

High Point University Sexual Misconduct/VAWA Policy and  
Grievance procedures  
2017-2018

# High Point University

## Title IX – Sexual Misconduct and Grievance Policy

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## I. GENERAL POLICIES

High Point University (“HPU” or “University”) seeks to ensure that no students or employees are excluded from participation in, or denied the benefits of, any University program or activity on the basis of sex. Members of the University community, as well as guests and visitors, have a right to be free from sexual harassment, violence and gender-based harassment. When an allegation of sexual misconduct is investigated, and a responding community member is found to have violated the HPU Title IX Sexual Harassment and Discrimination Policy (“Title IX Policy” or “Policy”) or to have engaged in other inappropriate conduct, discipline or corrective measures may be imposed.

## II. PURPOSE

High Point University has established the procedures outlined in this Policy in order to: 1) educate and promote awareness of the University policies against sexual harassment and misconduct; 2) provide all members of the University community with a process for promptly reporting any concerns regarding potential sexual harassment or related inappropriate conduct; and 3) provide guidelines for prompt and effective responses to any reports of sexual harassment.

## III. APPLICABLE LAW

Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of federal financial aid. Title IX states:

***No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.***

Sexual harassment is a form of sex discrimination prohibited by Title IX. Title IX prohibits sex discrimination in both the educational and employment settings. Sexual harassment is defined in Section VII of this policy.

“Sexual Misconduct” includes a broad range of unwelcome behaviors that are often committed without consent or by force, intimidation, coercion, or manipulation. Sexual Misconduct includes, but is not limited to, sexual harassment or discrimination and sexual assault. Sexual Misconduct may also include such things as threatening speech of a sexual nature or making or sharing visual or auditory recordings of a sexual nature of another person without their consent. Sexual Misconduct can be committed by men or women, and it can occur between people of the same or different sex.

Inquiries about the application of Title IX may be directed to the following:

Jerry L. Trew, J.D.  
Director of Title IX  
High Point University  
One University Parkway  
High Point, North Carolina  
27268  
[jtrew@highpoint.edu](mailto:jtrew@highpoint.edu)

Gail Tuttle  
Senior Vice President  
High Point University  
One University Parkway  
High Point, North Carolina  
27268  
[gtuttle@highpoint.edu](mailto:gtuttle@highpoint.edu)

Further, the Violence Against Women Reauthorization Act of 2013 (“VAWA”) is a federal law that requires colleges to have procedures in place to respond to incidents of sexual assault, dating violence, domestic violence, and stalking (“VAWA Complaints”). VAWA Complaints are referred to the Director of Title IX. Any complaints of Sexual Misconduct or VAWA Complaints must be promptly reported to the Director of Title IX. For more details on VAWA, see the VAWA Policy Statement for the Annual Security Report, which is located The HPU Security webpage at: <http://www.highpoint.edu/safety/files/2016/09/2015-AFSSR-Report-Complete.pdf>

HPU’s policies are consistent with Title IX of the Educational Amendments of 1972, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), Title VII of the Civil Rights Act of 1964, and all other applicable statutes and University policies.

#### **IV. NOTICE OF NON-DISCRIMINATION**

HPU expressly prohibits discrimination on the basis of age; ancestry; citizenship status; color; creed; disability or medical condition; gender; pregnancy, childbirth or related medical conditions; gender identity or expression; marital, military or parental status; national origin; race; religion; sexual orientation, or any other basis prohibited by law. For questions about discrimination on the basis of a disability or to file a Section 504 complaint alleging discrimination on the basis of a disability, contact the Director of Disability Support at [bcoc@highpoint.edu](mailto:bcoc@highpoint.edu).

#### **V. POLICY STATEMENT**

##### **A. General**

This Policy prohibits Sexual Misconduct as defined herein. The University will respond promptly and effectively to reports of Sexual Misconduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this Policy.

##### **B. Prohibited Acts**

HPU strives to provide an educational, employment, and business environment free of all forms of sex discrimination, including, but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting Sexual Misconduct, as defined in this Policy, the student Honor Code, the Student Guide to Campus Life, the Employee Handbook(s), and as otherwise prohibited by state and federal statutes.

##### **C. Scope of Policy**

This Policy applies regardless of the complainant’s or respondent’s sexual orientation, sex, gender identity, age, race, nationality, religion or ability.

Sexual Misconduct by non-HPU employees and guests doing business or providing services on campus (e.g., contractors and vendors) is prohibited by this Policy.

Conduct by an employee that constitutes Sexual Misconduct in violation of this Policy is considered to be outside the normal course and scope of employment.

#### **D. Gender Identity or Sexual Orientation Discrimination**

Harassment that is not sexual in nature but is based on gender, gender identity, sex or gender stereotyping, or sexual orientation is also prohibited by the University's nondiscrimination policies if it denies or limits a person's ability to participate in or benefit from educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether sexual harassment exists, the University may take into account acts of discrimination based on gender, gender identity, sex or gender stereotyping, or sexual orientation.

