



Functional Offices: President
Academic Affairs
Finance and Administration
Provost
Student Services
Human Resources
Compliance
General Counsel

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TITLE IX/SEXUAL MISCONDUCT POLICY

Purpose

Harrisburg University of Science and Technology (HU) is committed to maintaining a safe and healthy educational and work environment in which no member of the HU community is, on the basis of sex, excluded from participation in, denied the benefits of, or subjected to discrimination in any HU program or activity. Gender-based discrimination and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual's ability to participate in or benefit from HU programs or activities.

HU's Sexual Misconduct Policy (Policy) is designed to ensure a safe and nondiscriminatory educational and work environment, as well as meet HU's legal requirements, including but not limited to: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in HU's programs or activities; relevant sections of the Violence Against Women Reauthorization Act; Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and Pennsylvania laws that prohibit discrimination on the basis of sex.

Applicability

This Policy, and all applicable federal and state laws, applies to all HU students, all HU employees, third parties on HU owned or controlled property, and other community members on HU owned or controlled property.

Definitions

The terms and definitions used here are important components of HU's Policy. The definitions are intended to give meaning to these terms in the context of the HU community. Criminal and other applicable state laws may use different definitions and are inapplicable to this Policy.

Actual Knowledge

Actual Knowledge is when an official notice of sexual harassment or sexual misconduct is provided to Harrisburg University's Title IX Coordinator, Deputy Title IX Coordinator, Title IX Investigator, Title IX Administrator or a CSA (Campus Security Authority).

Advisor

An advisor is a support person who is present to aid a complainant or respondent throughout an investigation, and/or appeal hearing related to a possible violation of HU's Title IX/Sexual Misconduct Policy. Complainants and respondents may be accompanied by one advisor throughout the investigation and any related hearing process. The advisor may be any person of the party's choosing, including an attorney. An advisor may not speak, write, or otherwise communicate with a report facilitator during the statement collection and fact-finding portion of an investigation. Advisors are required should an investigation lead to a hearing and cross-examination.

Campus Security Authority (CSA)

A Campus Security Authority is a HU employee who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings, and in their employment capacity, has the authority and the duty to take action or respond to particular issues on behalf of the institution.

It is considered official notice to HU if the misconduct is within the actual knowledge of a CSA. CSAs assist HU in fulfilling its responsibility to annually disclose accurate crime statistics and to issue or facilitate the issuance of timely warnings or emergency notifications under the *The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (Clery Act) for crimes under that statute that pose a serious or continuing threat to the campus community.

Complainant

A Complainant is the recipient of the alleged misconduct. A complainant can be a student or employee.

For Title IX investigations a complainant must be participating in, or attempting to participate in, HU's education program or activity at the time of filing a formal complaint. A complainant who has graduated may still be "attempting to participate" in HU's education program or activity where the complainant has graduated from one program but intends to apply to a different program, or where the graduated complainant intends to remain involved with HU's alumni programs and activities. A complainant who is on a leave of absence may be "participating or attempting to participate" in HU's recipient's education program or activity. A complainant who has left HU

because of sexual harassment but expresses a desire to re-enroll if HU appropriately responds to the sexual harassment, is “attempting to participate” in HU’s education program or activity.

Situations in which the complainant is no longer participating in, or is no longer attempting to participate in HU’s education program or activity will not be processed through Title IX, rather through the respective Student or Employee Handbook of the respondent.

Consent

Consent is when clearly understandable words or actions manifest a knowing, active, voluntary, present, and ongoing agreement to engage in specific sexual or intimate contact. Relying solely on non-verbal communication can be unclear and lead to misunderstandings and harmful consequences for all parties involved. Individuals should be able to articulate why and how they knew they had received consent and what they considered to be indications of consent before they engaged in sexual activity.

Consent is not present when an individual does not have the capacity to give consent. Inability to give consent can be due a physical or mental condition, or the age of consent as defined by law. Things that can impair the ability to give consent include, but are not limited to, disability, the voluntary or involuntary consumption of drugs or alcohol, unconsciousness, sleep, or where the person is unaware that sexual activity is occurring.

Decision-Maker

The decision-maker oversees the statements and cross-examination of parties and witnesses during a Title IX resolution proceeding. During questioning, the decision-maker will determine if an advisor is adhering to HU’s procedural guidelines, if the cross-examination questions are relevant, and make the final determination as to whether there is a preponderance of evidence to support that the misconduct did or did not occur.

Deliberate Indifference

HU is deliberately indifferent only if its response to sexual harassment is clearly unreasonable and untimely in light of the known circumstances.

Deputy Title IX Coordinator

Deputy Title IX Coordinators are fully trained on HU’s sexual misconduct policies and assist the Title IX Coordinator in addressing reports of sexual misconduct.

Education Program or Activity

An Education program or activity includes locations, events, or circumstances over which HU exercised substantial control over both the respondent and the context in which the misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by HU.

Formal Complaint

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that HU investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in HU's education program or activity with which the formal complaint is filed.

Emergency Provision

An Emergency Provision is a temporary measure/s, imposed by HU on one or both parties based on credible information from a report of sexual misconduct. The Title IX Coordinator or Deputy Title IX Coordinator can impose Emergency Provisions, including removal from campus or campus housing for students and suspension with pay for employees based on the initial information received in a report of sexual misconduct. As a provision may impact a student's access to education or employment, the Title IX Coordinator will only implement provisions if there is cause to believe that the individual poses a threat to the safety or wellbeing of an individual or the campus community or the offensive behavior is severe, pervasive, and is unlikely to cease.

Emergency Provisions required for HU employees will be made by HU administration in consultation with the Office of Human Resources.

Parties

Parties is a term that refers to the complainant and the respondent collectively.

Preponderance of the Evidence (Burden of Proof)

A preponderance of the evidence standard is the burden of proof under this policy for both employees and student. It is understood to mean that a fact is more likely than not to be true. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on HU and not on the parties.

Quid Pro Quo Harassment

Quid pro quo sexual harassment typically involves someone being pressured by a superior or someone has power over a complainant to provide sexual favors in order to avoid a negative repercussion or to receive a benefit. The respondent in Quid Pro Quo harassment must be an employee of HU to be processed under a Title IX Investigation.

Report Facilitator

A Report Facilitator is responsible for meeting with parties and witnesses, gathering statements and evidence, and compiling a final report for review for either a decision in non-Title IX sexual misconduct allegations or cross-examination in Title IX resolution proceedings.

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Any “individual” can be a respondent, whether such individual is a student, faculty member, another HU employee or other person with or without any HU affiliation.

Retaliation

HU strictly prohibits retaliation against any member of its community for reporting an incident of sexual misconduct or for participating in an investigation or hearing related to a report of sexual misconduct. HU considers such actions to be protected activities in which all members of the HU community may freely engage.

