

Haverford College Sexual Misconduct Policy

Introduction

Title IX

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

U.S. Department of Education Final Rule under Title IX

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence),
- Addresses how an institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that an institution must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Haverford College ("the College") remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the new Title IX Final Rule, and retains authority to investigate and adjudicate allegations under the policies and procedures defined within this the Haverford College Sexual Misconduct Policy.

Bi-College Policy Development

Bryn Mawr and Haverford Colleges ("the Colleges") have a long-standing collaborative relationship which offers students comprehensive access to academics, student organizations, residence hall and dining facilities and social activities on both campuses. A free "Blue Bus" shuttle services makes regular stops at each campus every 30 minutes, providing easy and frequent access to all community members. Some academic programs and departments are provided only on one campus or structured to share resources between the two institutions. In 2016, the Colleges codified the Bi-College ("Bi-Co") relationship with a [Memorandum of Understanding](#) to provide a formalized framework for ongoing collaboration. Due to the complexity of the Title IX requirements, specific language in the Final Rule, and the sometimes-

overlapping nature of the Colleges' Education Program and Activities, Bryn Mawr and Haverford Colleges will implement Sexual Misconduct Policies which are substantially the same, effective August 14, 2020. The Colleges will jointly administer the procedures set forth in the Resolution Process of these Policies, as mutually agreed by the Colleges, if a Complainant is a student or employee of one College and the Respondent is a student or employee of the other College, if the Complainant is a student or employee of one College and the location of the alleged Sexual Misconduct is the other College, or if other facts and circumstances set forth in a Formal Complaint or in the investigation of such Formal Complaint suggest the need for joint administration of the Resolution Process.

Sexual Misconduct Policy

Haverford College is committed to ensuring that all members of the College community have a learning and working environment that is free from sexual misconduct. For purposes of this policy, the College defines **Sexual Misconduct** as acts described in one or both of the following broad categories:

1. **"Title IX Sexual Harassment,"** in accordance with the U.S. Department of Education Final Rule, includes any conduct on the basis of sex that is alleged to have occurred in a College education program or activity, and is alleged to have been perpetrated against a person in the United States. The conduct alleged, if true, must satisfy one or more of the following conditions:
 - a. A College employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
 - b. Unwelcome conduct a reasonable person would determine to be so severe, pervasive, and objectively offensive such that it effectively denies a person equal access to the College's Programs or Activities;
 - c. **Sexual Assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (such as incapacitation, age, family relation to the other Party, or intellectual or other disability). Sexual Assault can be committed by or against individuals of any sex or gender and can occur between individuals of the same sex/gender or different sexes/genders. As required by the Title IX Final Rule, the College will rely on the following definitions of Sexual Assault:
 - i. sexual intercourse with another person, including oral or anal sexual intercourse, or the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person,

without consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

- ii. touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- iii. sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- iv. sexual intercourse with a person who is under the statutory age of consent.

- d. **Dating Violence**, as defined in 34 U.S.C. § 12291(a)(1)), meaning any act of 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 is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.
 - e. **Domestic Violence**, as defined in 34 U.S.C. § 12291(a)(8), meaning a felony or misdemeanor crime 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.
 - f. **Stalking**, as defined in 34 U.S.C. 12291(a)(30), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
2. **“Other Gender-Based Misconduct,”** defined as acts which do not meet the narrow definition of “Title IX Sexual Harassment,” as defined above, but nevertheless could constitute discrimination on the basis of sex. Other Gender-Based Misconduct includes:
- a. Sexual Assault, as defined in 1c (above) which is alleged to have occurred by or against any member of the College community, regardless of the location of the alleged action.

- b. Unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or nonverbal conduct of a sexual nature that is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.
- c. Sexual exploitation, defined as occurring when a person abuses or exploits another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose without that person's consent. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include:

- o observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity in a place where that person would have a reasonable expectation of privacy, without that person's consent.
- o recording, and/or distributing (including streaming) of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without that person's consent;
- o prostituting another individual;
- o exposing one's genitals in non-consensual circumstances;
- o knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- o inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

General Rules of Application

The above-referenced acts are considered sexual discrimination. Title IX of the Educational Amendments of 1972, 20 U.S.C. §§1681-1688, ("Title IX") prohibits discrimination on the basis of sex in educational programs and activities operated by recipients of federal financial assistance, including Haverford College. This Policy is intended to meet the College's obligations under Title IX; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA"), with respect to its application to sex-based misconduct; and other applicable law and regulations.