#### **E. Retaliation**

This Policy prohibits retaliation against a person who reports Sexual Misconduct, assists someone with a report of Sexual Misconduct, or participates in any manner in an investigation or resolution of a Sexual Misconduct report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

#### **F. Discipline and Corrective Actions**

The University will take reasonable steps to prevent the recurrence of any Sexual Misconduct and to minimize the impact on the complainant (and others, if appropriate). Any member of the University community who is found to have engaged in Sexual Misconduct will be subject to appropriate discipline, up to and including expulsion, termination of employment or termination of their relationship with the University. The University also may take any other corrective action that it deems appropriate under the circumstances.

Discipline and/or corrective actions will also be appropriate if an investigation results in a finding that the complainant has knowingly made a false accusation.

#### **G. Free Speech and Academic Freedom**

This Policy is intended to define University standards and to outline the investigation and grievance processes when those standards are violated. The prohibitions against discrimination and harassment do not extend to statements and written materials that are germane to the classroom or academic course of study.

#### **H. Jurisdiction**

This Policy applies to students, employees, volunteers, independent contractors and vendors. The University requires reporting of all incidents of Sexual Misconduct, regardless of the alleged offender's identity or position. This Policy shall apply to conduct that occurs on University-owned or leased property and at University sponsored events, and to events on or off-campus that have sufficient ties to the University. Students shall be responsible for their conduct from the time of application for admission through the awarding of a degree, as well as during periods between terms of actual enrollment, study abroad and leaves of absence or suspension. Employees shall be responsible for their conduct from the time of application until their employment ends.

The University has the authority to combine violations of different policies, like those in the Honor Code, the Student Handbook, or the Faculty/Staff Handbook(s), that are related to the same incident under Title IX review, even though they may not be directly related to Sexual Misconduct. The University encourages individuals who believe they have been subject to any Sexual Misconduct to clearly and promptly notify a supervisor, manager, or the Director of Title IX. However, once a complaint or investigation is initiated under this Policy, it will supersede all other policies and will be used to resolve any and all other ancillary complaints arising out of the same or related incidents or allegations.

### **I. Distribution of Policy**

As part of the University's commitment to providing a working and learning environment free from Sexual Misconduct, this Policy shall be distributed widely to the University community. The University will distribute this Policy to the students and employees by appropriate channels of communications, including posting it on an internet or intranet web site and directly notifying all students and employees of how to access the Policy by an exact URL address or link, and that they may request a paper copy. The University will make preventive educational materials available to all members of the community and will provide incoming students with a copy of this Policy at a scheduled Title IX informational session as part of their orientation.

### **J. Additional Enforcement Information**

The federal Equal Employment Opportunity Commission ("EEOC") investigates complaints of unlawful harassment in employment. The U.S. Department of Education Office for Civil Rights ("OCR") investigates complaints of unlawful Sexual Misconduct by students or against students in educational programs or activities.

These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC or OCR.

## **VI. DIRECTOR OF TITLE IX AND RESOURCES**

### **A. Director of Title IX**

The University has a designated Director of Title IX ("Director of Title IX"). The Director of Title IX is responsible for implementing and monitoring Title IX compliance on behalf of HPU. The Director of Title IX's specific responsibilities include, but are not limited to, coordination of training, education, communications, providing prompt and effective response to reports of Sexual Misconduct in accordance with this Policy, initiating investigations of alleged Sexual Misconduct, maintaining records of reports of Sexual Misconduct including records of investigations, voluntary resolutions, and disciplinary action, as appropriate, and identifying and addressing any patterns or systemic problems that arise during the review of Sexual Misconduct complaints. The HPU Title IX office will also oversee the annual Campus Climate Survey.

When students or employees feel they have been subjected to discrimination on the basis of sex, they should contact the Director of Title IX or utilize the grievance procedures in this Policy, to bring concerns forward for a prompt and equitable resolution. Sex discrimination, includes, but is not limited, sexual harassment, sexual assault, gender discrimination, and VAWA Complaints.

Any inquiries regarding Title IX, VAWA, or this Policy should be directed to either the Director of Title IX or any of the Deputy Title IX Coordinators identified in the following Section.

The Director of Title IX and the Deputy Title IX Coordinators also qualify as campus security authorities (“CSA”) under federal law. A CSA is “[a]n official of an institution who has significant responsibility for student and campus activities.” These Directors will be available to meet with students, employees, and others regarding issues relating to Title IX, VAWA, and this Policy. Title IX and VAWA complaints should be referred to:

Director of Title IX  
Jerry L. Trew, J.D.  
High Point University  
336-841-9457  
[jtrew@highpoint.edu](mailto:jtrew@highpoint.edu)

## **B. Deputy Director of Title IX & Coordinators**

Deputy Director of Title IX (“Deputy Director”) and Deputy Title IX Coordinators (“Deputy Coordinators”) are responsible for implementing and monitoring Title IX compliance at HPU and for notifying the Director of Title IX of any alleged or suspected violations of this Policy and the resolution of such alleged or suspected violations, regardless of whether a complaint is filed.

