



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. This process was last revised on August 18, 2015.

A. Definitions

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

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.

Gatekeeper – Entity responsible for determining if a matter fits within the scope of Policy 03.004 and should therefore be resolved by this process. The Office of Equity and Civil Rights Compliance (ECRC) serves as the gatekeeper for this process.

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

Investigators – Individuals who are chosen from a pool of trained investigators in ECRC and CSSR. Two investigators will be assigned and will conduct a prompt, thorough, and impartial investigation that includes conducting interviews and completing the investigative report.

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.

Process Advisor – Member of the university community who has been specifically trained to provide information to complainants or respondents regarding 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. Process advisors cannot be a witness in the matter in question. A list of process advisors can be obtained by request from CSSR.

Referring Party – Person who reported the alleged policy violation to ECRC.

Respondent – Person who is alleged to have 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.

Sexual Misconduct – See Policy 03.004: Sexual Misconduct, Relationship Violence, and Stalking (<http://www.ohio.edu/policy/03-004.html>)

Support Person – Any person chosen by either the complainant or the respondent to provide support to them throughout their interactions with ECRC 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.

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.

B. Report of Potential Violation

Complainants may self-report incidents of sexual misconduct, relationship violence, or stalking directly to ECRC. Referrals or third party notices of alleged sexual misconduct, relationship violence and stalking also come from a variety of sources, including but not limited to 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 ECRC. This includes mandatory reporting from the Ohio University Police Department (OUPD) and CSSR to ECRC. 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 of Equity and Civil Rights Compliance.”

ECRC will then inform the Title IX coordinator of the report. ECRC and CSSR are 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 ECRC and CSSR are obligated to contact law enforcement, complainants are not required to speak with the police unless they so choose. ECRC will also work with OUPD to assess if a timely warning needs to be issued to the campus community in relation to the report. Complainants are encouraged to contact either OUPD or another appropriate law enforcement agency to file a report, if they so choose. Staff members in ECRC and CSSR are available, if requested, to assist students in making contact with the appropriate law enforcement agency.

Additionally, if any party involved in the alleged non-consensual sexual contact or non-consensual sexual intercourse is a minor, university personnel will notify Job and Family Services or other appropriate agencies, as required by Ohio law. Further, ECRC will share statistical information with OUPD as required by the Clery Act.

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 ECRC 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
Lindley Hall, 033
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 ECRC 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 there is no formal investigation. Interim measures may be made or requested 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.)
- Designated “safe hours” for use of communal spaces on campus (e.g. the Ping Center and/or dining halls)

The university reserves the right to determine the most appropriate course of action in making these arrangements. In most cases, ECRC and CSSR will make decisions on interim measures. Professional staff in the Department of Housing and Residence Life 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. Housing and Residence Life will notify ECRC and 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 ECRC 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 an interim suspension, the respondent will be notified in writing by the Dean of Students or designee.

F. Resources and Options Meeting

Staff from ECRC will contact the complainant within one business day of receiving a report of alleged sexual misconduct, relationship violence, or stalking to set up a resources and options meeting. The following will be covered:

- Medical, mental health, advocacy, law enforcement, and other resources available both on campus and in the surrounding community
- Possible interim measures (see Section E above)
- The obligation of the university to investigate every report of alleged sexual misconduct, relationship violence, and stalking under federal and state law, Ohio University policy, 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 of the complainant and respondent (see Section K below)
- The option to request confidentiality and the process by which that request will be evaluated (see Section G below)

ECRC will also verify the information received in the initial report with the complainant. Should the complainant not respond to ECRC's initial attempt to contact them, ECRC will make two additional attempts. Should the complainant not respond at all, ECRC 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 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 ECRC. 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 Sexual Misconduct, Relationship Violence, or Stalking Process or other university processes. 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 ECRC 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
- The involvement of multiple respondents in the commission of 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. 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, ECRC 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, ECRC 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

ECRC serves as the initial gatekeeper responsible for conducting the preliminary assessment to determine if there is enough information to initiate a formal investigation. This responsibility exists because ECRC 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, ECRC will notify appropriate parties and close the matter. ECRC 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 ECRC determines there is reasonable cause to initiate an investigation, that investigation will be conducted in accordance with Section M below.

Both CSSR and ECRC are responsible for ongoing gatekeeping once a matter has moved to investigation. There may be instances in which the information collected in the course of the investigation does not meet the elements of a violation of Policy 03.004. In such situations, the investigative team will make a written recommendation to the Title IX Coordinator to close the matter in the sexual misconduct 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 close the issue in the sexual misconduct 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. If there are other allegations present, the allegations will be referred to CSSR for adjudication.

I. Amnesty for Alcohol and Drugs

In an effort to encourage reporting of alleged sexual misconduct, relationship violence, and stalking, students will not be subject to referrals for action under the *Student Code of Conduct* if they engaged in the unlawful or prohibited personal use of alcohol or drugs during the incident when the alleged violation occurred. Amnesty applies only to the personal use of alcohol or drugs and does not extend to other potential violations of the *Student Code of Conduct* that may have been committed.

