

# 03.004: Sexual Harassment and Other Sexual Misconduct

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Status: Approved

Effective: September 27, 2022

Initiated by: Kerri Griffin | Director, CRC and Title IX Coordinator

Endorsed by: Elizabeth Sayrs | Executive Vice President and Provost

Approved by: Hugh Sherman | President

Signatures and dates on archival copy

## A. Rationale for Policy

Ohio university is committed to providing a workplace, educational environment, and programs and activities free from sexual harassment and other sexual misconduct.

To affirm its commitment to fairness and ensure compliance with federal and state laws and regulations, Ohio university has developed this policy and related processes to inform members of the university community about prohibited behavior; provide supportive measures designed to remediate the effects of sexual harassment and other sexual misconduct; and provide a prompt, fair, and impartial process to address alleged violations of this policy.

## B. Basis for policy

For purposes of this policy, "sexual harassment and other sexual misconduct" includes sexual harassment and sexual assault, domestic violence and dating violence, stalking and retaliation. These behaviors are prohibited as unlawful discriminatory conduct under Title VII of the Civil Rights Act of 1964 (as amended), Title IX of the Education Amendments of 1972, the Violence Against Women Act Reauthorization Act of 2022 (VAWA), the Campus Sexual Violence Elimination Act (Campus SaVE Act), and/or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). "Sexual harassment and other sexual misconduct," for purposes of this policy, also includes sexual exploitation. Additionally,

this policy contains a statement regarding consensual relationships in which one party retains a direct supervisory or evaluative role over the other party.

While sexual harassment and other sexual misconduct are forms of sex-based discriminatory conduct, discrimination on the basis of sex, gender, gender identity or expression, and sexual orientation is prohibited in all forms by Ohio university under university policy [40.001](#): nondiscrimination in education and employment.

## C. Applicable Scope and Jurisdiction of Policy

The expectations for conduct contained within this policy apply to all aspects of Ohio university's operations, locations, and programs, including, but not limited to, regional campuses, property owned or controlled by the university; online programs; university-sponsored events, activities, and travel; and in buildings owned or controlled by student organizations recognized by Ohio university.

These expectations apply to all members of the Ohio university community, which includes, but is not limited to, students, student organizations and student groups, faculty, administrators, staff, trustees and officers, and third parties such as agents, vendors, guests, visitors, volunteers and campers.

Any person may submit reports of prohibited behavior. Further, this policy encourages, and in some cases requires, reports of sexual harassment and other sexual misconduct regardless of where the incident occurred.

A violation of this policy by a student, student organization, or student group would also violate the student code of conduct. The Ohio university student code of conduct applies to all students, student organizations, and student groups whether the prohibited behavior occurred on or off campus; therefore, this policy applies to prohibited behavior by students, student organizations, and student groups whether it occurs on-campus or off-campus. Further, allegations of other conduct prohibited by the student code of conduct may be investigated and adjudicated through the Sexual Harassment and Other Sexual Misconduct Grievance Process in conjunction with violations of this policy.

Reports of prohibited behavior by faculty, administrators, staff, trustees, and officers will be assessed by the Title IX Coordinator to determine if the alleged behavior occurred within Ohio university's operations, locations, and programs, as described above, or if the alleged behavior, if true, may have effectively denied the complainant equal access to education or employment at Ohio university. If either circumstance exist, this policy will apply whether the behavior occurred on-campus or off-campus.

If the respondent in a reported violation of this policy is a student, student organization or group, faculty member, administrator, staff member, trustee, or officer, the grievance process described in this policy may be utilized regardless of the status of the complainant. Reports of prohibited behavior on the part of third parties such as agents, vendors, guests, visitors, volunteers, and campers will be assessed by the Title IX Coordinator to

determine the best means to stop the behavior, remediate the impact on the complainant, and prevent further prohibited behavior, such as barring individuals from university property or events, among other possible actions. If the respondent is unknown or is not a member of the university community, the university will not be able to utilize the grievance process; however, resources and other supportive measures will be offered to the complainant by the Title IX Coordinator.

Ohio university will respond to reports of sexual harassment or other sexual misconduct irrespective of when the alleged incident occurred, including during semester breaks, leaves of absence, or periods of dismissal. There is no time limit on making a report or submitting a formal complaint to the Title IX Coordinator; however, if the respondent is no longer a student or employee and/or if significant time has passed, the ability to investigate, respond, and provide remedies may be limited or not possible.

Acting on reports or formal complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage informal action, as appropriate. Ohio university will typically apply the policy in place at the time of the alleged misconduct and the process in place at the time a formal complaint is submitted by the complainant or signed by the Title IX Coordinator.

The measures described in this policy and related processes may be initiated when a respondent is charged with behavior that potentially violates both civil/criminal law and university policy, without regard to pending litigation in court or criminal arrest and prosecution. The Sexual Harassment and Other Sexual Misconduct Grievance Process may be carried out prior to, simultaneously with, or following criminal proceedings off campus. Determinations made and sanctions imposed under this policy will not be subject to change because criminal charges arising out of the same facts were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

If this policy directly contradicts any other university policy or procedures related to protected status discrimination, harassment, or retaliation, this policy takes precedence. An initial choice to use any particular policy does not preclude a later or simultaneous decision to use one or more of the others, or to use the criminal justice system.

