

22. Sexual Misconduct

22.1 Introduction

Hardin-Simmons University affirms that all members of our community are created in the image of God and therefore should be treated with dignity and respect. We do not unlawfully discriminate on the basis of any status or condition protected by applicable federal or state law. Further, we respect the inherent worth of each member of the community and do not tolerate conduct which fosters any form of harassment. We follow the profound truth found in the Golden Rule, "In everything do to others as you would have them do to you" (Matthew 7:12).

With a Biblical foundation of human dignity and worth, HSU approaches issues of sexual misconduct not only as acts that may be potential violations of the law, but as conduct that is antithetical to Christian scripture. Thus, sexual misconduct is harmful not only to the individuals involved, but undermines the values of the entire community.

This policy will address some of the complexities of legal requirements under Title IX, and our policy expectations in the areas of sexual misconduct, sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, and stalking. We hold to the expectation that sexual misconduct does not fit within our mission of Christian education. Violations of this policy are regarded as serious offenses of trust and integrity, and will result in disciplinary action. Sexual misconduct can be committed by men or women, and it can occur between people of the same or different gender. This policy will also provide resources and help for victims and their advocates.

Hardin-Simmons University expects students to abide by the Student Conduct and Regulations Statement (see Section 26).

22.2 Purpose of this policy

Pursuant to Title IX of the Education Amendments of 1972 and Violence Against Women's Reauthorization Act of 2013, HSU prohibits discrimination on the basis of sex or gender in its programs and activities. HSU has jurisdiction over complaints or reports under Title IX. Our university will respond to, and make reasonable efforts to, investigate and address complaints or reports about prohibited conduct, or possible prohibited conduct, that staff becomes aware of, with measures designed to stop the prohibited conduct, eliminate any such discrimination, prevent the recurrence of the prohibited conduct, and remediate any adverse effects of such conduct on campus or in university related programs or activities. The procedures in this policy are designed to provide for a timely and fair investigation of sexual misconduct cases, regardless of how the information was brought to HSU's attention or the extent to which the complainant (as defined below) wishes to participate or be involved, and to protect the rights and privacy of all parties involved.

Retaliation against anyone involved in filing an internal complaint under this policy, filing an external complaint, participating in the internal disciplinary process, or opposing in a reasonable manner an act believed to constitute a violation of this policy, is prohibited and will not be tolerated.

22.3 Scope of this policy

The policy includes investigation and disciplinary procedures that will be followed in response to allegations of sex or gender discrimination, including sexual misconduct such as sexual harassment and sexual assault, intimate partner violence, stalking, and related retaliation. In a case of alleged sex or

gender discrimination or sexual misconduct, this policy supersedes policies and procedures for other forms of misconduct, unless otherwise provided in this policy.

This policy defines: the prohibited conduct; the options and resources available to individuals who experience sexual misconduct; and the complaint; investigation and disciplinary procedures that will be followed when the University receives a complaint of sexual misconduct. All allegations of sexual misconduct, including, but not limited to, sexual harassment, sexual assault, intimate partner violence, stalking, and retaliation will be carefully reviewed.

This policy applies to all members of the HSU community, including administrators, students, faculty and staff, whether full-time or part-time, and any third parties (i.e. non-members of the university community, such as visitors to the campus, volunteers, vendors, and contractors). This policy applies to students regardless of location, whether on or off campuses.

This policy applies to university-sponsored programs and activities occurring both on and off campuses, as well as the university's computing and network resources being used on and off campus. This includes, but is not limited to, field trips, mission trips, study-abroad programs, off-site courses, volunteer work or internships, and use of any electronic or media associated with HSU including email and/or social media. If an incident of sexual misconduct involving a member of the HSU community occurs at a non-university sponsored event, and when such conduct may have a significant, adverse impact on the individual or on the campus community, the procedures of this policy will apply.