Students and employees who have a complaint against any individual involving allegations of Sexual Misconduct in violation of this Policy should contact the Director of Title IX or one of the Deputy Coordinators. The Deputy Director and Coordinators are listed below.

Deputy Director of Title IX:  
Gail Tuttle  
Senior Vice President for Student Life  
High Point University  
336-841-9141  
[gtuttle@highpoint.edu](mailto:gtuttle@highpoint.edu)

After hours Deputy Title IX Coordinator  
Please call the Resident Director on duty  
336-880-4409

## **C. Responsible Employee**

HPU employees are to report to the Director of Title IX, Deputy Director of Title IX or Title IX Coordinator any incidents of sexual harassment or sexual violence that may violate this Policy, Student Handbook or Employee Handbook(s) or may create or contribute to the creation of a hostile educational environment. (For Title IX purposes, HPU employees who are also students are considered “responsible employees” for reporting purposes while serving in the employee role, RAs, ARDs and OAs are considered responsible employees.)



Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (1) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Director of Title IX or other appropriate school officials, (2) the student's option to request that the school maintain his or her confidentiality, which the school (e.g., Director of Title IX) will consider, and (3) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual assault related services (e.g., sexual assault resource centers, HPU Campus Health Center, HPU Pastoral employees, and HPU Campus Counseling Center).

In addition to contacting the Director of Title IX, individuals who have experienced Sexual Misconduct are encouraged to contact the proper law enforcement authorities, including the High Point Police Department. The Director of Title IX and Coordinators will assist any member of our campus community with reporting the incident to law enforcement.

#### **D. Education and Training Programs**

The University provides programming to educate students and employees about Sexual Misconduct, including sexual assault, dating violence, domestic violence, and stalking. Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students, faculty and employees.

### **VII. DEFINITIONS**

The acts listed as Sexual Misconduct, are included to clarify *examples* of acts, which would qualify as gender-based discrimination or harassment against those with protected status under Title IX. The listing of these examples does not preclude nor set aside HPU's formal codes of conduct listed elsewhere in the University's publications, handbooks, or addendums. Violations of the University's policies may not constitute a violation of the Title IX Policy, but would be addressed under the proper policies as found in the Honor Code or any other applicable policies. In any event, if a lesser or ancillary violation arises out of the incident that falls under Title IX, then this Policy takes priority.

The term Sexual Misconduct, as used in this Policy, includes, but is not limited to, those acts listed in Sections A and B below.

#### **A. General Definitions**

**Coercion** is the practice of forcing another party to act in an involuntary manner by use of intimidation or threats or some other form of pressure or force. Coercion may include the use of emotional manipulation to persuade someone to do something the person may not want to do. Being coerced into having sex or performing sexual acts is not consenting sex and may be considered Sexual Misconduct.

**Consent** is the "positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue..." Consent must be informed.

Consent is *voluntary*. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will.

Consent is *revocable*. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is *incapacitated*. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment, which may occur from the consumption of alcohol or drugs.

**Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcomes resistance or produces consent.

**Incapacitation** is the state where someone cannot make rational, reasonable decisions due to a lack of capacity to give knowing consent (e.g., **to understand the “who, what, when, where, why, and how” of the sexual interaction**). Sexual activity with someone who is, or based on circumstances should reasonably be known to be, mentally or physically incapacitated (i.e., by alcohol or other drug use) constitutes a violation of this Policy. A person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the consumption (voluntary or otherwise) of incapacitating drugs cannot give consent.

## **B. Sexual Harassment**

**Sexual Harassment** is a subset of Sexual Misconduct and includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, on or off campus, when: 1) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or progress; or 2) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating or hostile academic or work environment. Sexual harassment may take many forms. Sexual Harassment may consist of repeated actions or may even arise from a single incident if sufficiently extreme.

Sexual Harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, student employees, students, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, or visitors). Sexual harassment may occur in hierarchical relationships, between peers, or between individuals of the same sex or opposite sex. To determine whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Examples of Sexual Harassment/Misconduct include, but are not limited to: subtle or persistent pressure for sexual activity; unnecessary touching, pinching or brushing against a person; requesting or demanding sexual favors concerning employment, academic activities or other University activities; unwelcome communications (verbal, written, electronic, etc.) of a sexual nature; and failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior. For this Policy, sexual harassment and sex discrimination may also include the following acts.

**Rape** under North Carolina law, the term rape refers to penile penetration of the vagina. All other forms of unwanted penetration are referred to as sexual offenses. Further Rape can be defined as 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 ([www.fbi.gov](http://www.fbi.gov)).

**Sexual Assault** actual attempted or threatened sexual act, with any body part or any object, by a man or a woman upon a man or a woman, without consent. Includes but is not limited to, rape or attempted rape or sexual intimidation.

