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High Point University Title IX & Advisors

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Presenters



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Agenda

- Introduction
- Legal Overview
- HPU Definitions and Policy Information
- Advisor's Role
- Resources for Parties

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Introductions

- Your expectations for today?
- Experience as an advisor
- Your “why” for this role?
- How would you describe the role of an advisor?
- Open to all comers?
- Thank you!



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Title IX Coordinator



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The Title IX Coordinator has primary responsibility for coordinating the efforts of HPU to comply with and carry out its responsibilities under Title IX:

- Oversees the University's response to reports and complaints
- Ensures a fair, equitable, and prompt process for all involved
- Oversees the grievance process
 - ***“When in doubt, reach out!”***
 - ***EXCEPT when you are working as an Advisor to a party in the Title IX process!***



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Training Requirements

- Coordinators & Deputies, Investigators, Decision-Makers, Facilitators of Informal Resolution
- Definitions of sexual harassment and the scope of your programs/activities
- HPU's Policies and Procedures
- How to conduct an impartial investigation and grievance process, including hearings, appeals, and informal resolution
- How to serve impartially and without bias/conflict of interest and without prejudgment
- Relevant evidence and how it should be used during a proceeding, including in any report and hearing/decision-making
- Issues of relevance to draft reports that fairly summarize evidence and hearing questions and evidence
- Proper techniques for questioning witnesses
- Conducting hearings that protect complainant's safety and promote accountability (impact of trauma)
- Technology to be used at any hearing (hearing decision-makers)



- Training cannot rely on sex stereotypes and must promote impartial investigations and adjudications

Maintain training records (7 years) and post on website

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Title IX

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Title IX

“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”

(20 U.S.C. § 1681)

AND

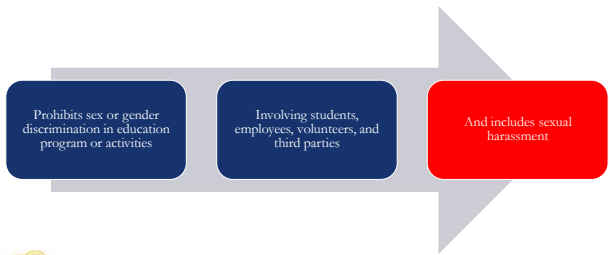
2020 Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (34 C.F.R. Part 106)

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Title IX's Scope



Prohibits sex or gender discrimination in education program or activities

Involving students, employees, volunteers, and third parties

And includes sexual harassment

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Related Legal Requirements

Clery Act - Campus safety and consumer protection law requiring, certain officials ("CSAs") to make:

- Accurate, timely, and complete reporting of certain crimes (including sexual assault) through, for example, daily crime logs, timely warnings, and annual reporting
- That occur on or adjacent to campus ("Clery geography")
- Included in Annual Security Report (that also includes HPU's Policies and crime statistics)

Violence Against Women Act ("VAWA")

- Amended Clery Act, Clery Act Enforcement
- Added **domestic violence**, **dating violence**, and **stalking** to the Clery crimes (which already included **sexual assault**) for crimes in Clery geography



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Related Legal Requirements

- **Family Educational Rights and Privacy Act (FERPA)**

- Limits access to education records
- Exceptions Under Title IX and VAWA

- **FERPA and Confidentiality**

- The Title IX regulations state the *general rule that an institution must keep confidential the identity of any person who has reported sexual harassment or who has been reported to be a perpetrator of sexual harassment*
- This duty of confidentiality has three exceptions
 - if disclosure is permitted under FERPA
 - if disclosure is required by law, or
 - if disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process

- **HPU's practice is to treat Title IX information as confidentially as is possible**



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HPU's Policy: "Title IX and Sexual Misconduct Grievance Policies"



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Policies at HPU

highpoint.edu/title-ix/grievance-policies-and-materials/

HIGH POINT UNIVERSITY
THE PRINCIPLE LIFE SKILLS UNIVERSITY

BACK TO HOME TOUR APPLY

TITLE IX GRIEVANCE POLICIES AND MATERIALS

High Point University • Title IX • Title IX Grievance Policies and Materials

Title IX prohibits discrimination on the basis of sex in any federally funded education program or activity. The U.S. Department of Education Office for Civil Rights provides guidelines to ensure that schools take effective steps to respond to sexual harassment and sexual violence in accordance with the requirements of Title IX.