## **D. Definitions**

The following definitions shall apply for the purposes of this policy:

### **1. Actual knowledge**

Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official with the authority to institute corrective measures on behalf of the university.

## 2. Advisor

A person chosen by a party (the complainant or respondent) to accompany the party to meetings related to the grievance process, to advise the party on that process, and to question the other party and witnesses at the hearing, if any. If a party does not have an advisor to question the other party and witnesses at the hearing, the university will appoint one to do so.

## 3. Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment, other sexual misconduct, or retaliation under this policy.

## 4. Confidential resource

An employee who is not a mandatory reporter and is not obligated by this policy to share knowledge and reports of sexual harassment, other sexual misconduct, or retaliation with the Title IX Coordinator. On-campus confidential resources include licensed mental health professionals and health care providers acting within the scope of their confidential roles.

## 5. Coercion

The use of intimidation, threats of harm, or extortion to compel another individual to initiate or continue sexual activity against the individual's will, or the use of these means for the purpose of retaliation as define by this policy.

## 6. Consent

The state of Ohio does not define “consent” in state statutes relating to sexual offenses. Ohio university's definition of consent is as follows:

Consent is knowing, voluntary, and clear permission to engage in sexual activity given by word or action. Reasonable reciprocation can be implied consent; however, silence or passivity, without words or actions demonstrating permission, cannot be assumed to show consent.

Consent to some sexual acts does not imply consent to others.

Past consent to a given act does not imply ongoing or future consent. A current or previous intimate relationship is not sufficient to constitute consent. Once given, consent can be withdrawn at any time through understandable words or actions that clearly convey that a party is no longer willing to engage in sexual activity. If consent is withdrawn, that sexual activity must cease immediately.

Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition.

Consent cannot be obtained by threat, coercion, or force. Agreement given under such conditions does not constitute consent.

To give consent, one must be of legal age.

Consent within relationships must be considered in context. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar patterns that may be evidenced.

Any individual who engages in sexual activity when the individual knows or should know that the other person has not given consent is in violation of this policy. It is not an excuse that the respondent was intoxicated and did not realize the complainant did not give consent.

## **7. Education program or activity**

Locations, events, or circumstances, including employment, where the university exercises substantial control over both the respondent and the context in which sexual harassment occurs and includes any building owned or controlled by a student organization that is officially recognized by the university.

## **8. Employee**

A person who performs work for the university and is paid for that work. For purposes of this policy, employees include paid faculty, administrators, staff, graduate research and teaching assistants, and all student employees.

## **9. Force**

The use of physical violence or constraint to gain sexual access to another person.

## **10. Formal complaint**

A document submitted by a complainant or signed by the Title IX Coordinator alleging behavior prohibited by this policy (sexual harassment, other sexual misconduct, or retaliation) against a respondent and requesting that the university investigate the allegation.

## 11. Grievance process

The method of resolution utilized to address allegations of sexual harassment, other sexual misconduct, and retaliation as defined by this policy.

## 12. Grievance process pool

Investigators, hearing panelists, appeal officers, and advisors who may perform any or all of these roles, though not at the same time nor for the same case.

## 13. Hearing panelist

Those with decision-making and sanctioning authority when allegations proceed to a hearing within the grievance process.

## 14. Incapacitation

A person who lacks the ability to make informed decisions is incapacitated and, therefore, cannot consent to sexual activity.

A person is incapacitated and cannot give consent if they are unable to understand what is happening or are helpless, asleep, or unconscious for any reason, including due to consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

Merely consuming or being under the influence of alcohol or other drugs does not constitute incapacitation. Incapacitation is not the same as intoxication, being drunk, or the inability to remember decisions made or actions taken while "blacked out." Incapacitation is determined by considering all relevant indicators of an individual's condition and actions at the time of sexual activity.

An individual who engages in sexual activity when that individual knows or should know that the other person is incapacitated is in violation of this policy. It is not an excuse that the respondent was intoxicated and, therefore, did not realize the complainant's incapacitation.

## 15. Investigator

The person or persons charged with gathering information about an alleged violation of this policy and compiling this information into an investigation report and file of evidence.

## 16. Mandatory reporter

An employee obligated by this policy to share knowledge and reports of sexual harassment, other sexual misconduct, or retaliation with the Title IX Coordinator.

## **17. Notice**

When an employee, student, or third party informs the Title IX Coordinator or any other official with authority of an alleged incident of sexual harassment, other sexual misconduct, or retaliation.

## **18. Official with authority ("OWA")**

An employee of the university with the authority to implement corrective measures for sexual harassment, other sexual misconduct, and retaliation on behalf of Ohio university. Notice to any OWA constitutes actual knowledge under this policy. For purposes of this policy, the following employees are designated as OWAs: Title IX Coordinator and Deputy Title IX Coordinator, President, Provost, Vice Presidents, Athletic Director, Dean of Students, Director of Community Standards and Student Responsibility, and Chief Human Resources Officer.

