



## Student Sexual Misconduct, Relationship Violence, and Stalking Process

This document describes the process for investigating and adjudicating reports of alleged sexual misconduct, relationship violence, and stalking that involve students as the Respondent. This process will be used to adjudicate alleged student violations of Ohio University Policy 03.004 as well as alleged violations of the *Student Code of Conduct*. This process applies to reported incidents in which the initial interview with the Complainant occurred on or after August 21, 2014.

### A. Definitions

For the purposes of this process, the following definitions apply:

**Sexual Misconduct** – See Policy 03.004: Sexual Misconduct (<http://www.ohio.edu/policy/03-004.html>)

**Respondent** – Person whom it is alleged committed a violation or violations of Policy 03.004 and/or the *Student Code of Conduct*. There may be more than one respondent for an incident.

**Complainant** – Person who was subject to alleged misconduct as described in Policy 03.004 and/or the *Student Code of Conduct*. There may be more than one complainant for an incident.

**Witness** – Person who is requested to participate in an investigation or a hearing because they may have information about the alleged misconduct. Witness names may be supplied by the complainant, respondent, or others with knowledge of the matter. All witnesses requested to appear at a hearing will be considered university witnesses.

**Hearing Authority** – Panel of two individuals chosen from the pool of trained investigators in the Office for Institutional Equity (OIE) and Community Standards and Student Responsibility (CSSR) who have not participated in the investigation of the matter at hand.

**Referring Party** – Person who reported the alleged policy violation to the Office for Institutional Equity.

**Support Person** – Any person chosen by either the complainant or the respondent to provide support to them throughout their interactions with OIE and/or CSSR throughout this process. The complainant and respondent are each entitled to one support person at a time, but this person does not have to be the same individual throughout the process. This person does not actively participate in the process, but can be present at meetings and hearings to provide support to the complainant or respondent. The support person cannot be a witness in the matter in question.

**Process Advisor** – Member of the university community who has been specifically trained to provide guidance and information to complainants and respondents involved in this process. This person does not actively participate in the process, but can be present at meetings and hearings to provide support to the complainant or respondent. Process advisors cannot be a witness in the matter in question. A list of process advisors can be obtained by request from CSSR.

**Gatekeeper** – Entity responsible for determining if a matter fits within the scope of Policy 03.004 and should therefore be resolved by this process. OIE serves as the gatekeeper for this process.

**Preponderance of Evidence** – Standard of proof used by the hearing authority. Preponderance of 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.

## **B. Report of Potential Violation**

Complainants may self-report incidents of sexual misconduct, relationship violence, or stalking directly to the Office for Institutional Equity (OIE). Referrals or third party notices of alleged sexual misconduct, relationship violence and stalking also come from a variety of sources, including students, faculty and staff members. With the exception of the confidential resources listed below, all employees of Ohio University have an obligation to report any instances of these behaviors to Institutional Equity. This includes mandatory reporting from the Ohio University Police Department (OUPD) and Office of Community Standards and Student Responsibility (CSSR) to the Office of Institutional Equity. Per Policy 03.004, “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 the Office for Institutional Equity.”

The Office for Institutional Equity will then inform the Title IX Coordinator of the report. OIE is also responsible for notifying the appropriate law enforcement agency if the report indicates that sexual violence and/or another felony may have been committed. While OIE is obligated to contact law enforcement, complainants are not required to speak with the police unless they so choose. OIE will also work with the Ohio University Police Department to assess if a timely warning needs to be issued to the campus community in relation to the report.

## **C. Confidential Resources**

The university recognizes that students impacted by sexual misconduct, relationship violence, or stalking may wish to take advantage of health and support resources without disclosing the situation to the university. To that end, there are a number of confidential resources on campus to whom students may speak. These confidential resources are not required to report incidents to the Office of Institutional Equity for further investigation. On campus, those resources are:

- Campus Care  
1st Floor Hudson Health Center  
740-593-1660  
<http://www.oucom.ohiou.edu/campuscare/services.htm>

- Counseling and Psychological Services  
3rd Floor Hudson Health Center  
740-593-1616 (24/7 Line)  
<http://www.ohio.edu/counseling/index.cfm>
- Survivor Advocacy Program  
McKee House, 44 University Terrace  
740-597-7233 (24/7 Line)  
survivor.advocacy@ohio.edu  
<http://www.ohio.edu/survivor>

#### **D. Timeline**

Guidelines by the Department of Education suggest 60 days as a time limit to complete the investigation and hearing processes. Every effort will be made to adhere to that timeline. However, in some circumstances, this process may require an extension of that time limit. In those instances, the complainant and respondent will be notified in writing of the extension. The timeline begins when OIE receives notice of an alleged violation and ends when the complainant and respondent are notified of the outcome of their matter. It is important to note that the 60-day time limit does not include the appeal process.

