedures in **Appendix B** (for student Respondents) and **Appendix C** (for employee Respondents) of the [Interim Procedures](#).

Acts of Sexual Misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation, gender identity, and/or gender expression of those involved.

- Sexual exploitation, defined as: taking, or attempting to take, non-consensual or abusive sexual advantage of another for the Respondent's own benefit or for the benefit of anyone other than the person being exploited, when such conduct does not otherwise constitute Sexual Harassment under this Policy. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
 - Taking pictures, video, or audio recording of another engaged in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of “revenge pornography”⁶
 - Prostituting another person
 - Engaging in sexual activity with another person while knowingly infected with a sexually-transmitted infection (“STI”), also known as a sexually-transmitted disease (“STD”), without informing the other person of the infection
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
 - Forcing a person to take a non-sexual action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
 - Knowingly soliciting someone under the age of consent as defined by state or federal law for sexual activity
 - Engaging in sex trafficking as defined by state or federal law
 - Creation, possession, or dissemination of child pornography as defined by state or federal law
 - “Stealthing,” defined as removing a condom (external (“male”) or internal (“female”)) during sexual intercourse without affirmative consent of the sexual partner; or the act of intentionally misleading a sexual partner to believe a condom is being used during sexual intercourse
- Attempts of conduct defined in the above definitions of sexual assault, domestic violence and dating violence,
 - Discriminatory harassment based on sex, defined as any unwelcome sexual advance, request for sexual favor(s), or other unwelcome verbal, nonverbal, graphic, or physical conduct of a sexual nature when such conduct is so severe, or pervasive, or so objectively offensive, that it has the purpose or effect of unreasonably interfering with an individual’s work or academic performance by creating an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, or social environment. The purpose or effect will be evaluated based on the perspective of a reasonable person in the position of a Complainant.

A single, isolated incident of discriminatory harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Discriminatory harassment based on sex:

⁶ Dissemination of a visual depiction of a current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct with the intent to harass, annoy, or alarm that person. 18 Pa.C.S.A. § 3131 (Unlawful Dissemination of Intimate Image).

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has or had an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the Parties are alone.
- May affect the Complainant, reporter and/or third Parties who witness or observe harassment.

The University reserves the right to impose any level of Sanction, ranging from a reprimand up to and including expulsion and/or termination, as appropriate, for any offense under this Policy.

Force, Coercion, Consent, and Incapacitation

As used in the definitions of consent below, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is *unreasonable* pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent: Consent is

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

Consent must be clearly provided prior to engaging in the activity, by either word or action.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease immediately.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

In adjudicating complaints in which consent is disputed, the existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. For example, when Parties consent to BDSM⁷ or other forms of “kink,” non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the “kink” and thus consensual, so the University’s evaluation of communication in such situations should be guided by reasonableness.

The Violence Against Women Act requires that the University train the University community on the definition of consent, with reference to sexual offenses, in the applicable jurisdictions, which are Pennsylvania and Delaware. Pennsylvania and Delaware provide the following definitions of consent:

Pennsylvania law (Title IX Chapter 3: Culpability § 311. Consent. (a) General rule) provides: “The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.” Pennsylvania does not have a definition of consent applicable to criminal prosecutions of sex offenses.

Delaware’s definition for “Without Consent” applicable to criminal prosecutions of sex offenses which is as follows (Title 11 Chapter 494):

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim’s refusal to consent known to the defendant; or

⁷ Bondage and discipline, dominance and submission, and sadism and masochism.

- (2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or
- (3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or
- (4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or
- (5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

These definitions are different from the definition of consent in this Policy.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including because of alcohol or other drugs, a temporary or permanent physical or mental health condition, or involuntary physical restraint.

It is a defense to a Policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when 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).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with the terms "intoxication" or "impairment," or imprecise colloquial phrases such as "blackout" or "drunk."

XIII. RETALIATION

The University will not tolerate Retaliation in any form. The University recognizes that Retaliation can take many forms, that it may be committed by or against an individual or a group, and that a Complainant, reporter, Respondent, third party, and any employee charged with implementing University Policy and related Procedures may also be the subject of Retaliation by another individual. It is a violation of University Policy to retaliate in any way against an individual because they raised allegations under this Policy.

Acts of alleged Retaliation should be reported immediately to the Director of OECR/Title IX Coordinator and will be promptly investigated by the Office of Equity and Civil Rights. The University is prepared to take appropriate steps to protect individuals who have been or fear that they may be subjected to Retaliation. Reports of Retaliation with student Respondents will be adjudicated through Appendix B of the [Interim Procedures](#). Appendix C of the [Interim Procedures](#) will be used for adjudication of employee Respondents.

Charging an individual making a materially false statement in bad faith in the course of proceedings under this Policy does not constitute Retaliation. A determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

XIV. FEDERAL TIMELY WARNING AND WARNING OBLIGATIONS

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported that indicate a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

Certain campus officials (those deemed Campus Security Authorities) have a duty to report particular conduct⁸ for federal statistical reporting purposes.

All personally identifiable information is kept private, but statistical information must be passed along to Arcadia's Department of Public Safety regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) for publication in the University's Annual Security Report and daily campus crime log.

Campus Security Authorities include: Dean of Students, Athletic Director, all athletic coaches (including part-time employees and graduate assistants); a faculty advisor to a student group; Resident Assistants; Director of OECR/Title IX Coordinator; the Director of Student Health Services, and the Director of the Counseling Center.

XV. FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious accusations under this policy are a serious offense, are a violation of this policy, and will be subject to appropriate disciplinary action by the Student Affairs Office or the Office of Human Resources. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

⁸ a) All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
 b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
 c) VAWA-based crimes (VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040), which include sexual assault, domestic violence, dating violence, and stalking; and
 d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

Additionally, witnesses and Parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

XVI. AMNESTY FOR PARTIES AND WITNESSES

The University encourages the reporting of misconduct and crimes by Parties and witnesses. Sometimes, Parties or witnesses are hesitant to report to University officials or participate in Formal Grievance Processes because they fear that they may be in violation of certain policies, such as if they were underage drinking or using illicit drugs at the time of the incident. This amnesty provision also applies for employees participating in a Formal Grievance Process.

To encourage reporting and participation in University process, the University maintains a policy of offering Parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to Public Safety). The University maintains a policy of amnesty for students who offer help to others in need. While Policy violations cannot be overlooked, the University may provide purely educational options with no official disciplinary finding, rather than punitive Sanctions, to those who offer their assistance to others in need.

The University considers the welfare of students, faculty, and staff to be of paramount importance. The University urges all community members to offer help and assistance to others in need and take reasonable and prudent actions to prevent or stop an act of Sexual Harassment or Sexual Misconduct. Taking action may include indirect or direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, and/or seeking assistance from a person in authority.

XVII. UNIVERSITY DISCIPLINARY PROCESS FOR ALLEGED SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

Any individual who believes that they have been subjected to Sexual Harassment or Sexual Misconduct may choose to (a) participate in both the University disciplinary process and an outside law enforcement process; (b) the University process only; (c) the outside law enforcement process only; or (d) none of the above.

XVIII. EFFECTIVE DATE

This Policy is effective on the date that it is signed by the President.

XIX. SIGNATURE, TITLE, AND DATE OF APPROVAL

By: 
Ajay Nair, President

Date: 8/13/2020

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