

See rc for policy:

# Sex a Mis nd Pr f r S den s

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Undergraduate and Graduate Students

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- Provides guidance for students who have been impacted by Sexual Misconduct.
- Outlines the University's student disciplinary response to alleged Sexual Misconduct
- Identifies individuals that are available to provide support
- Identifies the individuals responsible for the Protocol
- Provides information on available support programs within the University

When the complainant and the respondent do not share the same status at the University (e.g., one party is a student and one party is a faculty member) the following guidelines apply:

- Any report of an alleged Sexual Misconduct Violation made against a student will follow this Protocol for Students.
- Any report of an alleged Sexual Misconduct Violation made against an employee or non-student will follow the Title IX Protocol for Employees.
- At the time of filing a Title IX Sexual Misconduct formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of Miami University. At the time of filing a formal complaint, a respondent must be a student at Miami University.

- Regardless of past experiences with other partners or a current partner, consent must be obtained.
- Consent can never be assumed, even in the context of a relationship. A person has the right to say “no” and has the right to change their mind at any time.
- A person cannot legally give consent (no matter what they might say) when:
  - It is known or should be known by the Respondent that the person is substantially impaired due to alcohol or drugs, incapacitated or unconscious.
  - The person’s ability to resist or consent is substantially impaired because of a physical or mental condition.
  - The person was coerced due to force, threat of force or deception or when the person was beaten, threatened, isolated or intimidated.

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The removal of a respondent from the University’s education4 go ea

A verbal or written account of alleged sexual misconduct made to a person with authority to initiate corrective action. A report can be subme.



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or other law enforcement agency does not require the pursuit of criminal charges. Neither the complainant nor the respondent is under any obligation to speak with the law enforcement agency or the complainant.

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The Family Educational Rights and Privacy Act (FERPA) protects students' educational records, including reports made to the Title IX Coordinator, a Deputy Title IX Coordinator or the Office of Community Standards. FERPA prohibits the University from releasing these records to persons outside the institution without the student's consent except in response to a lawful subpoena or as otherwise required by law. However, in some instances, if the student is found responsible for violating the Code of Student Conduct-Sexual Misconduct and Interpersonal Violence or Physical or Mental Abuse or Harm, the University may release the following information to anyone:

1. Name of the student found responsible (but not the identity of the complainant)
2. Code of Student Conduct violation
3. Sanctions imposed as a result of the disciplinary proceedings

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## IX. Emergency Removal and Appeal

The respondent may be removed from the University's educational programs or activities on an emergency basis if the Dean of Students determines that the respondent poses an immediate threat to the physical health and or safety of any student or other individual. The respondent will be provided with notice and an opportunity to challenge the decision. (See Appendix B).

## X. Formal Complaint

Upon receipt of a formal complaint alleging a sexual misconduct violation, the Title IX Coordinator or designee will review the request of the complainant to pursue the investigative resolution process or the adaptable resolution process. The Title IX Coordinator will then initiate one of these actions with the understanding that as a case progresses, the action warranted can change, as described in these procedures.

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Investigative resolution includes, in the following order (1) an investigation by the Title IX Investigator or designee resulting in a written report containing a summary of the evidence; (2) a hearing, to determine by a preponderance of the evidence if there has been a Policy violation; (3) the imposition of sanctions and/or other appropriate remedies if there has been a finding; and (4) the opportunity to appeal both the finding and sanction. The goal of Investigative Resolution is to eliminate the Prohibited Conduct, prevent its recurrence, remedy the issues, and provide a fair process for the complainant and respondent.



If an investigation determines that the alleged behavior does not constitute sexual misconduct under the U.S. Department of Education's Title IX Regulations, in that it did not occur while the complainant was participating or attempting to participate in an educational program or activity of the University, or did not occur within the geographical territory of the United States, the complaint will be dismissed. Mandatory dismissal may be appealed in writing within 5 university business days of the dismissal by either party to the Dean of Students or their designee of record. See the Code of Student Conduct.

Cases dismissed as Title IX Sexual Misconduct may proceed as Non-Title IX Sexual Misconduct if the alleged misconduct meets one of the definitions therein (see Non-Title IX Sexual Misconduct definitions), or may proceed under the Code of Student Conduct.