#### **E. Assessment of Interim Measures**

All reports will be reviewed to determine if interim measures are necessary. Interim measures may be implemented even if a formal investigation is unable to proceed. Interim measures may be made at any point after a report is received and may include, but are not limited to:

- Administrative directives for no contact
- Temporary or permanent re-assignment of housing
- Restriction of access to particular areas of campus
- Altered academic arrangements (moving an individual from class, completing work online, etc.)

In most cases, OIE and CSSR will make decisions on interim measures. Professional staff in Residential Housing may initiate an immediate residential move in the case of allegations of sexual misconduct, relationship violence, or stalking. They may also issue temporary administrative directives for no contact under the same circumstances. Residential Housing will notify CSSR in writing of any interim measures they initiate as soon as possible, but no later than the next business day. All interim measures described above will be documented in writing.

Additionally, both OIE and CSSR may jointly assess reports as they are received to determine if there is a need to recommend an interim suspension of the respondent. That recommendation will then be presented to the Dean of Students for consideration. If the decision is made to proceed with a Presidential Interim Suspension, the respondent will be notified in writing by the Vice President for Student Affairs, or designee.

#### **F. Resources and Options Meeting**

Staff from OIE will reach out to the complainant(s) within one business day of receiving a report of alleged sexual misconduct, relationship violence, or stalking to set up a resources and options meeting with the complainant. During the resources and options meeting, the following will be covered with the complainant:

- Medical, mental health, advocacy, law enforcement, and other resources available to complainants, both on campus and in the surrounding community
- Possible interim measures that are available (see Section E below)
- The obligation of the university to investigate every report of alleged sexual misconduct, relationship violence, and stalking, both under federal law and out of concern for the safety of our campus community
- The process for investigating and resolving alleged violations of sexual misconduct, relationship violence, and stalking
- The rights that the complainant and respondent have in that process (see Section J below)
- The right for the complainant to request confidentiality and the process by which that request will be evaluated (see Section G below)

OIE may also verify the information received in the initial report with the complainant. Complainants are not required to attend this meeting, and if they do attend the meeting, are not required to share any information unless they choose to do so. Should the complainant not respond to OIE's initial attempt to contact them, OIE will make two additional attempts. Should the complainant not respond at all, OIE will send the complainant written acknowledgement of their non-participation, and notice of the next steps in the process. Should the complainant later choose to participate, they may re-engage with the process at any point before the process is concluded.

#### **G. Request for Confidentiality**

Complainants may request that their name not be used as part of any investigation that the university may initiate. Confidentiality will be discussed during the initial interview. Referring parties may share that a complainant wishes to request confidentiality, but it will not be considered a formal request until made by the complainant to OIE. Complainants requesting confidentiality need to be aware that the inability to use a complainant's name can significantly impede the university's ability to conduct an investigation and, in most cases, the university will be unable to investigate the matter or resolve it through the student conduct process. Additionally, confidentiality can also impact the interim measures the university is able to put in place. For example, a no-contact directive could not be issued if the complainant's name cannot be shared.

Should a complainant wish to request confidentiality, that request will be reviewed jointly by OIE and CSSR. The university will make every effort to honor a complainant's request for confidentiality; however, there are times when that request will not be able to be granted. Some of the reasons a request for confidentiality may be denied include, but are not limited to:

- The reported use of force during the commission of an alleged violation of sexual misconduct, relationship violence, or stalking
- The reported use of a weapon during the commission of an alleged violation of sexual misconduct, relationship violence, or stalking
- Significant physical injury resulting from an alleged violation of sexual misconduct, relationship violence, or stalking
- Prior allegations (substantiated or not) of sexual misconduct, relationship violence, or stalking made against the respondent

The complainant will be notified in writing of the outcome of their request for confidentiality. It is important to note that in situations where confidentiality has been granted, if another report is made regarding the same alleged perpetrator, the request for confidentiality may be reconsidered in the interest of the safety of the campus community. In those instances, OIE and/or CSSR will attempt to contact the complainant to discuss the need to revoke confidentiality. If the complainant is unable to be reached or does not respond after two attempts, OIE and/or CSSR will notify the complainant in writing regarding the revocation of confidentiality before proceeding to use the complainant's name.