When used in this policy, the term **Complainant** refers to the person who believes that he/she has been the subject of sexual misconduct, regardless of whether that person makes a complaint or requests an investigation. The term **Respondent** refers to the person(s) who has been accused of sexual misconduct. The term **third party** refers to an individual who is not a University student or employee. The term **witness** refers to any individual who may have information pertinent to the complaint or investigation. All Hardin-Simmons employees are designated as **Responsible Employees** which means they must report all disclosures of sexual misconduct to the Title IX Coordinator. A **Confidential Resource** refers to designated employees at Hardin-Simmons who are not required to report disclosures of sexual misconduct to the Title IX Coordinator. The Office of Counseling Services (Moody Center 2nd floor, 325-670-2272) is a designated Confidential Resource. Students who are not ready to disclose sexual misconduct to responsible employees or the Title IX Coordinator are encouraged to talk with HSU's Office of Counseling Services.

All forms of prohibited conduct described in this policy are regarded as serious offenses. Any member of the HSU community found in violation of this policy will be subject to disciplinary action, up to and including expulsion or termination of employment.

22.4 Additional Definitions Regarding Consent and Incapacitation

Consent is knowing, voluntary, and permission by word or action to engage in mutually agreed upon sexual activity or contact. Consent is active and not passive. Silence, in and of itself, should not be interpreted as consent.

- Consent to one act does not constitute consent to another act.
- Consent on a previous occasion does not constitute consent on a later occasion.
- Consent to an act with one person does not constitute consent to an act with any other person.
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent.

- Consent can be withdrawn or modified at any time, and sexual contact must stop immediately once consent is withdrawn.
- Consent cannot be inferred from silence, passivity, or lack of resistance, and relying on nonverbal communication alone may result in a violation of this policy.

In evaluating consent, the University will consider the presence of any force, threat of force, or coercion; whether the complainant had the capacity to give consent; and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular sexual act.

An individual is unable to provide consent to engage in sexual activity when the individual 1) is under age 17 and the sexual contact involves an adult (someone 18 years of age or older) who is 3 or more years older; 2) has a mental disorder or developmental or physical disability that renders her or him incapable of giving knowing consent; 3) is unconscious or physically unable to resist; or 4) is incapacitated from alcohol or other drugs, and this condition was known, or reasonably should have been known by the Respondent.

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident where they are, how they got there, what is happening, or with whom they are with. Incapacitation also includes intoxication to the point that the person is incapable of exercising the judgment required to decide whether to consent.

22.5 Prohibited Sexual Misconduct

22.5.1 Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that interferes with or limits a student's ability to participate in or benefit from the university's educational programs and activities or their living environment. Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender or gender-stereotyping, even if those acts do not involve conduct of a sexual nature. This definition will be interpreted and applied in a manner consistent with the accepted standards of mature behavior, academic freedom, and the mission of the university. Harassment includes the following definitions:

- Harassment can occur in person, by phone, text message, email or any other electronic medium
- Harassment includes unwanted staring or leering at a person
- Harassment includes verbal comments of a sexual nature, including comments about an individual's body, sexual activity, or sexual attractiveness; the use of sexually degrading language or innuendo; sexually suggestive gestures, sounds, or jokes
- Harassment includes displays of sexually suggestive objects, pictures, cartoons, or written materials

Examples of sexual harassment include, but are not limited to:

- A. A student repeatedly contacts another student to go out on a date after the student has made it clear that such contact is unwelcome.

- B. A male staff assistant in a biology lab repeatedly makes disparaging comments about women such as, “Science is a man’s field” and “Women don’t have the capacity to understand.”
- C. A student worker tells her supervisor that she is not comfortable with him massaging her shoulders, but he continues to do so on numerous occasions and also makes comments about her attractiveness.

22.5.2 Sexual Assault

Sexual assault is a general term that covers a broad range of inappropriate and/or unlawful conduct, including rape, sexual battery, and sexual coercion. Sexual assault includes, but is not limited to: nonconsensual sexual intercourse or acts that involve the use or threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Examples of sexual assault include the following nonconsensual acts: oral copulation, anal intercourse, and penetration of the anal or vaginal area with a foreign object, including a finger. Sexual battery includes the nonconsensual touching of a person’s intimate parts, or the clothing covering the immediate area of those parts, or forcing a person to touch another’s intimate parts.

