

SEXUAL MISCONDUCT POLICY

INTRODUCTION AND SCOPE OF POLICY

It is the policy of Huntington Junior College to promote a productive work environment and not to tolerate verbal or physical conduct by any employee or student that interferes with this environment. This includes sexual harassment, domestic violence, dating violence, sexual assault and stalking. Based on this policy and the Campus Awareness Security Act of 1990, Huntington Junior College will report all criminal sexual offenses occurring on campus to the Huntington Police Department.

Huntington Junior College will not tolerate assault and/or intimidating behavior of any kind against any person or group of individuals based on race, gender, sexual orientation, age, national origin, religion, marital status, or disability. Any staff member, faculty, or student who is found to have committed a sexual offense is subject to immediate disciplinary action including suspension or dismissal. This policy applies to all students, employees, and third party vendors of Huntington Junior College regardless of sexual orientation or gender identity.

The policy contains very specific guidance regarding confidentiality and the ability of the College to maintain confidentiality when an instance of sexual misconduct is reported. Please refer to the confidentiality section for more detail.

Information regarding sexual offenders living in West Virginia can be found at:
<http://www.wvstatepolice.com/sexoff/>

ASSISTANCE FOLLOWING AN INCIDENT OF SEXUAL MISCONDUCT – IMMEDIATE AND ONGOING SUPPORT

If you are a victim of any form of sexual misconduct, the community has numerous resources available to assist you. If you are in immediate danger, please contact 911!

Procedures to Follow if Sexual Assault Occurs:

- The victim should get to safety and contact the Huntington Police Department. Huntington Junior College staff/faculty will also assist in notifying the proper authorities.
- Evidence should not be destroyed. The victim should refrain from taking a shower, washing hands, or changing clothing. The location where the assault occurred should not be disturbed.
- The victim should get immediate medical assistance.

Medical Support

Cabell Huntington Health Department - 703 7th Ave
Cabell Huntington Hospital - 1340 Hal Greer Boulevard

St. Mary's Hospital - 2900 1st Ave

Campus Support

Director

President

Off Campus Support

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the College unless the victim requests the disclosure and signs a consent or waiver form.

Following is contact information for these off-campus resources:

- The National Sexual Assault Hotline - Call 800.656.HOPE (4673)
- Contact Huntington – Call 866.399.7273
- Goodwill – Call 304-523-9454 or e-mailing familyservice@goodwillhunting.org.

ACADEMIC ACCOMMODATIONS AND INTERIM MEASURES

If a student reports a sexual misconduct incident to the College, arrangements can be made to accommodate the student in a safe academic environment during an investigation of the incident. Class schedule changes can be made or the student may withdraw and return without penalty. Academic support such as tutoring is also available. If schedule accommodations cannot be made, the alleged perpetrator's enrollment may be temporarily placed on hold while the investigation occurs.

TITLE IX COORDINATOR

The Director of the College serves as the Title IX Coordinator. The Title IX Coordinator is charged with monitoring the College's compliance with federal, state and institutional policies that promote a non-discriminatory and harassment-free environment. This includes helping to maintain a safe and caring campus environment through prevention education and the investigation of complaints of sexual discrimination, sexual harassment and sexual assault/violence.

DEFINITIONS

Sexual Harassment is the unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment,
- Submission to or rejection of such conduct by an individual is used as the basis for education or employment decisions affecting such individuals, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's school or work performance or creating an intimidating, hostile, or offensive educational or working environment.

Hostile Environment Harassment refers to a situation where students and/or employees are

- subject to a pattern of exposure to unwanted sexual behavior that is so severe, persistent, or pervasive that it alters the conditions of education, employment, or participation in a school program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive.
- An isolated incident, unless sufficiently severe, does not amount to a hostile environment caused by sexual harassment.

Quid Pro Quo Harassment refers to a situation where students and/or employees are subject to unwanted sexual behavior where submission or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a school program or activity.

Sexual Assault is an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Unified Crime Reporting ("UCR") program.

- *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 another person, ***without the consent of the victim.***
- *Sex Offenses* - Any sexual act directed against another person, ***without the consent of the victim,*** including instances where the victim is incapable of giving consent.
 - *Fondling*—The 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 his/her age or because of his/her temporary or permanent mental incapacity.
 - *Incest*—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - *Statutory Rape*—Sexual intercourse with a person who is under the statutory age of consent.

Consent is a voluntary agreement to engage in sexual activity;

- someone who is incapacitated cannot consent;
 - Incapacitation such as due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent
- past consent does not imply future consent;
- silence or an absence of resistance does not imply consent;
- consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- consent can be withdrawn at any time; and
- coercion, force, or threat of either invalidates consent.

Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
- Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and,
- Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

Domestic violence is a felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- Any other person against an adult or youth victim who is protected from that person's act under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

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

- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

Stalking is engaging in a *course of conduct* directed at a specific person that would cause a *reasonable person* to—

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.
- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or

means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

If you have experienced a sexual offense, Huntington Junior College offers you a secure and supportive environment in which to consider all the options that are available to you including (but not limited to), medical attention and evaluation, obtaining information, support and counseling, and/or reporting. It should be noted that some of these options offer confidentiality while other services are required by law to report the sexual offense.

CONFIDENTIAL REPORTING

The College encourages victims of sexual violence to talk to somebody about what happened – so victims can get the support they need, and so the College can respond appropriately. Different employees on campus have different abilities to maintain a victim's confidentiality. Most employees are required to report all the details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator. A report to these employees (called "responsible employees") constitutes a report to the College – and generally obligates the College to investigate the incident and take appropriate steps to address the situation.

Reporting to "Responsible Employees."

A "responsible employee" is a College employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty.

When a victim tells a responsible employee about an incident of sexual violence, the victim has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. A responsible employee must report to the Title IX Coordinator all relevant details about the alleged sexual violence shared by the victim and that the College will need to determine what happened – including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the College's response to the report. A responsible employee should not share information with law enforcement without the victim's consent or unless the victim has also reported the incident to law enforcement.

The following employees (or categories of employees) are the College's responsible employees:

- ✓ Front Desk Staff
- ✓ Full-time Instructors

- ✓ College Administrative Team

The Director is the Title IX Coordinator for the College.

If the victim wants to tell the responsible employee what happened but also maintain confidentiality, the victim should be aware that the College will consider the request, but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Coordinator of the victim's request for confidentiality.

Responsible employees will not pressure a victim to request confidentiality but will honor and support the victim's wishes, including for the College to fully investigate an incident. By the same token, responsible employees will not pressure a victim to make a full report if the victim is not ready to.

Requesting Confidentiality From the College: How the College Will Weigh the Request and Respond.

If a victim discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College must weigh that request against the College's obligation to provide a safe, non-discriminatory environment for all students, including the victim. If the College honors the request for confidentiality, a victim must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when the College may not be able to honor a victim's request in order to provide a safe, non-discriminatory environment for all students. The College has designated the following individual(s) to evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual violence:

- President
- Director

When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the President and/or Director will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
 - whether there have been other sexual violence complaints about the same alleged perpetrator;
 - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;

- whether the sexual violence was committed by multiple perpetrators;
- whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the College possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College will likely respect the victim's request for confidentiality.

If the College determines that it cannot maintain a victim's confidentiality, the College will inform the victim prior to starting an investigation and will, to the extent possible, share information only with people responsible for handling the College's response.

The College will remain ever mindful of the victim's well-being and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or College employees, will not be tolerated. The College will also

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance;
- provide other security and support, which could include issuing a no-contact order, arrange a change of course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to local law enforcement – and provide the victim with assistance if the victim wishes to do so.

The College may not require a victim to participate in any investigation or disciplinary proceeding.

Because the College is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the College to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the College determines that it can respect a victim's request for confidentiality, the College will also take immediate action as necessary to protect and assist the victim.

INVESTIGATION PROCEDURES AND PROTOCOLS

Investigation

The Title IX Coordinator will lead the investigation. The investigation team will include additional members of the College's administration. The investigation will occur in as timely a manner as possible. The following procedures will be used to complete the investigation:

- Both the complainant and respondent have the right to have an advisor of their choosing present with them for all parts of the process, including any meeting with campus officials, with the hearing panel, and with the investigator. The advisor can speak to the complainant/respondent at any time during the process but cannot speak directly to the investigator or to the hearing panel.
- If a person reports a sexual assault, sexual exploitation, stalking, or relationship abuse by a student but does not wish to participate in the investigation and adjudication process, the situation will be reviewed by the Title IX Coordinator for student concerns. The review will determine whether there is sufficient information to proceed with an investigation and adjudication without the participation of the complainant, and also whether there is evidence of a risk to the larger campus community such that a timely warning to the campus should be issued.
- If the respondent (alleged perpetrator) does not wish to participate in the investigation and adjudication process, the process will proceed without their contribution to the determination of the facts of the case.
- The Title IX Coordinator will take primary statements from the complainant and respondent, ask follow up questions, reach out to and collect statements from others who have evidence/information relevant to the question of violation of the code of conduct, and ask follow-up questions as needed.
- The complainant and respondent may each suggest questions to the investigator to be asked of others, and may also suggest others that the investigator speak with. Final decisions about whom to talk with and what to ask will be made by the investigator.
- All of those contacted by the investigator will be required to maintain the privacy of the investigation.
- The investigator will also pull together any additional evidence available (for example, health care records (with permission of the student) previous disciplinary records, etc.) The statements of the complainant and respondent will be recorded.
- The investigator will produce for the hearing panel a report of his/her findings, which will include a list of those interviewed and copies of any additional material referenced.
- The investigator's report will be shared with the complainant and respondent once it is complete. The complainant and respondent each have 10 days following the receipt of the report to write a response to it if they wish to do so. Responses will be included in the official materials sent forward to the hearing panel for adjudication.