If no request for confidentiality is made, the investigation will proceed using the complainant's name.

#### **H. Gatekeeping**

The Office for Institutional Equity serves as the initial gate-keeper responsible for conducting the preliminary assessment to determine if there is enough information to initiate a formal investigation. This responsibility exists because OIE serves as the university's Title IX compliance office and oversees Title IX grievance processes. If there is no reasonable cause to believe that Policy 03.004 has been violated, OIE will notify appropriate parties and close the matter. OIE may also refer the matter to CSSR for resolution under the student conduct process if the report contains other alleged violations of the *Student Code of Conduct*. If OIE determines there is reasonable cause to initiate an investigation, that investigation will be conducted in accordance with Section L below.

Both CSSR and OIE are responsible for ongoing gatekeeping once a matter has moved to investigation. There are instances where OIE will initiate an investigation, but through the course of that investigation, it becomes clear that the matter should be handled through another process, such as the student conduct process through CSSR. In situations where this becomes the case, the investigative team will make a written recommendation to the Title IX Coordinator to move the matter from the sexual misconduct process to the student conduct process. The Title IX Coordinator will review the recommendation and make a decision as to which process is best suited to resolve the issue. If the Title IX Coordinator agrees to move the issue to the student conduct process, the investigative team will issue a letter to both the complainant and respondent with that information and the rationale for that decision, with a copy to the Title IX Coordinator and the director of Community Standards and Student Responsibility.

#### **I. Amnesty for Alcohol and Drugs**

In an effort to encourage reporting of alleged sexual misconduct, relationship violence, and stalking violations, neither complainants nor witnesses will face referrals for action under the *Student Code of Conduct* if they personally engaged in the unlawful or prohibited use of alcohol or drugs during the incident when the alleged violation occurred. Additionally, respondents will not face additional referrals for action under the *Student Code of Conduct* if they personally engaged in the unlawful or prohibited use of alcohol or drugs during the incident when the alleged violation occurred. Please note that amnesty applies only to the personal use of alcohol or drugs and does not extend to other potential violations of the *Student Code of Conduct* that may have been committed, even if the student may have been under the influence of alcohol or drugs at the time the alleged violations were committed.

## **J. Rights of the Complainant and Respondent**

Both complainants and respondents have many of the same rights under this process. Those rights include the right:

- To have a support person, process advisor, and/or legal counsel present during any meetings or hearings that may occur as part of this process
- To have legal counsel advise them whether or not to answer questions. (Please note, legal counsel is not otherwise permitted to participate in the process.)
- To request reasonable accommodations due to disability (see Section K below)
- To have their matter handled in a forthright and timely manner
- To receive advance notice of any meetings in which they are entitled to participate and the purpose of those meetings
- To provide statements, evidence, and information as part of the investigation
- To know the names of all witnesses that are contacted as a part of the investigation
- To know the specific charges being made under Policy 03.004 and the *Student Code of Conduct* and the range of potential sanctions should a violation be found
- To a copy of the redacted pre-hearing investigative report in order to prepare for the hearing
- To inspect evidence and other information obtained during the investigation in order to prepare for the hearing
- To inspect and review the full record of the matter as provided under the Family Educational Rights and Privacy Act
- To speak or not speak on their own behalf
- To question witnesses that appear through the hearing authority
- To rebut written materials presented in a hearing
- To file a written appeal to the Vice President for Student Affairs

## **K. Reasonable Accommodation for Students with Disabilities**

Any student with a disability involved in this process has the right to request reasonable accommodation in order to ensure their full and equal participation in this process. Students wishing to request reasonable accommodations should make those requests directly to the office of Student Accessibility Services (SAS). Students do not have to disclose information about the complaint or charge to SAS 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 staff and implemented in consultation with CSSR and OIE. Examples of reasonable accommodation include but not are limited to 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

## **L. Investigation**

Once OIE has determined that a matter will proceed, a joint investigation will be conducted by OIE and CSSR. Each office will assign one investigator to the matter, and that team of two investigators will conduct a prompt, thorough, and impartial investigation.