22.5.3 Sexual Coercion

Sexual coercion is defined as the act of using pressure to gain consent for sexual activity, using alcohol and drugs to lower another’s inhibitions, or the use of force to have sexual contact with someone against his or her will or with someone who has already refused. Such behavior includes but is not limited to verbal pressure, emotional pressure, threats, lying, blackmailing, use of alcohol or drugs to take advantage of another, use of guilt, or use of his/her position of authority over another.

22.5.4 Sexual Exploitation

Sexual Exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own personal advantage or benefit, (and that behavior does not otherwise constitute one of the other sexual misconduct offenses). Examples include, but are not limited to: invasion of sexual privacy; streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties; voyeurism; inducing incapacitation for the purpose of making another person vulnerable to nonconsensual sexual activity.

22.5.5 Domestic Violence

Acts of domestic violence are felony or misdemeanor crimes of violence committed by a current or former spouse of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction...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.

22.5.6 Dating Violence

Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. 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

22.5.7 Stalking

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress. Acts can include, but are not limited to, threats to harm self, others, and property; following; non-consensual communication; unwanted gifts; and trespassing. Stalking can also include cyber-stalking such as via internet, social media, texts, and phone calls.

22.6 Procedures and Reporting

If a student experiences sexual misconduct that person should:

- If there is any immediate danger, call campus police at 325-670-1461 if on campus or 911 if off campus.
- Go to a safe place and speak with someone you trust. Tell this person what happened.
- Strongly consider securing immediate support to assist in this crisis. The following options are available:
 - ✓ Interim Title IX Coordinator, Tera Gibson (325-670-1077)
 - ✓ Interim Deputy Title IX Coordinator, Holly Edwards (325-670-1691)
 - Receives and processes inquiries and complaints from the campus community and third parties in a timely manner, provides a fair and neutral process for both the complainant and respondent
 - Develops and implements avenues for communicating resources and processes with students
 - Using the American Council on Education guidelines, develops and implements sexual assault procedures and keeps apprised of new developments and best practices in Title IX procedures
 - Works with University Police to provide Clery reporting
 - ✓ Office of Counseling Services (325-671-2272)
 - On-campus confidential resource. The Office of Counseling Services will not disclose what is discussed in session.
 - ✓ Abilene Regional Victim Crisis Center (325-677-7895 -- 24 Hour Crisis Hotline)
 - The Abilene Regional Victim Crisis Center (RVCC) will arrange for a specific medical examination (SANE) at no charge.
 - ✓ SANE (Sexual Assault Nurse Examiner) Program (325-670-2151)
 - Go to the Hendrick Medical Center Emergency Room (1900 Pine St.) and ask to see a nurse
 - In cases of sexual assault, and for the sake of your safety and well-being, immediate medical attention is encouraged to evaluate for physical injury, sexually transmitted diseases, and pregnancy. Further, being examined as soon as possible, ideally within 72 hours, is important for evidence collection, which may be used to support prosecution should the complainant decide to pursue criminal charges. To preserve evidence, it is best that a victim does not bathe shower, douche, or change clothes before the exam. Even if you have already bathed, you are still encouraged to have prompt medical care. Additionally, gather any bedding, linens, or unlaundered clothing and any other pertinent articles that may be used for evidence.
 - ✓ Hardin-Simmons University Police (325-670-1461)
 - Provides the option to file a criminal complaint and report.
 - ✓ After hours, if the complainant lives on campus, an RA, RD, or campus police can typically help reach a confidential HSU counselor.

- Even after the immediate crisis has passed, consider seeking a trusted friend, or support from Regional Victims Crisis Center (regionalvictimcrisiscenter.org/services.html) or parent and pregnancy help from Abilene Regional Council on Alcohol and Drug Abuse with more information at: <http://www.arcadatx.org/programs/ppi.html>.
- Contact the Dean of Students at 325-670-1253 if assistance is needed with university-related concerns, including academic issues (e.g., missed classes or exams, requesting extensions regarding coursework) or on-campus housing issues (e.g., requesting that the student who is believed to have committed the assault be moved or that the complainant be moved to a different residence hall).
- Report to campus police or the Title IX Coordinator any concerns about retaliation against the complainant or their friends. Retaliation by any party is a serious offense and appropriate disciplinary action will be taken.