## **19. Parties**

The complainant(s) and respondent(s) in a matter, collectively.

## **20. Reasonable Person**

A reasonable person under similar circumstances and with similar identities to the complainant.

## **21. Report**

Information provided to the Title IX Coordinator indicating that sexual harassment, other sexual misconduct, or retaliation may have occurred.

## **22. Remedies**

Post-finding actions directed to the complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the university's educational program or activities, including employment.

## **23. Respondent**

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, other sexual misconduct, or retaliation under this policy. Student organizations or groups may also be respondents in the grievance process. It is presumed that a respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

## **24. Sanction**

A consequence imposed by the university on a respondent who is found to have violated this policy.

## **25. Student**

Any person from the time they are admitted to Ohio university up through the date of graduation. This includes, but is not limited to, new students at orientation, persons not currently enrolled but who are still seeking a degree from Ohio university, persons currently under suspension, and any other person enrolled in a credit earning course offered by Ohio university, including students enrolled in the college credit plus program.

## **26. Supportive measures**

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Supportive measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment or to deter sexual harassment, other sexual misconduct, and retaliation.

## **27. Title IX Coordinator**

The official designated by Ohio university to ensure compliance with Title IX and oversee the implementation of this policy. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

## **28. Title IX Team**

The Title IX Coordinator, Deputy Title IX Coordinator, and the members of the grievance process pool.

## 29. Witness

Person who is requested to participate in the grievance process because they may have relevant information about the alleged violation. The investigators may identify potential witnesses, or their names may be supplied by the complainant, respondent, or others with knowledge of the matter. All witnesses are considered to be witnesses called by the university.

## E. Sexual Harassment and Other Sexual Misconduct Offenses

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Ohio regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Ohio university has adopted the following definitions of sexual harassment and other sexual misconduct to address the unique environment of our academic community, which consists not only of employer and employees, but of students as well. All definitions encompass actual offenses and may also encompass attempts to commit the offense.

Acts of sexual harassment and other sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender identity, or gender expression of those involved.

The offenses below include behaviors prohibited by the Title IX regulations published in the Federal Register by the U.S. Department of Education, Office for Civil Rights on May 19, 2020. These regulations prescribe definitions based on the uniform crime reporting program of the Federal Bureau of Investigation. The offenses below also include additional behaviors prohibited by Ohio university. All of the listed offenses are violations of this policy.

Offenses 1-6 listed below are considered to be **Sexual Harassment**, as defined by Title IX regulations, if the behavior occurred within Ohio university's education programs or activities **and** in the United States **and** if the complainant was participating in or attempting to participate in the education program or activity of Ohio university at the time of filing a formal complaint. Ohio university's education programs or activities include locations, events, or circumstances, including employment, where the university exercises substantial control over both the respondent and the context in which sexual harassment occurs and includes any building owned or controlled by a student organization that is officially recognized by the university.

Under all other circumstances detailed in Section C of this policy, offenses 2-7 listed below constitute **Sexual Misconduct** under university policy.

Offense 8 (sexual exploitation) constitutes **Sexual Misconduct** under university policy in all circumstances detailed in Section C of this policy.

This policy prohibits conduct on the basis of sex that satisfies one or more of the following. If a charge is placed for the purposes of the Sexual Harassment and Other Sexual Misconduct Grievance Process, the italicized and underlined portion of each definition will be used as the charge in that process.

1. *Sexual Harassment under Title IX:*

- a. Unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to Ohio university's education program or activity.

2. *Sexual Harassment by Quid Pro Quo:*

- a. An employee of Ohio university,
- b. conditioning the provision of an aid, benefit, or service of Ohio university,
- c. on an individual's participation in unwelcome sexual conduct.

3. Sexual Assault (definitions based on the uniform crime reporting program of the Federal Bureau of Investigations as required by Title IX regulations):

- a. Sex Offenses, Forcible:
  - i. Any sexual act directed against another person,
  - ii. without the consent of the complainant,
  - iii. including instances in which the complainant is incapable of giving consent.

Federal regulations more specifically define a "sexual act" to include one or more of the following:

(a) Forcible Rape\*:

- (i) Penetration
- (ii) no matter how slight,
- (iii) of the vagina or anus with any body part or object, or
- (iv) oral penetration by a sex organ of another person
- (v) without the consent of the complainant.

(b) Forcible Sodomy\*:

- (i) Oral or anal sexual intercourse with another person
- (ii) forcibly,
- (iii) and/or against that person's will (non-consensually), or
- (iv) not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(c) Sexual Assault with an Object\*:

- (i) The use of an object or instrument to penetrate,
- (ii) however slightly,
- (iii) the genital or anal opening of the body of another person,
- (iv) forcibly,
- (v) and/or against that person's will (non-consensually),
- (vi) or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(d) Forcible Fondling\*\*:

- (i) The touching of the private body parts of another person (buttocks, genitals, breasts),
- (ii) for the purpose of sexual gratification,
- (iii) forcibly,
- (iv) and/or against that person's will (non-consensually),
- (v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

\*Allegations of behaviors fitting the definitions of Forcible Rape, Forcible Sodomy, or Sexual Assault with an Object will be charged as Non-consensual Sexual Intercourse in the Sexual Harassment and Other Sexual Misconduct Grievance Process.