That team will appoint a primary investigator for the current matter. Investigations will consist of interviews with the complainant, respondent, and relevant witnesses. Witness names may be supplied by either or both the complainant and respondent. Additionally, the investigators may determine through other means that they need to speak with someone and seek that person out independently. Investigators may need to conduct multiple interviews in order to follow up or clarify information provided by others. Student witnesses, while not required to speak, are required to attend scheduled interviews and meetings. Should they fail to attend, they may be charged under the *Student Code of Conduct* for failure to comply.

At the conclusion of the investigation, the investigative team will write a pre-hearing investigative report. The pre-hearing investigative report will include the following:

- The names of the investigative team and their contact information
- Applicable policies to the matter
- A list of involved parties
- A brief history of the case
- The violations that were alleged to have occurred
- What steps the investigative team took to investigate the matter
- Summaries of the interviews the investigative team conducted
- Any additional information or materials that were considered as part of the investigation

Both investigators will sign off on the report. This pre-hearing investigative report will be made available to both the complainant and respondent at their pre-hearing meetings. The investigator from OIE will also forward the report and all applicable information and evidence to the Title IX Coordinator.

#### **M. Pre-Hearing Meetings**

Once the pre-hearing investigative report is complete, the investigative team will schedule separate meetings with both the complainant and respondent. In that meeting, the investigative team will go over the pre-hearing investigative report with each party. Both the complainant and respondent will be given access to view the full record of the matter at that time. Additionally, both the complainant and respondent will be provided with a redacted copy of the investigative report. During the pre-hearing meeting, both the complainant and respondent will be informed, verbally and in writing, as to when and where the hearing on this matter is scheduled to take place.

Options for the hearing will also be discussed. Complainants have the right to participate in the hearing in a number of ways. They may participate from another location by phone or video, they may attend in person but request to be screened off from the respondent, or they may attend the hearing without any accommodations in place. Either party may also choose not to attend the hearing at all. In those situations, the hearing will be conducted as scheduled in that person's absence.

The respondent will have three business days from the date of the pre-hearing meeting to decide if they would like to accept responsibility for the charge. If a respondent accepts responsibility for the charge, the hearing will not be held. In the event that a respondent accepts responsibility for the charge, the investigative team will contact the complainant to let them know the hearing has been cancelled due to

the respondent accepting responsibility for the charge. The complainant will have an opportunity to provide an impact statement to be used in determining sanctioning. The deadline for the impact statement is three business days from when the complainant is notified that the respondent has accepted responsibility for the charge. The investigative team will then give the report, all evidence and information collected during the investigation, and the impact statement (if any) to the hearing authority. The hearing authority will review those materials, determine an appropriate sanction, and notify the complainant and respondent of their decision in writing, with a copy to the Title IX Coordinator. Both the complainant and respondent have the right to appeal as outlined in Section O below.

#### **N. Hearing**

A hearing will be conducted for all matters that are not resolved by the respondent accepting responsibility after the pre-hearing meeting. The hearing authority will be a panel of two individuals chosen from the pool of trained investigators in OIE and CSSR who have not participated in the investigation of the matter at hand. The hearing authority will use the preponderance of the evidence standard in making their decision as to whether or not university policy was violated. In order for a respondent to be found in violation, both members of the hearing authority must agree that the standard of proof has been met. If both of the members of the panel are not in agreement, then there will be no finding of violation.

All hearings under this process will be closed to the public. The complainant and respondent will not be permitted to address each other directly, but may submit questions they would like to have asked to the hearing authority. The hearing authority has discretion to determine which questions are appropriate. For example, questions regarding complainant's sexual history with anyone other than the respondent would be deemed irrelevant and would not be asked. Initial questions that the complainant and respondent would like to ask of the other party should be submitted in writing in advance of the hearing. Those questions should be submitted to the Office of Community Standards and Student Responsibility by no later than 5:00 pm the business day before the hearing is scheduled. Should the need to ask additional questions arise during the hearing, each party will be asked to write their question down and submit the question to the hearing authority for consideration.