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## XIV. Hearing Process

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If an investigation results in a hearing regarding alleged violations of Title IX Sexual Misconduct or Non-Title IX Sexual Misconduct, the parties will receive a Notice of Hearing at least ten (10) university business days prior to the hearing. The notice will include:

1. The conduct allegedly constituting Title IX or Non-Title IX Sexual Misconduct and the specific sections of the Code of Student Conduct allegedly violated;
2. A copy of the Code of Student Conduct;
3. A statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the student conduct process;
4. The potential sanction(s) which Miami University may implement following any determination of responsibility;
5. A statement that the student may be accompanied throughout the process by an advisor of their choice who may be, but is not required to be, an attorney;
6. A statement that the parties may request to inspect and review evidence;
7. A statement informing the parties that it is a violation of the "Dishonesty" section of the Code to knowingly make false statements or knowingly submitting false information during the investigation or any resulting process under this Code;
8. Names of the members of the Board who will be determining responsibility in the case;
9. A statement informing the parties of the process which allows for the temporary delay j -e

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An audio recording of the hearing will be made by the Office of Community Standards. The recording will be made available to the parties upon request.

At the conclusion of the hearing the Board will adjourn to deliberate. The Board will provide written notification of the outcome of the hearing to all parties simultaneously. The written notification will include:

- The specific allegation that constitutes sexual misconduct
- Description of procedures that were followed, starting with the formal complaint and continuing through determination;
- The finding of facts that support the outcome;
- A conclusion applying the appropriate definition of the policies determined to have been violated;
- A rationale for each allegation regarding the determination of responsibility, sanctions of the respondent and remedies for the complainant; and
- Appeal procedures.

~~Sanctions shall be sensitive to the nature of the misconduct. The hearing will include~~



Individuals may be accompanied by an advisor at any meetings related to AR. Information shared or obtained during AR will be treated as private to the extent permitted by law and the University will not take subsequent disciplinary actions related to the same complaint.

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Investigations and hearings are designed to provide a prompt, fair, and impartial resolution regarding an alleged sexual misconduct. The hearing will be held before a designated unbiased and impartial hearing board. All Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process are trained using materials that will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual misconduct. These individuals will receive training on:

- The definition of sexual harassment (as defined in 34 CFR §106.30);
- The scope of Miami University's education program and/or activity;
- How to conduct a grievance process including investigations, hearings and appeals;
- How to serve impartially (specifically avoiding prejudgment of the facts at issue, conflicts of interest, and bias);
- The technology to be used at a live hearing;
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual disposition or prior sexual behavior are not relevant; and
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence (applies only to investigators).

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In addition to University disciplinary action, a person who engages in a Sexual Misconduct Violation may be the subject of criminal prosecution and/or civil litigation. A police report must be made for criminal prosecution to be considered by the local prosecuting attorney. The chances of successful prosecution are greater if the report is timely and is supported by the collection of medical and/or legal evidence.

Complaints may also be filed with the United States Department of Education Office for Civil Rights or by consulting an attorney at the person's own expense. See <http://www.ed.gov/ocr/2011/04/041104.html> How to File a Discrimination Complaint

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(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

### Ohi Revised Code 907.03 – Sex a Battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

~~(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.~~

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian or person in loco parentis of the other person.

~~(6) The offender is a custodian of the other person in a hospital, institution or other institution, and the offender has supervisory or disciplinary authority over the other person.~~

~~(7) The offender is a teacher, principal, administrator, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section \_\_\_\_\_~~





placing a person with whom the actor is or was in a dating relationship by threat of force in fear of imminent physical harm (A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause physical harm to the family or household member in a

## Ohio Revised Code 903.11 – Menacing by Stalking

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(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation or

- Ohio Revised Code 2903.21 – Aggravated Menacing
- Ohio Revised Code 2903.22 – Menacing
- Ohio Revised Code 2917.21 – Telecommunications Harassment

## Appendix B

The University can act to remove a student entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual, arising from allegations of sexual harassment or other sexual misconduct, justifies emergency removal. The analysis will be conducted by the Dean of Students or designee. In all cases in which an emergency removal is justified, the Respondent will be given notice and the opportunity to challenge the decision immediately following the removal or prior to removal being finalized.

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Websites

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- The Family Educational Rights and Privacy Act (FERP)