**Sexual Intimidation** includes but is not limited to:

- a. Threatening another person that you will commit a sexual act against them
- b. Stalking and/or cyber-stalking
- c. Engaging in indecent exposure

**Sexual Exploitation** means taking nonconsensual, unjust or abusive sexual advantage of another, for one's own advantage or benefit; or to benefit anyone other than the individual being exploited. Sexual exploitation encompasses a wide range of behaviors which may include but are not limited to:

- a. Inducing incapacitation with the intent to gain sexual advantage over another person;
- b. Non-consensual electronic recording, audiotaping, photographing, or transmitting intimate or sexual activity, sounds or images, and/or distribution of these materials including, but not limited to, via the Internet;
- c. Allowing others to observe a personal act of consensual sex without all parties' knowledge or consent;
- d. Voyeurism;
- e. Knowingly or recklessly transmitting a sexually transmitted disease, including HIV, to another person;
- f. Exceeding the boundaries of consent.

**Non-consensual Contact (fondling)** sexual contact with any body part or any object, by a man or a woman upon a man or a woman, without consent. Sexual touching includes but is not limited to any contact with the breasts, buttocks, groin, genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, when such touching would be reasonably and objectively offensive.

**Sexual Violence** means any form of unwanted sexual contact obtained without consent and/or obtained through use of force, threat of force, intimidation, or coercion by any person(s). Any violation of the above mentioned policies could constitute sexual violence. Premeditation is not required to be found responsible of this policy.

### **C. VAWA Complaints**

VAWA, (Violence Against Women’s Act) identifies four specific complaints that may fall under the Title IX Policy: Sexual Assault, which is defined above, Dating Violence, Domestic Violence, and Stalking. **VAWA cases will sent to the Priority Court.**

**Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship will be determined based on a consideration of the following factors: 1) the length of the relationship, 2) the type of relationship, and 3) the frequency of interaction between the persons involved in the relationship.

**Domestic Violence** is defined as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

**Stalking** includes conduct directed at a specific person that would cause a reasonable person to, 1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress. Such behaviors or activities may include, but are not limited to non-consensual communications (i.e., face-to- face, telephone, email, and social media), threatening or obscene gestures, surveillance, or showing up outside the targeted individual's classroom, residence or workplace.

**Cyber Stalking** Using the internet, e-mail, or other electronic communications to stalk, and generally referring to a pattern of malicious behaviors. This includes electronically communicating threats to damage property or injure another person, or their family, with the intent of abusing, harassing, embarrassing, or extortion.

## **VIII. REPORTING AND RESPONDING TO A COMPLAINT**

All members of the HPU community are strongly encouraged to contact the Director of Title IX/Coordinator if they observe or encounter conduct that may be subject to the Policy. This includes conduct by employees, students, or third parties. Reports of Sexual Misconduct may be brought to the Director of Title IX, Deputy Director or Title IX Coordinators. If the person to whom Sexual Misconduct normally would be reported is the individual accused of harassment, reports may be made to the Senior Vice President for Student Life or Director of Human Resources. Managers, supervisors, and employees are required to notify the Director of Title IX, Deputy Director or Title IX Coordinators to review and investigate Sexual Misconduct complaints when a report is received.

### **A. Prompt Reporting Encouraged**

Complainants of Sexual Misconduct may report incidents at any time, but are strongly encouraged to make reports promptly in order to best preserve evidence for a potential legal or disciplinary proceeding. Complainants are strongly encouraged to report incidents to the local police

department and campus security. Complainants are also encouraged to contact the local victim/survivor services office, counseling center, and health care providers for appropriate action. In general, there is no time limit for students to make a report, but an undue delay in reporting may affect the quality or preservation of evidence or witness testimony that would have been available. Employees who have experienced or observed conduct that they believe is contrary to this Policy have an obligation to promptly make a report. Timely reporting is necessary for employees. Professional counselors, when acting as such, are not considered to be mandatory reporters. Please note that professional counselors are not required to disclose knowledge of crimes reported to them except when necessary to prevent harm.

## **B. Confidentiality**

To the extent permitted by law, the confidentiality and/or the identities of all parties involved in the investigation and/or resolution of alleged or suspected violations of this Policy will be observed, provided that it does not interfere with the University's ability to conduct an investigation and take any corrective action deemed appropriate.

When weighing a complainant's request for confidentiality or that no investigation, hearing or discipline be pursued, the Director of Title IX will consider a range of factors, including the following:

- 1) The increased risk that the respondent will commit additional acts of Sexual Misconduct, such as: whether there have been other Sexual Misconduct complaints about the same respondent, whether the respondent has a history of violence, and whether the respondent threatened further Sexual Misconduct or other violence against the complainant or others.
- 2) Whether the Sexual Misconduct was committed by multiple perpetrators.
- 3) Whether the Sexual Misconduct was perpetrated with a weapon.
- 4) Whether the University possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g. security cameras or personnel, physical evidence).
- 5) Whether the complainant's report reveals a pattern of perpetration (e.g. via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors, or other factors unique to the situation, could lead the University to investigate and, if appropriate, pursue discipline or corrective actions.

