Sex Discrimination & Sexual Harassment Policy

Revised October 1, 2021

I. Notice of Nondiscrimination

This Sex Discrimination Policy (

sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
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UCR defines a ***forcible sex offense*** as a sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent and includes the following:

below.

Domestic violence is defined under VAWA as:

- Felony or misdemeanor crimes of violence committed:
  - by a current or former spouse or intimate partner of the victim/survivor;
  - by a person with whom the victim/survivor shares a child in common;
  - by a person who is cohabitating with or has cohabitated with the victim/survivor as a spouse or intimate partner;
  - by a
    domestic or family violence laws; or
  - by any other person against an adult or youth victim/survivor who is protected
    violence laws.

Stalking is defined under VAWA as:

- 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 or others, or
  - to suffer substantial emotional distress.

Stalking may include repetitive and menacing pursuit, following, harassment and/or interference with the peace and/or safety of another.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include, but are not limited to:

- Unwelcome and repeated visual or physical proximity to a person;
- Repeated oral or written threats;
- Extortion of money or valuables;
- Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, images, and messages on online bulletin boards;
- Unwelcome/unsolicited communications about a person, his or her family, friends, or coworkers;
- Sending or posting unwelcome/unsolicited messages with an assumed identity;
- Implicitly threatening physical contact; or
- Any combination of these behaviors directed toward an individual person.

Sexual assault, dating violence, domestic violence, or stalking are inherently serious sex-based offenses. However, stalking may not *e.g.*, when a

e.g., when the stalker desires to date the victim stalking constitutes sexual harassment. Stalking that does not constitute sexual harassment may still be prohibited under

Sexual harassment may be committed by anyone in the United States, regardless of gender, age, intent, position, relationship, or authority, in an ***educational program or activity*** of ONU. An educational program or activity includes locations, events, or circumstances over which ONU exercises substantial control over both the respondent and the context in which the sexual harassment occurs, as well as any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.[6]

Sexual harassment also includes harassment based on gender, sexual orientation, transgender status, gender identity, or gender expression, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

It is important to the University that individuals feel free to come forward and seek assistance before issues of sexual harassment become severe, pervasive, and objectively offensive. Reports of sexual harassment that do not rise to the level of severe, pervasive, and objectively offensive may still be investigated and addressed by the University under other policies, so as to prevent further incidents from occurring. Also, in appropriate

- A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor; the lack of informed, freely given consent to sexual contact constitutes sexual misconduct.
- Intoxication is not an excuse for failure to obtain consent.
- A person incapacitated by alcohol or drug consumption, or who is unconscious or asleep or otherwise physically or mentally impaired, is incapable of giving consent.
- A person who is below the legal age of consent is incapable of giving consent.

C. Incapacitation

Incapacity occurs when a person is temporarily or permanently impaired by mental and/or physical deficiency, disability, illness, sleep, unconsciousness, or by the use of drugs or alcohol to the extent the person cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing/informed consent (*e.g.* when, where, his or her sexual interaction).

Sexual activity with someone the respondent knew to be or should have known to be incapacitated constitutes a violation of this Policy. The question of whether the respondent should have known the complainant was incapacitated is based on what a reasonable person in the place of the respondent, sober and exercising good judgment, would have known about the condition of the complainant.

An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this Policy.

III. Reports and Formal Complaints

All individuals, including students and members of the ONU community, are obligated to promptly report any incidents of sex discrimination or sexual harassment as set forth in this Policy. A formal complaint, as defined in Section III.G below, is not required to make a report of sex discrimination or sexual harassment and initiate a response by ONU, including the offering and providing of supportive measures, as defined in Section III.E below.

