



**Sexual Misconduct Policy | 2018-2019**

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**Title IX Website:**  
**[www.otterbein.edu/public/TitleIX.aspx](http://www.otterbein.edu/public/TitleIX.aspx)**

## **TABLE OF CONTENTS**

<b>Rave Alerts</b>	<b>1</b>
<b>Sexual Misconduct</b>	<b>2</b>
<b>Sexual Harassment</b>	<b>4</b>
<b>Consent</b>	<b>7</b>
<b>Reporting/Resources</b>	<b>9</b>
<b>Other Reporting Options</b>	<b>10</b>
<b>Informal Resolutions</b>	<b>14</b>
<b>Next Steps &amp; Timeline</b>	<b>15</b>
<b>Findings, Conclusions &amp; Recommendations</b>	<b>17</b>
<b>Appeals/Appeals Procedures</b>	<b>18</b>
<b>Student Rights</b>	<b>19</b>
<b>Student Sanctions</b>	<b>21</b>
<b>Records</b>	<b>22</b>

## **WHAT YOU SHOULD KNOW ABOUT RAVE ALERTS. . .**

**In compliance with federal law, Otterbein sends out warnings and emergency notifications for ongoing and continuing threats and emergencies on campus, including violence and sexual assault if applicable.**

**Rave Alerts are sent to inform the community about weather emergencies, power outages, possible property damage, and potential harm to members of the community, including violence and sexual assault.**

**While they may be unsettling, the purpose of the alerts is to promote awareness, safety, transparency, communication, and communal support.**

**The campus community receives these alerts through text, email and voicemail.**

- Text messages provide only pertinent information: a trigger warning when applicable, the location of the threat/emergency, and a reminder that students should check their email for more details.**
- Voice messages provide the above information as well as information about an alleged suspect, however limited. We offer details about potential suspects in the interests of safety and full disclosure.**
- Emails include information about the threat/emergency as well as University support resources.**

**We hope that knowing about Rave Alerts in advance will make it easier to receive an unexpected alert and to take action on the disclosed information.**

**If you have questions about Rave Alerts, please contact Larry Banaszak, Chief of Police at [ibanaszak@otterbein.edu](mailto:ibanaszak@otterbein.edu). If you have questions about alerts of sexual violence, you may also contact Title IX Staff:**

**Scott Fitzgerald ([sfitzgerald@otterbein.edu](mailto:sfitzgerald@otterbein.edu)),**

**Julie Saker ([jsaker@otterbein.edu](mailto:jsaker@otterbein.edu)), and Colette Masterson ([cmasterson@otterbein.edu](mailto:cmasterson@otterbein.edu)).**

## **Sexual Misconduct**

*Otterbein University does not discriminate on the basis of sex in its education programs or activities. The University has designated the following person to address any questions you may have about sexual misconduct and Title IX:*

*Scott Fitzgerald  
Title IX Coordinator  
614.823.1130  
[sfitzgerald@otterbein.edu](mailto:sfitzgerald@otterbein.edu)*

*You may also contact the United States Department of Education, Office of Civil Rights, with any sexual misconduct and Title IX questions:*

*Office of Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline: 800.421.3481  
TDD# 877.521.2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>*

*Sexual misconduct is covered by University Policy 117.0 Sexual Misconduct, which includes the following introductory statement:*

Members of the University community, guests, and visitors have the right to be free from all forms of gender and sex-based discrimination, including sexual misconduct, examples of which can include acts of sexual assault, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When a respondent is found to have violated this policy, sanctions and other appropriate measures will be used to reasonably ensure that the sexual misconduct has been stopped, its effects have been addressed, any hostile environment has been eliminated and steps have been taken to prevent its recurrence. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated. Finally, retaliation against an individual who makes a report or participates in any proceedings under this policy is a violation of this policy. Individuals engaging in retaliation will be subject to disciplinary action.

The University Sexual Misconduct policy and grievance procedures apply to complaints of sexual misconduct in or impacting a University program or activity. This includes sex or gender-based harassment, sexual assault and sexual violence carried out by employees, faculty, students, and third parties. The University has jurisdiction to investigate and remedy all Title IX related matters that occur on campus or at a University sponsored event. Specifically, this includes academic, educational, extracurricular, athletic, and any other school programs, whether those programs take place in a school's facilities, on a school bus, at a class or training program sponsored by the school at another location, during study abroad, or elsewhere. Additional examples include school-sponsored field trips, school-recognized fraternity or sorority houses, and athletic team travel; and events for school clubs that occur off campus.