Retaliation is a materially adverse action taken against an individual because they engaged in protected activities when the adverse action is sufficiently severe or pervasive that it could deter a reasonable person from engaging in the protected activities. Members of the community are prohibited from engaging in actions directly or through others that reasonably could deter a party or a witness from reporting sexual misconduct or participating in an investigation or hearing.

Sexual Harassment

Title VII Sexual Harassment (Employment Discrimination for Employees and Student Employees [excluding Work Study])

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Title IX Sexual Harassment (Students and Employees)

Conduct on the basis of sex that satisfies one or more of the following:

- (1) An HU employee of conditioning the provision of an HU aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to HU's education program or activity;
- (3) Sexual assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. This includes rape, sodomy, sexual assault with an object, fondling, incest, or statutory rape.

(4) Dating violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

(5) Domestic violence: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

(6) Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Support Measures

Support measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Supportive measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

An individual can initiate the process for support measures by contacting the Title IX Coordinator.

Title IX Administrator

In coordination with the Title IX Coordinator and Deputy Coordinators, the Title IX Administrator, handles investigation notifications, support measures, and scheduling of meetings, hearings, and cross-examinations. The Title IX Administrator does not have any decision-making authority and acts as a resource and support for all individuals involved in an investigation of Sexual Misconduct, whether it meets the criteria for Title IX or not.

Title IX Coordinator

The Title IX Coordinator is responsible for overseeing the sexual misconduct resolution process under Title IX. The Title IX Coordinator works closely with the Deputy Title IX Coordinators, the Director of Human Resources and the Director of Student Services, to address reports of sexual misconduct.

Unwelcome Conduct

Conduct is unwelcome if a person (1) did not request or invite it and (2) regarded the unrequested or uninvited conduct as undesirable or offensive. If a person welcomes some sexual contact that does not mean that person welcomes other sexual contact. Similarly, a person who willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcomed on a subsequent occasion.

Whether conduct is unwelcomed is determined based on the totality of the circumstances, including various objective and subjective factors. The following types of information may be helpful in making a determination: statements by any witnesses to the alleged incident; information about the relative credibility of the parties and witnesses; the detail and consistency of each person's account; the absence of corroborating information where it should logically exist; information that the respondent has been found to have harassed others; information that the complainant has been found to have made false allegations against others; information about the complainant's reaction or behavior after the alleged incident; and information about any actions the parties took immediately following the incident, including reporting the matter to others.

In addition, when a person lacks capacity to request or invite conduct, conduct of a sexual nature is deemed unwelcomed, provided that the respondent knew or reasonably should have known of the person's inability to give consent (*See* definition of “consent”).

Witness

A witness is a person who has direct or indirect knowledge related to specific aspects of a case. A witness can be a student, employee, or a third-party with no connection to HU.

Policy Jurisdiction

This Policy applies to prohibited conduct that is committed by students, faculty, staff, HU appointees, or third parties (such as vendors and contractors), whenever the misconduct occurs on HU property or off HU property, if the conduct was in connection with an HU or HU-recognized program or activity; or the conduct may have the effect of creating a hostile environment for a member of the HU community. Conduct subject to Title IX disciplinary action must occur within the United States. All other misconduct that does not meet the definition or geographic requirements of Title IX will be processed under HU’s Student Code or HU’s Employee Handbook.

Prohibited Conduct

HU prohibits all forms of sexual misconduct and gender-based harassment. This conduct violates HU's community standards and disrupts the living, learning, and working environments for HU students, faculty, staff, and other community members.

Prohibited conduct includes:

SMV¹.A - Dating/Domestic Violence²

Dating/Domestic Violence includes intimidation, harassment, physical abuse, sexual abuse, or interference with personal liberty of any person by someone in an intimate relationship.

Dating violence includes, but is not limited to, people who have or have had a dating relationship or people who have or had a social relationship of a romantic or intimate nature.

Domestic violence includes, but is not limited to relationships of current and former spouses, current and former domestic partners, intimate partners or dating partners who share or formerly shared a common dwelling or persons who otherwise have a child in common or share a relationship through a child.

Actions that constitute dating/domestic violence include, but are not limited to:

- a. Physical abuse: hitting, slapping, shoving, grabbing, pinching, biting, or hair pulling;
- b. Psychological or emotional abuse: a pattern of behavior undermining an individual's sense of self-worth or self-esteem, constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with one's children;
- c. Sexual abuse: attacks on sexual parts of the body, forcing sex after physical violence, treating one in a sexually demeaning manner, coercing or attempting to coerce any sexual contact or behavior without consent.

¹SMV represents Sexual Misconduct Violation within the Student Code of Conduct

² Conduct that meets this definition will be processed as Title IX Violation (*TIXV*) A- *Dating/Domestic Violence* through HU's Title IX Resolution Process if: 1) a Title IX Coordinator or official with the authority to institute corrective measures has actual knowledge of the reported behavior; 2) behavior was directed against a person in the United States; and 3) behavior was within the program and/or activity. Otherwise, the conduct will be processed under HU's Student or Employee Code of Conduct.

SMV.B - Gender-Based Harassment³

Gender-based harassment is verbal, nonverbal, graphic, physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation, or gender identity, but not necessarily involving conduct of a sexual nature. For example, disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

SMV.C - Sexual Assault⁴

Sexual assault includes any of the following behaviors:

- Sexual penetration without Consent (e.g., rape): Any penetration of the sex organs or anus of another person when consent is not present; any penetration of the mouth of another person with a sex organ when consent is not present; or performing oral sex on another person when consent is not present. This includes penetration or intrusion, however slight, of the sex organ or anus of another person by an object or any part of the body.
- Sexual Contact without Consent (e.g., fondling): Knowingly touching or fondling a person's genitals, breasts, thighs, groin, or buttocks, or knowingly touching a person with one's own genitals, breasts, or buttocks, when consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.
- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the laws of the location in which the incident occurred.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent under the laws of the state in which the incident occurred.
- Sexual Exploitation: Taking sexual advantage of another person for the benefit of oneself or a third party when consent is not present.
 - This includes but is not limited to the following actions (including when they are done by electronic means, methods, or devices):

³ Conduct that meets this definition will be processed as *TIXV. B- Gender-based Harassment* through HU's Title IX Resolution Process if: 1) a Title IX Coordinator or official with the authority to institute corrective measures has actual knowledge of the reported behavior; 2) behavior was directed against a person in the United States; 3) behavior was within the program and/or activity; AND 4) the unwelcome conduct is so severe, pervasive, and objectively offensive that it denies access to the program or activity. Additionally, if the behavior meets the previous criteria AND involve *quid pro quo* harassment by a HU employee, HU will resolve under HU's Title IX Resolution Process. Otherwise, the conduct will be processed under HU's Student or Employee Code of Conduct.

⁴ Conduct that meets this definition will be processed as *TIXV. C- Sexual Assault* through HU's Title IX Resolution Process if: 1) a Title IX Coordinator or official with the authority to institute corrective measures has actual knowledge of the reported behavior; 2) behavior was directed against a person in the United States; and 3) behavior was within the program and/or activity. Additionally, if the behavior meets the previous criteria AND involves *quid pro quo* harassment by a HU employee, HU will resolve under HU's Title IX Resolution Process. Otherwise, the conduct will be processed under HU's Student or Employee Code of Conduct.