\*\* Allegations of behaviors fitting the definition of Forcible Fondling will be charged as Non-consensual Sexual Contact in the Sexual Harassment and Other Sexual Misconduct Grievance Process.

b. Sex Offenses, Non-forcible:

i. Incest:

- (a) Non-forcible sexual intercourse,
- (b) between persons who are related to each other,
- (c) within the degrees wherein marriage is prohibited by Ohio law.

ii. Statutory Rape:

- (a) Non-forcible sexual intercourse,

(b) with a person who is under the statutory age of consent.

4. Dating Violence:

- a. Violence or threat of violence,
- b. committed by a person,
- c. who is in or has been in a social relationship of a romantic or intimate nature with the complainant.

For the purposes of this definition:

- i.** The existence of such a relationship shall be determined based on the complainant'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.
- ii.** Violence means physical violence.
- iii.** Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence:

- a. Conduct that would meet the definition of a felony or misdemeanor crime committed by a person who,
- b. is a current or former spouse or intimate partner of the complainant, or a person similarly situated to a spouse of the complainant under the family or domestic violence laws of Ohio;
- c. is cohabitating, or has cohabitated, with the complainant as a spouse or intimate partner;
- d. shares a child in common with the complainant, or
- e. commits acts against a youth or adult complainant who is protected from those acts under the family or domestic violence laws of Ohio.

For purposes of this definition:

Domestic violence does not include acts covered under the definition of dating violence.

6. Stalking:

- a. Engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for their own safety, or
  - ii. the safety of others, or
  - iii. suffer substantial emotional distress.

For the purposes of this definition:

- (a) Course of conduct means two or more acts, including, but not limited to, acts in which the respondent 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.
- (b) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

7. Sexual Harassment under University Policy:

- a. Physical or verbal conduct,
- b. of a sexual nature,
- c. that is unwelcome, and
- d. sufficiently severe, or

- e. pervasive,
- f. from both a subjective (the complainant's), and
- g. an objective (reasonable person's) viewpoint, where:
- h. such conduct has the purpose or effect of unreasonably interfering with a person's work or academic performance,
- i. or creating an intimidating, hostile, or offensive environment for working, learning, or living on campus.

For the purposes of this definition:

- i. The determination of whether an environment is "hostile" is often contextual and must be based on the circumstances. These circumstances could include:
  - (a) The frequency of the conduct;
  - (b) The nature and severity of the conduct;
  - (c) The relationship between the complainant and the respondent;
  - (d) The location and context in which the alleged conduct occurs;
  - (e) Whether the conduct was physically threatening;
  - (f) Whether the conduct was humiliating; or
  - (g) Whether the conduct arose in the context of other discriminatory conduct.

**8. Sexual Exploitation:**

- a. A person, knowingly or recklessly,
- b. taking non-consensual or abusive sexual advantage of another,
- c. for the person's own advantage or benefit,
- d. or to benefit or advantage anyone other than the one being exploited,

- e. through behavior that does not otherwise constitute a violation of this policy.

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

- i.** Prostituting another person;
- ii.** Non-consensual video- or audio-recording or photographing of sexual activity;
- iii.** Going beyond the boundaries of consent (such as permitting others to observe you having consensual sex with someone who is not aware of the observation);
- iv.** Voyeurism;
- v.** Public indecency (such as exposing your genitals to others without consent);
- vi.** Knowingly exposing another person to a sexually transmitted infection ("STI") or Human Immunodeficiency Virus ("HIV") without prior knowledge and consent of the person to be exposed to STI or HIV;
- vii.** Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) to compromise that person's ability to give consent to sexual activity, or make that person vulnerable to non-consensual sexual activity; or
- viii.** Using contact-free means (e.g., by threat of violence) to coerce a person to participate in sexual behavior against their will.

## **F. Retaliation**

1. No person may intimidate, threaten, coerce, or discriminate against any individual,
2. for the purpose of interfering with any right or privilege secured by Title IX or this policy, or
3. because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.
4. The exercise of rights under the First Amendment does not constitute retaliation prohibited under this section.

## G. Consensual Relationships

Consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical, create a risk for real or perceived coercion, and are expressly a violation of this policy. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advising relationship.

Therefore, persons with direct supervisory, evaluative, grading, or academic advising responsibilities who are involved in such relationships must bring those relationships to the attention of their supervisor. This will likely result in the necessity to remove the employee from the supervisory, evaluative, grading, or academic advising responsibilities.

Ohio University does not intrude upon private choices regarding personal relationships when these relationships do not violate university's policies, or cause or increase the risk of harm to the safety and wellbeing of campus community members.

If no other behaviors prohibited by the sexual harassment and other sexual misconduct policy are alleged, investigations of alleged violations of the consensual relationships provision will be conducted by an investigator from the grievance process pool. After interviewing the involved parties and any witnesses and reviewing relevant documents, the investigator will compile a memorandum of finding including a summary of information gathered during the investigation and a determination as to whether, by the preponderance of the evidence, the consensual relationship provision was violated. The memorandum of finding will be provided to the parties, and the supervisor(s)/department chair(s)/director(s) of the party or parties who are employees of the university for their consideration and appropriate action.

