

The following Resource Guide can be found in the **Student Handbook** on pages 39-44.

Sexual Harassment/Misconduct Policy, Procedure and Resource Guide

- The student sexual harassment/misconduct policy (restatement)
- Definitions of key terms used in the policy
- Reporting options
- Additional Information & Procedures
- Rights of a the complainant (restatement)
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- The employee sexual harassment policy & How to report a faculty or staff member
- Flow chart representing the process

Sexual Harassment/Misconduct Policy

Sexual harassment in any form is not permitted. "Sexual Harassment" is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. It may vary in its severity and consists of a range of behaviors or attempted behaviors. One type of sexual harassment is the creation of a hostile environment. This could include, but is not limited to: sexual exploitation; stalking with a sexual or gender based component; relationship intimidation; sexually charged name calling; retaliation against (see retaliatory harassment) someone who reports sexual harassment/misconduct; and the use of language or the presentation of posters/banners and/or t-shirts that promotes the diminishing of a particular sex or gender. Sexual misconduct/violence is another form of sexual harassment. Sexual misconduct/violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving effective consent. Because sexual misconduct often hinges upon effective consent, *i.e.*, sexual permission, it is defined in considerable detail in terms below. Sexual violence could include, but is not limited to: non-consensual sexual contact; non-consensual sexual intercourse; forced sexual intercourse; sexual exploitation; sexual abuse; and relationship intimidation or violence. Any one act or series of acts that create or contribute to an intimidating, hostile or offensive environment is prohibited. Any breach of the sexual harassment/misconduct policy is a violation of what we, as a Catholic and Marianist University, recognize as the dignity of each person, and it diminishes our fundamental commitment to living, learning, and working together as a just and inclusive community.

All forms of sexual harassment are discriminatory in nature and are prohibited by Title IX of the Educational Amendments Act of 1972 as well as prohibited by the University Of Dayton Code Of Conduct.

Terms:

Coercion:

Coercion exists when a person engages in threats, sexual pressuring or oppressive behavior that violates the University community's expectation of respect for the dignity of another person by causing another person to engage in unwanted sexual activity. (Coercion can be differentiated from seduction by a repetition of the coercive activity in the face of resistance, the degree of pressure applied, or the initiator's knowledge that the pressure is unwanted.)

Effective Consent:

Effective consent is granted when a person freely, actively, and knowingly agrees at the time to participate in a particular sexual act with a particular person. Effective Consent exists when mutually understandable words and/or actions demonstrate a willingness to participate in mutually-agreed-upon activity at every stage of that sexual activity. Effective consent has time boundaries. Consent at one time does not imply consent at any other time. The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish effective consent for future sexual activity. Effective consent is informed, freely and actively given, and is based on rational and reasonable judgment. It requires clear communication between all persons involved in the sexual encounter. There is **no** consent when agreement is only inferred from a person's silence or lack of resistance; there is threat of physical force, harm or intimidation, or there is coercion; or a person is a minor. There is also no consent when someone engaging in sexual behavior knew or should have known that the other person was incapacitated. The perspective of a "reasonable person" will be the basis for determining whether one should have known about the impact of the use of alcohol, drugs, mental illness, etc. on another's ability to give consent.

Forced Sexual Intercourse:

Any sexual penetration (anal, oral or vaginal), by any object or body part, by a man or woman upon a man or woman, that occurs as a result of physical force.

Hostile Environment:

A hostile environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive, or objectively offensive, that it has the effect of unreasonably interfering with, denying, or limiting someone's ability to participate in or benefit from the University's educational program or activities.

Incapacitation:

Incapacitation includes a person who is who is unaware, ill, blacked out, unconscious, unable to make rational/reasonable decisions, and/or otherwise physically or mentally helpless to give effective consent. Indicators of incapacitation include but are not limited to outrageous/unusual behavior, inability or diminished ability to accurately discern his/her environment (who, what, where, when and/or how), slurred speech, vomiting, severe intoxication, loss of voluntary motor skills, loss of involuntary motor skills, disjointed speech patterns (unable to follow a conversation or verbalize complete thoughts, and/or sleepiness that demonstrates an inability to control one's ability to stay awake).

Intimidation:

Intimidation exists when one person uses his/her physical presence to threaten or menace another or when the knowledge or prior violent behavior is used to threaten or menace another.

Non-Consensual Sexual Contact:

Any unwelcome intentional sexual touching. This includes any contact with the breasts, buttocks, groin, genitals, mouth, or other bodily orifice of another, as well as the touching of another with any of these body parts, by a man or a woman upon a man or woman, without effective consent.

Non-Consensual Sexual Intercourse:

Any sexual penetration (anal, oral, or vaginal) however slight, with any object or body part, by a man or a woman, upon a man or a woman, without effective consent.