The University also has jurisdiction to investigate and remedy off campus incidents if (1) the University has control over the Respondent and (2) has control over the context of the misconduct (on University property, in our programs, on land we lease or control, or at events we sponsor).

If the incident does not meet both prongs above, the University may still provide support to the Complainant including counseling and assistance on how to file a criminal complaint with the appropriate law enforcement agency. The University will address off-campus sexual misconduct that creates a hostile environment on campus.

### **Summary of Process**

Upon receipt of a complaint, the University's process involves an immediate initial investigation to determine if, assuming the facts in the complaint to be true, the complaint would state a violation of this policy. If so, the University will initiate a prompt, thorough and impartial investigation. This investigation is designed to provide a fair and reliable determination about whether the University Sexual Misconduct Policy has been violated. If so, the University will implement a prompt and effective remedy designated to end the sexual misconduct, prevent its recurrence, and address its effects. Upon a determination that a complaint does not present a violation of this policy but may present a potential violation of another University policy, the complaining party will be informed of their option to have the complaint forwarded to the University division having jurisdiction over such matters.

The University's Title IX Compliance is overseen by the individuals below. Members of the campus community are encouraged to contact them if they have any questions regarding Title IX or this Policy. Confidential and non-confidential complaint options are outlined later in this policy.

Title IX Coordinator: Scott Fitzgerald  
Director of Human Resources: sfitzgerald@Otterbein.edu  
614.823.1130

Title IX Deputy Coordinator: Julie Saker  
Associate Dean of Students jsaker@otterbein.edu  
614.823.1554

**Training:** The Title IX Team receives annual training on the handling of complaints of sexual harassment, the University's Sexual Misconduct policy, grievance procedures, and applicable confidentiality requirements.

**Sexual misconduct:** is a form of sex-and gender-based discrimination. Sexual misconduct includes the following:

**Non-consensual sexual intercourse:** any sexual penetration (anal, oral or vaginal), however slight, with any body part or object by any person upon any person without consent.

**Non-consensual sexual contact:** any intentional sexual touching, either by the offender or when the complainant is forced to touch, with any body part or object without consent.

**Sex- and gender-based discrimination:** Discriminatory treatment based on sex, gender or gender identity. Gender-based discrimination can include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Sex-stereotyping can include the expectation that a person conform to certain behaviors, mannerisms or appearances stereotypical of their biological sex.

## **Sexual Harassment**

In the education context, sexual harassment is unwelcome, sex- or gender-based verbal or physical conduct that is sufficiently severe, persistent, or pervasive that it interferes with, denies, or limits an individual's ability to

participate in or benefit from the university's educational programs and activities.

In the employment context, sexual harassment is unwelcome, sex- or gender-based verbal or physical conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

It can take two forms: power differentials (quid pro quo) or hostile environment:

Quid pro quo sexual harassment exists when:

- There are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and
- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions adversely affecting such individual.

Hostile environment in the employment context includes any situation in which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

The determination of whether an environment is "hostile" is based on a totality of circumstances. These circumstances may include:

- The degree to which the conduct interfered with the complainant's educational or work performance;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the accused and the complainant(s)
- The number of individuals involved;
- The age and sex of the accused and the complainant(s);
- The location of the incident(s) and the context in which it occurred;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct was humiliating;
- The effect of the conduct on the complainant's mental or emotional state;
- Whether the conduct arose in the context of other discriminatory conduct;

- Whether the speech or conduct deserves the protections of academic freedom or the first amendment.
- A single or isolated incident of sexual harassment (e.g., rape) may be severe enough to create a hostile environment.

**The following are examples of the types of conduct that, if severe or pervasive enough, can create a hostile work or educational environment on the basis of gender:**

- Inappropriate comments of a sexual nature, including sexually explicit comments, questions, or jokes;
- Persistent, unwelcome attempts to change a working or academic relationship into a romantic or sexual relationship;
- Inappropriate remarks about sexual activity, experience, or orientation;
- Abusive or derogatory remarks about individuals or classes of individuals on the basis of their gender or sexuality;
- Persistent and unwelcome forms of attention toward another member of the University community such as requests for dates, flirtations, sexual advances, phone calls or other communications, or unwanted gifts;
- Touching, patting, hugging, brushing against an individual's body, or repeated or unwanted staring;
- Display of inappropriate sexually oriented or derogatory materials in a location where others can see them;
- Sexual violence or assault (can also be a criminal violation subject to the criminal justice system).