The Guide and Handbooks below outline definitions of behavior that constitutes a violation of university policy, in addition to the grievance process procedures.

- Staff Handbook (Title IX Grievance Procedures)
- Faculty Handbook (Title IX Grievance Procedures)
- Title IX and Sexual Misconduct Grievance Policies

To view all current materials for the 2025-26 academic year used to train the Title IX Coordinators, Title IX Deputy Coordinators, investigators, justices, hearing chairs, appellate decision-makers, and informal resolution process facilitators, [please click the link provided.](#)

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When Does Title IX Apply?

Title IX Response:

- Actual Knowledge
- Sexual Harassment
- Education Program or Activity
- In the United States

Under **Title IX**, an institution is obligated to respond when: it has **"actual knowledge"** of **"sexual harassment"** involving a person who is participating or attempting to participate in an **"education program or activity"** of the institution and when the sexual harassment is directed against a person **in the United States**

- If you know, the knowledge is imputed to the University*

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HPU Policy: Title IX Sexual Harassment Defined

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

- Quid pro quo:** When an employee of HPU conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct. Such unwelcome sexual conduct could include, but is not limited to, sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature.
- Hostile environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to HPU's education program or activity.
- "Sexual assault," "dating violence," "domestic violence," or "stalking"**

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HPU Policy: Title IX Sexual Harassment Defined

Sexual Assault: is sexual contact with another person who does not or cannot give consent. This may or may not include force. Sexual assault includes, but is not limited to:

- **Rape:** the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of any person, without consent. A Complainant may be a person who is penetrated without consent or a person who is forced to penetrate another person without consent.
- **Nonconsensual Sexual Contact:** the intentional or forced touching of clothed or unclothed body parts without consent for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This most commonly involves the touching of intimate body parts, including the genital area, groin, inner thigh, buttocks or breast.



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HPU Policy: Title IX Sexual Harassment Defined

Sexual Assault (cont.):

- **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** sexual penetration or other form of sexual contact with a person who is under the statutory age of consent.



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HPU Policy: Title IX Sexual Harassment Defined

- **Dating violence:** Violence on the basis of sex committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship; type of relationship; and frequency of interaction between the persons involved in the relationship.
- **Domestic violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or who has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.

** The VAWA crimes as defined in the Clery Act*



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HPU Policy: Title IX Sexual Harassment Defined

- **Stalking:** Engaging in a course of conduct directed at a specific person (e.g., the Complainant) that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. "Course of conduct"
- **Course of conduct:** means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any actions, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
- **Substantial emotional distress:** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- ** The VAWA crimes as defined in the Clery Act*



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HPU Policy: Title IX Sexual Harassment Defined

For the purposes of the definition of Title IX Hostile Environment Harassment, whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following: (a) the degree to which the conduct affected the Complainant's ability to access the University's education program or activity; (b) the type, frequency, and duration of the conduct; (c) the Parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct; (d) the location of the conduct and the context in which the conduct occurred; and (e) other sexual harassment in the University's education program or activity.

- Determination about whether conduct is subjectively and objectively offensive includes consideration of whether a **reasonable person** in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident, would deem the conduct offensive.



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HPU Policy: Title IX Sexual Harassment Defined

Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment Harassment:

- Repeated and unwelcome sexual flirtations, advances, attention, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature, obscene language, off-color jokes, unwelcome verbal commentary about an individual's body, sexual innuendo, and gossip about sexual relations;
- The display of derogatory or sexually suggestive pictures, posters, cartoons, drawings, objects, notes, letters, emails, or text messages;
- Visual conduct such as leering or making gestures;
- Unwanted kissing;
- Unwelcome touching of a sexual nature such as patting, pinching, caressing, or brushing against another's body; and
- Cyber or electronic harassment.