The ONU officials who have authority to institute corrective measures on behalf of ONU and who receive notice or actual knowledge of sexual harassment programs or activities

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incident or allegation of sex discrimination and sexual harassment from any individual, including an ONU official who has authority to institute corrective measures on behalf of ONU or complainant, the Title IX Coordinator will promptly contact the complainant to discuss the availability of ***supportive measures*** and inform the complainant of the availability of such supportive measures with or without filing of a formal complaint. The Title IX Coordinator will also explain to the complainant the process for filing a formal complaint, as outlined in Section III.G below.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been fi

In addition to implementing supportive measures set forth in Section D above, in emergency situations that arise out of allegations of conduct that could constitute sexual harassment, ONU

may be made only after ONU conducts an individualized safety and risk analysis and concludes that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. Removal may take place before an investigation into sexual harassment allegations concludes or where no grievance process is pending.

Where ONU elects to remove a respondent from its education programs or activities, it will provide the respondent with notice and an opportunity to challenge the decision immediately following removal.

Where a respondent is a non-student employee, ONU may elect to place the respondent on administrative leave during the pendency of a grievance process under Section IV.

G. Formal Complaints of Sex Discrimination and Sexual Harassment

While ONU will promptly and meaningfully respond to reports of sex discrimination and sexual

hesitant to make a report, file a formal complaint, or to participate in an investigation because of potential consequences for him/her. It is in the best interests of the ONU community that reporting parties choose to report incidents and allegations of sexual discrimination and sexual harassment, that all parties participate in an investigation, and that witnesses come forward to share what they know.

Students: A student who reports sex discrimination or sexual harassment, either as a complainant or a third-party witness, will not be subject to disciplinary action by the University for his/her/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. Any student who participates in an investigation and grievance process, either as a complainant, respondent, or a third-party witness, will not be subject to disciplinary action by the University for his/her/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

Faculty/Administrative/Support Staff: Sometimes employees are also hesitant to report or offer assistance to others for fear that they might be disciplined for their conduct, including alcohol and/or drug use. ONU may, at its discretion, offer employee reporting amnesty from such policies related to the incident. Amnesty may also be granted to witnesses on a case-by-case basis.

J. Bystander Intervention

The University encourages all community members to

decision-maker has reached a determination regarding responsibility.[8]

However, while not a party to the proceedings, ONU bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility provided that

maintained by a physician, psychiatrist, psychologist, or other recognized professional or

capacity, and which are made and maintained in connection with the provision of treatment to the party, unless ONU obta . This Policy also does not require, allow, rely upon or otherwise use questions or evidence that constitute or seek disclosure of information protected under legally recognized privilege, unless the person holding the privilege waives it.

the

- The parties are provided written notice that discloses the following:
    - the allegations,
    - the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
    - any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- The parties provide voluntary, written consent to the informal resolution process.

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3. Appeal Procedure

The parties shall prepare written statements in support of, or challenging the outcome, including all relevant information and arguments, and deliver

termination.

O. Documentation and Recordkeeping

Where the Title IX Coordinator or a Deputy Title IX Coordinator receives a report of an incident or allegation of sex discrimination and sexual harassment or a formal complaint is filed, ONU will create records of any actions, including any supportive measures, taken in response to a report or formal complaint. In each instance, ONU will document the basis for its conclusion that its response was not ***deliberately indifferent***, and document that it has taken measures designed to

- The definition of sexual harassment;
- The education program or activity;
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; and
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Title IX Coordinators, investigators, decision makers, any person who facilitates an informal resolution process, and Appeal Panel members will receive training on the definition of

an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision makers will also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence

forth in Section IV.H.1 above.

Investigators will also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth Section IV.G.6 above.

First responders, such as ONU Security and Office of Student Conduct staff receive regular, ongoing training focused on working with complainants of sex discrimination and sexual harassment.

Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

Q. Victim/Survivor Support Information

The University is committed to providing support for students and employees who have been victims/survivors of sex discrimination. Below is a brief description of resources available.

Supportive measures as detailed in Section III.E of this policy.

Additionally, a victim/survivor may seek advocacy or counseling support from one of the outside agencies listed below:

- Crime Victim Services
  Lima, OH
  Pamela Silver
  Crime Victim Services
  Office: 419-222-8666