

# Title IX and Sexual Violence

## What is Title IX?

Title IX is a federal law passed in 1972 that requires gender equity in every educational program that receives federal funding. Title IX prohibits sex discrimination, sexual harassment, and sexual violence in all student services and academic programs, including, but not limited to, admissions, financial aid, advising, housing, athletics, recreational services, health services, counseling, classroom assignments, and grading.

## Our Commitment:

University of Holy Cross (UHC) is committed to creating and maintaining a campus environment where all individuals are treated with respect and dignity and free to participate in a lively exchange of ideas. Individuals have a right to learn and work in an environment free of harassment.

- Sexual harassment is a form of sex discrimination prohibited under Title IX and will not be tolerated at UHC.
- Harassment is not just limited to conduct of a sexual nature. UHC prohibits harassment based upon an individual's race, color, sex, religion, national origin, age, disability, genetic information, sexual orientation, gender identity, gender expression, pregnancy, marital status, military status, veteran status, or any other status or classification protected by federal, state, or local law.
- Harassment occurs when unwelcome verbal or physical conduct, because of its severity and/or pervasiveness, significantly interferes with an individual's work or education, or adversely affects an individual's employment or ability to learn or participate in school activities.
- Harassment also occurs when a person uses a position of authority to engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

UHC complies with federal mandates related to Title IX, sex discrimination, sexual assault, sexual violence, intimate partner violence and dating violence.

UHC provides many resources to students, faculty and staff to address concerns relating to discrimination or harassment on the basis of sex, which includes sexual harassment and sexual violence.

Any student, faculty, staff member or applicant for admission who has concerns about sex discrimination or sexual misconduct is encouraged to seek the assistance of a **Title IX Coordinator**.

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# Consent and Sexual Misconduct

## What is Consent?

Consent must be clear, unambiguous, and a voluntary agreement between participants to engage in specific sexual activity. Consent is active, not passive, and is given by a clear and sober "YES". Consent may not be inferred from silence, passivity, or lack of active resistance alone. A current or previous dating or sexual relationship is not sufficient to constitute, and consent to one form of sexual activity. It does not imply consent to other forms of sexual activity. Being intoxicated does not diminish one's responsibility to obtain consent. In some situations, an individual may be deemed incapable of consenting to sexual activity because of circumstances or the behavior of another, or due to their age. Examples of such situations may include, but are not limited to, incompetence, impairment from alcohol and/or other drugs, fear, unconsciousness, intimidation, coercion, confinement, isolation, or mental or physical impairment.

## What is Sexual Misconduct?

Sexual misconduct is considered a sexual act or contact of a sexual nature that occurs, regardless of personal relationship, without the consent of the other person(s), or that occurs when the person(s) is unable to give consent or whose consent is coerced or obtained in a fraudulent manner. Sexual misconduct includes, but is not limited to, sexual assault, sexual abuse, violence of a sexual nature, sexual harassment, non-consensual sexual intercourse, sexual exploitation, video voyeurism, contact of a sexual nature with an object, or the obtaining, posting or disclosure of intimate descriptions, photos, or videos without the express consent of the persons depicted therein, as well as dating violence, domestic violence and stalking. Some examples of misconduct include:

- Pressure for a date or a romantic or intimate relationship;
- Unwelcomed touching, kissing, hugging, or massaging;
- Pressure for or forced sexual activity;
- Unnecessary and unwelcomed references to various parts of the body;
- Belittling remarks about a person's gender or belittling remarks about a person's sexual orientation based in gender-stereotyping;
- Inappropriate sexual innuendoes or humor;
- Videotaping and photographing someone or people without consent;
- Obscene gestures of a sexual or gender-based nature;
- Offensive sexual graffiti, pictures, or posters;
- Sexually explicit profanity; and/or
- Use of e-mail, the Internet, or other forms of digital media to facilitate any of the above referenced behaviors.

