



general

university policy

03.004: Sexual Misconduct, Relationship Violence, and Stalking

Status:	Re-formatted on March 17, 2016 Approved on October 6, 2015	Signatures and dates on archival copy
Effective:	30 days after approval	
Initiated by:	Inya Baiye Director of Equity and Civil Rights Compliance	
Endorsed by:	Pam Benoit Executive Vice President and Provost	
Approved by:	Roderick J. McDavis President	

A. Policy

Ohio university prohibits sexual misconduct, relationship violence, and stalking in any of its employment situations or educational programs and activities.

This policy has been developed to provide a fair process for determining if a violation of this policy occurred, to remediate the effects of conduct that violates this policy, and to provide information to prevent sexual misconduct, relationship violence, and stalking.

B. Basis for policy

For purposes of this policy, "sexual misconduct, relationship violence, and stalking" includes sexual harassment and sexual assault, domestic violence and dating violence, and stalking. 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, section 4112.02 of the Revised Code, the Violence Against Women Reauthorization Act of 2013 ("VAWA"), and the Campus Sexual Assault Elimination Act ("Campus SaVE Act").

C. Policy application

The rights, responsibilities, and expectations for conduct contained within this policy apply to all aspects of Ohio university's operations, locations, and programs, including regional campuses and online programs. This policy applies to all students, employees, volunteers, and agents of Ohio university. This policy applies to visitors or guests on campus who make an allegation of sexual misconduct against Ohio university students or employees. Sexual misconduct, relationship violence, and stalking can occur between any persons associated with the university, e.g., an employee and a supervisor; coworkers; faculty members; a faculty, staff member, or student and a customer, vendor, or contractor; students; or a student and a faculty member; etc.

All requirements of this policy are applicable regardless of sexual orientation, gender identity, or gender expression. People who believe they have been harmed by conduct prohibited by this policy may file a complaint or report with the office of equity and civil rights compliance ("ECRC"). Third parties may file a complaint or report on behalf of persons whom they believe have been adversely affected by conduct prohibited by this policy.

Sexual misconduct, relationship violence, and stalking committed against or by an Ohio university student, employee, or agent is prohibited through this policy. Depending on the facts and the individuals involved, it could also have implications under the Ohio university employment policies (e.g., under policy [41.135](#)) or the "[Student Code of Conduct](#)." If this policy directly contradicts any other 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.

Students, faculty and staff members may also be victims of sexual misconduct, relationship violence, and stalking by individuals not associated with Ohio university. In such situations, while the university may not conduct an investigation, all resources described in part [\(H\)](#) are available to those victims.

D. Definitions

The following definitions are used in this policy:

1. Complainant

The person who initiates a complaint or report regarding conduct which falls under the sexual misconduct policy is referred to as the "complainant."

2. Respondent

The person who is alleged to have engaged in behavior in violation of this policy is referred to as the "respondent."

3. Consent

The state of Ohio does not provide a definition of "consent" in state statutes relating to sexual crimes. Ohio University's definition of consent is as follows:

Consent must be informed, knowing and voluntary. Consent must be clear and unambiguous for each participant throughout any sexual encounter. Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent can be revoked at any time. For all of these reasons, sexual partners must evaluate consent in an ongoing fashion and should communicate clearly with each other throughout any sexual encounter.

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. In order to give effective consent, one must be of legal age.

4. Sexual harassment

Sexual harassment includes sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature that is unwelcome and sufficiently severe or pervasive from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint. Sexual harassment occurs under either of two circumstances, "sexual harassment by quid pro quo" and "sexual harassment by hostile environment," as discussed in parts [\(E\)\(1\)](#) and [\(E\)\(2\)](#), of this policy.

5. Sexual assault

Sexual assault is any type of sexual contact or behavior that meets the definition of "non-consensual sexual intercourse" or of "non-consensual sexual contact," as discussed in parts [\(E\)\(3\)](#) and [\(E\)\(4\)](#), of this policy.

E. Offenses

The following types of conduct are violations of this policy:

1. Sexual harassment by *quid pro quo*

Physical or verbal conduct of a sexual nature that is unwelcome and sufficiently severe or pervasive from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint, where:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or academic status; or
- b. Submission to or rejection of such conduct by a person is used as the basis for employment or academic decisions affecting such person.

2. Sexual harassment by hostile environment

Physical or verbal conduct of a sexual nature that is unwelcome and sufficiently severe or pervasive from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint, where:

- a. Such conduct has the purpose or effect of unreasonably interfering with a person's work or academic performance or creating an intimidating, hostile, or offensive environment for working, learning, or living on campus.
- b. The determination of whether an environment is "hostile" is often contextual and must be based on the circumstances. These circumstances could include:
 - i. The frequency of the conduct;
 - ii. The nature and severity of the conduct;

- iii. Relationship between the complainant and the respondent;
- iv. Location and context in which the alleged conduct occurs;
- v. Whether the conduct was physically threatening;
- vi. Whether the conduct was humiliating; or
- vii. Whether the conduct arose in the context of other discriminatory conduct.