For a list of confidential and non-confidential resources, please review the HPU Resource Guide for Victims of Sexual Assault, Dating Violence and Stalking. It includes a list of off-campus counselors, advocates, and health care providers that will generally maintain confidentiality and not share information with the University unless the complainant requests the disclosure and signs a consent or waiver form.

### C. Required Notice for Reports of Sexual Misconduct

The University will provide all reporting parties and respondents The Resource Guide for Victims of Sexual Assault, Dating Violence and Stalking which contains rights and options, including procedures to follow, when the University receives a report that a student or employee has been involved in an incident of Sexual Misconduct or a VAWA Complaint, whether the offense occurred on- or off-campus or in connection with any University sponsored program or event. The written information shall include:

- Options for reporting.
- Options for reporting to law enforcement and campus authorities, including the option to notify local law enforcement authorities; the right to be assisted by campus authorities in notifying law enforcement authorities if the complainant so chooses and the right to decline to notify such authorities.
- The rights of the parties regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts and the University's responsibilities regarding such orders.
- The importance of preserving evidence as may be necessary to prove the complaint or to obtain a protection order.
- Existing campus and community services available for the parties including counseling, health, mental health, victim advocacy, and other services.
- Any applicable procedures for institutional disciplinary action.

### D. Title IX – Initial Assessment

Upon receipt of a report of a Policy violation, the Director of Title IX (or a designee) will conduct an initial Title IX assessment. The first step of the assessment will usually be a preliminary meeting with the reporting party or the complainant. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report, and address interim measures needed; **it is not intended to be a full interview**. Prior to the interview, the complainant should have time to recover from any trauma that may have occurred. While doing so is not required, it will greatly assist in more efficiently handling the individual's concerns. At this initial meeting, the complainant will be provided with information about resources, procedural options and interim measures.

This initial assessment will proceed to the point where a reasonable determination of the safety of the individual and of the campus community can be made, **(The HPU Security Supervisor on duty will be advised of the incident details for determining if a Timely Warning should be issued per Security Policy)**. Thereafter, an investigation may be initiated depending on a variety of factors, such as whether the complainant will pursue disciplinary action, the nature of the allegation and the proper grievance process to be applied. After the initial assessment, the Director of Title IX and the Assistant Dean of Students will issue a Notice of Investigation (NOI) to the parties involved.

If an investigation is initiated, both the complainant and respondent will receive a copy of the Notice of Investigation. The HPU Manager of Investigations will also receive a copy of the NOI to assign a case investigator. After the process has been initiated, the respondent will have the option to prepare a written/verbal response to the alleged violations and may assert any cross-complaints. Any responses and cross-complaints or a summary of that information will be provided to the complainant.

## **E. Anonymous and Third-Party Complaints**

Where a complainant requests to remain anonymous or that no formal action be taken, the University must balance this with its obligations to provide a safe and non-discriminatory environment for all community members and to afford a respondent fundamental fairness by providing notice and an opportunity to respond before any action is taken against a respondent. In the event that the circumstances of the complaint dictate a full investigation, the University will take all actions necessary to conduct the investigation while balancing the wishes of the complainant. This may include disclosing the identity of the complainant and other steps that might compromise the complainant's request for confidentiality and anonymity. Subject to these limitations, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. The University shall inform the complainant that its ability to investigate or take action will be limited based on the nature of the request by the complainant.

If the individual decides not to file a complaint with the University, the University encourages the individual to seek out the available medical and mental health resources listed in the HPU Resource Guide for Victims of Sexual Assault. Individuals who wish to make a complaint at a later date may contact the Director of Title IX/Coordinator(s) at any time. Please note that a delay in reporting could affect the University's ability to gather information and evidence to determine whether a person is responsible for Sexual Misconduct.

Reports that are made anonymously or by third parties may not initiate the formal complaint process. However, Title IX requires the University to investigate all incidents about which the University knows or has reason to know in order to protect the health and safety of the University community. The University may undertake an initial assessment even in cases where the alleged victim and/or complainant choose not to cooperate or participate. As necessary, the University reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim or complainant.

## **F. Reluctance to Report Based on Potential Violations**

Students may be reluctant to report incidents because of concerns that their own behavior may be a violation of University policies. The University's primary concern is student safety. Any other rules violations will be addressed separately from the Sexual Misconduct allegation. The use of alcohol or drugs does not make the complainant at fault for Sexual Misconduct. A student who is found to have engaged in excessive consumption of alcohol or drugs will not be charged with conduct violations to encourage the reporting of sexual misconduct.

## **G. Interim Measures**

At any time during the process, the Director of Title IX (or a designee) may impose reasonable and appropriate interim measures designed to eliminate the reported hostile environment and protect the parties involved (“Interim Measures”). Interim Measures may be imposed regardless of whether discipline or corrective measures are sought by the complainant or the University. All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by an Interim Measure. The University will take responsive action to enforce the Interim Measures.