See also the **University's Discrimination and Harassment Policy**.

**Sexual Exploitation:** taking non-consensual, unjust, or abusive sexual advantage of another. Examples include, but are not limited to, prostituting another student or employee, non-consensual pictures, video-, or audio-recording of sexual activity, including on social media and texting. Includes sharing videos, photos, recording such as on social media even if media was obtained consensually. Engaging in non-consensual voyeurism, and knowingly transmitting or exposing another person to a sexually transmitted infection (STI) without the knowledge of the person.

**Stalking:** engaging in a course of conduct that includes two or more acts directed at a specific person, based on gender or sexual orientation that would cause a reasonable person to fear for his or her safety or the safety of

others or suffer substantial emotional distress. This includes whether the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

**Domestic Violence:** violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child, by a person who is or was cohabitating with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, and/or by any other person against an adult or youth victim who is protected from that person under the domestic or family violence laws.

**Dating Violence:** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant and where the existence of such a relationship is determined based on the following factors: length of the relationship, type of relationship and frequency of interaction between the persons involved in the relationship.

**Indecent Exposure:** the exposure of the private or intimate parts of the body in a lewd manner in public or in private premises when the accused may be readily observed.

**Sexual Violence:** Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

**Pregnancy Discrimination:** Discrimination based on sex can include discrimination based on pregnancy or pregnancy-related conditions, such as childbirth, false pregnancy, termination of a pregnancy, miscarriage or recovery from any of these conditions. The University provides reasonable accommodations of limitations imposed by pregnancy or pregnancy-related conditions in accordance with applicable law.

### **Consent**

Consent is informed, freely and actively given, mutually understandable words or action, which indicate a willingness to engage in mutually agreed upon sexual activity.

- Consent is active, not passive.
- Silence or lack of resistance, in and of itself, cannot be interpreted as consent.

- Consent can be given by words, actions, or behaviors as long as those words, actions or behaviors create mutually understandable clear permission regarding willingness to engage in the conditions of sexual activity: who, what, when, where, why, and how sexual activity will take place.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Consent can be withdrawn at any time by word or action.
- Previous relationships or prior consent cannot imply consent to current or future sexual acts.

To be effective, consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion.

- Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion.
- Coercion is unreasonable pressure for sexual activity. When a person indicates by words or actions that he/she does not want to engage in sexual activity, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- Intimidation is implied threats, including the exertion of perceived or actual power resulting from position or stature.
- A person must be of legal age (16) to give consent.

An incapacitated person cannot give consent. Sexual activity with someone who one should know to be mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout) is not consented sexual activity and therefore is a violation of this policy.

- Incapacitation is a state where someone cannot make rational, reasonable decisions.
- Incapacitation may result from mental disability, sleep, involuntary physical restraint, and alcohol or drug impairment, including taking “rape drugs.” A rape drug is any drug intentionally used to incapacitate another victim to assist in the execution of drug facilitated sexual assault.
- Possession, use and/or distribution of any so-called “rape drug” is prohibited and administering these drugs to another person is a violation of this policy.
- Being under the influence of alcohol or other drugs will not excuse behavior that violates this policy.

### **Identification of Parties as used in this Policy**

**Complainant:** an individual who brings forth a concern of sexual misconduct.

**Respondent:** an individual who is accused of sexual misconduct.

**Title IX Coordinator:** University employee responsible for overseeing all investigations related to sexual misconduct, to ensure prompt, fair, and impartial investigation and resolution. He/she will coordinate the in-take, investigation, and review of all complaints that fall within this policy.

## **Reporting Resources**

Promptly seeking information can be very helpful to anyone who may want to report sexual misconduct. Reporting incidents is important to addressing sexual misconduct on campus. There are a number of options available to students and employees. This section will discuss confidential and non-confidential options to provide information to assist with the process to make an informed decision.