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HPU Policy: Title IX Sexual Harassment Defined

The more severe the conduct, the less need there is to show multiple incidents or a pattern of incidents to prove a hostile environment, particularly when the alleged conduct is physical. A single verbal or written act on the basis of sex, standing alone, is typically not sufficient to constitute Hostile Environment Harassment.



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HPU Policy: Title IX Sexual Harassment Defined

Retaliation: Intimidation, threats, coercion, or discrimination against any person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity, for the purpose of interfering with any right or privilege secured by this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an informal resolution process, in grievance procedures, and in any other actions taken by the University under this Policy.



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When Title IX Does **Not** Apply to Sexual Harassment

Title IX Response:

- Actual Knowledge
- Sexual Harassment
- Education Program or Activity
- In the United States

If each of these prongs is not met, then the same type of conduct is frequently addressed through the University's "Non-Title IX Sexual Harassment" process and definitions.



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HPU Policy: Non-Title IX Sexual Harassment Defined

Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature when:

- Submission to or rejection of that conduct or communication is made a term or condition, either explicitly or implicitly, of an individual's educational experience or employment; (Quid Pro Quo);
- Submission to or rejection of that conduct or communication is used as the basis for an educational program decision or employment decision affecting that individual; (Quid Pro Quo);
- Unwelcome conduct determined by a reasonable person to be so severe **or** pervasive **or** objectively offensive that it unreasonably interferes with an individual's functioning or creates an intimidating, hostile, or abusive working or learning environment. (Hostile Environment).
- Examples of non-Title IX Hostile Environment Harassment may include the same type of conduct listed for Title IX Hostile Environment Harassment, when such conduct (1) does not rise to the level of being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; (2) does not occur in the University's education program or activity; or (3) occurs outside of the United States.



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HPU Policy: Non-Title IX Sexual Harassment Defined

Non-Title IX Sexual Harassment also includes Sexual Assault, Dating Violence, Domestic Violence, and Sex Based Stalking, as those terms are defined by HPU's policies.



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HPU Policy: Non-Title IX Sexual Harassment Defined

Sexual Exploitation is taking non-consensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited, including extending the bounds of consensual contact without the knowledge or consent of the other person. Sexual Exploitation is conduct that does not otherwise constitute Prohibited Conduct under this Policy. Examples of Sexual Exploitation include, but are not limited to:

- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity.
- Allowing third parties to observe private sexual activity from a hidden location or through electronic means.
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy).
- Recording or photographing private sexual activity and/or a person's intimate parts, including genitalia, groin, breasts, or buttocks, without consent, or reviewing such content without consent.
- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without consent.
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Using artificial intelligence or other technology to create realistic images of another's intimate parts, including genitalia, groin, breasts, or buttocks, without consent.
- Publishing, viewing, or disseminating images of another's intimate parts, including genitalia, groin, breasts, or buttocks, created by using artificial intelligence or other technology to create realistic images of another's intimate parts, including genitalia, groin, breasts, or buttocks, without consent.
- Prostituting or sex trafficking another person.
- Exposing another person to a sexually transmitted infection or virus without the other person's knowledge.



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Other Important Definitions – Consent

- **Consent** is a clear expression in words or overt actions by a person affirmatively communicating a freely-given, present agreement to engage in a particular form of sexual contact. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in the mutually agreed-upon sexual contact. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent.
- All parties to a particular form of sexual contact must provide consent, and such consent must be present throughout the activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not, by itself, sufficient to constitute consent. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
- Silence or the absence of resistance alone is not consent. Although resistance is not required, it is a clear demonstration of a lack of consent.



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Other Important Definitions – Consent

- If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.
- Even when consent is given, it may be withdrawn at any time. When consent is withdrawn, the sexual contact for which consent was initially provided must stop immediately. Any words or overt actions can communicate withdrawal of consent. As is the case with communicating the existence of consent, verbal communication is usually the clearest way of communicating withdrawal of consent.
- Consent cannot be obtained, expressly or implicitly, by use of physical force, threats, intimidating behavior, or coercion, as defined by the Policy.
- An individual known to be—or who should be known to be—incapacitated, as defined by this Policy, cannot consent to sexual activity.