## H. Title IX Coordinator

The Title IX Coordinator ensures compliance with Title IX and oversees the implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Ohio university's efforts related to the intake of reports, implementation of supportive measures, investigation and resolution of formal complaints, and other activities designed to stop, remediate, and prevent behaviors prohibited by this policy. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

The Title IX Coordinator manages the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all processes under this policy. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against complainants or respondents, generally.

Inquiries regarding this policy and its related processes may be made to:

Director of Civil Rights Compliance and Title IX Coordinator

006 Lindley Hall

Ohio University

Athens, OH 45701

740-593-9140 (phone)

740-593-9168 (fax)

[civilrights@ohio.edu](mailto:civilrights@ohio.edu) or [titleIX@ohio.edu](mailto:titleIX@ohio.edu)

## I. Reporting Violations of this Policy

Reports of sexual harassment, other sexual misconduct, or retaliation may be made using any of the options below. The complainant may submit a report, or a third party may file a report on behalf of a person they believe has been adversely affected by conduct prohibited by this policy.

If a complainant is identified in the report, the Title IX Coordinator will attempt to contact the complainant to offer supportive measures and to ensure the complainant knows all of the options available to them, including making a police report and submitting a formal complaint, if applicable and desired.

Reporting carries no obligation for complainants to submit a formal complaint, and Ohio university respects complainants' wishes regarding formal action unless there is a compelling threat to health or safety. While Ohio law requires any person who has knowledge of a felony to make a report to law enforcement, the complainant is not required to speak with law enforcement officers, even if the Title IX Coordinator must make such a report.

1. Report online using the Sexual Harassment and Other Sexual Misconduct Reporting Form by clicking on Submit a Report at <https://www.ohio.edu/civil-rights>. Reports submitted on-line are routed immediately to the Title IX Coordinator.
2. File a report with the Title IX Coordinator by mail, phone, or email. A report may be submitted at any time (including during non-business hours) using the contact information below. Reports may also be made in person at the Civil Rights Compliance (CRC) office on business days when an CRC staff member is available.

Director of Civil Rights Compliance and Title IX Coordinator

006 Lindley Hall

Ohio University

Athens, OH 45701

740-593-9140 (phone)

[civilrights@ohio.edu](mailto:civilrights@ohio.edu) or [titleIX@ohio.edu](mailto:titleIX@ohio.edu)

Reports of sexual harassment, other sexual misconduct, or retaliation by the Title IX Coordinator should be made to the office of the Executive Vice President and Provost. Concerns of bias or potential conflict of interest by the Title IX Coordinator should also be raised with the Provost.

Reports of behavior prohibited by this policy by any other Title IX Team member should be reported to the Title IX Coordinator. Likewise, concerns of bias or potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Inquiries and complaints may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline: (800)421-3481  
Fax: (202) 453-2172  
TDD: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://ed.gov/ocr>

Inquiries and complaints involving employees may be made externally to:

Equal Employment Opportunity Commission (EEOC)  
Cleveland Field Office  
Anthony J. Celebrezze Federal Building  
1240 E. 9th Street, Suite 3001  
Cleveland, OH 44199  
Phone: 1-800-669-4000  
Fax: 216-522-7395  
TTY: 1-800-669-6820  
ASL Video Phone: 844-234-5122

Specific resources and reporting options are available to medical students, people receiving grants, and others. A listing of resources and agencies may be found at <https://www.ohio.edu/civil-rights/resources>.

## J. Formal Complaint

A formal complaint is a document submitted by the complainant, or signed by the Title IX Coordinator, alleging a violation of this policy by a respondent and requesting that Ohio university investigate the allegation(s). When the Title IX Coordinator signs a formal complaint, they are not a complainant or other party in any resulting investigation.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail using the contact information in Section I. It must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the complaint and requesting that the allegations be investigated through the Sexual Harassment and Other Sexual Misconduct Grievance Process.

When a formal complaint is submitted, the respondent is notified of the allegations in the complaint, including the complainant's identity. While a formal complaint may be submitted at any time and without any prior contact with an CRC staff member, complainants may want to consider submitting a report and meeting with CRC staff to learn about supportive measures available to them and options for proceeding before deciding to submit a formal complaint.

## K. Mandatory Reporters

All Ohio university faculty, administrators, and staff (except those identified as confidential resources in paragraph M) have a duty to immediately report violations of this policy to the Title IX Coordinator if they receive a complaint of a violation or observe or learn of conduct that is reasonably believed to violate this policy.

Graduate assistants and student employees have a duty to report violations of this policy if they become aware of the violations in the course of their duties and those duties include responsibility for the safety and wellbeing of other members of the campus community or if they have supervisory, evaluative, grading, or advisory responsibility over other members of the campus community.

In certain limited circumstances, exemptions to mandatory reporting may be requested in advance from the Title IX Coordinator (e.g., Take Back the Night).