### **Amnesty**

The University encourages students to report sexual misconduct. Sometimes, survivors or witnesses are hesitant to report to university officials because they fear that they themselves may be accused of a policy violation, such as alcohol and drug use, at the time of the incident. It is in the best interest of the community that as many survivors as possible choose to report sexual misconduct to university officials and that witnesses come forward to share what they know. To encourage reporting, the University offers survivors of sexual misconduct and witnesses' amnesty from minor policy violations (such as alcohol and drug use) related to the incident.

### **Retaliation**

The University will not tolerate retaliation in any form against any student, faculty or staff who files a complaint (Complainant), against whom a complaint has been filed (Respondent), serves as a witness, assists the Complainant or Respondent, or participates in an investigation of discrimination or harassment. The University will take steps to prevent retaliation or recurrence of any sexual misconduct on the Complainant or others.

## **Confidentiality**

Otterbein will make every effort reasonably possible to preserve the privacy of an individual who makes an official report and to protect the confidentiality of the information reported. When a Complainant requests that no action be taken or that their name not be used, the Complainant will be advised that the University's ability to respond will be limited but that the University will take all appropriate action consistent with the request. However, there will be situations in which the University may decide to override a request for confidentiality or that no action be taken in light of the nature of the incident or threat to the campus community. Such considerations include the risk of additional attacks, the use of weapons or drugs, multiple attackers, past conduct, the attack was accompanied by other crimes or threats. Therefore, Complainants desiring to make truly confidential reports should review the confidential reporting section below.

The degree, to which confidentiality can be protected, however, depends upon the professional role of the person being consulted. The professional being consulted should make these limits clear before any disclosure of facts. The individuals/offices below are recognized by the University as being able to receive confidential reports.

### **Employee Confidential Resources:**

Employee Assistance Program	888.238.6232
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### **Student On-Campus Confidential Resources:**

Mental Health Counselor	614.823.1333
Student Health Center Provider	614.823.1345
University Chaplain	614.823.1409
Women's Gender & Sexuality Resource Center Advocates	
614.823.1028	

### **Off-Campus Confidential Resources for Employees and Students:**

SARNCO (Sexual Assault Response Network of Central Ohio)	
614.267.7020	
CHOICES 24 Hour Domestic Violence Hotline	
614.224.4663	
Mt. Carmel Crime & Trauma Assistance Program	
614.234.5900	
Buckeye Region Anti-Violence Organization (BRAVO)	
614.294.7867	

Rape, Abuse, & Incest National Network (RAINN)

800.656.4673

(National hotline that connects callers to their nearest rape crisis line.)

## **Anonymous Reporting:**

The following resources provide anonymous reporting options. (Anonymous reporting may limit the University's ability to fully investigate and resolve the complaint.)

Campus Conduct Hotline 866.943.5787

Otterbein Police Silent Witness online form at:

<http://www.ottoberbein.edu/public/CampusLife/HealthAndSafety/Policies/silent-witness-form.aspx>

As required by law, all disclosures to any Otterbein employee of an on-campus sexual assault are tabulated for statistical purposes without personal identifying information.

## **Non-Confidential Reporting**

Employees, guests, and third parties are encouraged to speak to Otterbein officials to make formal reports of incidents. The University considers all employees responsible employees. Notice to an Otterbein employee is official notice to the institution. Responsible employees are expected to relay any report of sexual misconduct to the appropriate Title IX team member. Therefore, students have the right and can expect incidents of sexual misconduct to be taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through administrative procedures.

The following options for reporting are not confidential in that other University employees with a need to know so as to stop the conduct, conduct an investigation, and resolve the matter will know of the complaint.

Employees, guests and third parties are encouraged to report complaints to the Title IX Coordinator/Director of Human Resources:

**Title IX Coordinator:** Scott Fitzgerald

sfitzgerald@Otterbein.edu

614.823.1130

Students are encouraged to report complaints against students to the Title IX Deputy Coordinator/Associate Dean of Students:

**Title IX Deputy Coordinator:** Julie Saker

Associate Dean of Students jsaker@otterbein.edu  
614.823.1554

Following an incident, the Complainant and/or their colleagues may contact the Title IX Deputy Coordinator or Title IX Coordinator who can explain all aspects of the reporting process, support measures, and possible next steps. If the Respondent (accused person) is an Otterbein employee, the Title IX Coordinator (Director of Human Resources) may join the Associate Dean of Students for investigative meetings if a complaint is filed.