3. Non-consensual sexual contact

Non-consensual sexual contact is:

- a. Intentional contact with the breasts, buttock, groin, or genitals;
- b. Touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts;
- c. Any intentional bodily contact in a sexual manner;
- d. By a person upon a person;
- e. Without consent.

4. Non-consensual sexual intercourse

Non-consensual sexual intercourse is:

- a. Vaginal or anal penetration by any body part or foreign object;
- b. Oral copulation (mouth to genital contact or genital to mouth contact);
- c. However slight;
- d. By a person upon a person;
- e. Without consent.

5. Sexual exploitation

Sexual exploitation occurs when a person, knowingly or recklessly, takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include:

- a. Prostituting another person;
- b. Non-consensual video- or audio-recording or photographing of sexual activity;
- c. 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);
- d. Voyeurism;
- e. Public indecency (such as exposing your genitals to others without consent);
- f. 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; or

- g. Contact-free coercion (e.g., by threat of violence) causing a person to completely or partially disrobe.

6. Domestic violence

Domestic violence is defined as physical violence committed by a current or former spouse, or intimate partner of the complainant; by a person with whom the complainant shares a child; by a person cohabiting with the complainant as a spouse or intimate partner; or by a family or household member (i.e., parent, child, other persons related by blood, marriage, or prior marriage); see section [2919.25](#) of the Revised Code).

Harmful behavior that is not physical in nature will be evaluated through the "severe and pervasive" lens described in part [\(E\)\(2\)](#) of this policy, "Sexual Harassment by Hostile Environment."

7. Dating violence

Dating violence is defined as physical violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where 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. Dating violence does not include acts that meet the definition of "domestic violence."

Harmful behavior that is not physical in nature will be evaluated through the "severe and pervasive" lens described in part [\(E\)\(2\)](#) of this policy, "Sexual Harassment by Hostile Environment."

8. Stalking

- a. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or that would cause a reasonable person to suffer substantial emotional distress. A "reasonable person" is a person under similar circumstances or similarly situated to the victim. "Substantial emotional distress" is significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.
- b. Stalking requires two or more acts, such as the following:
 - i. Acts in which the stalker directly, indirectly, or through third parties;
 - ii. By any action, method, device, or means;
 - iii. Follows, monitors, observes, surveils, threatens, or communicates to or about a person; or
 - iv. Interferes with a person's property.
- c. The following are examples of behaviors that could constitute stalking:
 - i. Sending unwanted emails, texts, letters, or gifts;
 - ii. Asking someone or someone's acquaintances where they are or where they are going;
 - iii. Repeatedly calling someone on the phone;
 - iv. Using the internet to threaten someone;
 - v. Appearing at someone's class or workplace without a legitimate reason.

9. Retaliatory harassment

Retaliatory harassment is an adverse action or threat of an adverse action taken in response to a person who makes a protected disclosure under this policy. Protected disclosures include:

- a. Reporting suspected sexual misconduct, relationship violence, or stalking to a supervisor or appropriate university official;
- b. Filing a complaint or lawsuit under federal or state law or university policy that prohibits sexual misconduct, relationship violence, or stalking; or
- c. Participating in an investigation or proceeding under this policy.

10. 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 the policies of the university, cause harm to the safety and wellbeing of members of campus community, or increase the risk of harm to the safety and wellbeing of members of campus community.

F. Reporting

1. Duty to report

Immediately upon learning of potential campus sexual misconduct, any employee with a duty to report violations of this policy who receives a complaint of sexual misconduct or who observes or learns of conduct that is reasonably believed to be in violation of this policy, is required to report the alleged conduct to ECRC.

Employees with a duty to report violations of this policy include faculty, administrators, coaches, and staff. Graduate assistants and student employees have a duty to report violations of this policy of which they become aware in the course of their duties when these 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 addition to the duty to report sexual misconduct to ECRC 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 you suspect or have knowledge of criminal activity occurring on university property, call the Ohio university police department ("OUPD") at 740-593-1911 (in an emergency, please dial 911 immediately). Incidents that occur off campus or at a regional campus should be reported to local law enforcement.

2. Filing a formal report of violation of this policy

ECRC serves as the recipient for any formal complaint or report of sexual misconduct. Other offices may handle certain aspects of the university response, such as university human resources, dean of students office, office of community standards and student responsibility ("CSSR"), OUPD, etc. ECRC is responsible for investigating complaints of sexual misconduct under this policy, monitoring the response of other campus offices that may respond to complaints of sexual misconduct under this policy, and for responding to complaints of retaliation for filing a complaint on the basis of this policy.