# Reporting Sexual Misconduct

## Right to Refuse

Individuals can choose whether or not to report an incident of sexual misconduct. UHC allows complainants and reporters to file both reports and complaints against an individual that is thought to have violated this policy. If the event where only a report is filed and not a formal complaint, the complainant or reporter will be notified that they can file a formal complaint at any time, but the University is still obligated to investigate the report.

## Filing a Formal Complaint

Any member of the UHC campus community, guest, visitor or other interested party may make a report of an alleged violation of this policy. Formal complaints must be in writing and it is suggested for the preservation of evidence that they be submitted within one hundred and twenty (120) calendar days following the date of the alleged incident of sexual misconduct. Formal complaints submitted after 120 calendar days will still be investigated. While UHC is firmly committed to protecting all members of the campus community from sexual misconduct, failure to file a timely complaint may adversely affect the ability of UHC to take appropriate actions under this policy. Formal complaints must be submitted in person or a complainant or reporter can call to make arrangements for a representative to meet with them at another location. Individuals that are unable to file a written complaint and would like to make a verbal complaint can call a designated reporting location, but in order for a complaint to be official it must be in writing.

## Responsible Employee

A Responsible Employee must promptly notify the Title IX Coordinator(s) of any report of sexual misconduct brought to their attention, including campus law enforcement. The Title IX Coordinator(s) works collaboratively with the reporting entity, making every effort to operate with discretion and maintain privacy of the individuals involved. Responsible Employees for UHC are as follows:

- Members of the Board of Trustees
- President
- Vice Presidents
- Campus Police
- Deans
- Departmental Directors and Coordinators
- Academic Department Chairs
- Academic Faculty (full-time and part-time)
- Staff

## **Confidentiality and Privacy**

An individual may make a request for confidentiality at any point during the investigation process. This type of request typically means that a complainant, reporter, or witness does not want his/her identity known to other individuals involved in the investigation or to other members of the campus community. UHC is required to weigh requests for confidentiality within its commitment to provide a reasonably safe and non-discriminatory environment. If at any point an individual requests privacy during an investigation, UHC will make all reasonable attempts to comply with this request, but such requests limit UHC's ability to investigate and properly adjudicate any allegations.

In all investigations, the identities of all involved parties will only be revealed to University Officials who need to know as an official part of the investigation. When a report or formal complaint is filed, all parties who are named in the investigation will be notified of UHC's expectation of confidentiality and privacy. UHC will make all reasonable efforts to maintain the confidentiality and privacy of parties involved in sexual misconduct investigations and hearings. Breaches of confidentiality and privacy against involved parties may warrant a separate misconduct hearing.

## **The Complaint Process**

- Formal complaints are investigated by the Title IX Coordinator(s) or a designee. Following an initial investigation, a preliminary meeting will be held with the respondent to review the complaint and other information gathered. The respondent will be provided with a written notification of the formal investigation or and a copy of the Sexual Misconduct Policy by the Title IX Coordinator(s) or his/her designee.
- As a part of the investigation process, the disclosure of facts to all involved parties will be limited to what is reasonably necessary to conduct a fair and thorough investigation. All participants will be advised that maintaining confidentiality is essential to protect the integrity of the investigation.
- All involved parties may have an advisor present throughout the investigation and adjudication process.
- At any time during the investigation, the Title IX Coordinator(s) may recommend that interim protections or remedies for any involved party.
- The investigation shall be completed as promptly as possible and in most cases, within sixty (60) business days of the date that the formal complaint was filed.
- After the completion of the investigation, the Title IX Coordinator(s) will prepare a written report. The written report will include a statement of the allegations and issues, the positions of the involved parties, and a summary of the evidence.
- If the investigation involves allegations of student-on-student sexual misconduct, and the investigation results in a finding that this policy has been violated, the complaint will be adjudicated as outlined in the Student Code of Conduct and Student Judicial System and Procedures. The University Judicial Committee will make a determination of responsibility based on the Student Code of Conduct.
- If the investigation involves allegations of sexual misconduct where an employee is the respondent, and the investigation results yield a finding that this policy has been violated, the file will be forwarded to the Office of Human Resources where the procedures outlined in the

University of Holy Cross Employee Handbook will be followed. The determination of responsibility will be determined by the guidelines of the aforementioned Handbook.