The University reserves the right to take immediate action and impose restrictions on any person accused of violating this Policy, or to take any other Interim Measures it deems appropriate, pending the outcome of an investigation and/or disciplinary proceedings. If the Director of Title IX, or a designee, decides at any point the well-being of a student or employee is at stake, an interim suspension may be imposed on the individual, who is suspected of violating this Policy or otherwise poses a risk of safety to others, until the investigation and/or hearing can be completed. This action assumes no presumption or determination of guilt and the investigation will be completed as soon as possible.

At any time during the investigation, HPU may implement the following Interim Measures:

- Placing an employee on paid or unpaid administrative leave.
- Removing a student from campus and/or current classes.
- Providing access to counseling services.
- Issuing on-campus No Contact Orders.
- Modifying course schedules, rescheduling of exams and assignments.
- Limitations on time and access to campus (including reduced access to the library and other University buildings).
- Banning individuals from campus except for classes and required University activities.
- Changing class schedules, work schedules or job assignments.
- Voluntary leave of absence.
- Providing an escort to ensure safe movement between classes and activities.
- University imposed leave or separation.
- Any other remedy tailored to the involved individuals to achieve the goals of this Policy.

The University may use these Interim Measures in any combination thereof, or create new measures as needed. The University will take responsive action to enforce the Interim Measures.



## **H. Disciplinary Actions for Violations of This Policy**

Students who are found to have violated this Policy will be subject to disciplinary action, up to and including expulsion or dismissal in accordance (1) with the provisions of any applicable policy; and (2) with the additional provisions set forth in this Policy.

Employees who are found to have violated this Policy will be subject to disciplinary action, up to and including termination in accordance (1) with any applicable policies or procedures governing disciplinary action against faculty and staff and; (2) with the additional provisions set forth in this Policy, to the extent these additional provisions are applicable.

Guests and other third parties who are found to have violated this Policy will be subject to corrective action deemed appropriate by the University, which may include removal from the campus and termination of any applicable contractual or other arrangements. In instances where the University is unable to take disciplinary action in response to a violation of this Policy because a complainant insists on confidentiality or for some other reason, the University will nonetheless pursue other steps to limit the effects of the conduct at issue and prevent its recurrence.

## **IX. INVESTIGATING A COMPLAINT**

### **A. Duty to Investigate**

HPU is committed to investigating known or suspected violations of this Policy. In addition to direct or third-party complaints, some common triggers for an investigation may include: a student filing a police report with local police who alert the University, parents calling an administrator to complain, or an administrator receiving an anonymous voicemail, email, or written message alleging Sexual Misconduct. HPU's ability to investigate in a particular situation, or the extent of the investigation in any given situation, may be affected by any number of factors, including whether the complainant is willing to file a complaint or to consent to an investigation, the location where the alleged conduct occurred, and HPU's access to information relevant to the alleged violation of this Policy. All parties are expected to fully cooperate with the Director of Title IX and/or the University investigators.

### **B. Sexual Misconduct Involving Bodily Harm**

In the event the Director of Title IX has received a report of Sexual Misconduct involving bodily harm, the Director of Title IX must determine, consistent with state or local law, whether appropriate law enforcement or other authorities should be notified. The person reporting the Sexual Misconduct may choose to file a criminal complaint against the respondent. Any pending criminal investigation or criminal proceeding may have some impact on the timing of the University's investigation, but the University will commence its own investigation as soon as is practicable under the circumstances. HPU reserves the right to commence and/or complete its own investigation prior to the completion of any criminal investigation or criminal proceeding.

## C. Investigations

The Director of Title IX may investigate the claims or assign the case to the HPU Security Manager of Investigations to investigate the claims. The designated investigator (“Investigator”) is primarily responsible for investigating or coordinating the investigation of reports and complaints of violations of the Policy. All Title IX Investigators will be up to date on annual training with regard to sexual assault investigations approved by the Director of Title IX. Attorneys/advisors for the parties will not be allowed to actively participate in the investigation. The Investigator shall:

- Conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings with witnesses named by both the complainant and respondent.
- Contact parties and witnesses as needed: such as when evidence is disputed or when further information is required.
- Inform the witnesses and other involved individuals of the confidentiality requirements and the prohibition against retaliation.
- Create, gather and maintain investigative documentation, as appropriate.
- Disclose appropriate information to others only on a **need to know basis**, consistent with *state and federal law*.
- Handle all data in accordance with applicable federal and state privacy laws.
- Apply a **preponderance of evidence** standard to determine whether there has been a violation of Title IX or VAWA. This means that, if the University finds it is more likely than not that the alleged misconduct occurred; the University will conclude that there was a violation of the Policy.

