

OAKLAND UNIVERSITY

ADMINISTRATIVE POLICIES AND PROCEDURES

625 STUDENT SEXUAL MISCONDUCT POLICY

SUBJECT:	STUDENT SEXUAL MISCONDUCT POLICY
NUMBER:	625
AUTHORIZING BODY:	SENIOR VICE PRESIDENT STUDENT AFFAIRS AND CHIEF DIVERSITY OFFICER
RESPONSIBLE OFFICE:	DIVERSITY, EQUITY, AND INCLUSION
DATE ISSUED:	SEPTEMBER 9, 2016
LAST UPDATE:	NEW

RATIONALE: The rationale for this policy is to build a healthy community that values each student and helps promote safety and respect of all. Members of the campus community must strive to create and maintain a safe, welcoming and respectful environment. Sexual misconduct by a student violates University values, is prohibited and will be sanctioned. This Policy applies regardless of one's gender, gender identity or expression, or sexual orientation.

POLICY: This policy establishes procedures for reporting and investigating allegations of sexual misconduct.

SCOPE AND APPLICABILITY: This policy applies to sexual misconduct reportedly committed by a student and requires all University employees deemed "Responsible Employees" as defined by the U.S. Department of Education and discussed below to report allegations of sexual misconduct.

DEFINITIONS:

Sexual Misconduct by a student can occur in any University sponsored program, both on- campus and off-campus or at an off campus location if the effects of the misconduct adversely affects or creates a hostile environment on campus, endangers or threatens the health or safety of any person, and/or is detrimental to

the University's interests and/or educational mission. Sexual misconduct is unwelcome conduct of a sexual nature without consent and includes *sexual harassment, sexually hostile environments* and *sexual violence*.

The best way to describe what is "unwelcome" or "without consent" is to describe what consent is and is not:

- Consent is an affirmation, unambiguous, and a conscious decision by each participant to engage in mutually agreed upon sexual activity.
- Consent is revocable and can be withdrawn at any time.
- Consent to some form of sexual activity does not imply consent to other forms of sexual activity.
- Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion.
- Silence does not imply consent.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- If coercion, intimidation, threats, or physical force are used there is no consent.
- If a person is underage there is no consent.
- If a person is mentally or physically incapacitated so that they cannot understand the fact, nature or extent of the sexual situation, there is no consent. This includes incapacitation due to alcohol or drug consumption, or being asleep or unconscious.

Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature, including sexual assault and other acts of sexual violence.

Sexual harassment creates a *sexually hostile environment* if the conduct is sufficiently serious that it denies or limits the ability to participate in or benefit from a University program. A variety of related factors determine if a sexually hostile environment has been created and the conduct in question is considered from both an objective and subjective perspective. Factors examined include the type of harassment; the frequency and severity of the misconduct; the age, sex, and relationship of the individuals involved; the setting and context in which the harassment occurred; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove hostile environment, particularly if the harassment is physical. A single or isolated instance of sexual violence may create a hostile environment.

Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into this category including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Is Student Sexual Misconduct a Crime?

Sexual misconduct can lead to University sanctions, civil legal action and criminal penalties.

Student sexual misconduct may be considered a crime under the following Michigan laws:

- Domestic Violence (includes dating violence) – MCL 750.81
- Aggravated Domestic Violence (includes dating violence) – MCL 750.81a
- Criminal Sexual Conduct (sexual assault) – MCL 750.520B
- Misdemeanor Stalking – MCL 750.411h
- Aggravated Stalking – MCL 750.411i
- Criminal Sexual Conduct (First-Fourth Degree, includes dating violence) – MCL 750.81a, MCL 750.520c, MCL 750.520d, MCL 750.520e

PROCEDURES:

Reporting Student Sexual Misconduct

1. Voluntary Reporting

Notwithstanding the following section, those who believe they have been the victim of sexual misconduct by a student or have information that a student has been victimized should report the sexual misconduct to any of the following:

Oakland University Police Department (OUPD)

Dial 911(campus phone) or (248) 370-3331 (cell phone).

Send a text message to 67283. Include “OUPD” at the beginning of the message.

The OUPD has officers specifically trained to work with students and is available 24 hours a day, 7 days a week

Title IX Coordinator

Chad Martinez

Director of Diversity, Equity, and Inclusion & Title IX Coordinator

150 Oakland Center

(248)-370-3496

chadmartinez@oakland.edu

These individuals will coordinate with one another and may also notify and involve other appropriate University officials. Complaints can be filed with both the OUPD and Title IX Coordinators or separately.