Consistent with Title IX requirements, Haverford College does not discriminate on the basis of sex in its education programs or activities (including in admissions and employment). College community members have the right to be free from all forms of sexual harassment and violence. All College community members are expected to conduct themselves in a manner that does not

infringe upon the rights of others. The College has zero tolerance for sexual misconduct, and this Policy applies to all employees and students. Non-members of the campus community who engage in discriminatory actions within College programs or on College property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with College programs as the result of their misconduct.

Reports of Sexual Misconduct committed by any student or employee (including faculty and staff) of the Haverford community will be resolved according to the procedures outlined in this Policy, unless otherwise noted.

Effective Date

This Sexual Misconduct Policy is effective on August 14, 2020 and will apply to Formal Complaints of Sexual Misconduct brought on or after August 14, 2020. Formal Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to previous College policies.

Non-Discrimination in Application

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about this Policy or processes set forth herein may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

Disability Accommodations

This Policy does not alter any College obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Resolution Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other College programs and activities.

Alcohol and Drug Use Amnesty

The health and safety of every student is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of Sexual Misconduct. An individual who experiences Sexual Misconduct, or a Witness to such Sexual Misconduct, acting in good faith, who discloses any

incident of Sexual Misconduct to College officials or law enforcement will not be sanctioned under College codes of conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of Sexual Misconduct. The College may request that the individual attend an approved alcohol or drug education program, without assessing any charges for such program. This amnesty provision also applies to student groups making a report of Sexual Misconduct. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

Policy Definitions

Advisor

An Advisor is any individual who has been chosen by a Party or designated by the College to provide support and guidance during the resolution process. The Advisor will conduct questioning should the process involve a hearing.

Complainant

A Complainant is any individual who has reported being or is alleged to be the victim of conduct that could constitute Sexual Misconduct as defined under this Policy.

Consent

Consent to engage in sexual activity must be informed, knowing and voluntary; consent must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Consent is active, not passive.

Guidance for Consent:

- Prior to initiating a sexual encounter, one is expected to obtain consent to each act of sexual activity prior to initiating such activity. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.
- Either Party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or orally refuse sexual activity is not necessarily giving consent.

- When consent is requested orally, absence of any explicit oral response constitutes lack of consent. An oral “no” constitutes lack of consent, even if it sounds insincere or indecisive.
- If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both Parties should stop and clarify orally the other’s willingness to continue before continuing such activity.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in each sexual activity.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual’s ability to exercise their own free will to choose whether or not to have sexual contact.
- An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent.
- In the Commonwealth of Pennsylvania, the age of majority is 18. Under state law, consent cannot be given by minors under the age of 13 and can only be given by a minor under the age of 16, if the other Party is less than four (4) years older than the minor.

Confidential Resource

A Confidential Resource is a College employee who is not required to report notice of sexual harassment to the Title IX Coordinator. References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. Lists of Confidential Resources are available on the [Haverford College](#) webpage.

Education Program or Activity includes:

- Any Haverford College on-campus premises
- Any off-campus premises over which the College has substantial control over the Respondent and the context in which the Sexual Misconduct occurred. This includes buildings or property owned or controlled by a recognized student organization.
- Any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of College programs and activities over which the College has substantial control.

Formal Complaint

A Formal Complaint is a document – including an electronic submission—filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or a document signed by the Title IX Coordinator, alleging Sexual

Misconduct against a Respondent about conduct within the College's Education Program or Activity and requesting initiation of the College's Resolution procedures consistent with this Sexual Misconduct Policy to investigate the allegation of Sexual Misconduct.

Hearing Panel

The Hearing Panel is the group of individuals appointed by the College with authority to determine responsibility and sanctioning (if applicable) for violation of this Sexual Misconduct Policy.

Investigator

The Investigator is the individual or individuals appointed by the College to gather evidence and facts related to the allegation of Sexual Misconduct. The Investigator(s) will provide an investigative report summarizing all relevant evidence for review by both the Complainant and Respondent.

Resolution Process

The Resolution Process is a formal resolution process to address reported conduct that may be a violation of this Sexual Misconduct Policy.

Respondent

A Respondent is any individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct as defined under this Policy.

Privacy

References made to privacy mean the actions of College employees, who cannot guarantee confidentiality, to maintain privacy to the greatest extent possible. Information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The College will limit disclosure as much as practicable, even if the Title IX Coordinator determines that a request for confidentiality cannot be honored.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the [Haverford College FERPA](#) policy. Employee privacy will be protected in accordance with [Haverford College Employee Handbook](#).