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<u>Policy</u>	Sexual Misconduct
<u>Regulation</u>	Title IX of the Education Amendments of 1972 and the Violence Against Women Act
<u>Method of Disclosure</u>	HDS Website, upon student enrollment and upon student request

1. **Introduction**

- a. HDS Truck Driving Institute, subsequently referred to as HDS, cannot and will not tolerate any form of sex/gender-based harassment, sex/gender-based violence, sexual exploitation, sexual assault, dating or domestic violence and stalking. The aforementioned acts are collectively referred to as sexual misconduct.
- b. HDS is committed to maintaining a hostile free educational environment and campus by addressing sexual misconduct violations as outlined in this policy.

2. **Scope**

- a. HDS' Sexual Misconduct Policy outlines reporting, investigation, complaint resolution procedures and possible sanctions, it provides resources available to assist students in dealing with the impact of sexual misconduct and it reviews the school's prevention, education and training measures for all programs and locations.
- b. This policy is applicable to all HDS students, faculty, and staff regardless of sexual orientation or gender identity. In addition, it applies to such acts conducted by third parties that are directed toward an HDS community member.
- c. All HDS employees who become aware of an alleged violation of this policy are expected to notify the campus Title IX Coordinator with the names of the parties involved and the details of the incident. Confidential reporting can be made off campus to an individual with a professional license requiring confidentiality, such as an attorney, a member of the clergy, a medical practitioner, a social worker, and a mental health professional (*i.e. psychiatrist*).

NOTE: For greater details regarding Confidentiality, refer to #6c of this policy.

3. **Options for Assistance Following an Incident of Sexual Misconduct**

- a. Victims should immediately call emergency 9-1-1 for police assistance if they believe the situation warrants it. Offenses can and should all be reported to an HDS campus Responsible Employee or directly to the Title IX Coordinator.
 - i. Off-Campus Law Enforcement contact information:
To share information about a crime: Call 88-CRIME, 520-882-7463
Online reporting: <http://88crime.org/>

- ii. After a sexual assault, it is very important that the victim receive medical attention to address any physical injuries and to screen for sexually transmitted diseases (STDs) and pregnancy.
- iii. Preserving DNA evidence from the assault is important. Every effort should be made to save anything that might contain the perpetrator's DNA, therefore a victim should not:
 - Bathe or shower
 - Use the restroom
 - Change clothes
 - Comb hair
 - Clean up the crime scene
 - Move anything the offender may have touched
 A sexual assault nurse examiner (SANE), sexual assault forensic examiner (SAFE) or another medical professional will conduct a forensic medical exam of the victim, but only if the victim gives permission. It is important to remember, that agreeing to a forensic medical exam does not require the victim to subsequently file a police report.

Tucson

Southern AZ Center Against Sexual Assault

<https://www.sacasa.org/advocacy/>

520-327-1171

- b. Ongoing assistance such as counseling, advocacy and support can be found off campus both nationally and locally.

- i. Contact Information:

- *National Sexual Assault Online Hotline: online.rainn.org*
- *National Sexual Assault Phone Hotline: (800)656-HOPE (4673)*
- *EMERGE Center for Domestic Violence: 888-428-0101*

- ii. HDS will implement supportive and protective interim measures to ensure the safety and well-being of a victim after receiving notice of Prohibited Conduct and prior to any final outcomes (investigatory, disciplinary, or remedial) have been determined. Interim measures may include: administrative actions (e.g., a "no contact" directive, interim suspension), academic modifications (e.g., changing of class time), or other measures designed to reasonably minimize the possible recurrence of, and mitigate the effects of, the alleged conduct.

4. Title IX Coordinators

- a. The Title IX Coordinators' primary responsibility is coordinating HDS' efforts to comply with and carry out its responsibilities under Title IX, which purpose prohibits of interfering with any right or privilege pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R Part 106. The Title IX Coordinator oversees the campus' response to reports and complaints that involve possible sexual discrimination to monitor outcomes, identify and address any patterns, and assess effects and address issues that affect the campus' climate. Please contact the Title IX Coordinator at 520-721-5825.