Walk-in or mail: Office of Equity and Civil Rights Compliance
Title IX Coordinator
Ohio University
Lindley Hall 006
Athens, Ohio 45701

Phone: 740-593-9140

FAX: 740-593-9168

E-mail: equity@ohio.edu

3. Self-reporting of sexual offenses

Persons who are victim or survivors of sexual offenses are encouraged to contact university police. Victims or survivors may be assisted by campus employees in notifying law enforcement authorities, if the victim or survivor so chooses. Reporting an assault to university police may not require criminal prosecution. Opportunities exist to make confidential reports of crimes for inclusion in Clery Act statistics, for filing a Title IX complaint within the university, and for obtaining counseling or treatment without initiating a Title IX investigation or criminal investigation. See part (F)(4) of this policy for more details. In all cases, victims or survivors are encouraged to avail themselves of existing resources.

Within the university, sexual offenses should be reported to:

Ohio University Police Department
Main Campus: 740 593-1911

4. Privacy and confidentiality

If a complainant requests that his or her identity be kept confidential, the university shall evaluate such requests in the context of the complainant's safety and potential harm to the community. Requests will be honored to the extent possible. Individuals should be aware that the university's ability to respond (including sanctioning the alleged respondent) may be limited by such a request. However, once formal procedures are pursued, the complainant's identity must be disclosed to the respondent. In the event that the complainant's identity is disclosed, where the complainant has sought anonymity, the complainant shall be notified in advance, whenever possible, of the disclosure. Requesting that an individual's identity be kept confidential does not relinquish one's ability to avail him or herself of support services. In those cases where the evaluation permits confidentiality, record-keeping will exclude personally-identifiable information about the complainant.

In general, information received in connection with the filing, investigation, and resolution of allegations will be treated as private, with certain exceptions. These exceptions include the following: to the extent it is necessary to disclose information in the course of the investigation, for the purposes of addressing conduct or practices that violate the policy, or when required to do so by law. All persons involved in the process should observe the same standard of discretion and respect for the privacy of persons involved in the process.

If the complaint contains sufficiently detailed information about conduct that may constitute a crime, then the matter will be reported to law enforcement, as discussed in part [\(F\)\(1\)](#) of this policy.

5. Anonymous complaints

Anonymous complaints will be accepted; however, Ohio university's ability to obtain additional information may be compromised and the ability to investigate or resolve anonymous complaints may be limited.

If the complaint contains sufficiently detailed information about conduct that would constitute a violation of this policy, ECRC will exercise due diligence to address the concerns identified with the affected planning unit to the extent possible with available information.

6. Filing a false complaint

Intentionally making a false complaint or report of sexual misconduct is prohibited, is a violation of this policy, constitutes misconduct subject to disciplinary action, and may also be a crime. ECRC shall refer evidence of intentional false complaints or reports to the office of legal affairs.

G. Investigation guidelines

1. Preservation of evidence and medical examination

Evidence of a sexual assault should be preserved as soon as possible after the incident, even if the affected party is unsure about reporting or filing criminal charges. This is because some kinds of evidence may only be collected within a short period of time after an assault, and delaying preservation may reduce the chances of a successful criminal prosecution in the future. A sexual assault forensic examination ("SAFE") will preserve evidence. Therefore, any person who has been subjected to physical sexual violence is urged to go as quickly as possible to the emergency room at any local hospital for medical attention. For a list of hospitals close to each campus, including those with SAFE nurse examiners or staff specially trained for sexual misconduct examination and evidence collection, refer to the "Sexual Misconduct, Relationship Violence and Stalking Resource List" (linked from the "[References](#)" part of this policy).

2. Investigation

Violations committed by persons affiliated with Ohio university who are not students shall be investigated and adjudicated pursuant to the "ECRC Grievance Procedure" (linked from the "[References](#)" part of this policy). Violations of this policy committed by students shall be investigated and adjudicated pursuant to the "Student Sexual Misconduct, Relationship Violence and Stalking Process" (linked from the "[References](#)" part of this policy).

Such proceedings shall provide a prompt, fair, and impartial investigation and resolution.

Investigation proceedings are conducted by employees who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and on investigation and hearing processes that protect the safety of victims and promote accountability.

Both the complainant and respondent are entitled to have others present during proceedings, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice.

Both the complainant and respondent shall be simultaneously informed, in writing, of the outcome of the proceedings; of procedures, if any, to appeal the results of the proceeding; of any change to the results that occurs prior to the time that such results become final; and when such results become final.