22.7 Amnesty for Complainants

Hardin-Simmons encourages the reporting of sexual misconduct. Sometimes, complainants are hesitant to report to college officials because they fear being charged with policy violations themselves (such as a campus housing visitation rule infraction, underage drinking, or sexual activity which violates the Student Code of Conduct) at or near the time of the incident. To encourage reporting, HSU offers complainants amnesty for Student Code of Conduct violations related to reporting sexual misconduct.

22.8 Amnesty for Good Samaritans

HSU encourages students to offer assistance to other students in need, both on and off campus. When a student seeks medical assistance for a student in need, both parties will receive amnesty from disciplinary action for any related Student Code of Conduct violation. This policy exists for students who are hesitant to offer assistance to other students for fear of being disciplined for policy violations themselves.

An example of a Good Samaritan situation may include a student at an off-campus party who is drinking alcohol in violation of the law or the Student Code of Conduct. If this person learns of a sexual assault at this party and comes forward or otherwise requests assistance for a victim while at the party, the person reporting the incident, along with the victim/complainant or others who report the situation, will not be held responsible by HSU for an alcohol policy violation. HSU policy is that it is more important to seek help right away for the individual(s) in danger, than worry about the effect of potential disciplinary or Student Code of Conduct violations.

22.9 Retaliation

The university prohibits retaliation against any individual who, in good faith, files a complaint of discrimination, harassment, sexual misconduct, or assists in providing information about a complaint of discrimination, harassment, or sexual misconduct. Retaliation can come in a variety of forms including, but not limited to, threats, hostile actions, and intimidation based on someone's complaint or participation in the process. Any individual who engages in retaliatory conduct is in violation of this policy and is subject to disciplinary action up to, and including, dismissal from the university.

22.10 Reporting Discrimination, Harassment, Sexual Misconduct and Retaliation

Students who feel that they have been subjected to discrimination, harassment, retaliation, or sexual misconduct should contact the Interim Title IX Coordinator, Tera Gibson (325-670-1077), for assistance in making a report.

Anyone can make an anonymous report by submitting information through STOPit. You can access STOPit via the web at: <https://appweb.stopitsolutions.com/login> or by downloading the STOPit app from either the App store or Google Play. When reporting an incident, you will be prompted for a school code.

- For students, your code is HSUCOWBOYS
- For HSU faculty/staff, your code is HSUEMPLOYEES

22.11 Additional Reporting Information for Sexual Misconduct

Making the decision whether or not to report a sexual misconduct incident is the beginning of the process by which complainants walk through the Sexual Misconduct process with their advisor and Title IX Coordinator.

Some students may choose to pursue criminal charges (i.e., through the police and criminal courts). Others may choose to pursue university judicial options if the respondent is a HSU student. Some may choose both. Civil litigation is a third option that some complainants choose. It is important that complainants understand their options as they make these decisions. Speaking confidentially with a counselor from HSU or RVCC may be helpful in making a decision as to how to proceed.

For help in reporting an offense to local law enforcement, contact HSU campus police (325-670-1461). It is important to understand that reporting the incident does not obligate the complainant to press criminal charges. To pursue disciplinary action through the university, the complainant must file a report with the Interim Title IX Coordinator at 325-670-1077.

If the complainant or another source identifies a potential respondent, the campus police and Title IX Coordinator will collaborate with local law enforcement in conducting an investigation. Although the complainant's wishes will be taken into consideration, there are also community safety issues which must be considered. Thus, if the respondent could reasonably be a potential threat to the complainant or other members of the university community, the university may implement interim measures or remedies relating to a respondent regardless of whether the complainant agrees or wishes to pursue a complaint. The university will make every effort to safeguard the identities of students who seek help and/or report sexual misconduct. While steps are taken to protect the privacy of complainants, the university may investigate an incident and take action once an allegation is known, whether or not the student chooses to pursue a complaint.

The Title IX Coordinator has the ability to consolidate multiple cases into one investigation if evidence relevant to one incident might be relevant to others. For example, consolidation might involve multiple complainants and one respondent, multiple respondents, and/or conduct that is temporally or logically connected.

The University may place an administrative hold on the respondent's University transcript, make a transcript notification, or defer or withhold the award of the respondent's degree. Although a respondent may withdraw from the University while the investigation is pending, this withdrawal may be considered permanent and the respondent's transcript will be noted "withdrawal pending disciplinary investigation." Even if a respondent withdraws from the University, the Title IX Coordinator may decide to proceed with the investigation and resolution process.