The length of time it will take to complete the investigation will vary based on the complexity of the complaint and other factors such as witness availability, delay or uncooperative actions of any necessary party, number of witnesses, holidays and vacation periods, and any other unforeseeable events / circumstances. The University’s goal is to resolve all complaints as efficiently and promptly as possible. In general, the resolution of the complaint will be completed within sixty (60) days of the filing of a complaint or from the report of the suspected violation of this Policy, unless the University determines in its discretion that more time is required. As part of the investigation, the Investigator will seek to interview the complainant and the respondent.

To help ensure a prompt and thorough investigation, complainants are encouraged to provide as much of the following information as possible:

- The name, department, and position of the person or persons allegedly causing Sexual Misconduct or retaliation.
- A description of any relevant incident(s), including the date(s), location(s), and the presence and identities/names of any witnesses.
- Any evidence obtained or preserved that they have in their possession or have knowledge of its existence.
- The alleged effect of the incident(s) on the complainant’s academic standing, educational benefits or opportunities, position of employment, salary, employee benefits, promotional opportunities, or other terms or conditions of employment.
- The names of other students or employees who the complainant knows to have been subject to the same or similar Sexual Misconduct, or retaliation.

- Any issues or questions that you want to bring to the attention of the investigator.
- Any steps the complainant has taken to try to stop the Sexual Misconduct or retaliation.
- Any other information the complainant believes to be relevant to the alleged Sexual Misconduct or retaliation.

The respondent is also encouraged to provide as much of the above information as possible that relates to or may be applicable to the respondent in connection with the investigation as well as any other additional information, including:

- Any information or documentation providing support for any defense or counterclaim.
- The identity or name of any witnesses who can testify on the respondent’s behalf or who can contradict the complainant’s allegations.
- The identity or name of any witnesses who can testify as to the complainants’ competence, including whether or not the complainant was under the influence of any drugs or alcohol.
- Any other information the respondent believes to be relevant to the allegations, defenses or counterclaims.

Under VAWA, the parties are entitled to have a personal advisor or support person (“Advisor”) of their choice, at their expense, and may be accompanied by the Advisor to any meeting the party is required to attend. An Advisor may only consult and advise his or her advisee, but not speak for the advisee at any of the meetings. However, this requirement does not apply to Title IX complaints except for Sexual Assault because it is covered by VAWA.

#### **D. Mediation**

Allegations of Sexual Assault may not be resolved using mediation or any other an informal resolution process that involves direct contact between the parties.

#### **E. Investigation Report**

After the investigation has been completed, the Investigator shall:

1. Prepare an investigation report. Generally, an investigation results in a written report that at a minimum includes a statement of the allegations and issues, the position of the parties, list of parties interviewed, table of attachments/evidence, a summary of evidence, and a statement of responsible or not responsible based upon the Preponderance of the Evidence. The investigator may also recommend:
  - Additional interim measures needed for the safety of all parties at any time.
  - That the Director of Title IX conducts or coordinates education/training needed to correct deficiencies noted during the investigation.
  - Any other recommendations deemed appropriate to resolve the complaint in a fair and just manner.

2. Take any follow-up or additional investigative measures as determined by the Director of Title IX.
3. Be responsible for coordinating responses to requests for information contained in their investigation report in accordance with the privacy laws and other applicable law including but not limited to the Family Educational Rights and Privacy Act (FERPA).

## **X. POST INVESTIGATION**

After receiving the report prepared by the Investigator, the Director of Title IX and Assistant Dean of Students shall make the final determination as to whether a violation of this Policy has occurred, and what disciplinary actions or corrective measures, if any, should be taken. The Director of Title IX may take the following actions:

- Determine there has been no violation(s) under the Policy or that there is insufficient evidence to conclude that there has been a violation under the Policy.
- Determine whether a Hearing Panel or Priority Hearing Panel should be convened to resolve the complaint.
- Notify the complainant and the respondent of the outcome as appropriate, in accordance with applicable privacy laws and HPU Policy.

Once a decision as to the outcome of the complaint is made, the University will send to both the complainant and respondent a letter with a brief summary of the findings, reason for the decision, and the legal standard applied.

## **XI. HEARING**

The Director of Title IX in partnership with the Assistant Dean of Students has the discretion to convene a hearing based upon information obtained through the investigation process. In determining whether a hearing should be convened, the Director of Title IX and Assistant Dean of Students may consider the following factors:

- The seriousness of the allegation(s).
- Whether the allegation(s) involve violence, injury, or the use of a weapon.
- Whether there are multiple complaints or multiple complainants.

- Whether the accused has been found responsible for prior incidents of Sexual Misconduct.
- Any other circumstances as determined by the Director of Title IX.

If a hearing is determined to be required, the University will provide written notification to the complainant and respondent of the hearing date and procedures. The hearing will be held within ten (10) business days after the Title IX/Conduct Director determines the necessity for a hearing, unless the University determines that additional time is required.

In the hearings involving more than one respondent, the Director of Title IX, at his or her discretion, may permit the hearings concerning each student to be conducted either separately or jointly.