- At the conclusion of the adjudication process, within 2 business days, written notification will be provided to the Title IX Coordinator(s) of what action, if any has been taken.
- The outcome of a sexual misconduct investigation and adjudication will become a part of the educational/personnel record of the respondent, and is protected from release under federal law (FERPA), and UHC's confidentiality of records policies. Both the complainant and respondent will be informed by the Title IX Coordinator of the outcome and essential findings and sanctions of the Office of Human Resources or the Office of Student Engagement and Advising, in writing, without conditions or limitations.
- The outcome of sexual misconduct investigation may be appealed in accordance with the appeals guidelines of the Student Code of Conduct and Employee Handbook. For an appeal to be valid it must be based on at least one of the following criteria:
  - There was a procedural error in the operation of the University judicial process that was substantial enough to have effectively denied an individual a fair hearing.
  - There is availability of new and significant evidence that was not available during the initial hearing process in spite of diligent efforts to collect such information.
  - There was a lack of substantial information presented during the hearing process to support the decision on responsibility for a violation.

## COMPLAINANT'S (VICTIM) STATEMENT OF RIGHTS

- The right to an investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith;
- The right to be treated with respect by University officials;
- The right of both the complainant and respondent to have the same opportunity to have others present (in support or advisory roles) during the University judicial process;
- The right not to be discouraged by University officials from reporting sexual misconduct offenses to both on-campus and off-campus authorities;
- The right to be informed of the outcome and any sanctions imposed as the result of a University judicial hearing involving a sexual misconduct offense, usually within forty-eight (48) hours of the end of that hearing;
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, if the student/employees so chooses. This also includes the right not to report;
- The right to be notified of available counseling, mental health or student services both on campus and in the community;
- The right to notification of and options and assistance for changing academic and living situations after an alleged sexual misconduct incident if such changes are reasonably available. (No formal complaint, or investigation, campus or criminal, need occur before this option is available.)
- The right not to have irrelevant prior sexual history admitted as evidence in the University judicial process;
- The right to make an Impact Statement at the University judicial hearing and to have that statement considered in determining a sanction;
- The right to a campus no-contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;
- The right to appeal the (finding and) sanctions imposed by the UHC Office of Student Life, in accordance with the standards for appeal established by the institution;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least forty-eight (48) hours prior to the University judicial hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, usually within forty-eight (48) hours of the University judicial hearing, except in cases where a witness's identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the alleged complainant, which will always be revealed);
- The right to preservation of privacy, to the extent possible and allowed by law;
- The right to a hearing closed to the public;
- The right to petition that any member of the Hearing Board be removed on the basis of demonstrated bias;
- The right to bring a victim advocate or adviser to all phases of the investigation and University judicial process;
- The right to give testimony in the University judicial hearing by means other than being in the same room with the respondent;
- The right to ask the investigator(s) to identify and question relevant witnesses, including expert witnesses;

- The right to be fully informed of the University judicial process rules and procedures, as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the University request the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses (including the respondent) and the right to challenge documentary evidence;
- The right to be present for all testimony given and evidence presented before the Hearing Board;
- The right to have complaints heard by the Hearing Board members and appeal officers who have received annual sexual misconduct training;
- The right to have a Hearing Board comprised of a diverse group of representatives;
- The right to have University policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint if possible; and
- The right not to have released to the public any personally identifiable information, without his or her consent.