Sexual Misconduct, which includes sexual harassment, involves a variety of inappropriate behavior, the most serious being non-consensual sexual intercourse (sexual assault).

**Reporting of sexual harassment:** students are encouraged to report complaints against students to the Julie Saker, Deputy Title IX Coordinator. To report complaints against faculty or employees, students are encouraged to contact either the Julie Saker, Deputy Title IX Coordinator or Scott Fitzgerald, Title IX Coordinator. The Deputy Title IX Coordinator will share complaints with the Title IX Coordinator, who will coordinate the next steps outlined below under “Next Steps.”

When a student reports a possible sexual harassment, the Deputy Title IX Coordinator and/or Title IX Coordinator will meet with the student to provide support and obtain detailed information about the student concern. Charges of sexual misconduct, including sexual harassment, will follow the steps and procedures listed below.

**Reporting of sexual assaults and other sexual violence:** Students are encouraged to report sexual assaults and other sexual violence to the Otterbein Police Department or the Westerville Police Department immediately following the incident if possible.

Survivors of sexual assault are encouraged to get to a safe place and obtain immediate medical treatment. Calling 911 is important to obtain immediate medical assistance and medical support, and to preserve evidence. Students and employees are encouraged to report sexual assaults to the Otterbein Police Department or the Westerville Police Department immediately following the incident if possible. An officer from the Otterbein Police Department will meet with the student to take a report. The Complainant can make decisions about their level of involvement in an investigation and potential criminal or campus student conduct action. Otterbein Police will provide assistance in preserving relevant materials and will obtain, secure, and maintain evidence needed for criminal and employee/student conduct proceedings.

Contact Information Includes:

Otterbein Police	614.823.1222
Westerville Police	614.882.7444 or 911

Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department of Education:  
Office of Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline: 800.421.3481  
TDD# 877.521.2172  
Email: OCR@ed.gov  
Web: <http://www.ed.gov/ocr>

Any false report of behavior or incidents alleging sexual misconduct, with an intent to mislead, is a violation of this policy.

**Responsible Employees**

For the purposes of this policy, a “responsible employee” is a University employee who is obligated to report incidents of sexual misconduct to the Title IX Coordinator. **It is the policy of this University that all employees, who are not confidential reporting resources, are responsible employees.**

When a victim tells a responsible employee about an incident of sexual violence, the victim has the right to expect the University to take appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX coordinator all relevant details about the alleged sexual violence shared by the victim and that the University will need to determine what happened – including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University’s response to the report.

Before a student reveals any information to a responsible employee, the employee should ensure that the student understands the employee’s

reporting obligations – and, if the student wants to maintain confidentiality, direct the student to confidential resources as designated in this policy.

If the student wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the student that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Coordinator of the student's request for confidentiality.

Responsible employees will not pressure a student to request confidentiality, but will honor and support the student's wishes, including for the University to fully investigate an incident. By the same token, responsible employees will not pressure a student to make a full report if the student is not ready to.

The University will not tolerate retaliation in any form against any student, faculty, or staff who files a complaint (Complainant), against whom a complaint has been filed (Respondent), serves as witness, and assists the Complainant; or Respondent, or participates in an investigation of discrimination or harassment. The University will take steps to prevent retaliation or recurrence of any sexual misconduct on the Complainant or others.

### **Informal Resolution**

In cases other than sexual assault (which includes non-consensual sexual intercourse or nonconsensual sexual contact), a complainant may request or the Title IX Coordinator may propose that the parties explore an informal resolution. The informal resolution process is intended to provide prompt, effective, and mutually agreeable resolution but does not result in a formal investigation or disciplinary action against a respondent. Typically, an informal resolution involves a meeting with the Title IX Coordinator to explore mutually agreeable solutions. Participation is voluntary, and a complainant or respondent may terminate the informal resolution process at any time and request a formal resolution. Further, if the informal resolution does not prove effective in stopping the prohibited conduct, addressing its effects, and preventing its recurrence, the complaint may pursue formal resolution. Records of informal resolutions will be maintained by the Title IX Coordinator for tracking and enforcement purposes. The results of an informal resolution may be taken into account when fashioning a sanction in a subsequent proceeding.

## **Timeline for Title IX Investigation Process**

The timelines outlined below are anticipated timeframes in cases that do not present extraordinary circumstances, such as the temporary unavailability of evidence or witnesses. The University will inform parties of more specific dates to the extent it can and of any deviations in previously established timelines.