NOTE: For greater details regarding the Title IX Coordinator's duties, refer to #7 of this policy.

5. Definitions

a. Sexual Misconduct policy terms defined:

- i. **Sexual Harassment** is defined as 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. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education or interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile or offensive.
- ii. **Hostile Environment caused by Sexual Harassment** exists when sexual-based harassment is sufficiently serious to deny or limit the student's ability to participate in or benefit from HDS' programs or activities. A hostile environment can be created by anyone involved in the school's programs or activities (e.g., administrators, instructors, students, and campus visitors). In determining whether sexual-based harassment has created a hostile environment, the school considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the student who was harassed, but the school will also need to find that a reasonable person in the student's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment. To make the ultimate determination of whether a hostile environment exists for a student or students, the school considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual-based harassment, including:
 - (1) Type, frequency, and duration of the conduct;
 - (2) Identity and relationships of persons involved;
 - (3) Number of individuals involved;
 - (4) Location of the conduct and the context in which it occurred, and
 - (5) Degree to which the conduct affected one or more students' education.The more severe the sexual-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment likewise, a series of incidents may be sufficient even if the sexual-based harassment is not particularly severe. HDS enforces this policy in a manner that respects the First Amendment rights of students, instructors, administrators, and others.
- iii. **Domestic Violence** is abuse committed against an adult or a minor who is a spouse or former spouse, cohabitant or former cohabitant, or someone with whom the abuser has a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship.
- iv. **Sexual Assault** is having or attempting to have sexual contact with another individual without consent or having or attempting to have sexual intercourse with another individual without consent.
- v. **Dating Violence** is abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- vi. **Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses.
- vii. **Retaliation** in any way against a person or persons because they have opposed any practices forbidden under this policy or have filed a report, assisted, or participated in any manner in an investigation or proceeding is a violation under this Policy. This includes action taken against a bystander who intervened to stop or attempted to stop discrimination, harassment, sexual misconduct, interpersonal violence, or stalking. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy.
- viii. **Intimidation** is intentional behavior that would cause a person of ordinary sensibilities to fear of injury or harm.
- ix. **Stalking** is 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 to suffer substantial emotional distress.

b. Additional terms defined:

- i. **Consent** is a voluntary agreement to engage in sexual activity. Someone who is incapacitated cannot consent and past consent does not imply future consent. Silence or an absence of resistance does not imply consent nor does consent to engage in sexual activity with one person 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.
- ii. **Incapacitation** is the hindrance from having the capacity to give consent 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.

6. **Reporting Policies and Protocols**

- a. Students are able to disclose violations of this policy to an available HDS Responsible Employee, including the Title IX Coordinator by phone, in person, by mail or by email.
- b. Alternatively, criminal behavior of any kind can always be reported in the form of a criminal complaint to the area's local police department.
- c. HDS encourages victims of sexual misconduct to talk to someone about what happened. By talking to someone, it allows victims to get the support they need and gives HDS the ability to respond appropriately.

A Responsible Employee is any employee who has the authority to take action to redress sexual misconduct; who has been given the duty of reporting incidents of sexual misconduct by students to the Title IX Coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.

- i. Before a victim reveals any information to a Responsible Employee, the employee is to ensure that the victim understands the employee's reporting obligations, and if the victim wants to maintain confidentiality, direct the victim to confidential resources. 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, HDS must weigh that request against its obligation to provide a safe, non-discriminatory environment for all students, including the victim. The following range of factors will be considered;
 - (1) The increased risk that the alleged perpetrator will commit additional acts of sexual or other misconduct, such as:
 - whether there have been other sexual misconduct 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 misconduct;
 - whether the alleged perpetrator threatened further sexual misconduct or other violence against the victim or others;
 - whether the sexual misconduct was committed by multiple perpetrators;
 - (2) whether the sexual violence was perpetrated with a weapon;
 - (3) whether the victim is a minor;
 - (4) whether HDS possesses other means to obtain relevant evidence of the sexual misconduct (e.g., security cameras or personnel, physical evidence);
 - (5) 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 HDS to investigate and, if appropriate, pursue disciplinary action. If none of these factors are present, HDS will likely respect the victim's request for confidentiality.