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- Indecent or lewd exposure or inducing others to expose themselves when consent is not present;⁵
- Recording any person engaged in sexual or intimate activity in a private space without that person's consent;
- Distributing sexual information, images, or recordings about another person without that person's consent;
- Recruiting, harboring, transportation, providing, or obtaining another person for the purpose of sexual exploitation; or
- Incapacitation of another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct occurs.
- Obscene gestures;
- Sexual graffiti, pictures, or posters;
- Sexually explicit profanity;
- Stalking or cyberbullying that is based on gender or sex; or
- E-mail, texting ("sexting") and internet use that violates this Policy.

All forms of sexual misconduct identified in this Policy are prohibited forms of sexual harassment. Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct is sufficiently severe, pervasive, objectively offensive that it denies access to HU's programs or activities.

SMV D - Sexual Harassment⁶

For purposes of Title IX, sexual harassment is conduct on the basis of sex that satisfies one or more of the following: (1) An HU employee of conditioning the provision of an HU aid, benefit, or service on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to HU's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Non-Title IX sexual harassment is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, including *quid pro quo*. *Quid pro quo* occurs when submission to or

⁵ Breast feeding a child is not indecent and does not constitute sexual misconduct.

⁶ Conduct that meets this definition will be processed as *TIXV.D – Sexual Harassment* through HU's Title IX Resolution Process if: 1) a Title IX Coordinator or official with the authority to institute corrective measures has actual knowledge of the reported behavior; 2) behavior was directed against a person in the United States; 3) behavior was within the program and/or activity; AND 4) the unwelcome conduct is so severe, pervasive, and objectively offensive that it denies access to the program or activity. Additionally, if the behavior meets the previous criteria AND involves *quid pro quo* harassment by a HU employee, HU will resolve under HU's Title IX Resolution Process. Otherwise, the conduct will be processed under HU's Student or Employee Code of Conduct.

rejection of sexual conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement. There is no geographic requirement that non-Title IX sexual harassment occur within the United States.

The following conduct may constitute sexual harassment for Title IX or Non-Title IX proceedings:

- Observing, photographing, videotaping, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties;
- Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s);
- Sexual advances, whether or not they involve physical touching;
- Commenting about or inappropriately touching an individual's body;
- Lewd or sexually suggestive comments, jokes, innuendoes, or gestures;
- Stalking;
- Pressure for a dating, romantic, or intimate relationship;
- Unwelcomed sexual advances;
- Unwelcomed touching, kissing, hugging, or massaging;
- Pressured for or forced sexual activity;
- Unnecessary references to parts of the body;
- Remarks about a person's gender, nonconformity with gender stereotypes, or sexual orientation;
- Sexual innuendoes or humor;

SMV.E - Stalking⁷

Stalking is a course of conduct directed at a specific person that is unwelcomed and that would cause a reasonable person to fear for his or her safety (or the safety of a third party) or suffer substantial emotional distress. Conduct that can amount to stalking may include two or more actions directed at another person, whether done directly, indirectly, through others, through devices, or by any other methods or means (specifically including electronic means), including but not limited to:

- Following a person;
- Being or remaining near a person without academic purpose or invited social cause;
- Entering or remaining on or near a person's property, residence, or place of employment;
- Monitoring, observing, or conducting surveillance of a person;
- Threatening (directly or indirectly) a person;
- Communicating to or about a person;
- Giving gifts or objects to, or leaving items for, a person;
- Interfering with or damaging a person's property (including pets); or

⁷ Conduct that meets this definition will be processed as *TIXV.E – Stalking* through HU's Title IX Resolution Process if: 1) a Title IX Coordinator or official with the authority to institute corrective measures has actual knowledge of the reported behavior; 2) behavior was directed against a person in the United States; and 3) behavior was within the program and/or activity. Otherwise, the conduct will be processed under HU's Student or Employee Code of Conduct.

- Engaging in other unwelcome contact.

An attempt to commit an act identified above, as well as assisting or willfully encouraging any such act, is also considered a violation of this Policy.

An act may violate one or more parts of this Policy. Furthermore, community members may also be held responsible for the misconduct of their visitors and guests.

Reporting Sexual Misconduct

Employee Reporting

All HU employees (including student employees) should be familiar with HU's Sexual Misconduct Policy in addition to the resources and support available to complainants and witnesses of sexual misconduct. HU does not require all employees to report sexual misconduct. HU's Title IX Coordinator, Deputy Title IX Coordinators, Title IX Administrator, Title IX Investigators, Residence Life Staff, as well as CSAs are required to report any alleged instance of Sexual Misconduct. In the event in which a complainant discloses sexual misconduct to a non-mandated reporting HU employee, the employee should encourage the complainant to reach out to Title IX staff. Title IX staff can provide support measures without seeking a formal resolution. If an employee perceives the conduct to rise to the level of Title IX sexual harassment or non-Title IX sexual harassment as defined in this policy, HU encourages the employee to reach out to Title IX staff for reporting options.

Employees should make every attempt to explain to the student/employee that they are potentially not a confidential resource before a student/employee reveals something that they may want to keep confidential. If a complainant, respondent, or witness begins talking about the incident(s) with no warning, employees should immediately but gently interrupt and inform them that the conversation may not be considered confidential, and if they do not want the incident(s) to potentially be reported then they should make an appointment with a confidential resource, including HU's Counseling Center.

In emergency situations, where a person's health or safety is in immediate danger, employees should call 911 and then report to the Title IX Coordinator.

Anonymous Reporting

While anonymous incident reports will be reviewed and investigated by the Title IX Coordinator if possible, HU's ability to address alleged misconduct reported anonymously is significantly limited in both Title IX and non-Title IX cases of sexual misconduct.

Individuals can make anonymous reports by going to this public link:

https://harrisburgu-advocate.symplicity.com/public_report/

Reporters are encouraged to provide as much information as possible including date(s) of incident(s), time of incident, individual names, nicknames, locations, potential witnesses, and any other pertinent details.

Third Party Reporting

While HU strongly encourages reporting of violation under this policy and will address all reports from third parties, HU asks third parties to consider the impact of a potential investigation on the complainant. HU may need to move forward with an investigation based on the information provided to the Title IX Coordinator by the third party. This may put the complainant at risk or retraumatize the complainant by taking away the complainant's right to choose to report. HU encourages third parties to reach out to confidential resources on or off-campus prior to reporting to a Title IX Coordinator.

HU encourages third parties to discuss concerns with the complainant directly, if possible. Third parties may reach out to confidential resources and Title IX Coordinator for additional resources and information on how to approach these difficult conversations. Confidential resources and the Title IX Coordinator can answer general questions without requiring specific information that which may commence an investigation.