2. Mandatory Reporting by University Employees

All University employees are deemed “responsible employees” as defined by the U.S. Department of Education and must report allegations of student sexual misconduct to the Title IX Coordinator, identified above. Only those University employees in the role of mental-health counselors, psychologists, health care employees, and persons with a professional license requiring confidentiality and those supervised by such a person do not have to report allegations of student sexual misconduct. Faculty or staff members that do not act in the roles described above but hold such credentials must report allegations of sexual misconduct.

Employees must report all relevant details that are disclosed to them so that the University can determine what occurred and to address the situation, including the names of all involved (if known), the date, time, location, etc.

Employees do not need to determine if student sexual misconduct actually occurred but must be aware of and adhere to this Policy. In addition, although confidentiality cannot be guaranteed, to the extent possible employees should only share the information about student sexual misconduct with University employees or external parties on a need-to-know basis and as permitted or required under University policy and applicable law.

3. Handling of Reports of Sexual Misconduct By a Student

All reports of sexual misconduct by a student will be investigated and adjudicated in accordance with the hearing process outlined in the Student Code of Conduct (SCC). The SCC process may proceed while criminal or civil proceedings are pending or resolved and University sanctions, if any, will be administered independently from those criminal or civil proceedings. The SCC process includes without limitation the availability of interim measures, fact-finding, participation of advisors, standards of evidence, sanctions, remedies, notice of the outcome and the appeals process. See the SCC for detailed explanations of each.

Sexual misconduct reportedly by a faculty or staff member will be investigated in accordance with other applicable University policies, please refer to Administrative Policies and Procedures Nos. 710 and 711.

Sexual misconduct can also be perpetrated by University vendors as well as persons who are not members of the campus community (e.g., student from another school). When appropriate, students and others will also be directed to available support services such as counseling or to report to other law enforcement and/or other agencies. The ability to investigate and/or take direct action may be limited in such instances.

Prohibited Retaliation

No one may retaliate against a student, faculty or staff member or intimidate, threaten, or coerce them in any way because he/she has reported or participated in an investigation or adjudication of sexual misconduct by a student. Anyone who believes they are being retaliated against should contact the Title IX Coordinator immediately.

OTHER RESOURCES:

Confidential Reporting:

- Counseling Center - (248) 370-3465: www.oakland.edu/oucc
- Crittenton Hospital, Rochester - (248) 652-5000
- St. Joseph Mercy Hospital, Pontiac - (248) 858-3000
- HAVEN, Pontiac - (248) 334-1274 or (877) 922-1274 - 24-hour crisis support for sexual assault victims
- Common Ground Sanctuary Victim Assistance Program (serving Oakland County) - (248) 456-8150, Crisis Line - (800) 231-1127: www.commongroundhelps.org
- Turning Point, Mount Clemens, 24 Hour Crisis Line - (586) 468-6990

Campus:

- Dean of Students - (248) 370-3352: www.oakland.edu/studentcodeofconduct
- OU Police Department - (248) 370-3331
- Office of Inclusion/Title IX Coordinator - (248) 370-3496: <https://www.oakland.edu/diversity/title-ix/>
- International Students and Scholars - 328 O'Dowd Hall, (248) 370-3358
- Financial Aid, 120 North Foundation Hall - (248) 370-2550
- Disability Support Services, 103A North Foundation Hall - (248) 370-3266
- Violence and Abuse Resource Consortium, Department of Psychology: varc@oakland.edu
- Graham Health Center - (248) 370-2341: www.oakland.edu/ghc

Off-Campus:

- Oakland County Prosecutor's Office, District Court Advocacy Program
Prosecutor's Office/Victim Services (serving Oakland County) - (248) 858-0656 www.oakgov.com
- Oakland County Sheriff's Office - (248) 858-4911
- Auburn Hills Police Department - (248) 370-9444
- Rochester Police Department - (248) 651-9621
- Macomb County Sheriff's Office - (586) 469-5151

HELPFUL NATIONAL WEB SITES:

- Not Alone, <https://www.notalone.gov/>
- National Sexual Assault Hotline - 1-800-656-HOPE

RELATED POLICIES AND FORMS:

- OU AP & P #710 Administrative Guidelines Prohibiting Discrimination
- OU AP & P #711 Guidelines for Handling Discrimination Complaints