## **RESPONDENT'S (ACCUSED) STATEMENT OF RIGHTS**

- The right to an investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith;
- The right to be treated with respect by University officials;
- The right to be informed of, and have access to, campus resources for medical, counseling and advisory services;
- The right to be fully informed of the nature, rules and procedures of the University judicial process and to timely receive written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in the University judicial process;
- The right to make an Impact Statement during the University judicial hearing and to have that statement considered in determining a sanction;
- The right to appeal the finding and sanction of the Hearing Board, in accordance with the standards for appeal established by UHC;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, usually within forty-eight (48) hours prior to the University judicial hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, usually within forty-eight (48) hours of the University judicial process hearing, except in cases where a witness's identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the Hearing Board be removed on the basis of bias;
- The right to have the Hearing Board request the presence of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of witnesses and the right to challenge documentary evidence;
- The right to have complaints heard and/or appealed by individuals who have received annual sexual misconduct adjudication training;
- The right to have UHC policies and procedures followed without material deviation;
- The right to have an advisor or advocate accompany and assist in the University judicial process. This advisor can be anyone but the advisor may not take part directly in the hearing itself, though he/she may communicate with the respondent as necessary;
- The right to a fundamentally fair hearing, as defined by UHC policies and procedures;
- The right to an outcome based solely on evidence presented during the University judicial process hearing. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the Hearing Board;
- The right to have the Hearing Board comprised of a diverse group of representatives; and
- The right to be informed, in advance when possible, of any public release of information regarding the complaint.

# Confidential Advisor

## What is a Confidential Advisor?

A Confidential Advisor is an individual designated to aid a student/employee involved in a sexual misconduct complaint resolution process serving as a confidential resource. As suggested by the term "confidential advisor," confidential communications with the advisor will be kept confidential in all circumstances except where the institution or advisor may be required to disclose the communications under state and federal laws. University of Holy Cross (UHC) describes the duties of the Confidential Advisor to include:

1) To inform a complainant of the following:

- The rights of the complainant and respondent under University of Holy Cross policies.
- The complainant's reporting options, including the option to notify the Title IX Coordinator(s), the option to notify local law enforcement, and any other reporting options.
- If reasonably known, the potential consequences of the reporting options.
- The process of investigation, adjudication, and disciplinary proceedings of UHC.
- The limited jurisdiction, scope, and available sanctions of UHC student disciplinary procedures, and that this process should not be considered a substitute for the criminal justice process.
- Potential reasonable accommodations that UHC may provide to complainant.
- The name and location of the nearest medical facility where complainant may have a rape kit administered by an individual trained in sexual assault forensic medical examination and evidence collection, and information on transportation options for a visit to such facility.

2) To advise the complainant of, and provide written information regarding, both the complainant's rights and University of Holy Cross' responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by UHC.

Disclosures or reports made to any other entities except those listed above are NOT confidential. For example, incidents of sexual misconduct discussed with a supervisor, resident assistant, staff, or faculty member, and those persons are "Responsible Employees" and, as such, are obligated pursuant to this policy to report sexual misconduct to the Title IX Coordinator(s).

## Who is the Campus Confidential Advisor?

Incidents of sexual misconduct may be reported confidentially to the following Confidential Advisor:

**Dr. Roy Salgado, NCC, LPC-C, LMFT-S**  
Associate Professor of Counseling  
(504) 398-2169  
[rsalgado@uhcno.edu](mailto:rsalgado@uhcno.edu)

## Resources

### *Campus Support:*

- Thomas E. Chambers Counseling and Training Center: <http://uhcno.edu/stulife/counseling-and-training-center.html> or (504) 398-2168
- Campus Ministry: (504) 398-228
- Student Health Services: (504) 398-2127

### *Community Support:*

- RAINN (Rape, Abuse & Incest National Network)  
1-800-656-4673  
<http://www.rainn.org>
- Metropolitan Center for Women and Children  
(504) 837-5400  
<http://www.mcwcnno.org>
- New Orleans Family Justice Center  
(504) 866-9554  
<http://www.nofjc.org>
- New Orleans Sexual Assault Team  
1-855-435-STAR  
<http://www.nolasart.org/>
- Know Your IX – Empowering Students to Stop Sexual Violence  
<https://www.knowyourix.org/>
- Not Alone – Together Against Sexual Violence  
<https://www.justice.gov/ovw/protecting-students-sexual-assault>

### *Department of Education's Office of Civil Rights Resources:*

- <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>
- <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>