All Other Reporting

While HU strongly encourages reporting, members of the HU community who believe they have experienced sexual misconduct have the right to choose whether or not to report the incident to HU or law enforcement and whether or not to pursue a sexual misconduct complaint with HU.

Time Considerations for Reporting Sexual Misconduct

All reports should be made as soon as possible after an incident because the passing of time makes the collection and review of evidence more difficult and the memories of involved individuals become less reliable. There is no time limit for when an incident of sexual misconduct may be reported. The Title IX Coordinator reserves the right to conduct an initial inquiry, initiate an investigation, or otherwise address any report, regardless of the time it is made, based on concern for the safety or well-being of the HU community.

A report of a violation can be submitted by anyone by any means listed within this policy including phone, email, personally or electronically through the following link:

https://harrisburgu-advocate.symplicity.com/public_report/.

If the respondent(s) is/are no longer students, employees, or third-party contractors for HU, HU may be unable to pursue a formal investigation but may be able to offer support measures to the impacted individual.

Reporting to Title IX Staff

The following individuals are trained to receive reports of sexual misconduct and can coordinate support measures:

Title IX Coordinator

Matthew Point, Director of Compliance

Physical Address:
255 Market Street, Room 228
Harrisburg PA 17101

Mailing Address:
326 Market Street
Harrisburg, PA 17101
(717) 901-5100 x1769
mpoint@haarisburgu.edu

Deputy Title IX Coordinator for Students

Melissa Morgan, Director of Student Services

Physical Address:
Student Union, Room 124
Harrisburg, PA 17101

Mailing Address:
326 Market Street
Harrisburg, PA 17101
(717)901-5149

MMorgan@HarrisburgU.edu

Title IX Deputy Coordinator for Employees

Ellyn Garcia, Director of Human Resources

Physical Address:
255 Market Street, Room 204
Harrisburg PA 17101

Mailing Address:
326 Market Street
Harrisburg, PA 17101
(717) 901-5112
egarcia@harrisburgu.edu

Title IX Administrator

Joann Noel, Graduate Student Services Coordinator

Physical Address:
Student Union, Room123
Harrisburg, PA 17101

Mailing Address:
326 Market Street
Harrisburg, PA 17101
(717) 901-5100 x1761
jnoel@harrisburgu.edu

Upon receipt of a report, a Title IX staff member will contact the complainant to provide information about policies, resources, support measures, and reporting options. The information provided by the Title IX staff member will generally include information about medical and confidential counseling and support resources; options for pursuing a complaint and/or reporting the incident to law enforcement; how to request a protective order or support measures; how to request and accommodations; how to preserve evidence; where to access more information; and an invitation to meet with or speak to a Title IX staff member.

Confidential Reporting

When complainants request that their name or other identifiable information not be shared with respondents and/or that no conduct proceeding or other action be taken, HU will seek to honor that preference when possible. In determining how to proceed, HU will balance a complainant's request with its obligation to provide a safe and nondiscriminatory environment for all HU community members, including the respondent.

HU will consider the following factors in evaluating such requests:

- The nature and scope of the reported conduct, including whether the reported conduct involved physical force or the use of a weapon;

- The potential impact on the complainant of moving forward, particularly in reports involving intimate partner violence;
- The respective ages and roles of the complainant and respondent, including whether the complainant is (or was at the time of the reported conduct), a minor under the age of 18;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- Whether there are any other documented complaints to HU related to similar behavior about the same respondent (if known)⁸;
- Whether the respondent has a history of convictions or records from a prior school indicating a history of harassment/misconduct, if such records are available;
- Whether the respondent threatened future sexual violence against the complainant or others;
- Whether the report reveals a pattern of conduct at a given location or by a particular group such that there is an increased risk of future acts of sexual misconduct under similar circumstances; and
- Whether the conduct included multiple respondents.

When HU determines that a complainant's request to remain confidential can be honored, HU will evaluate whether support measures will remedy any effects on the complainant and the HU community. Those steps may include offering appropriate supportive measures to the complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances. HU cannot impose sanctions on a respondent without due process.

When HU determines that action should be taken that is inconsistent with the request of the complainant that a report remain confidential or that it not be acted upon, the complainant will be informed about the chosen course of action, which may include HU initiating a conduct proceeding against a respondent. In that event, HU will need to disclose the identity of the complainant to the respondent. If so, the complainant will be notified that HU intends to proceed with a conduct proceeding, but that the complainant is not required to participate in the proceeding or in any other actions undertaken by HU.

In cases when the complainant chooses not to participate, HU may pursue conduct proceedings if it is possible to do so without the complainant's participation. Where a complainant declines to participate in a conduct proceeding, however, HU's ability to meaningfully investigate and respond to a report, including a subsequent disciplinary hearing, may be limited or unable to be adequately pursued.

Reporting to Law Enforcement

HU encourages individuals to report incidents of sexual misconduct to local law enforcement. Timely reporting to the police is an essential factor for the successful investigation and prosecution of crimes, including sexual violence crimes. It may lead to the arrest of an offender or aid in the investigation of other incidents.

⁸ Prior allegations of sexual misconduct can only be considered if the investigation determined that the allegations were founded.

An individual who has experienced sexual misconduct has the right to choose whether to file a police report. Filing a police report may result in the investigation of whether sexual violence or related crimes occurred and the prosecution of those crimes against a perpetrator. It is important to know that reporting the incident to the police does not mean an individual is obligated to testify in court.

Police can also assist in reviewing options with alleged victims and identifying and facilitating support resources related to:

- Seeking medical attention
- Seeking support, advocacy, and counseling services; and
- Discussing legal options, including seeking protective orders from a court.

Contact information for local law enforcement

Harrisburg Police Department

123 Walnut Street
Harrisburg, PA 17101
(717) 255-3131
9-1-1 for Emergencies

Philadelphia Police Department

401 N. 21st St.
Philadelphia, PA 19130
(215) 686-3090
9-1-1 for Emergencies
3-1-1 for non-Emergencies

Swatara Township Police (Steelton-Highspire Aquaponics Lab)

599 Eisenhower Blvd
Harrisburg, PA 17111

717-564-2550
9-1-1 for Emergencies

Amnesty Policy

HU encourages the reporting of sexual misconduct and seeks to remove any barriers to making a report. HU recognizes that an individual who has been drinking or using drugs at the time of an incident may be hesitant to make a report because of the potential consequences of their conduct. An individual who makes a good faith report of sexual misconduct will not be subject to disciplinary action by HU for a conduct or policy violation that is related to and revealed in the sexual misconduct report or investigation, unless HU determines the violation was serious and/or placed the health or safety of others at risk. HU may, however, initiate an educational discussion or pursue other educational interventions regarding alcohol or other drugs. These interventions do not include involuntary leaves for students from HU. Amnesty does not preclude or prevent action by police or other legal authorities.

Confidential Resources

Resources are available for individuals to discuss incidents and issues related to sexual misconduct on a confidential basis. Confidential resources will not disclose information about incidents of

sexual misconduct to anyone, including law enforcement or HU, except in limited situations, such as when failure to disclose the information would result in imminent danger to the individual or to others or where state law requires that a report be made.