- d. In compliance with the Clery Act, HDS must disclose accurate and complete crime statistics for incidents that are reported to Campus Security authorities and local law enforcement as having occurred on or near the campus.
- e. Any third-party or anonymous report must be reported to the Title IX Coordinator as soon as possible. The Title IX Coordinator will then collect any needed information, record the incident, and investigate further so that the proper protocols are followed, including confidentiality procedures.
- f. HDS 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 HDS employees, is prohibited and will not be tolerated.
- g. HDS offers amnesty to reporting parties, witnesses, and other individuals who may be hesitant to report or share information because of a fear that they themselves may be accused of minor policy violations, like drinking and/or drug use that occurred at the time of the incident. By acting in good faith and disclosing an act of violence, students will not be held accountable for Code of Conduct and/or policy violations.

NOTE: While these off-campus counselors and advocates may maintain a victim's confidentiality vis-à-vis HDS, they may have reporting or other obligations under state law.

7. Investigating Procedures and Protocols

- a. HDS President will first review all disclosed incidents and determine if there is a need for a formal investigation of the reported charges. If it is deemed to be necessary, the local police department will be contacted and an offsite Title IX expert will be retained to conduct the investigation.
- b. The investigation will be initiated immediately and local authorities and Title IX expert notified that day or the next business day. Preserving the evidence will be at the discretion of the police department and the provided Title IX expert.
- c. Preserved evidence may be used in an investigation or criminal proceedings. While evidence can be collected and preserved via medical examinations, victims can take steps to preserve evidence as well.

NOTE: For greater details regarding preserving evidence, refer to #3aiii of this policy.

8. **Grievance/Adjudication Procedures**

- a. HDS will use the preponderance of evidence, (i.e. whether it is more likely than not) standard that this policy has been violated by the conduct alleged, in any Title IX fact-finding and related proceedings, including any hearings. Mediation will not be used as a means to address or resolve cases of sexual assault or other sex/gender based violence.

- b. In the event an offsite Title IX expert has been retained, the expert will advise the adjudication panel in the determination of whether the alleged sexual misconduct occurred. The panel will consist of a selected 3 neutral Responsible Employees that will make the final determination and assign sanctions at the hearing. This will be a 2 out of 3 vote.
 - i. Both parties may submit in writing any issue with potential conflicts of interest and it will be reviewed by the Title IX Coordinator.
 - ii. Both parties and creditable witnesses may attend and testify in the adjudication process. However' the victim will only be questioned by the hearing panel. There will be no cross examination. The defense must submit questions to the hearing panel to present to the victim prior to the hearing.
 - 1. History of the victim's sexual activities is not relevant. Evidence of a prior consensual dating or sexual relationship between both parties does not imply consent or preclude a finding of sexual misconduct.
- c. The sanctions imposed may consist of, but not limited to suspension, expulsion, or change of academic schedule and additional remedies for benefit of the victim and school community.
- d. Both parties will receive simultaneous written notice of the outcome of the complaint.
- e. Appeals are not permitted

9. **Prevention and Education**

- a. HDS is committed to educating its community about sexual misconduct and taking the necessary steps in prevention. Multiple resources can be found within this policy, HDS website, and school catalog.
- b. This policy is distributed to all students, faculty, and staff by means of the HDS website and upon request.

10. **Training**

- a. At a minimum, the Title IX Coordinator, Responsible Employees, and anyone else who is involved in responding to, investigating or adjudicating sexual misconduct is required to be informed of this policy and receive adequate training.
- b. Training consists of an annual review of VAWA/Title IX policies and procedures and all aforementioned individuals are required to be fully knowledgeable on the VAWA/Title IX requirements and are to treat VAWA/Title IX prevention and reporting as a serious on going concern. HDS is focused on providing a safe and secure campus for its students and is diligently working toward continued improvement on VAWA policies and procedures.