Complainants should consider if they want to share information regarding behaviors under this policy with non-confidential mandatory reporters, as all details of potential violations must be promptly reported to the Title IX Coordinator so that supportive measures and options may be made available to complainants.

In addition to the duty to report sexual misconduct to the Title IX Coordinator as identified in the prior paragraphs, in some circumstances there is also a duty to report allegations of criminal conduct to law enforcement. Section [2921.22](#) of the Revised Code requires every person who knows that a felony has been or is being committed, to report it to law enforcement. It is a criminal offense to knowingly fail to make the report. If any person suspects or has knowledge of criminal activity occurring on university property, they should call the Ohio University Police Department ("OUPD") at

740-593-1911 (in an emergency, dial 911 immediately). Incidents that occur off campus or at a regional campus should be reported to local law enforcement.

## L. Officials with Authority (OWAs)

OWAs are university employees with the authority to implement corrective measures for sexual harassment, other sexual misconduct, and retaliation on behalf of Ohio university. Notice to any OWA constitutes actual knowledge under this policy. For purposes of this policy, the following employees are designated as OWAs: Title IX Coordinator and Deputy Title IX Coordinator, President, Provost, Vice Presidents, Athletic Director, Dean of Students, Director of Community Standards and Student Responsibility, and Chief Human Resources Officer.

## M. Confidential Resources

Certain campus and local resources may maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediate threat or danger, in cases of abuse of certain populations (e.g., minors), or when required to disclose by law or court order. These resources may offer options and resources without any obligation to inform a campus official or law enforcement authorities.

Ohio University's confidential resources include:

- Licensed professionals and staff at Counseling and Psychological Services,
- Licensed professional and students registered for practice under a licensed psychologist at the Psychology and Social Work Clinic,
- Health care providers and staff at Campus Care,
- Advocates at the Survivor Advocacy Program, and
- Licensed professional counselors available through the Employee Assistance Program.

Off-campus confidential resources include:

- Licensed professional counselors and other medical providers,
- Local rape crisis counselors,
- Domestic violence resources,
- Local or state assistance agencies,

- Clergy/Chaplains, and
- Attorneys.

Information regarding support resources, many of which are confidential, may be found on the Resources page on the CRC website (linked from the "References" part of this policy).

## **N. Anonymous Reports**

Anonymous reports may be submitted, and if the report contains information about conduct that would constitute a violation of this policy, CRC staff will attempt to address the reported concerns; however, their ability to investigate or resolve anonymous complaints will likely be limited. Further, CRC tries to provide supportive measures to all complainants, which is impossible with an anonymous report.

## **O. Amnesty for Violations of Alcohol and Drug Policies under the Student Code of Conduct**

To encourage reporting of alleged violations of this policy and to support candid communication of information, students participating in the grievance process (complainants, respondents, and witnesses) will not be charged with alcohol or drug-related violations of the Student Code of Conduct if they engaged in unlawful or prohibited personal use of alcohol or drugs during the incident when the alleged violation occurred. Amnesty applies only to the personal use of alcohol or drugs during the incident in question and does not extend to other potential violations of the Student Code of Conduct. Amnesty does not apply to the respondent if drugs or alcohol were allegedly used to facilitate a violation of this policy.

## **P. Reporting to Law Enforcement**

Complainants are encouraged to make a report to law enforcement authorities, even if they decide not to report to the Title IX Coordinator. Making a report to the police does not obligate the complainant to further participate in the criminal process. Reports of incidents occurring on the Athens campus may be made to the Ohio University Police Department (740-593-1911). Incidents occurring on a regional campus or center, or off campus, may be made to the local law enforcement agency. CRC staff, SAP advocates, counselors in CPS, and other university employees are available to assist complainants who want to make a report to law enforcement authorities.

## **Q. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and obtaining restraining orders, and is particularly time-sensitive. A medical evidentiary examination provides documentation of the assault, identification of any injury, and forensic

evidence collection. It is important for health, safety, and evidence collection to have an exam as soon as possible after a sexual assault.

Refer to the Resources page on the CRC website (linked from the "References" part of this policy) for a list of hospitals close to each campus and center with staff specially trained for sexual assault examination and evidence collection.

Additionally, documentary evidence such as emails, texts, social media posts, pictures, videos, etc., may be vital to both a criminal investigation and the university's grievance process. Retention of these items preserves the opportunity to submit them for consideration if an investigation is undertaken by the police and/or the university.

## **R. Federal Timely Warning Obligations**

Under the Clery Act, Ohio university must issue timely warning for reported incidents that fall under the definitions of sexual assault, domestic violence, dating violence or stalking and pose a serious or continuing threat of bodily harm or danger to members of the campus community. If possible, Ohio University will not disclose a complainant's name and other identifying information, while providing enough information for community members to make decisions regarding their safety. Ohio university also collects and shares de-identified statistical information regarding reported incidents as required by the Clery Act.

## **S. Making a False Report**

Intentionally making a false complaint or report of sexual harassment, other sexual misconduct, or retaliation is prohibited, violates this policy, constitutes misconduct subject to disciplinary action, and may also be a crime. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a finding of a policy violation.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation or hearing may be subject to discipline under Ohio university policy. CRC will refer evidence of intentional false complaints or reports to the appropriate campus authority.