Confidential resources can provide alleged victims with information about support services and their options. Because of the confidential nature of these resources, disclosing information to or seeking advice from a confidential counselor does not constitute a report or complaint to HU and will not result in a response or investigation by HU. A person consulting with a confidential resource may later decide to make a report to HU or law enforcement.

On-Campus Confidential Resources for the Harrisburg and Philadelphia Campus for Students

Harrisburg University
Counseling Center (HUCC)
326 Market Street, Room 253
Harrisburg, PA 17101
(717) 901-5100, ext:0253
Counseling@HarrisburgU.edu

Virtual Confidential Resources

For Students (including student employees)

Student Assistance Program by BHS

<https://portal.bhsonline.com/>

Username: HarrisburgU

1-800-327-2252

Available 24/7

For Full-Time Employees (non-student employees)

Employee Assistance Program (EAP)

Mutual of Omaha

EAP professionals are available 24 hours a day, 7 days a week, at 1-800-316-2796

Off-Campus Confidential Resources

A list of confidential off-campus resources can be found on SharePoint:

<https://myharrisburgu.sharepoint.com/sites/StudentServices/SitePages/Resources.aspx>

Seeking Medical Assistance

Experiencing any form of sexual misconduct, especially acts of violence, is difficult and overwhelming. Survivors often experience a range of emotions, including fear, anxiety, and confusion, and may be unsure of what they want to, or should do next. Regardless of whether the individual choose to report the incident, HU strongly encourages survivors of any form of violence to seek medical attention as soon as possible, even if they feel no injury was sustained.

Medical assistance providers can treat visible physical injuries and identify injuries that may not be visible, and where appropriate, also address concerns regarding sexually transmitted infections and pregnancy, and provide emergency contraception (if requested). In addition, a hospital can test for the presence of alcohol or drugs (e.g., "date rape" drugs) and perform a rape evidence collection procedure (see Procedure Section 2), which are also strongly recommended to maintain all legal options.

Medical Care Providers

Harrisburg Campus Location

Pinnacle Health Services Sexual Assault Forensic Examiner (SAFE) Program*

(717)782-5205

111 South Front Street,
Harrisburg PA 17101

<https://www.pinnaclehealth.org/our-services/womens-health/our-programs/>

*Accessible through emergency room

Philadelphia Campus Location

Thomas Jefferson University Hospital, Center City Philadelphia Sexual Assault Forensic Examiner (SAFE) Program*

132 South 10th Street,
Philadelphia PA 19107

<https://hospitals.jefferson.edu/departments-and-services/emergency-department-at-jefferson.html>

*Accessible through the Emergency Room on the corner of 10th and Sandon Streets)

Philadelphia Sexual Assault Response Center (PSARC)

Emergencies: Call (215) 425-1625 to reach the on-call sexual assault nurse examiner

Or (215) 800-1589 for non-emergencies

300 E. Hunting Park Avenue,
Philadelphia, PA 19124

<https://drexel.edu/medicine/about/departments/emergency-medicine/forensic-emergency-medicine/>

Additional resources can be found on SharePoint at:
<https://myharrisburgu.sharepoint.com/sites/StudentServices/SitePages/Resources.aspx>

Preserving Evidence

Many sexual misconduct offenses also are crimes in the state or locality in which the incident occurred. For that reason, complainants of sexual misconduct often have legal options that they can pursue. However, these options are available solely at their discretion, and complainants may change their minds about pursuing them at any time. For example, complainants may seek a protective order from a court against the perpetrators; pursue a civil action against the perpetrator(s); and/or participate in a law enforcement investigation and criminal prosecution of the perpetrator(s).

Regardless of whether an incident of sexual misconduct is reported to the police or HU, HU strongly encourages those who experienced sexual misconduct to preserve evidence to the greatest extent possible, as this will best maintain all legal options for them in the future.

Additionally, this evidence may also be helpful in a HU investigation. While HU does not conduct forensic tests for parties involved in a complaint of sexual misconduct, the results of such tests that have been conducted by law enforcement agencies and medical assistance providers may be submitted as evidence that HU may consider in its investigation or proceeding, if the evidence is available at the time of HU's investigation or proceeding. For Title IX hearings, the collector of the evidence with firsthand knowledge must be available for cross-examination purposes.

Below are suggestions for preserving evidence related to an incident of sexual misconduct. It is important to remember that each suggestion may not apply in every incident:

General Evidence Preservation Recommendations⁹

In order to potentially maintain future legal options, individuals should consider not altering, disposing, or destroying any physical evidence of sexual misconduct.

If there is suspicion that a drink may have been drugged, an individual should inform a medical assistance provider and/or law enforcement as soon as possible so attempts can be made to collect possible evidence (e.g., from the drink, through urine or blood sample).

Individuals can preserve evidence of electronic communications by saving them and/or by taking screen shots of text messages, instant messages, social networking pages, or other electronic communications and by keeping pictures, logs, or copies of documents that relate to the incident and/or respondent.

Even if complainants choose not to make a complaint regarding sexual misconduct, they may consider speaking with City of Harrisburg Police to preserve evidence if they change their mind at a later date.

Evidence Preservation Suggestions Specific to Sexual Assault

Because some evidence, particularly evidence that may be located on the body, dissipates quickly (within 48-96 hours), individuals who have been sexually assaulted and wish to preserve evidence should go to the hospital or medical facility immediately to seek a medical examination and/or evidence collection. Pennsylvania law, 18 Pa.C.S. § 11.707, provides that the costs of the forensic rape examination and medications provided as a direct result of a sexual offence shall not be charged to the victim. The victim of a sexual offence does not need to 'report' the sexual offense or 'talk' to law enforcement for the costs to be paid by the Victims Compensation Assistance Program (VCAP).

⁹ This is not offered or intended to be legal advice or ensure the acceptability or admissibility of evidence. These are practical tips that may result in the preserving of evidence but may not be best practice forensically.

Health care providers must utilize the victim's insurance to include Medical Assistance, health maintenance organizations, or federally financed insurance programs such as Medicare or Champus, before applying to the VCAP. In instances where the victim or person responsible for the victim requests that the provider not access insurance, the claim may be submitted directly to the VCAP for consideration of payment.

An individual who has been sexually assaulted and wishes to preserve evidence should, if possible, not shower, bathe, douche, smoke, brush teeth, eat, drink, use the bathroom, or change clothes or bedding before going to the hospital or seeking medical attention.

If the individual who has been sexually assaulted decides to change clothes or bedding and wishes to preserve evidence, they should not wash clothes worn or bedding used during the assault, and should bring them to the hospital, medical facility, or the police in a non-plastic bag (e.g., paper bag).