Primary adjudication

- The decision about whether there has been a violation of the College's Code of Conduct regarding sexual misconduct (including sexual assault) will be made by a hearing panel of three staff members. If such a violation is found to have taken place, then the same panel also determines a sanction. Two "yes" votes are necessary for a finding that there has been a violation.
- The panel will start its deliberations by reading the statements gathered by the investigator and the investigator's report, along with the responses to the report (if any) from the complainant and respondent. After discussion, the panel will decide whether there are additional questions that need to be asked. If so, the investigator will go back to the parties to ask those questions.
- The panel will decide whether there is a preponderance of evidence showing a violation of the college's code of conduct as regards sexual misconduct.
- If the panel determines that there has been a violation of the code of conduct regarding sexual misconduct, the complainant and respondent will each have the opportunity to briefly address the committee, either in person, by phone, or in writing, before the sanction is determined. (The two parties would do this separately – neither one in the presence of the other. It is optional to make such a statement, not required.) This opportunity is not one in which the facts of the case are discussed or questions are asked by the committee. Rather, it is an opportunity for both parties to present directly to the hearing panel in their own "voice" any additional information, including information about the impact of the incident in question. This opportunity is limited to 15 minutes or the written equivalent thereof.
- The hearing panel then determines a sanction. The decision and the sanction are communicated to both parties, simultaneously and in writing, by the President of the College.

Appeal

- Both parties have the right to request an appeal of the decision made by the hearing panel. The right to appeal is limited to (a) significant procedural lapses or (b) the appearance of substantive new evidence not available at the time of the original decision. (Note that deliberate omission of information by the appealing party in the original investigation is not grounds for appeal.)
- Each party has 15 days following the receipt of the written decision to request an appeal. Requests for appeal, with reasons, should be sent in writing within the 15 day time limit to the President.
- Appeals will be granted only in cases where the procedural problems or new evidence are considered substantive enough to potentially affect the outcome of the initial hearing. If the appeal is granted, it will be returned to the original hearing panel.

- The review by a panel may result in a change in the decision as to whether or not a violation of the college's code of conduct as regards sexual misconduct occurred, or may result in an increase in sanction, a decrease in sanction, or no change in sanction.
- If the decision of the reviewing panel is to affirm the original decisions as to violation and as to sanction, that decision shall be final. If the decision of the reviewing panel is to change the original decision either as to violation or as to sanction, the reviewing panel's decision shall be subject to appeal in accordance with the foregoing procedures.
- The results of any such second appeal process shall be final, not subject to further appeal.

The results of any appeal will be communicated simultaneously and in writing to the complainant and the respondent by the President.

CONSEQUENCES OF VIOLATING SEXUAL MISCONDUCT POLICY

Violations of this policy may result in sanctions and corrective actions, which can include, but are not limited to:

- Verbal warning
- Written warning
- Disciplinary hold on academic and/or financial records
- Required counseling
- Required training or education
- Campus access restrictions
- No trespass order
- No contact directive (with respect to an individual)
- Probation
- Revocation of offer (employment or admissions)
- Disciplinary suspension
- Suspension with pay
- Suspension without pay
- Expulsion
- Termination of employment
- Termination of contract (for contractors)

The College may assign other sanctions as appropriate in each particular situation. Sanctions and corrective actions will be imposed in accordance with relevant policies and/or procedures and other requirements set forth in the applicable Staff Faculty Handbook, Student Handbook, other policies or handbooks that may be developed over time, or contracts.

EDUCATIONAL PROGRAMS

The College provides educational training regarding campus safety, including information about sexual misconduct to all new students. Students receive the policy as part of the orientation process. In addition, they are provided an online class that provides detailed education on the

policy. They are notified of this class during new student orientation and again through email to their student email account.

All faculty members received training on sexual misconduct, and the employees' role in maintaining a safe campus. All new faculty must complete the education as part of the employment process. The training for faculty is conducted online. Faculty must complete and pass the online education before their hiring is finalized.

In addition, ongoing training opportunities are provided by bringing in specialists in the community that can address sexual misconduct issues on an annual basis. All students and faculty are encouraged to participate in these events.