**Interim Measures:** If warranted, as soon as reasonably practicable under the circumstances.

**Commencement of Investigation or Informal Resolution:** Ordinarily, within 7 working days of receipt of the complaint.

**Notice of Outcome:** Ordinarily, within 60 working days of receipt of the complaint.

**Deadline for Filing an Appeal:** The appealing party must submit their appeal within (7) calendar days of the receipt of the written decision.

**Decision on Appeal:** Ordinarily, within (14) calendar days from the date any response to an appeal was due.

A support person will be provided for each Complainant and Respondent. The role of the support person is to provide assistance and serve as a resource of information. A support person will inform the Complainant and the Respondent of their rights, options of criminal prosecution, medical assistance, and the University's investigation process.

**Interim Measures:** services, accommodations, or other assistance that Otterbein puts in place for Complainants after receiving notice of alleged sexual misconduct but before any final outcomes—investigatory, disciplinary, or remedial—have been determined. The following are examples of interim measures:

- Academic accommodations.
- Medical and mental health services, including counseling
- Change in campus housing
- Assistance in finding alternative housing
- Assistance in arranging for alternative University employment arrangements and or changing work schedules
- No Contact order pending the outcome of an investigations. Such a directive serves as a notice to both parties that they must not

have verbal, electronic, written, or third party communication with one another.

The University may continue to take these steps if sexual violence is found to have occurred.

Appropriate measures will be taken to avoid retaliatory action. Students or employees may be required to sign a “No Contact Order” to restrict any form of contact between the Complainant and the Respondent.

Both the Complainant and the Respondent may choose to have an advisor of their choice other than the University provided support person to provide assistance during the investigation and resolution process. Either party may also choose to proceed without an advisor. Both parties are expected to ask and respond to questions on their own behalf, without representation by their advisor during an investigative meeting. The advisor may consult with the advisee quietly or in writing or outside during breaks in the meeting, but may not speak on behalf of the advisee. Any advisor who steps outside of this defined role will be given one warning and then be asked to leave the investigative meeting. (A substitute advisor will not be permitted at this meeting.) The advisor or a substitute advisor may be allowed to attend additional investigative meetings at the discretion of the Title IX Coordinator.

If aware of a possible sexual misconduct violation, the University may conduct an investigation and impose sanctions for the protection of the campus community. The University reserves this right even if a Complainant decides not to pursue charges, either criminally or through the University’s process.

During the investigatory period, the University will take steps to assure that the alleged misconduct does not continue and that the Complainant is safe from further improper conduct or retaliation.

The Title IX Coordinator, the Associate Dean of Students or designee assigned by the Title IX coordinator will serve as investigator(s) for complaints. The investigator(s) will meet with the Complainant to gather information about the allegation.

Before proceeding further, the Title IX Coordinator, with the advice and input of the investigator(s), will determine whether the conduct or language referenced in the complaint would, if true, constitute a violation of this

policy. If the conclusion is that the conduct or language referenced in the complaint, even if true, would not constitute a violation of this policy, there will be no further investigation. The University will take any steps needed to remedy inappropriate conduct that does not constitute a violation of this policy.

If the conclusion is that the conduct would, if true, constitute a violation of this policy, the investigation will proceed as follows:

- The investigator(s) will contact the Respondent and witnesses, gathering other pertinent information and following up with the Complainant, Respondent, and witnesses as needed.
- While the allegation is under investigation, the investigator will encourage all parties and witnesses to provide any additional information (including statements, e-mails, documents, or other facts) that may assist the investigation. The investigator will continue to receive and review this information until the investigation is closed.
- The investigator(s) will inform the parties at regular intervals of the status of the investigation.

#### **Findings, Conclusions and Recommendations:**

Upon completion of the investigation, the investigator(s) will submit a report to the Title IX Coordinator that will include factual findings as well as the investigator's conclusion of whether it is more likely than not (a preponderance of the evidence in legal terms) that there has been a violation of this policy. The report may also include recommendations for resolution, sanctions, or other appropriate action.

The investigator will submit the report to the Title IX Coordinator (or Deputy Coordinator if Title IX Coordinator is the investigator) for final review. As Title IX Coordinator, the Director of Human Resources shall forward the final report, with recommendations for resolution, sanctions, or other appropriate action, to the respective Vice President or Provost for disposition.