In Pennsylvania, individuals who have been sexually assaulted may allow the collection of evidence even if they choose not to make a report to law enforcement. A Sexual Assault Nurse Examiner (SANE) advocate or a law enforcement officer will know how long evidence will be stored. A sexual assault evidence collection kit may not be released by a Pennsylvania hospital without written consent from the survivor.

Title IX VAWA Statement

It is Policy of HU to comply with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination (including sexual harassment and sexual violence) based on sex in HU's educational programs and activities.

It is also HU's Policy to continue to comply as Policy with the federal Violence Against Women Act (VAWA) amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (Clery Act), and the accompanying regulations.

Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination.

VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled.

HU has designated the Title IX Coordinator to coordinate its compliance with Title IX and VAWA and to respond to reports of violations.

HU has directed its Clery Coordinator to coordinate its compliance with the Clery reporting-related VAWA requirements. HU's Clery report is posted annually on its website and circulated to the HU community.

A person may also file a complaint with the Department of Education's Office for Civil rights regarding an alleged violation of Title IX by visiting <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or calling 1-800-421-3481.

Complaint Resolution Process for Sexual Misconduct¹⁰

Introduction

The goal of the resolution process is to promptly initiate a fair and impartial investigation to determine what occurred and subsequently take steps to resolve the situation, if necessary. This includes both parties having the same procedural and substantive rights; an equal opportunity to preserve relevant witness information and other evidence; similar and timely access to information that will be used in the investigation and subsequent report, any Title IX hearing, and the ability to have a support person/advisor of their choice in any meeting that occurs regarding the incident.

Participation in Process¹¹

HU invites complainants and witnesses to participate fully in the complaint resolution process. If the alleged conduct meets the criteria for a Title IX violation as described in the prohibited conduct section of this policy, the complainant must sign a formal complaint.

If a complainant decides not to participate but wants disciplinary action to be taken, HU will determine whether it is possible to move forward with a case without the participation of the complainant. In most cases, disciplinary action is not possible without the participation of the complainant. HU may act as the complainant in the process in unusual circumstances or resolve the complaint under student or employee conduct policies. Support measures are available for complainants regardless of whether or not the complainant wishes to participate in the resolution process.

When individuals report allegations of sexual misconduct to HU and do not consent to the disclosure of their names and/or do not disclose the identity of the alleged offenders or identifiable information about the alleged offenders, HU's ability to respond to complaints may be limited. In cases where an individual reporting sexual misconduct requests anonymity or does not wish to proceed with an investigation, HU will attempt to honor that request but, in some cases, a Title IX Coordinator or designee may determine that HU needs to proceed with an investigation based on concern for the safety or well-being of the broader HU community (e.g., risk of future acts of sexual violence or a pattern of sexual misconduct). HU reserves the right to take appropriate action in such circumstances, including in cases when the individual reporting the misconduct is reluctant to proceed.

HU encourages Respondents to participate in the complaint resolution process.

¹⁰ Any individual requiring an accommodation under the Americans with Disabilities Act (ADA) in order to fully participate in any aspect of this policy should contact a Title IX Coordinator.

¹¹ Participating in the process, and HU's ability to vigorously pursue an investigation and a disciplinary hearing substantially depends on whether the matter is required to be processed as a Title IX violation or a non-Title IX violation. For all Title IX disciplinary hearings, hearsay evidence is not permitted, and parties and witnesses must be present and be subject to cross-examination for their evidence to be considered by the decision maker.

Mandatory Grounds for Dismissal

If the conduct alleged in a formal Title IX complaint would not constitute sexual harassment as defined in Title IX, even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then HU must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. However, a dismissal for this reason does not preclude action under HU Student Code of Conduct for non-Title IX offense sexual misconduct. HU will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Discretionary Grounds for Dismissal

The recipient may dismiss a formal Title IX complaint or any allegations contained in it, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in it; the respondent is no longer enrolled or employed by HU; or specific circumstances prevent HU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations. However, a dismissal for this reason does not preclude action under HU Student Code of Conduct for non-Title IX offense sexual misconduct. HU will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Voluntary and Information Resolution

Informal resolution involves action taken by HU in response to a signed report of sexual misconduct from a complainant when formal resolution is not desired by the complainant. Informal resolutions cannot be used for *quid pro quo* harassment or misconduct that involves faculty or staff. Examples of informal resolutions can include, but are limited to, a warning to cease current behaviors, no-contact directives, an educational conversation with the respondent or others, and changes in academic, work, or living arrangements.

As part of the informal resolution process, the parties may submit to mediation to resolve outstanding issues. However, mediation will not be used to resolve complaints involving sexual or physical violence or where there is a power dynamic such as between a HU employee and student.

HU may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. Similarly, HU may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

To proceed with informal resolution, HU must provide the parties with written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.”

To proceed with informal resolution, HU must obtain the parties' voluntary, written consent to the informal resolution process.

HU may not use informal resolution to resolve allegations that an employee sexually harassed a student.

The factors that will be considered in evaluating requests for informal resolution, include, but are not limited to:

- The nature and scope of the reported conduct, including whether the reported conduct involved physical force or the use of a weapon;
- The potential impact on the complainant of moving forward, particularly in reports involving intimate partner violence;
- The respective ages and roles of the complainant and respondent, including whether the complainant is (or was at the time of the reported conduct), a minor under the age of 18;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- Whether HU has received other complaints of similar behavior about the same respondent (if known);
- Whether the respondent has a history of convictions or records from prior school(s) indicating a history of harassment/misconduct, if such records are available;
- Whether the respondent threatened further sexual violence or other violence against the complainant or others;
- Whether the report reveals a pattern of conduct at a given location or by a particular group such that there is an increased risk of future acts of sexual misconduct under similar circumstances; and
- Whether the conduct included multiple respondents.

Providing False Statements

All participants have the responsibility to be completely truthful with any information they share at all stages of this Policy's processes. Any individual who knowingly or intentionally provides false information as part of a report or investigation under this Policy will be subject to discipline in accordance with the procedures set forth in the Student Handbook, Faculty Handbook, or Employee Handbook.

This provision does not apply to a good faith report that is not substantiated or not proven by a preponderance of the evidence.

Privacy and Sharing of Information

To the extent noted in this Policy, HU considers complaints and investigations of sexual misconduct to be private matters for the parties involved. For that reason, HU will protect the identity of persons involved in reports of sexual misconduct to the extent circumstances allow. HU will only share personally identifiable information with persons who are on "a need-to-know basis" for HU to investigate, respond, or deliver resources or support services.

HU does not publish the names nor post identifiable information about persons involved in a report of sexual misconduct in HU's Daily Crime Log or elsewhere online. HU does not confirm to

outside parties the identity of an individual who may be involved in a report of sexual misconduct without the individual's consent. However, HU cannot promise complete confidentiality or privacy in the handling of sexual misconduct reports or complaints. It can promise discretion to the extent possible as noted within this Policy or applicable laws.

All participants in an investigation or a hearing of sexual misconduct, including advisors, are informed that confidentiality helps enhance the integrity of the investigation, protects the privacy interests of the parties, and protects the participants from statements that might be interpreted to be retaliatory. For these reasons, the complainant, respondent, witnesses, and advisors will be asked to keep information related to the investigation and resolution private to the extent consistent with applicable law.