22.12 Interim Measures

If the Dean of Students or Title IX Coordinator determines that continued close proximity or potential for unwanted interaction with the respondent might pose a threat to the complainant, interim measures may

be imposed pending a final determination of responsibility. Interim measures may include alternative living arrangements, arrangements which avoid contact between the complainant and the respondent while using university property, classrooms, or related privileges, interim suspension of the accused pending an investigation when serious safety concerns dictate, or other appropriate interim measures.

22.13 Procedure in Sexual Misconduct Cases

Complainants and respondents involved in sexual misconduct cases are subject to the following procedure. Mediation is not an option in resolving sexual misconduct cases.

- A. Students who experience sexual misconduct report the incident(s) to the Title IX Coordinator and opt to file a complaint.
- B. The Title IX Coordinator determines if any interim measures are warranted, such as suspension, relocation of housing, assess duty to warn campus, etc.
- C. Title IX Coordinator notifies respondent of complaint.
- D. Title IX Coordinator gathers statements from complainant(s), respondent, and witness(es).
- E. Title IX Coordinator determines if there was a possible Student Handbook policy violation based on the evidence provided in the statements.
- F. If there is a possible policy violation, the Title IX Coordinator assigns the case to Title IX Investigators to gather information pertinent to the case. Complainants or respondents may address potential conflicts of interest related to investigators to the Title IX Coordinator. The conflict of interest must be addressed within 48 hours of meeting with the investigators. The Title IX Coordinator will work to remedy the conflict of interest if deemed necessary.
- G. Both parties may have an advisor present. The advisor may be a current faculty or staff member of the university or a parent or legal guardian who was not involved in the incident. The advisor may not address the committee. The role of the advisor is to accompany the student and advise him or her privately during the investigation.
- H. After the preliminary investigation, Investigators develop a report and provide it to the complainant and respondent for review. The complainant and respondent then have the opportunity to provide written feedback on the report within three business days. The written feedback will be included in the final report written by the Investigators.
- I. Title IX Investigators provide the final investigative report to the Title IX Coordinator.
- J. Title IX Coordinator submits the Investigators final investigative report to the adjudication board composed of University administrators, faculty, and/or external professionals to determine sanctions.
- K. Parties receive the written notification of outcome as well as any necessary sanctions via the Title IX Coordinator.
- L. Each party may appeal the decision of the adjudication board to the Vice President of Student Life, when the Respondent is a student, based on the appeal criteria set forth under the Appeals Process below:
 - a. Insufficient information to support the decision
 - b. New information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original hearing
 - c. Procedural irregularity that undermined the student's ability to present a defense
 - d. Inappropriateness of the sanction for the violation of the Code of Conduct.
- M. When the Respondent is a staff or faculty member in a complaint brought by a student, the parties may appeal the decision of the adjudication board to the Provost. Specifically when the Respondent is a faculty member, the appeals process will follow the HSU Personnel Handbook.

After a decision is rendered regarding the appeal, both parties will be sent simultaneous notification of the outcome with consideration of employee privacy rights.

- N. The adjudication board will endeavor to render a decision within 60 days of the complaint being filed in most cases. However, there may be extenuating circumstances that render this time-frame impractical. In such cases, decisions will be rendered as promptly as possible. For questions regarding the investigation or adjudication processes, please contact the Interim Title IX Coordinator, Tera Gibson (tera.gibson@hsutx.edu) in writing.

Individuals involved in Title IX investigations are encouraged to exercise discretion in divulging information in order to protect the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, complainants and respondents are not restricted from discussing and sharing information with others who may support or assist them during the process.

The university's actions are not dependent on the initiation or outcome of criminal charges. Disciplinary proceedings may be carried out prior to, simultaneously with, or following civil or criminal proceedings. If a respondent is found responsible for sexual misconduct, the university will take steps to prevent its recurrence and correct its discriminatory effect on the complainant and others within the community, as appropriate.