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Other Important Definitions – Consent – Coercion/Force

- Coercion or Force includes conduct, intimidation, and expressed or implied threats of physical or emotional harm that would reasonably place an individual in fear of immediate or future harm and that are used in order to compel someone to engage in sexual contact.
- Any sexual contact occurring after a person has engaged in coercion or force will be presumed non-consensual, even if the particular sexual contact that occurs is different from the form of sexual contact in which the individual was attempting to engage, and even if the other individual uses words or actions that would otherwise appear to convey consent.
- Examples of coercion or force include causing the deliberate incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personally sensitive information if the other party does not engage in the sexual contact.



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Other Important Definitions – Incapacitation

- **Incapacitation** means the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol.
- With respect to incapacitation due to the influence of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs. Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition *was known or reasonably should have been known to the Respondent or a reasonable, sober person in the Respondent's position*.
- Use of drugs or alcohol by the Respondent is not a defense to any violation of this Policy.



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Other Important Definitions – Incapacitation

- Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated can be difficult.
- There are common signs that should alert a reasonable sober person as to whether an individual might be incapacitated.
 - Those signs might include slurred or incomprehensible speech, disorientation of time, place, or location, clumsiness, difficulty walking, combativeness, emotional volatility, vomiting, or incontinence.
- A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know who I am?"
- If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo all sexual contact.



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Important Concept: Amnesty

To encourage Complainants and witnesses to make reports of conduct prohibited under this Policy, individuals who, in good faith, report a violation of this Policy to the University, respond to allegations of a violation of this Policy, or participate as a witness in an investigation into allegations of violations of this Policy, will not be disciplined by the University for disclosure of their consumption of drugs or alcohol in connection with the reported incident. The University may still require the individual to participate in training or educational programming or pursue disciplinary action for the alleged violation of other University policies in instances where someone is harmed by the conduct.



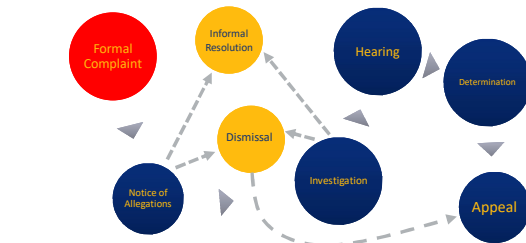
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Role of a University Advisor

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Formal Grievance Process



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Role of the Advisors (Title IX and Non-Title IX)

- Both parties have the right to be accompanied by advisor to any meeting or proceeding during the investigation (Title IX and VAWA)
- Recipient may not limit the presence or choice
- But may establish restrictions around advisor participation in meetings or proceedings, as long as applied equally to both parties
 - Gag orders NOT permitted
 - May set parameters through advisor agreements
 - Nondisclosure agreements (NDAs)
 - Potted plant during process and interviews and no direct communication with recipient
 - Avoid direct engagement with advisor, address party and advise party of consequences
 - Involve Title IX Coordinator in decisions about advisor conduct
 - Take the same approach for all advisors, in all cases
- Recipient not required to provide an advisor at any time prior to hearing
 - May not restrict advisor's role in cross-examination

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HPU Policy on Advisors (Title IX and Non-Title IX)

- The parties may select whoever they wish to serve as their Advisor as long as the Advisor is available. This means the party cannot insist on an Advisor who simply does not have inclination, time, or availability.
- The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with throughout the Resolution process. The parties may choose Advisors from inside or outside of the HPU community.
- Advisors should not have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor an implement sanctions.
- ***The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the university, the Advisor will have been trained by the university and be familiar with the university's Resolution Process.***
- If the parties choose an Advisor from outside the pool of those identified by the university, the Advisor may not have been trained by the university and may not be familiar with university policies and procedures.
- Choosing an Advisor who is also a witness in the process creates potential bias which will be explored by the hearing decision-maker(s).



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HPU Policy on Advisors (Title IX and Non-Title IX)

- Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.
- The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
- Advisors should not address HPU officials or investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or "represent" their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or hearing decision-maker(s) except during a Title IX hearing during questioning. If a party selects an attorney as an Advisor, the Advisor's participation in the complaint resolution process is in the role of an advisor and not as an attorney representing a party.
- The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.