However, HU reserves the right to share information regarding an investigation with other appropriate parties on a need-to-know basis consistent with the Family Educational Rights and Privacy Act (FERPA) and other applicable laws.

Case Resolution Timeline

In most cases, HU investigates and resolves complaints of sexual misconduct, including any sanctions and/or corrective actions within 90 days of receiving a complaint. However, this may vary based on the availability of the parties and witnesses, the scope of the investigation, support measures or accommodations, or unforeseen circumstances. Many cases are resolved in a shorter time.

Extensions of time beyond this 90-day timeframe may occur for good cause. In cases where there is simultaneous law enforcement investigation, HU generally will proceed with its investigation and resolution of a complaint during, and possibly prior to the completion of, any law enforcement investigation.

The primary goal of an investigation is to provide a prompt but equitable resolution to a case through a fair and impartial proceeding. Due to extenuating circumstances, an investigation may take additional time to preserve these goals. However, available electronic means, such as online interviews, may be utilized to timely complete an investigation.

Conflicts of Interest

A list of report facilitators and appeal reviewers who may make findings in sexual misconduct matters is available through HU's Title IX Coordinator.

HU reserves the right to use an appropriately trained report facilitator or appeal reviewer not on this list as it deems necessary. Parties can raise the issue of a potential conflict of interest or perceived bias within two days of their initial meeting with the Title IX staff member. The Title IX Coordinator will determine whether a conflict of interest exists. No report facilitator or appeal reviewer will make findings or determinations in a case in which they have a conflict of interest.

A Title IX Coordinator may hire external report facilitators in complicated cases if perceived bias cannot be avoided or the nature of the case exceeds HU's resources. External report facilitators will receive training specific to HU policy prior to initiating a report finding procedure.

Any party or witness who believes that a conflict of interest, or bias, exists on the part of a report facilitator, should report their concerns to a Title IX staff member.

Standard of Evidence

HU uses the preponderance of the evidence standard in its investigations and hearings of complaints alleging sexual misconduct and any related violations. A preponderance of evidence means it is more likely than not that a violation of the Policy occurred.

Initial Inquiry

When HU receives a report of sexual misconduct, Title IX staff will begin an initial inquiry as soon as practical. This will most frequently begin with an attempt to gain additional information from the complainant, preferably through an in-person meeting. The scope and timing of further action will depend upon a number of factors, including but limited to, whether the identity of the victim is known; whether the complainant is willing to participate in an investigation and/or hearing; whether the complainant requests anonymity or confidentiality; whether the respondent is affiliated with HU; and whether HU has an obligation to proceed with an investigation based on concerns for the safety of the broader HU community, regardless of the complainant's wishes.

Following an Initial Inquiry, possible next steps include:

- **Refer for Resolution under *Code of Conduct*:** If the conduct described in the initial report does not meet the criteria outlined in the definition section of this Policy for resolution under Title IX, and the respondent is a student, the Title IX Coordinator will refer the report to the Director of Student Services for resolution through the process outlined HU's *Code of Conduct*, Chapter 1 of HU's *Student Handbook*
- **Refer for Resolution under *Employee Handbook*:** If the conduct described in the initial report does not meet the criteria outlined in the definition section of this Policy for resolution under Title IX, and the respondent is an HU employee or third-party, the Title IX Coordinator will refer the report to the Director of Human Resources for resolution through policies and procedures outlined in the *Employee Handbook* or *Faculty Handbook*.
- **Close the Case:** For a case to be referred for a full investigation, there must be sufficient information to believe a policy violation may have occurred and that the respondent may be responsible. The Title IX Coordinator may dismiss a case when insufficient information exists to move forward or when the alleged misconduct, even if substantiated, would not be a violation of Policy. The Title IX Coordinator may, in their discretion, reopen a case in the future if additional information becomes available or a complainant who was unwilling to pursue formal resolution changes their mind, (consistent with the time limitations discussed above).
- **Consolidation.** If multiple complaints have been filed that arise from the same or similar set of facts, the matters may be consolidated into one investigation in the sole discretion of HU and processed informally, formally, or closed.
- **Formal Resolution:** The Title IX Coordinator may determine that there is reasonable information to suggest a policy violation involving a Title IX violation¹² may have

¹² This applies to only *TIXV.A – Dating/Domestic Violence*, *TIXV.B – Gender-Based Harassment*, *TIXV.C – Sexual Assault*, *TIXV.D – Sexual Harassment*, and *TIXV.E – Stalking*.

occurred. In these cases, the complaint will proceed to further investigation and formal resolution. See *Title IX Complaint Resolution Procedure* section of this Policy.

Title IX Complaint Resolution Procedure¹³

Title IX Notification to Respondent

The Title IX sexual misconduct complaint resolution process includes an opportunity for the respondent to be notified of the alleged misconduct and the policy violations under consideration and an opportunity to be heard. If a case is referred for formal resolution, the Title IX Coordinator or designee will notify the respondent of the alleged misconduct and the respondent will be given an opportunity to respond.

All notices will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process, the written notice must inform the parties that they may have an advisor of their choice, who may be an attorney, the written notice must inform the parties that they may inspect and review evidence, the written notice must inform the parties of any provision in HU's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the process, and provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

The notification will also include a brief description of the alleged misconduct, the date and location of the incident, the identities of the parties, a list of any HU policies allegedly violated, and a description of the steps toward resolution. HU may modify the list of policies allegedly violated based on additional information revealed during fact and statement gathering. However, if, in the course of an investigation, HU decides to investigate allegations about the complainant or respondent that are not included in the notice provided, HU must provide notice of the additional allegations to the parties whose identities are known.

All notifications will contain statements regarding false statements and retaliation, as well as contact information for ADA accommodations.

Title IX Report Process

HU will investigate formal complaints through final resolution. To meet the formal complaint criteria, a complainant must sign a statement of the alleged violation with details outlining the respondent's name, or nickname, location, date and times, if known, and general description of the alleged violation. Depending upon the circumstances, one or more report facilitators are assigned from a list of trained report facilitators. In some cases, an outside report facilitator may be retained. All report facilitators and Title IX staff receive trauma-informed training on sexual misconduct and are familiar with HU's policies and procedures regarding Sexual Misconduct. HU, in its discretion, may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one

¹³ This applies to only *TIXV.A – Dating/Domestic Violence*, *TIXV.B – Gender-Based Harassment*, *TIXV.C – Sexual Assault*, *TIXV.D – Sexual Harassment*, and *TIXV.E – Stalking*.

party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances

During the fact-finding and report process, the complainant has the opportunity to describe the allegations and present supporting evidence to the report facilitator. The respondent has the opportunity to hear the allegations, respond to them, and present a statement and supporting evidence to the report facilitator. HU will record these meetings. Parties may choose to have an advisor present.