22.14 Sanctions

Violation of university policies for sexual misconduct may result in the imposition of one or more of the sanctions listed below. Sanctions that may be imposed are not limited to those listed. In certain limited situations, the Title IX Coordinator may impose a sanction but suspend or postpone its actual implementation. Failure to comply with the sanction(s) imposed by a judicial body may result in further disciplinary action, including but not limited to, a registration hold, placement on or extension of university probation, or suspension.

Sanctions affecting the conduct of students are based on general principles of fair treatment. While attempting to be consistent in its disciplinary decisions, the university also seeks to be fair and sensitive to the facts and circumstances of each individual case. Possible disciplinary sanctions include:

- A. **Warning:** Oral or written notice to the student that the student is violating or has violated the Code of Conduct and that continuation or repetition of misconduct may result in a more severe sanction.
- B. **University Probation:** A status which indicates that a student's relationship with HSU is tenuous. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found in violation of any university regulations. Probation may also result in the loss of privileges, depending on the policies of various university departments and organizations. For example, a student becomes ineligible to hold some leadership positions when placed on probation (see "Expectations for Student Leaders" below for more information).
- C. **Loss of Privileges:** Such loss may include, but is not limited to, financial assistance, eligibility to represent the university officially on athletic teams or performing groups, participation in the housing lottery, or use of specific university facilities, computer systems, equipment, or services.
- D. **Educational Sanctions:** Mandatory work hours, reading/writing assignment, drug or alcohol assessment/treatment (at the expense of the student), seminar attendance, or other discretionary sanctions as deemed appropriate.

- E. **Dismissal from University Housing:** Loss of privilege to live in university housing - *Students in a contract or required to live on campus who are dismissed from university housing will be responsible for any remaining monetary charges for the term of their contract.*
- F. **Suspension:** Temporary separation of the student from HSU for a definite period of time, after which the student is eligible to return without re-applying.
- G. **Expulsion:** Temporary separation of the student from HSU for a definite period of time, but not less than two years, after which the student must re-apply for admission.
- H. **Dismissal:** Permanent separation of the student from HSU - The student is dismissed from the university and is permanently ineligible to re-enroll at the university at any time in the future.

When students are dismissed, expelled, or suspended for disciplinary reasons, there will be no refund of tuition or room and board charges for the semester and all financial assistance for subsequent semesters will be reviewed and is subject to cancellation.

When students are dismissed, expelled, or suspended for disciplinary reasons, they are not allowed to continue any academic work and will receive all F's for the term. The student's academic transcript will also be noted that they have been temporarily or permanently dismissed and it is up to the student to notify any other institutions to the nature of their dismissal.

Violations of the Sexual Misconduct policy involving student Complainants and staff or faculty Respondents may result in sanctions or disciplinary actions contained in HSU's Personnel Handbook, including the Employee Disciplinary Procedures listed therein. Sexual misconduct complaints involving only employees (staff and/or faculty) will be administered pursuant to the *Complaint Procedure for Harassment and Discrimination* contained in the HSU Personnel Handbook's Sexual/Discriminatory Harassment section.

Mandatory Transcript Notations

Texas law requires a notation on the transcript of any student who is "ineligible to reenroll in the institution for a reason other than an academic or financial reason." Therefore, this requirement applies to violations of the Prohibited conduct Policy that result in ineligibility to enroll in HSU for any period of time, such as suspension, expulsions, and dismissals. In addition, if a student withdraws while there are "pending disciplinary charges that may result in the student becoming ineligible to reenroll in the institution for a reason other than an academic or financial reason," HSU will not end the disciplinary process until "a final determination of responsibility" has been made. A disciplinary charge becomes a pending matter upon the initial receipt of the complaint, whether oral or written.

For further information, see the Transcript Notations section of the Registrar's Policies

Mandatory Reporting Requirements for Certain Incidents of Sexual Misconduct.

In addition to the duty of Responsible Employees to report all forms of Prohibited Conduct in the Sexual Misconduct/Title IX Policy, Texas law also requires employees to "promptly" report certain incidents of Prohibited Conduct to the Title IX Coordinator or deputy Title IX coordinator. Reporting to other persons does not meet the express requirements of Texas law. Failure to promptly report required incidents can result in criminal charges being brought against you, administrative penalties against HSU, and mandatory termination of your employment.