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HPU Policy on Advisors (Title IX and Non-Title IX)

- Advisors appointed by the institution will not be asked to disclose details of their interactions with their advisees to hearing decision-maker(s).
- Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by HPU. As part of the grievance process, **advisors will be asked to sign HPU's Advisor Agreement form.**
- HPU may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the HPU's privacy expectations.
- HPU generally expects an Advisor to adjust their schedule to allow them to attend HPU meetings/interviews/hearings when planned, but HPU may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.
- HPU may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.



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HPU Employees as Advisors

- Both the Complainant and Respondent have the right to be accompanied to meetings by an advisor of their choice, who may be, but is not required to be, an attorney.
- Generally, the advisor selected by the Complainant or Respondent should be readily available to participate in an efficient Grievance Process and be free of conflicts of interest.
- If a member of the HPU community, the advisor should be free of conflicts in his or her position in the community.
- Parties must notify the Title IX Coordinator, in writing, of their advisor of choice and the parties and their advisors must complete and sign HPU's advisor agreement form in advance of any meeting related to this Policy.



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Role of the Advisors

- The *only legal requirement* on the University regarding advisors:
 - If a party does not have an advisor present at the live hearing, HPU **must** provide an advisor without fee or charge, *to conduct cross-examination on behalf of that party*
 - May or may not be an attorney



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HPU Employees as Advisors

- Could be asked to serve as an advisor at any point during the process, ranging from participating in:
 - Meetings with the party you are advising
 - Meetings with the party and University officials, including the Title IX Coordinator, Investigator, Hearing panel
 - Party interviews
 - Pre-hearing meeting
 - Hearing
- Responsible for being familiar with HPU's policies and procedures, providing support to the party during the process and in preparation for the process steps, and reading cross-examination questions during the hearing



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Parameters

The purpose of the advisor is to support a Party in the Grievance Process.

- During the investigation phase of the Grievance Process or in any other meeting, advisors may confer with their advisee, but they may not speak on behalf of their advisee, advocate for their advisee, or otherwise actively participate in the process.
- The advisor may accompany their advisee to all meetings relating to the Grievance Process, including the Informal Resolution Process if applicable. While advisors may assist their advisee in drafting written communications to the University, they may not directly or indirectly communicate with the University in the Grievance Process, including with the Title IX Coordinator, the investigator, any decision-maker (including appeals), or any witnesses except as specifically outlined in this Grievance Process.
- Advisors may not interrupt or otherwise unduly delay the Grievance Process. The University will strive to accommodate advisors' schedules; however, if an advisor is not reasonably available to participate in and throughout the Grievance Process, HPU reserves the right to move forward with its process in order to ensure its prompt completion.
- With the permission of their advisee, advisors will be provided access to the same investigation materials and permissible evidence that is available to their advisee. This information frequently includes student records of participants beyond just their advisee and other confidential and highly sensitive information. Advisors' access to such information is conditioned upon their agreement to maintain the confidentiality of these records, except when disclosure is legally authorized. Advisors may only discuss information disclosed through the investigation process with their advisee. For example, if a party's advisor is an attorney, the attorney may not share any information obtained during the investigation process with other attorneys or staff associated with the attorney.
- Violations of confidentiality or other forms of interference with the Grievance Process by the advisor may result in disqualification of an advisor, in addition to other available actions.
- The parties should expect that the University will disclose information about the identity of one party's advisor to the other party in a Grievance Process.