Generally, the report facilitator meets with each party and each witness separately. In some cases, the report facilitator may interview the parties and/or witness more than once. The parties may submit additional materials, evidence, or information to the report facilitator following their interview(s). In all cases, both the complainant and the respondent have equal opportunities to share information and have their information considered. Each will have access to the statements, materials, and evidence submitted by the other party's witnesses prior to hearing.

The complainant and the respondent can present names of witness they suggest the report facilitator interview. Complainants and respondents may only present factual witness and may not present character or expert witness. The report facilitator will take information provided by the complainant and respondent into consideration when identifying whom they will interview and what questions they ask, but these decisions are in the report facilitator's sole discretion. The report facilitator may also choose to interview other witnesses not identified by the parties based on the information provided in the parties' statements.

Once the report facilitator collects all statements and evidentiary documents, the report facilitator will create an investigative report that includes all statements and evidence that the parties provided. Parties will receive the report for review before cross-examination. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. .

Title IX Cross-Examination Hearing

With the assistance of the Title IX Administrator, the Title IX Coordinator will schedule an opportunity for cross-examination of statements and documents on the report. HU will conduct the cross-examination hearing live and virtually using Microsoft Teams. The Title IX Administrator can facilitate access to a private and secure setting with appropriate internet access if requested by either party. HU will record the cross-examination hearing.

The cross-examination hearing allows parties to respond to the report and ask questions of the other party and the other party's witnesses. Parties are not allowed to ask each other questions directly. The advisor must ask questions on behalf of the complainant or respondent. The advisor will ask questions of witnesses.

The cross-examination hearing is not a courtroom trial and advisors are to conduct themselves per the hearing guidelines set forth by the Title IX Coordinator. Theatrics will not be tolerated. Advisors that do not adhere to these guidelines will be warned. If the behavior continues, the decision-maker can then remove the advisor from the proceedings. A new advisor will be appointed to proceed with the cross-examination hearing.

Witnesses do not need advisors, but all witnesses must attend the cross-examination hearing or the witness' statements and evidence will not be considered in reaching a final decision.

The Title IX Decision Maker will review all questions from the advisors for relevance prior to a response being provided. The Decision-Maker will provide justification for any excluded questions. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Additionally, the Decision Maker will make the final determination of whether there was a preponderance of evidence to support that the misconduct did occur.

Title IX Final Determination

A final determination will contain the following information:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of HU's Policy to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that HU imposes on the respondent, and whether remedies designed to restore or preserve equal access to HU's recipient's education program or activity will be provided by HU to the complainant; and
- HU's procedures and permissible bases for the complainant and respondent to appeal.

Title IX Notification

Notification of findings and sanctions are simultaneously provided to the complainant and the respondent in separate correspondence from the Title IX Coordinator including an explanation of

the weight of evidence using the appropriate standard of proof. However, some information may not be shared if it would violate any federal or state law, such as the Family Educational Rights and Privacy Act (FERPA).

The complainant's notification includes findings related to violations of the Policy, remedies offered or provided to the complainant, sanctions imposed on the respondent that directly relate to the complainant, and any other steps HU has taken to prevent the recurrence and eliminate a hostile environment, if such was found to exist. Information contained in the notification may be limited due to applicable laws.

In a case related to alleged sexual assault, stalking, or dating/domestic violence, the complainant's notification of outcome will also include the rationale for the findings related to violations of Policy and all sanctions imposed on the respondent, not just those directly related to the complainant. The respondent generally will not be notified of the individual remedies offered or provided to the complainant.

Complainants and respondents are informed of appeal procedures within their notifications. HU encourages the parties to maintain confidentiality of all communication related to findings and sanctions.

Title IX Sanctions

Sanctions are determined based on several factors, including the severity of the conduct and any prior policy violations. In addition, HU may take steps to address the effects of the conduct on victims and others, including, but not limited to, counseling and support resources, academic and housing assistance, change in work situations, leaves of absence, and training or other preventative measures. Sanctions and remedial actions aim to eliminate any hostile environment, prevent sexual misconduct from recurring, and remedy any discriminatory effects on a complainant or others. HU may impose more severe sanctions if there are prior founded conduct violations on the respondent's student or employment record.

Sanctions and corrective actions are¹⁴:

- Verbal warning
- Written warning
- Advisory Letter
- Monitoring
- Disciplinary hold on academic and/or financial records
- Performance improvement/management process
- Required training or education
- Campus access restrictions
- Loss of oversight, teaching or supervisory responsibility
- Probation
- Demotion

¹⁴ Listed sanctions may not be applicable to all respondents. The list includes potential sanctions applicable to HU employees and students.

- Loss of pay increase
- Revocation of offer (employment or admissions)
- Disciplinary suspension
- Deferred suspension
- Suspension with pay
- Suspension without pay
- Exclusion
- Expulsion
- Degree revocation
- Loss of privileges
- Termination of employment
- Termination of contract (for contractors)
- No trespass orders

Title IX Right to Appeals

Title IX Appeals

Both parties may file an appeal from a determination regarding responsibility or from HU's dismissal of a formal complaint or any allegations contained within.

Title IX Basis for Appeal

The only grounds for appeal to a finding of sexual misconduct are as follows:

1. New information discovered after the investigation that could not have reasonably been available at the time of the investigation and is of a nature that could materially change the outcome;
2. Procedural errors within the investigation or resolution process that may have substantially affected the fairness of the process;
3. An outcome (findings or sanctions) that was manifestly contrary to the weight of the information presented (i.e., obviously unreasonable and unsupported by the great weight of information).

All other reasons for an appeal will be dismissed. At the time of its filing, an appeal must specifically provide supporting facts and/or documentation in support of the three permissible grounds for appeal as outlined above.

Title IX Appeal Process

1. An appeal must be made within the record retention timeframe. An appeal must be in writing to the Title IX Coordinator and specify the basis for the appeal as outlined above. The original finding is presumed reasonable and appropriate by a preponderance of the evidence unless information to the contrary is presented.
2. In the event of sanctions, it is in the sole discretion of the Title IX Coordinator and the sanctioning office whether the sanctions are implemented or stayed pending resolution of an appeal.

3. Appeals are reviewed by the appropriate University Official. Appeals for employees will be reviewed by the Chief Operating Officer and appeals for students will be reviewed by the Provost.

Title IX Requirements for Appeals

For all appeals, HU will do the following:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties.

Training Materials

All materials used to train HU's employees in administering the Title IX process as outlined in the policy will be posted annually and available to the public on HU's website.

All members of the Title IX staff are provided a SOP for their role within the team in addition to a yearly training.

Record Retention

All records received and created under this Policy shall be maintained for a period of seven years from the date a file is closed. All records shall be maintained in electronic format. The Director of Compliance, in collaboration with the Office of Student Services and Office of Human Resources, will maintain all files.

The ability for anyone to access closed records is at the discretion of the Director of Compliance in conjunction with the Office of General Counsel and in a manner consistent with federal and state laws.