## **T. Privacy**

Every effort is made by Ohio university to preserve the privacy of reports and of the identities of those involved in the grievance process. This information will not be shared except as necessary to carry out the purposes of Title IX regulations (34 CFR Part 106), as required by law, or as permitted by the Family Educational Rights and Privacy Act (FERPA).

Information related to reports will be shared with a limited number of Ohio university employees who "need to know" to respond to the report and/or assist in its assessment, investigation, and resolution. Ohio university reserves the right to determine which officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

When a formal complaint is submitted by the complainant or signed by the Title IX Coordinator, the complainant's identity and the allegations made in the report must be disclosed to the respondent. Further, the parties and their advisors will have the opportunity to review all directly related evidence gathered during the grievance process.

If a report contains sufficiently detailed information about conduct that may constitute a felony, the matter will be reported to law enforcement, as discussed in Section I. When required by the Clery Act, the Ohio University Police Department will be provided information regarding the report so they can maintain the campus crime log and assess if a timely warning should be issued to the campus. Additionally, if any party involved in alleged sexual misconduct is a minor, Ohio university personnel will notify Job and Family Services or other appropriate agencies, as required by Ohio law.

## U. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Supportive measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment or to deter sexual harassment, other sexual misconduct, and retaliation.

Upon receipt of a report alleging a violation of this policy, the Title IX Coordinator will contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes regarding what supportive measures may be implemented. The Title IX Coordinator will also explain the process for filing a formal complaint, including that supportive measures are available with or without the filing of a formal complaint.

Ohio university will act to minimize the academic and/or occupational impact on the parties as much as possible and maintain the privacy of supportive measures to the extent that it does not impair the provision of the supportive measures.

Supportive measures may include, but are not limited to:

- Referral to campus and community counseling, medical, and/or other health care services, including the employee assistance program, as appropriate
- Implementing mutual no-contact orders between the parties\*
- Altering campus housing assignment(s)
- Altering work arrangements for employees, including student employees
- Academic support, extensions of deadlines, or other course/program-related adjustments

- Class schedule modifications, withdrawals, or leaves of absence
- Safety planning
- Providing campus safety escorts and/or transportation accommodations
- Visa and immigration assistance
- Student financial aid counseling
- Timely warnings
- Increased security and monitoring of certain areas of campus
- Education to the campus community or community subgroup(s)
- Any other actions deemed appropriate by the Title IX Coordinator

If a party procures a restraining order or similar order from a court, the party is encouraged to notify OUPD of the order so that OUPD can assist, as needed, with enforcement of the order.

\*Violations of no-contact orders will be referred to the appropriate student or employee conduct process for enforcement.

## **V. Emergency Removal and Administrative Leave**

Under specific circumstances, Ohio university may remove a student respondent from the university's education program or activity on an emergency basis. Before an emergency removal is enacted, the university conducts an individualized safety and risk analysis, which must determine that an immediate threat to the physical health and safety of any student or other individual arising from the allegations of sexual harassment justifies removal. If so, the respondent is provided notice of the emergency removal and an opportunity to immediately challenge the decision. A full description of the process for emergency removal may be found in the Sexual Harassment and Other Sexual Misconduct Grievance Process.

If deemed appropriate, Ohio university may place a non-student employee respondent on administrative leave during the completion of the grievance process.

## **W. Investigation of Formal Complaints**

Investigation and adjudication of formal complaints under this policy will be conducted pursuant to the Sexual Harassment and Other Sexual Misconduct Grievance Process (linked from the References part of this policy).

1. All reports are responded to promptly when received by the Title IX Coordinator. The grievance process begins when the respondent is sent notice of the allegations. Every effort is made to complete the grievance process within 90 business days, not including appeal. Business days for the purpose of this policy are weekdays (Monday-Friday) when Ohio university offices are open for normal operations. Sometimes exceptions or extenuating circumstances can cause the grievance process to take longer, but Ohio university will avoid all undue delays within its control.

If the general timeframes for the grievance process outlined in the process document will be delayed, CRC will provide written notice to the parties of the delay, its cause, and an estimate of the additional time that will be needed as a result of the delay.

2. The standard of evidence applied to determine responsibility for violating this policy is the preponderance of the evidence standard. The preponderance of the evidence means that the statements and information presented in the matter must indicate to a reasonable person that it is more likely than not that the respondent committed a violation.
3. When a respondent is found to in violation of this policy, appropriate disciplinary sanctions will be imposed. For a student respondent, these may include reprimand, disciplinary probation, suspension, and expulsion from the university. These sanctions may also be imposed on a student organization or group. For an employee respondent, sanctions may include censure, reprimand, suspension without pay, demotion and/or loss of tenure, and dismissal/termination of employment. Sanctions take into account prior disciplinary history, if any.

In conjunction with a sanction, a respondent found to be in violation of this policy may be assigned conditions of sanction, which include but are not limited to, access restriction, revocation of rights and privileges, housing or worksite reassignment, educational activities, etc.