J. Related Student Code of Conduct Allegations

In situations where the sexual misconduct matter has moved to a formal investigation, any related *Student Code of Conduct* allegations connected to the sexual misconduct that arise during the investigation will be adjudicated within the sexual misconduct process. Two examples of allegations that will be resolved in this manner are allegations that the respondent used alcohol or drugs to facilitate sexual misconduct, and possession or use of a weapon in the course of sexual misconduct. These are alleged *Student Code of Conduct* charges, and the sanctions for those related charges, if substantiated and regardless of whether the sexual misconduct charge is substantiated, would be determined in the hearing.

K. Rights of the Complainant and Respondent

Both complainants and respondents have 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
- Have legal counsel advise them whether or not to answer questions. (Please note, legal counsel is not otherwise permitted to participate in the process.)
- Request reasonable accommodations due to disability (see Section L below)
- Have their matter handled in a forthright and timely manner
- Receive advance notice of any meetings in which they are entitled to participate and the purpose of those meetings
- Provide statements, evidence, and information as part of the investigation
- Know the names of all witnesses that are contacted as a part of the investigation
- 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
- A copy of the redacted pre-hearing investigative report in order to prepare for the hearing
- Inspect information compiled by the investigators for the purpose of the sexual misconduct resolution process in order to prepare for the hearing
- Speak or not speak on their own behalf
- Question witnesses that appear through the hearing authority
- Rebut written materials presented in a hearing
- File a written appeal to the Vice President for Student Affairs

L. Reasonable Accommodation for Students with Disabilities

Any student with a disability involved in this process has the right to request reasonable accommodations 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 accommodations 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 ECRC. Examples of reasonable accommodation include but are not 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.

M. Investigation

Once ECRC has determined that a matter will proceed, a joint investigation will be conducted by ECRC 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. Every effort will be made for both investigators to be present at all interviews.

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 investigative team may determine through other means that they need to speak with someone and seek that person out independently. Witness interviews will be limited in scope to the relevant facts of the matter. Character witnesses and witnesses without relevant information will not be interviewed. The investigative team 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 an investigative report. The investigative report will include the following:

- The names of the investigative team
- Applicable policies to the matter
- A list of involved parties
- A brief history of the investigation
- The violations that were alleged to have occurred
- Summaries of the interviews the investigative team conducted

Both investigators will sign off on the report. This investigative report will be made available to both the complainant and respondent.

N. Pre-Hearing Meetings

Once the 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 investigative report with each party. At that time, both the complainant and respondent will be provided with a redacted copy of the investigative report. Additionally, both the complainant and the respondent will be given access to any additional information or materials that were considered as part of the investigation. 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 the matter is scheduled to take place.

Options for the hearing will also be discussed. Complainants may participate in the hearing in a number of ways. They may participate from another location by phone or video conference, they may attend in person but request to be screened off from the respondent, or they may attend the hearing without any alternative arrangements in place. If either party does not attend the hearing, it 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(s). If a respondent accepts responsibility for the

charge(s), the hearing will not be held, and the investigative team will contact the complainant to let them know the hearing has been cancelled. 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(s). The investigative team will then give the report, all documents 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 P below.

O. 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 use the preponderance of the evidence standard in making their decision as to whether or not university policy was violated. Both members of the hearing authority must agree that the standard of proof has been met, if not 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 or any witnesses directly but may submit questions they would like to have asked to the hearing authority. The hearing authority will determine which questions are relevant. For example, questions introducing the 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 or any witnesses should be submitted in writing in advance of the hearing. Those questions should be submitted to the investigators by no later than 5:00 pm two business days 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 begin the hearing by discussing expectations for the hearing.
- The hearing authority will give a brief overview of the nature of the allegations.
- 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 determine which questions are relevant.
- 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 relevant.
- The hearing authority will call witnesses 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 reserves the right to ask questions of anyone at the hearing at any time. The hearing authority will recess to deliberate on findings and, if applicable, sanctions. Once the hearing authority has reached their decision, the hearing will be reconvened, and the finding will be given along with a rationale for the decision. If the respondent is found in violation, the sanction will be given along with a rationale for the sanction. Sanctions will be determined in accordance with the Sanctioning Guidelines for Sexual Misconduct, Relationship Violence, and Stalking. 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.

The hearing authority aims to make a decision at the time of the hearing, however, there may be instances in which the hearing authority may require additional time to deliberate. In such cases, 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.

P. Appeal

Both the complainant and the respondent will have three business days from the written notification of the decision 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. In the event of an emergency, deadline for appeals and/or rebuttals can be extended for up to three additional business days at the discretion of the vice president for student affairs or designee. The appeals and rebuttals will be submitted to CSSR, who will forward them with the case file, to the vice president for student affairs or designee. Within two weeks of receiving the appeal(s) and 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. It is a closed process and is limited to the review of written documents and the case file.

Q. Notice of Final Determination

If there is no appeal, CSSR 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 letter will be sent to both the complainant and respondent with a copy to the Title IX coordinator and the director of CSSR. Unless a new hearing is granted, the letter from the vice president for student affairs is considered the notice of final determination.

R. Sanction Monitoring

CSSR 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 ECRC prior to a final decision. A student who has complied with all components of their sanctions and completed the re-enrollment requirements will generally be permitted to re-enroll.

S. Process Review

The offices of Community Standards and Student Responsibility, Legal Affairs, Dean of Students, and Equity and Civil Rights Compliance will review this process periodically to assess effectiveness and continued compliance. Any recommended changes will be presented to the Review and Standards Committee.