If the Vice President's or Provost's conclusion is that it is more likely than not that a violation of this policy has occurred, the Respondent will be advised in writing of the finding of a violation, the sanction, and the procedure for appeal. The Complainant will simultaneously be advised in writing that the investigation is complete, that a violation was found, that there will be sanctions against the Respondent, and the procedure for appeal.

- If the violation involves domestic violence, dating violence, sexual assault, or stalking, the University will inform the Complainant of all the disciplinary sanctions.
- If the violation involves any other issue not discussed above, the University will inform the Complainant only of the disciplinary sanctions that directly relate to the Complainant.

If the investigation does not support a violation of any University policy, both the Complainant and the Respondent will be advised in writing of this outcome and the procedure for appeal.

**Appeals:**

If the Complainant or Respondent disagrees with the final decision, they may submit an appeal. The appealing party must submit their appeal within seven (7) calendar days of the receipt of the final report. The written request for appeal must identify the reasons and evidence supporting the appeal, state the result sought, and be submitted in writing to the Title IX Coordinator.

The grounds for an appeal are as follows:

- A procedural error occurred that significantly impacted the outcome of the investigation (e.g. substantial bias, material deviation from established procedures).
- New evidence unavailable during the original hearing or investigation that could substantially impact the original finding or sanction. The appealing party must submit a summary of the new evidence and its potential impact must be included.
- The sanctions imposed are substantially disproportionate to the severity of the violation.

Disagreement with the facts found or interpretation of evidence does not constitute a procedural error and is not a grounds for appeal.

The Title IX Coordinator will provide a copy of the written appeal to the non-appealing party within five calendar days of receipt of the appeal. The non-appealing party may submit a written response to the appeal request within five days of receipt of the appeals request. If the non-appealing party submits a written response to the Title IX Coordinator, the Title IX Coordinator will forward a copy to the appealing party.

The Title IX Coordinator will forward the report, the file, the request for appeal, and the response to the appeal (if submitted) to the President's Designee (Designee). Ordinarily, the Designee will issue a decision within fourteen (14) calendar days.

The Designee shall review the appeal and determine if it satisfies one of the grounds for appeal. If the appeal does not meet the grounds for an appeal, the Designee will issue both parties a written decision that the appeal did not meet the grounds for the appeal and that the underlying decision was decided reasonably and appropriately. The Designee's decision to deny the appeal is final.

If the Designee determines that a material procedural (or substantive) error occurred, the Designee may return the complaint to the investigator and appropriate Vice President or Provost with instructions to cure the error. The results of the decision of the investigator and the appropriate Vice President or Provost are not appealable.

If the Designee determines that new evidence should be considered, the Designee may review the new evidence or refer the case to the investigator to reconsider in light of the new evidence only. The investigator will review the new evidence and submit an addendum to the original report for review by the appropriate Vice President or Provost. The reconsideration of the investigator and appropriate Vice President or Provost is not appealable.

If the University receives an allegation that the Respondent has violated any of the sanctions, the University will treat the allegation as a new allegation of a violation of the University Sexual Misconduct Policy and will begin a new investigation pursuant to this policy.

## **Student Rights**

### **Complainant**

- To have all allegations of sexual misconduct taken seriously and to be given a timely and respectful response.
- To be given amnesty (Complainant and witness) for minor student misconduct violations (such as alcohol or drug use) that is secondary to the sexual misconduct incident.
- To be informed of immediate measures for medical care and preservation of evidence if applicable.

- To be informed about University and community support services and resources.
- To be told about criminal and student conduct reporting options and the right to be assisted by campus authorities.
- To learn about possible protective measures, including but not limited to, change in class schedules, alternative housing assignments, campus employment, and restricted contact.
- To be offered a trained University faculty/staff member to serve as a support person and resource.
- To have an advisor other than the University provided support person to assist during the investigation and resolution process.
- To be have related policy, process and support information explained clearly and fully at every stage of the conduct process.
- To suggest names of witness to be interviewed during the investigation process and provide the investigator with questions that they would like asked of the complainant or witnesses.
- To review, consistent with FERPA, any evidence gathered.
- To be informed in writing of the outcome of the student conduct proceeding and appeal procedure at the same time the Respondent is informed.
- To be notified of any change in the investigation results prior to when they become final.
- To be notified when the results become final.