#### **A. Sexual Assault Hearing Panel**

The Sexual Assault Hearing Panel is a fact-finding committee comprised of **individuals trained in areas related to Sexual Misconduct**. Panel members will receive **annual** training on the issues related to sexual assault, dating violence, domestic violence and stalking and how to conduct hearings that protect the safety of the parties and promotes accountability. The hearing panel will have three (3) panelists, comprised of Staff and/or Faculty. The individuals who serve as panelists will be selected by the Assistant Dean of Students, or other designated official.

The Hearing Panel will have for its review, the initial complaint, the respondent's response and any cross-complaints, all witness statements written or recorded, and any evidence preserved for the hearing. The assigned Investigator on the case will present his or her investigative findings to the hearing panel.

Hearings involving Faculty or Staff respondents will be conducted by the process outlined in their respective employee handbooks.

#### **B. Standard for Determining Responsibility**

A preponderance of the evidence standard will be used to determine whether Title IX or VAWA has been violated. This means that, if the University finds it is more likely than not that the alleged misconduct occurred, the University will conclude that there was a violation of the Policy.

#### **C. Rights of Complainants and Respondents**

The complainant and respondent have the following rights:

- The opportunity to speak on one's own behalf.
- The opportunity to be advised or accompanied by an Advisor of their choice, at their expense, to the hearing with advanced notice to the Title IX/Assistant Dean of Students. In general, an Advisor may only consult and advise his or her advisee, but not speak for the advisee at any hearing. The Advisor must comply with any other restrictions placed by the University on the extent to which he or she may participate in the proceedings, as long as such restrictions apply equally to both parties.
- The opportunity to present witnesses who can speak about the alleged conduct at issue.
- The opportunity to present other evidence on one's own behalf.

- The opportunity to submit questions before the hearing and/or follow-up questions during the hearing to the Hearing Panel. The Hearing Panel may ask the complainant, respondent, or witnesses any of the questions they deem appropriate and relevant to the hearing. Neither the complainant nor respondent may personally or through their Advisors question one another at any time during the hearing.
- The opportunity to attend the entire hearing or other proceeding, except for the deliberation phase.
- The right to be informed of the outcome of the hearing or other proceeding.
- The opportunity to appeal the outcome of the hearing or other proceeding.

#### **D. Advisors and Support Persons**

The hearing is closed to all persons except for the complainant and respondent, one advisor or support person, any witnesses while they are testifying, any staff required by the hearing panel, and any other person deemed appropriate or necessary by the Title IX/Assistant Dean of Students or the hearing panel. The advisor or support person cannot be a witness in the proceeding.

#### **E. Notification and Results of Investigation or Hearing**

After the conclusion of the investigation or hearing, the University will provide verbal notification to the complainant and the respondent involved of the outcome (i.e., whether a violation of this Policy has occurred) and sanctions assigned if any. This notice shall be issued contemporaneously to both parties to the extent practicable. The University also may disclose to the complainant information about any sanctions or corrective actions taken that relate directly to the complainant's case (e.g., any other notice required under Title IX). Neither the complainant nor respondent will be prohibited from disclosing the outcome of an investigation or hearing. The University will maintain documentation of all hearings or other proceedings.

### **XII. RIGHT TO APPEAL**

Once written notification of the resolution has been provided, either the complainant or the respondent will have the opportunity to appeal the outcome, as outlined in the Student Guide to Campus Life, or appropriate Employee Handbook(s). The appeal decision is final.

### **XIII. PROHIBITION AGAINST RETALIATION**

Retaliation exists when action is taken against a complainant or participant in the complaint process that (1) adversely affects the individual's employment or academic status; and (2) is motivated in whole or in part by the individual's participation in the complaint process.

No individual who makes a complaint alleging a violation of this Policy or who participates in the investigation or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation. Any acts of retaliation, as defined in this Policy, shall be grounds for discipline or corrective measures, up to and including expulsion, termination of employment or termination of relationship with the University.

#### **XIV. PRIVACY**

The University shall protect the privacy of individuals involved in a report of Sexual Misconduct to the extent permitted by law and University Policy. A report of Sexual Misconduct may result in the gathering of extremely sensitive information about individuals in the University community. While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of Sexual Misconduct. In such cases, efforts shall be made to redact the records in order to protect the privacy of individuals. An individual who has made a report of Sexual Misconduct may be advised of discipline or corrective measures imposed against the respondent when the individual needs to be aware of the discipline or corrective measures in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report).

In addition, when the offense involves a crime of violence or a non-forcible sex offense, FERPA permits disclosure to the complainant the final results of a disciplinary proceeding against the respondent, regardless of whether the University concluded that a violation was committed. Information regarding discipline or corrective measures taken against the respondent shall not be disclosed without the respondent's consent, unless permitted by law as noted above, or unless it is necessary to ensure compliance with the action or the safety of individuals.

#### **XV. RETENTION OF RECORDS**

The Director of Title IX is responsible for maintaining records relating to Sexual Misconduct, investigations, and resolutions. Records shall be maintained in accordance with University records policies. All Investigative reports and evidence will be stored in the Maxient records system.