Retaliatory Harassment:

Intentional action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms an individual as reprisal for reporting sexual harassment or for participating in an investigation of sexual harassment

Sexual Exploitation:

Sexual exploitation occurs when a person takes sexual advantage of another for his or her own advantage or benefit, regardless of whether such behavior constitutes one of the other sexual misconduct offenses. Examples include, but are not limited to:

- a. Non-consensual video or audio recording of sexual activity or nakedness (full or partial).
- b. Stalking with a sexual component. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site, as well as physical stalking. When the content of the messages or the nature of the physical stalking is of a sexual nature, sexual misconduct has occurred.
- c. Voyeurism. This is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in non-consensual video or audio recording of sexual acts or nakedness. Although the person secretly viewed or recorded may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the victimized student.
- d. Disrobing or exposure of oneself or another person without his or her consent.

Reporting:

A student who is the victim of any type of sexual harassment/misconduct is encouraged to report the incident.

What to do if you have been sexually assaulted:

1. Go to a safe place.
2. Tell someone. A list of contacts is located on page 41 Your reporting options include
 - **Report to a Campus Authority:** Reporting the assault to an authority who will forward your report such that action is taken to investigate. These community members include University Police (911 or 937-229-2121), Resident Assistants, Housing & Residence Life professional staff members, administrators in the Division of Student Development or off campus law enforcement. *Note: counseling and medical assistance will be offered to any student reporting an assault.*
 - **Seek Counseling:** Choosing not to report the assault but seeking counseling through the University Counseling Center 937-229-3141 or with a doctor in the Health Center 937-229-3131. *Note: counseling and medical assistance will also be offered to any student who chooses to report an assault to a campus authority.*

3. Seek medical attention. Medical attention is critical so that injuries (including internal injuries) or infections which may have resulted from the assault can be treated. It also helps preserve evidence. People who receive medical exams are not required to press charges. However, hospitals are required by state law to contact the police when a sexual assault is reported to them. They, however, are not required to share the details of the incident. Medical attention can be sought by contacting law enforcement or by going to a local hospital. When choosing to seek medical attention from a hospital it is important to note the following ways you can work to preserve evidence. These include:

- Do not wash anything (including your hands, mouth and face.)
- Do not wash or comb your hair.
- Do not shower or clean yourself in anyway.
- Do not change your clothes.
- Bring an extra set of clothes with you to the hospital.

4. Seek assistance from the Dean of Students office in changing existing academic and living situations in order to feel safe on campus. The University will offer these services when made aware of an assault.

Get Help

The most important thing a victim of sexual assault can do is tell someone whether that be the police, a friend, a rape crisis center, a counselor, a family member or a staff member. Do not isolate yourself, don't feel guilty, don't blame yourself and don't just ignore it. Sexual assault, whether by a stranger or by someone you know, is a violation of your body and your trust. The organizations and departments listed below can provide or arrange for immediate support and response including assistance with personal safety concerns.

The University of Dayton encourages students to report sexual assaults to the Police or campus authorities so that the University can take appropriate measures to provide help and to prevent future assaults. It is important to understand that some individuals on campus can hear or receive reports confidentially (for example psychologist's in the counseling center, ordained clergy and the medical doctors in the health center), whereas others are obligated to take investigative action upon hearing or receiving a report (for example University Police, Housing & Residence Life staff, Student Development administrators.) *Note: general faculty and staff may or may not have an obligation to report sexual assault to the authorities.*

Contact Numbers for Assistance

1. Campus Authorities
 - a. University Police, 911 or 937-229-2121
 - b. Housing & Residence Life, 937-229-3317 (evening & late night contact can be made at any residence hall front desk)
 - c. Community Standards & Civility, 937-229-4627
 - d. Dean of Student's Office, 937-229-3311
2. Campus Services
 - a. Counseling Center, 937-229-3141
 - b. Health Center, 937-229-3131
 - c. Women's Center, 937-229-5390
 - d. Campus Ministry, 937-229-3339
3. Off Campus Assistance
 - a. Dayton Police, 937-333-2677, 335 West Third Street, Dayton, OH 45402. *Note that 911 calls are received at the University dispatch.*
 - b. Montgomery County Victim Witness, 934-225-5623
 - c. Miami Valley Hospital, 937-208-8000, One Wyoming Street, Dayton, OH 45409-2793
 - d. Kettering Hospital, 937-298-4331, 3535 Southern Blvd. Kettering, OH 45429
 - e. Artemis Center/YWCA hotline, 937-222-7233
 - f. Womanline of Dayton, 937-223-3446
 - g. Ohio Alliance to End Sexual Violence, 888-886-8388
 - h. National Domestic Violence Hotline, 800-799-7233

Important Information and Procedures

Students are encouraged to seek immediate psychological/medical attention, if needed, from the Counseling Center, the Student Health Center, or from an area hospital.

- **Sexual Harassment/Misconduct:**
 - o Can be committed by a man or a woman against a person of the same or opposite sex.
 - o Can be committed by current or former lovers, friends and acquaintances.