### **Respondent**

- To be informed of all allegations of sexual misconduct in a timely and respectful manner.

- To be informed about University and community support services and resources.
- To learn about possible measures, including but not limited to, change in class schedules, alternative housing assignments, campus employment and restricted contact.
- To be offered a trained University faculty/staff member to serve as a support person and resource.
- To have an advisor other than the University provided support person to assist during the investigation and resolution process.
- To be have related policy, process and support information explained clearly and fully at every stage of the conduct process.
- To suggest names of witness to be interviewed during the investigation process and provide the investigator with questions that they would like asked of the complainant or witnesses.
- To review, consistent with FERPA, any evidence gathered.
- To be informed in writing of the outcome of the student conduct proceeding and appeal procedure at the same time the Complainant is informed.
- To be notified of any change in the investigation results prior to when they become final.
- To be notified when the results become final.

### **Student Sanctions**

Sexual Misconduct is a Level IV Judicial violation. Sanctions may include Monetary Fine; Restitution; Restricted Access; Living Unit Probation; Living Unit Dismissal; Disciplinary Probation; Disciplinary Probation with Restrictions; Alcohol/Drug/Anger Assessment; Suspension; or Dismissal. (Definitions of these sanctions can be found in the Campus Life Handbook under Section 10 – Judicial Sanction Defined.)

A student found to be responsible for nonconsensual sexual intercourse may be dismissed from the University or suspended for a minimum of one semester, and additional sanctions as described above may be imposed.

**First time offenders who are found responsible for nonconsensual sexual intercourse** will receive a sanction to include at minimum the following:

- The offender may be suspended from the university for a minimum of one semester or up to dismissal;
- They will not be allowed on campus during the period of suspension;
- Contact with the victim/survivor is strictly forbidden;
- The offender must submit documentation of counseling received off-campus prior to return. The documentation must include an assessment of the student's ability to return to campus without threatening the safety of others, and the counselor must be licensed and approved by the Associate Dean of Students.

**Second time offenders found responsible for nonconsensual sexual intercourse** will receive a minimum of the following sanction:

- Dismissal from the University.
- Permanent exclusion from campus.

Student-Athletes who are found in violation of the sexual misconduct policy may receive additional sanctions from the Athletic Department, including but not limited to, suspension from athletics practices, contests, or other activities. Student-Athletes may also be suspended from the team for a designated period of time.

Criminal liability can be incurred in a sexual misconduct violation in penalties established in the Ohio Revised Code for all offenses deemed criminal.

### **Records**

Student conduct records/hearing reports are confidential as they are protected under the Family Educational Rights and Privacy Act.

Documentation of sexual misconduct proceedings, including a report and formal correspondence with parties, are kept on file in the Student Affairs Office. All student conduct records resulting from major violations, including sexual misconduct, are kept for seven years. The Vice President for Student Affairs reviews files before expunging. Conduct files on students who have not completed their degree, and are of a more serious nature (felonies and/or dismissals) are kept indefinitely.

Otterbein University academic transcripts include notations of suspensions and dismissals stemming from violations of the Otterbein Code of Student Conduct. Student conduct suspension notations will be removed from the transcript once the required separation period has expired, the student has completed all required conditions, and the student has notified the Registrar's Office in writing. Only after all three criteria have been met will the suspension notification be removed. Student conduct dismissal notations will be permanent.

**Public Information:**

Otterbein generally does not release information to the public concerning an incident of sexual assault, except as required by law or necessary to investigate and reach a resolution of such an incident. Inquiries regarding any such incident may be directed to the Otterbein Police Chief at (614) 823-1222.

**Public Notification of Incidents:**

As required by law, Otterbein collects and annually reports statistical information concerning sexual assaults occurring within its jurisdiction. To promote public safety, Otterbein also alerts the campus community to incidents and trends of immediate concern.

The University provides additional resources on our Title IX Webpage regarding the following topics:

- What to do if you are a victim of a sexual assault
- The involvement of alcohol and drugs in sexual assaults
- Bystander Intervention
- Risk Reduction Tips
- Recognizing warning signs of relationship abuse

This information is located at:

<http://www.otterbein.edu/public>TitleIX.aspx>



**Office of Student Affairs  
614-823-1250**