3. Cooperation with investigation

A person with a duty to report will actively provide information in the time and manner deemed necessary and appropriate by the university to conduct the investigation. Failure to cooperate with the investigation process in a timely manner may compromise the university's ability to conduct an investigation and fully address allegations.

4. Standards of evidence

In determining a violation of this policy, the "preponderance of evidence" standard is applied. Therefore, if a violation of this policy is found, the behavior is "more likely than not" to have occurred.

5. Sanctions and protective measures

A person or group of persons found to have violated this policy will be subject to disciplinary action by the responsible planning unit or office. Student discipline may include the following sanctions: reprimand, probation, suspension, and expulsion from the university. Employee discipline may include censure, suspension, and termination of employment. Following a determination of non-consensual sexual contact, non-consensual sexual intercourse, sexual assault, domestic violence, dating violence, or stalking, additional protective measures may be imposed. In consultation with ECRC, responsible planning units will ensure corrective measures intended to end the prohibited conduct and prevent further violation of the policy.

6. 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, if the conduct that was the basis for the complaint occurred in an instructional context, broad deference is given. 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.

H. Resource and response guidelines

1. Resources for victims, complainants, and respondents

Ohio university offers resources for all persons who have been affected by sexual misconduct. ECRC shall maintain information online listing, describing, and linking to on-campus confidential and non-confidential resources, as linked from the "[References](#)" part of this policy.

In most circumstances, those designated as confidential resources do not have a duty to report violations of this policy to ECRC or law enforcement other than for statistical record-keeping purposes as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), 34 C.F.R. 688.46. There should be no expectation that a report to these resources otherwise puts Ohio university on notice of a violation of this policy.

2. Interim employment and academic arrangements

As an interim measure, the university will consider requests for and implement alternative living, working, transportation, and academic arrangements as available and appropriate. These may include no-contact directives. The university reserves the right to determine the most appropriate course of action in making these arrangements.

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

3. Reasonable accommodation for persons with disabilities

Any persons living with a disability involved in this process have the right to request reasonable accommodation in order to ensure their full and equal participation. Students should make requests to the office of student accessibility services ("SAS") and employees should contact the office for equal opportunity and accessibility ("EOA"). 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 the determination of reasonable accommodations. Accommodations are determined on an individual basis by SAS or EOA 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.

4. 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 as they occur on the individual, relationship, institutional, community, and societal levels. ECRC shall maintain a list of prevention and awareness programs, including those directed at new students and new employees, and make it available [online](#).

Reviewers

Proposed revisions of this policy should be reviewed by:

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

Forms, References, and History

1. Forms

The following form is specific to this policy:

- a. The Discrimination and Harassment complaint form is available online through the ECRC website, "How to File a Complaint," at <https://www.ohio.edu/equity-civil-rights/complaint.cfm>.

2. References

The following items are relevant to this policy:

- a. The "Sexual Misconduct, Relationship Violence, and Stalking Resource List" outlines and describes resources available to the person who has been affected by sexual misconduct and the person being accused of sexual misconduct; it is available online, linked through <https://www.ohio.edu/equity-civil-rights/>.
- b. The "Student Code of Conduct" is online, linked through <https://www.ohio.edu/communitystandards/>.
- c. The "ECRC Grievance Resolution Procedure" is available online, linked through the Office of Equity and Civil Rights Compliance website, "Grievance Procedures," at <https://www.ohio.edu/equity-civil-rights/grievance.cfm>.
- d. The ECRC and CSSR procedure for student-to-student Sexual Misconduct, Relationship Violence, and Stalking cases under this policy is linked at <https://www.ohio.edu/equity-civil-rights/upload/Sexual-Misconduct-Process.pdf>.
- e. The ECRC list of prevention programs discussed in part (G)(4) of this policy is linked through <https://www.ohio.edu/equity-civil-rights/>.
- f. The Ohio Revised Code is available online, including sections [2921.22](#) and [4112.02](#).

- g. The Department of Education "Dear Colleague Letter" (April 4, 2011) is available on-line, at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.
- h. The Violence Against Women Act 2013 Reauthorization is available in several formats online, including <https://www.congress.gov/bill/113th-congress/senate-bill/47>.
- i. Policy [03.006](#), "Whistle-blowing and Retaliation."
- j. Policy [40.001](#), "Equal Employment and Educational Opportunity."
- k. Policy [41.135](#), "Workplace Violence."
- l. Policy [44.119](#), "Video Surveillance Systems."

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, at <https://www.ohio.edu/policy2/03-004/>.

Prior versions of this policy were approved on:

- a. March 17, 2016 (re-formatted)
- b. October 6, 2015
- c. August 3, 2012
- d. March 27, 2006
- e. October 28, 2002
- f. November 1, 1994
- g. April 1, 1984
- h. August 14, 1981