1. Pursuant to the requirements of Texas Education Code Section 51.252 (bolded terms are included in the Definitions section below, or the Sexual Misconduct/Title IX Policy:
 - a. **Duty to report.** An HSU employee who, in the **course and scope of employment**, either witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes **sexual harassment, sexual assault, dating violence, or stalking** alleged to have been committed by or against a person who was:
 - i. a student enrolled at or
 - ii. an employee of the institutionat the time of the incident, must promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator. These persons are referred to as Mandatory Reporters and should not delay in making any report required.
 - b. **Content of report.** Except as provided by subsection (c) below, the report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.
 - c. **Confidential Resource.** Employees of HSU designated as a Confidential Resource as defined in the Sexual Misconduct/Title IX Policy as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking, or a person who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law, shall in making the required report state only the type of incident reported (by general category, i.e., sexual harassment, sexual assault, dating violence, or stalking) and may not include any information that would violate a student's expectation of privacy. An employee reporting under subsection (c) should consider these additional issues when reporting:
 - i. Include information about the approximate location of the alleged incident so that the university can determine its Clery Act and other reporting obligations. For instance, state that the incident occurred in "a residence hall," "a building on campus," "outdoors but on campus," or "not on or near any university owned property," etc.
 - ii. Subsection (c) does not affect the employee's duty to report incidents of sexual misconduct under any other applicable laws.
 - d. **Exceptions from duty to report.** Notwithstanding Subsection (a), employees are not required to make a report relating to an incident: (1) in which the person reporting was a victim of sexual harassment, sexual assault, dating violence, or stalking; or (2) of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by the university or by a student organization affiliated with HSU.
 - e. **Reporting methods.**
 - i. **Writing required.** Reporting by email to the Title IX coordinator is the preferred method of communicating incidents promptly, so that a record is made of the time and all factual details disclosed in the initial report. A written memo is also acceptable if it can be delivered to a coordinator promptly after the employee's duty to report arises.
 - ii. **Exigent circumstances.** If the urgency of the situation or other circumstances necessitate an initial oral report (whether in person or by phone), at the conclusion of the oral report the employee must immediately send the coordinator to whom the oral report was made an email detailing all relevant information known to the reporting person, receipt confirmation requested. The coordinator will also confirm

receipt by return email. If the employee does not promptly receive a written confirmation from a coordinator, the employee should continue to follow up with emails or phone calls to the coordinator until a confirmation is received.

- iii. **Anonymous reports.** Employees are discouraged from reporting anonymously pursuant to this policy, except in circumstances where the employee would not otherwise report at all. Anonymous reports present difficulties in proving the identity of the reporter and to shield that person from the potential legal consequence of a criminal prosecution and/or mandatory termination of employment.

f. **Definitions.**

- i. **Sexual harassment** as used in this section means unwelcome, sex-based verbal or physical conduct that:
 - 1. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or,
 - 2. in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.
- ii. **Course and scope of employment** means that an employee has a duty to report when he or she witnesses or receives reportable information while performing duties in the furtherance of the university's business and for the accomplishment of tasks for which the employee was hired.

2. **Criminal Offense.**

- a. An employee commits a criminal offense under Texas law if the employee:
 - i. is required to make a report as described in Section 1 above and knowingly fails to make the report; or
 - ii. with the intent to harm or deceive, knowingly makes a report as described above that is false.
- b. Criminal penalties imposed become more severe if employees intend to conceal incidents that must be reported, described in Section 1 above.

3. **Termination of Employment.** HSU will initiate the applicable employee disciplinary process to terminate the employment of any employee determined to have committed a criminal offense described in Subsection (a) of Section 2 above.

4. **Immunity.** An employee who in good faith reports or assists in the investigation of a report of an incident described in Section 1(a) above, or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident, will not be subject to disciplinary action for Personnel Handbook or employee code of conduct violations which are reasonably related to the incident, and for which suspension or expulsion from the institution is not a possible punishment. This immunity does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 1 of this policy.

BOTTOM LINE:

Do not risk your job or criminal penalties. Unless you are a Confidential Resource or your communications are privileged or confidential under other laws, promptly report all incidents of sexual misconduct!