The following is a guide as to how the hearing will be conducted:

- The hearing authority will welcome everyone and discuss expectations for the hearing
- The hearing authority will give a brief overview of the investigative report
- The hearing authority may ask the investigative team clarifying questions regarding the investigation at any point during the hearing
- The complainant will be given an opportunity to respond to the investigative report.
- The hearing authority will have an opportunity to ask complainant questions
- The respondent will be given an opportunity to provide the hearing authority with a list of questions they would like complainant to be asked. The hearing authority will have the discretion to determine which questions are appropriate and relevant and ask those questions
- The respondent will be given an opportunity to respond to the investigative report
- The hearing authority will have an opportunity to ask respondent questions
- The complainant will be given an opportunity to provide the hearing authority with a list of questions they would like respondent to be asked. The hearing authority will determine which questions are appropriate and relevant and ask those questions
- The hearing authority will call witnesses, one by one, and ask them questions.



- The complainant will be given an opportunity to ask questions of witnesses through the hearing authority
- The respondent will be given an opportunity to ask questions of witnesses through the hearing authority
- The complainant will be given the opportunity to make a summary statement, including an impact statement, if any, and any requested sanctioning considerations
- The respondent will be given the opportunity to make a summary statement, including an impact statement, if any, and any requested sanctioning considerations

The hearing authority will go into closed session to deliberate on both findings and sanctions. Once the panel has reached their decision, the parties will be called back into the hearing. The finding of violation or not in violation will be given, along with a rationale for why the decision was made. If there is a finding of violation, the sanction will also be given, along with a rationale as to why that sanction was chosen. CSSR is responsible for the determination of sanction, in consultation with OIE. Sanctions will be determined in accordance with the sanctioning guidelines for sexual misconduct maintained by CSSR. Both parties will receive a formal written notice of the outcome of the hearing within two business days of the conclusion of the hearing, with a copy to the Title IX Coordinator.

While every effort will be made to reach a decision on the matter at the time of the hearing, there may be some instances in which the hearing authority may require additional time to deliberate. If a finding cannot be reached that day, the hearing authority will adjourn the hearing and both the complainant and respondent will be notified of the outcome in writing within two business days, with a copy to the Title IX Coordinator.

#### **O. Appeal**

Both the complainant and the respondent will have three business days from the written notification of the decision from the hearing authority to appeal. Both parties have the right to appeal on the following grounds:

- Inappropriate sanction (*cases of clear abuse of discretion by the hearing authority*);
- Procedural defect in the original hearing (*cases where a defect substantial enough to change the outcome of the finding is present*); and/or
- Presence of new evidence that was not available at the time of the hearing (*evidence which was not available at the time of the original investigation and is found to be substantial enough to have changed the outcome of the finding*).

If either party submits an appeal, that appeal will be shared with the other party who will then have three business days to write a rebuttal. The appeals and rebuttals will be submitted directly to the Vice President for Student Affairs, or designee, who will review the appeal(s) and any rebuttal(s). The Vice President for Student Affairs, or designee, will make a final determination, in consultation with the Title IX Coordinator. The Vice President, or designee, may alter the sanction, order a new hearing, or uphold the decision. The appeal process is not a re-hearing on the matter. The appeal process is a closed process and is limited to the review of written documents and the case file.

#### **P. Notice of Final Determination**

If there is no appeal, the Office of Community Standards and Student Responsibility will issue a notice of final determination to both the complainant and respondent once the appeal period has passed, with a copy to the Title IX Coordinator. If there is an appeal, the Vice President for Student Affairs will issue a letter stating the outcome of the appeal. The Vice President for Student Affairs will send that letter to both the complainant and respondent, with a copy to the Title IX Coordinator and the director of Community Standards and Student Responsibility. Unless a new hearing is granted, the letter from the Vice President for Student Affairs is considered the notice of final determination in the matter.

**Q. Sanction Monitoring**

The Office of Community Standards and Student Responsibility is responsible for monitoring completion and compliance with all sanctions. Should a student suspended via this process petition to re-enroll, that petition will be reviewed with the Office for Institutional Equity prior to a decision on re-enrollment being made. Absent unusual circumstances, if a student has complied with all components of their sanctions and completed the re-enrollment requirements, they will be permitted to re-enroll.

**R. Process Review**

The offices of Community Standards and Student Responsibility, Legal Affairs, Dean of Students, and Institutional Equity will review these process changes periodically to assess effectiveness and continued compliance. This group will make recommended changes, if any, to be reviewed by the Review and Standards Committee for possible implementation.