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General Overview of the Processes

Once a Formal Complaint is received, HPU will address allegations of Title IX Sexual Harassment through the conduct process outlined below:

- Supportive Measures
- Formal Complaint
 - Dismissal of Formal Complaint
- Notice of Investigation sent to all parties
- Informal Resolution (if the parties and HPU agree to participate)
- Investigation & File Review and Responses
 - Interviews and submitting of information
 - Sharing of Evidence/Draft Report with parties for them to file a response
 - Final Investigation Report (Including Party Responses) for the parties to review and file a response
 - Non-Title IX: Review report, submit response, review response, and submit rebuttal
- Title IX Hearing Process/Adjudication
 - Title IX: Prehearing & Hearing with cross-examination (video conference)
 - Non-Title IX: Hearing possible but unlikely, no cross-examination
 - Decision and Appeal (includes sanctions if a finding of responsibility)
- Appeals (grounds and process are explained in the policy)



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Preparation

Initial Steps:

- Meet with the party (only) and discuss your role (**critical**)
- Review Notice of Investigation
- Review policies and definitions—know the elements of the alleged conduct
- Discuss Informal Resolution Process
- Provide overview of the formal process steps using Policy as your guide (interviews, evidence review, hearing, decision-making, sanctions, and appeals)
- Opportunities **for the party to submit** relevant evidence and information, regardless of form
 - Text messages, voicemails, emails, social media, medical records, police records
- Opportunities for the **party to draft a response** to the evidence/draft report and then to the final report
- Note deadlines



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Preparation

Preparation for Hearing or Prehearing:

- Review files (will be made available electronically)
- Review Draft Report/Directly Related Evidence
- Final Investigative Report and exhibits ("directly related evidence"?)
- Party responses (and anticipate arguments for hearing)
- Pertinent pre-hearing conference information
- Determine what factual questions need to be decided
- Evaluate all related, existing evidence
- Identify consistencies and inconsistencies in material information
- Identify information gaps and sources to fill them
- Know who the witnesses will be
- Discuss cross-examination and questions to be drafted for any other party and witnesses
- Party to draft questions and prepare for any discussion around relevancy
 - Keep list of exclusions (listed in policy: prior sexual history, privileged communications, and treatment records)



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Preparation: Understanding Cross-Examination

- Advisor poses question
- Before a question can be answered, the hearing officer must determine whether it is relevant and explain any decision to exclude a question that is not relevant
 - Mechanics: question posed, pause, hearing officer makes relevancy determination, and, if permitted, question answered
- Questions that assume facts, are prejudicial, or appear misleading are to be permitted, if relevant, but affect potential weight of the answer
- Questions that ask about an exclusion, are redundant, or are harassing will generally be disallowed
- Hearing officer may choose to ask advisor to explain why the question ask is relevant/not relevant
- HPU must create an audio recording, audiovisual recording, or transcript of the live hearing and make it available to the parties for review and inspection for appeal



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A Draft Notice of Investigation and Hypotheticals



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Business as Usual?

- You are serving as the advisor for Jane.
- You have scheduled a Teams meeting to prepare for her upcoming interview with the investigator.
- Jane arrives to your Teams meeting with her mother.
- Mom says you should go ahead and do what you need to do, but she is "helping Jane through this."
- A few minutes later, Mom begins asking you questions about the Title IX Coordinator, investigator, investigation timeline, the evidence, conversations she wants you to have with the Title IX Coordinator, the sanctions the other party might face, and how Jane could script her answers during the interview.
- **As the advisor, how should you handle the parent's presence and requests for information?**
- **What considerations guide your response?**



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The Drama

- You are advising John, who has received the NOIA.
- During your introductory meeting with John, he tells you he is anxious and frustrated because he has not heard any updates since receiving the notice a month ago, and he doesn't understand what's taking so long to clear his name.
- John says Jane has been badmouthing him to fellow actors in the drama club and he's thinking about quitting and that he keeps skipping classes to avoid her.
- Then John asks you to contact four of his witnesses because they know what a liar Jane is, and he wants you to prepare written statements for them to sign.



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Fair Game?

- During a check-in meeting, Jane tells you that since the investigation began, a close friend informed her that John has been telling members of the drama club that Jane "ruined his life" and that other members should vote her out.
- Jane is visibly upset and says she no longer feels comfortable attending the meetings.
- Jane also says she has been having panic attacks because of John but does not want her parents to know.
- **How long do you wait to call the Title IX Coordinator?**



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Appeals

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Decision-Making — Appeals

- Must be offered to both parties for the final determination of responsibility and the dismissal of formal complaints
- Appeal bases must include:
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available at the time the determination regarding responsibility (or dismissal) was made, that could affect the outcome
 - Title IX Coordinator, Investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome
- Plus any other grounds listed in the policy

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HPU Appeal Grounds

Same as Title IX minimum requirements:

- **Procedural irregularity** that affected the outcome (this therefore requires a material irregularity)
 - Was a material procedure not followed and did it impact the outcome?
 - Did the decision-maker not consider material evidence, including inculpatory and exculpatory evidence
 - Was relevant evidence excluded?
 - Did the decision-maker fail to provide rationale for any of the determinations made?