4. Where a determination of responsibility has been made against the respondent, the university will provide remedies to the complainant. Remedies are designed to restore or preserve the complainant's equal access to Ohio university's education program or activity. They may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. A complainant is not entitled to a particular sanction against the respondent.

## **X. Consideration of Classroom and Instructional Settings**

The classroom or other instructional setting (e.g., studio, laboratory, office hours) presents special issues because academic freedom protects the expression of ideas, even where the idea or its expression is perceived to be mature, controversial, explicit, graphic, or offensive. Nevertheless, conduct that would otherwise constitute violation of this policy will not be exempt merely because it occurs in an instructional setting. Rather, the investigation will consider the legitimate pedagogical context and will take into account discipline-specific guidelines for professional practice as defined by the appropriate educational unit.

Accordingly, broad deference is given if the conduct that was the basis for the complaint occurred in an instructional context. When there is a legitimate pedagogical basis, the presentation or discussion of sexual topics that are mature, controversial, graphic, or explicit shall not be considered sexual harassment even if some persons find these topics subjectively offensive.

## **Y. Reasonable Accommodation for Persons with Disabilities**

Any persons living with a disability involved in the Sexual Harassment and Other Sexual Misconduct Grievance Process have the right to request reasonable accommodation to ensure their full and equal participation. These requests should be made to the office of accessibility services (OAS). Parties do not have to disclose information about the complaint or charge to request reasonable accommodation, except to the extent that it may assist in determining reasonable accommodations. Accommodations are determined on an individual basis by OAS and are implemented in consultation with the case investigator(s). Examples of reasonable accommodation include sign language interpretation, real-time communication access during hearings, large print documents, extended time to review documents, or assistance with transcribing questions during interviews or hearings.

## **Z. Prevention Programs**

Ohio university provides comprehensive, intentional, and integrated programming initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault and stalking that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome. These programs consider environmental risk and protective factors on the individual, relationship, institutional, community, and societal levels.

Such programs will include a statement that the university prohibits dating violence, domestic violence, sexual assault, and stalking; definitions of each of those behaviors, as well as a definition of consent; a description of safe and positive options for bystander intervention; information on risk reduction; information regarding the importance of preserving evidence that may assist in proving that an offense occurred; how and to whom to report an offense; options about the involvement of law enforcement; the rights of victims and the institution's responsibilities; how the institution will protect the confidentiality of victims; and information regarding the university's disciplinary procedures. A list of prevention and awareness programs, including those directed at new students and new employees, is in the Ohio university annual security report found under Policies and Regulations on the CRC website, linked from the References section of this policy.

## Reviewers

Proposed revisions of this policy should be reviewed by:

1. Chief Human Resources Officer
2. Faculty Senate
3. Administrative Senate
4. Student Senate
5. Graduate Student Senate
6. Deans
7. Chairs and Directors
8. Chief of the Ohio University Police Department
9. Director of the Office of Community Standards and Student Responsibility
10. Vice Provost for Diversity and Inclusion

## Forms, References, and History

### 1. Forms

The following form is specific to this policy:

- a. The Sexual Harassment and Other Sexual Misconduct Report form is online, linked through the CRC website at <https://www.ohio.edu/civil-rights/>.

### 2. References

The following items are relevant to this policy:

- a. Resources available to parties impacted by or accused of sexual harassment or other sexual misconduct are available online at <https://www.ohio.edu/civil-rights/resources>.
- b. The "Student Code of Conduct" is online, linked through <https://www.ohio.edu/communitystandards/>.
- c. The "Sexual Harassment and Other Sexual Misconduct Grievance Process" is online at <https://www.ohio.edu/civil-rights/sexual-harassment-and-other-sexual-misconduct-grievance-process>.
- d. The list of prevention and awareness programs discussed in part XXVI of this policy is available in the Annual Security Report found under Policies and Regulations, linked through <https://www.ohio.edu/civil-rights/>.
- e. The Ohio Revised Code is available online at <http://codes.ohio.gov/orc/>.
- f. 34 CFR 106, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, a Final Rule of the Office for Civil Rights, Department of Education, published in the Federal Register 5/19/2020 and effective 8/14/2020 is available online at <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
- g. The Violence Against Women Act Reauthorization Act of 2022 is available in several formats online, including <https://www.congress.gov/bill/117th-congress/senate-bill/3623>.
- h. Policy [40.001](#), "Nondiscrimination in education and employment," is online at <https://www.ohio.edu/policy/40-001>.

### 3. History

Draft versions of this policy that were circulated for review, their cover memos, their forms, and Reviewers' comments on them are available on the [password-protected Review site](#).

Prior versions of this policy were approved on:

- a. April 6, 2022 (Correction to sexual exploitation language in section 8e).
- b. August 14, 2020 (Approved for interim use in accordance with Policy 01.001).

- c. September 17, 2021 (Non-substantive update. Classified Senate removed as Reviewer due to the establishment of the AFSCME 3200 Contract)
- d. March 17, 2016 (re-formatted)
- e. October 6, 2015
- f. August 3, 2012
- g. March 27, 2006
- h. October 28, 2002
- i. November 1, 1994
- j. April 1, 1984
- k. August 14, 1981

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