- Can be committed in connection with any UD program whether on or off campus. This applies to academic, educational, extra-curricular, athletic, residential and other University programs.
 - Cannot be excused by the accused use of alcohol or drugs.
- Alcohol and/or drug related charges associated with cases of sexual harassment will not be issued to either the accused or the complainant.
- In situations where the case reveals multiple instances of sexual harassment through the investigation made from a complainant the University reserves the right to combine the cases into one in order to illustrate to the board a pattern of behavior.
- Reportable incidents of sexual harassment from student to student are not limited to instances that occur on campus or in the campus area. Such behavior is prohibited regardless of where the offense occurs.
- The University reserves the right to proceed to a finding in all cases regardless of a student's withdrawal from the University.
- The complainant and accused student will not have access to any part of the other's previous disciplinary record should there be a record on file.
- The University is required to investigate any allegation of sexual harassment that is reported to any University official with the exception of those receiving parties that are confidential resources. (Licensed psychologists in the Counseling Center, medical doctors in the Health Center and ordained clergy working in their role as clergy.
- Sexual harassment encompasses a wide range of behaviors, all of which must be confronted directly by the UD community.
- The use of alcohol or drugs blurs the distinction between sexual consent and coercion or manipulation.
- Real or perceived power differentials between individuals may create an intentional or unintentional atmosphere of coercion or manipulation.
- Educational and preventative measures, including effective policies and programming, are necessary components of the University of Dayton's commitment to reducing sexual harassment in our community.
- Responding effectively to sexual harassment necessitates the coordinated efforts of Residence Life, Public Safety, the Counseling and Health Centers, Campus Ministry, the Women's Center, and individual faculty and staff.
- UD will take seriously every report of sexual misconduct, offering complainants appropriate support and allowing them to maintain as much control as possible over their individual situations. At the same time, UD will ensure that those who are accused are offered support and are treated fairly in the University's processes.
- When sexual harassment occurs at the University of Dayton, the standards of the campus community are certainly violated. In addition, the Ohio Revised Code on sexual imposition, rape, sexual battery and gross sexual imposition may also be violated.
- Those found responsible of sexual harassment violations may be subject to criminal prosecution in addition to any University disciplinary action.
- Standard consequences for a violation of sexual harassment range from educational interventions to expulsion. In cases that include assault the likely consequence is suspension or expulsion if found responsible.
- Retaliation against the complainant or any other party involved in the case will not be tolerated. There is to be no contact between the accused student and the complainant while the matter is being investigated or is progressing through the student conduct process. "No Contact" includes but is not limited to physical presence/non verbal intimidation, verbal, written, online social contact, third party contact, and loud verbal statements made in the proximity of the other party.
- All rights afforded to the accused student in cases of sexual harassment are equally afforded to the complainant, including but not limited to notification of the charges, a pre-hearing meeting, a designated support person, attendance at the hearing, and appellate rights. (see complainant rights below.)
- In cases where the complainant does not want the University to move forward and the investigation does not reveal sufficient evidence to justify University charges, both the complainant and the accused student (if known) will receive notice that the case is not progressing through the student conduct system, along with notice that the case will may be re-opened should new evidence be revealed in the future.
- The University will investigate all allegations of sexual harassment/misconduct made to a campus authority. This investigation will be supervised by the University Title IX Coordinator (See page 61.)

Rights of a Complainant

Complainants of Sexual Harassment cases going before the University Hearing Board have the right:

- to have a hearing.
- to receive written notice of the charges.
- to have a support person for any case heard by the University Hearing Board.
- to submit a Written Account and witness statements for Accountability Hearings before the University Hearing Board.
- to be notified in writing of the outcome of the hearing.

- to invite those witnesses who provided a written statement to the University Hearing Board to attend the hearing as a witness.
- to request an appeal of a hearing in accordance with the appeal process described in the Student Standards of Behavior.
- to submit a response to any appeal submitted by the accused.

Accused Student Rights

Students accused of possible violations of the Code of Conduct have the following rights:

- to have a hearing.
- to receive written notice of the charges.
- to have a support person for any case heard by the University Hearing Board.
- to submit a Written Account and witness statements for Accountability Hearings before the University Hearing Board.
- to be notified in writing of the outcome of any hearing.
- to invite those witnesses who provided a written statement to the University Hearing Board to attend the hearing as a witness.
- to request an appeal of an Accountability hearing held by the University Hearing Board in accordance with the appeal process described in the Student Standards of Behavior.
- to request that the University Hearing Board review any suspension issued by an individual hearing officer in accordance with the review process described in the Student Standards of Behavior.
- to submit a response to any appeal submitted by the complainant.

Faculty/Staff/Employment Harassment:

The Student Conduct System and Code of Conduct do not address cases of sexual harassment perpetrated by faculty and staff against students. However, students can report such instances to the University police and/or Office of Human Resources. The faculty/staff sexual harassment policy and procedure can be found at www.udayton.edu/~hr.