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HPU Appeal Grounds

Same as Title IX minimum requirements:

- **New Evidence:** new evidence presented for the first time on appeal
 - Was the evidence not available at the time of the determination and what is the explanation for what it was not?
 - Would that evidence impact the outcome?



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HPU Appeal Grounds

Same as Title IX minimum requirements:

- Title IX Coordinator, Investigator, or decision-maker(s) had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome
 - Has the appealing party specifically referenced evidence or factual support for the alleged conflict or bias?
 - Is the evidence material?
 - Is the conclusion reasonable?
 - Has the appealing party explained how it impacted the outcome?



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Decision-Making — Appeals

- Generally, the purpose of an appeal is ***not*** for the decision-maker to review all evidence and make a decision about responsibility
- An appeal is not a re-deciding of the determination and the Decision-Maker should not substitute their own judgment for that of those who made the determination
- Determine whether an error occurred, by the applicable standard of evidence



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Appeals at HPU

- Complete online form
- Within 3 business days of the receipt of a notice of dismissal or 5 business days of the receipt of a notice of determination.
- **Initial assessment by Title IX Coordinator (or designee) and can be denied**
- If the appeal states a valid ground for appeal, the other party will be provided with a copy, will have 3 business days (for dismissals) or 5 business days (for notices of determination) to respond
- As applicable, both parties may appeal
- In reviewing any appeal, the Executive Council can affirm the decision, overturn the decision, or remand the matter, with instructions, for further investigation and adjudication by the same or different investigators, decisionmakers, or Hearing Board or Adjudication Panel members, as applicable.



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Decision-Making — Appeals

Additional Requirements (Title IX):

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- Decision-maker for appeal cannot be:
 - Decision-maker on the determination of responsibility or dismissal
 - Investigator who investigated
 - Title IX Coordinator
- Comply with prohibitions on bias and conflict of interest
- 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
- Provide the written decision simultaneously to the parties



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Resources and Support for Parties



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Resources at HPU

Confidential Resources

- Counseling & Psychological Services
 - Individual therapy
 - Urgent crisis appointment
 - Psychiatric Services
- Student Health Services
 - Broad range of confidential services
 - Referrals for medical specialists and emergency services
- Priests or clergy acting in their sacred confidence role



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Supportive Measures

- **Nondisciplinary, non-punitive, individualized** services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or 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 HPU's education program without unreasonably burdening the other party, including measures designed to protect the safety of all parties, HPU's educational environment, and/or deter Title IX Sexual Harassment



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Supportive Measures at HPU

- Referral to counseling, medical, and/ or other health care services;
- Referral to community based service providers;
- Visa and immigration assistance;
- Student financial aid counseling;
- Education to the community or community subgroup(s);
- Altering campus housing assignment(s);
- Altering work arrangements, including status and job responsibilities, for employees or student-employees;
- Safety planning;
- Providing campus safety escorts;
- Providing transportation accommodations;
- Implementing contact limitations (No Contact Orders) between the parties;
- Limiting access to certain residence halls, facilities or activities pending resolution of the matter;
- Academic support, extensions of deadlines, or other course/ program related adjustments;
- Support with extracurricular or other programs or activities;
- Timely warnings;
- Voluntary leaves of absence;
- Class schedule modifications, withdrawals, or leaves of absence;
- Increased security and monitoring of certain areas of the campus;
- Assistance in reporting to law enforcement or locating resources to petition a court for an order of protection;
- Training and education programs related to Sex-Based Harassment; and
- Any other actions deemed appropriate by the Title IX Coordinator.



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