

SEXUAL MISCONDUCT POLICY

Statement of Purpose

The University of Detroit Mercy is committed to promoting an environment which supports its educational mission and Jesuit and Mercy traditions. In addition, the University seeks to create a climate which preserves the safety and dignity of its members. In particular, the University views, with the utmost seriousness, offenses against an individual such as stalking, sexual harassment, inappropriate sexual touching, sexual assault and any other form of non-consensual sexual activity.

The University experience includes learning to make wise choices. The decision-making process can be a challenge and an opportunity for students, faculty and staff. At the University of Detroit Mercy, choices are framed by an ethical and moral commitment to honesty, to the dignity of the individual and to responsibility to others.

This policy addresses Sexual Misconduct. It provides information on the University's prevention, education and resources related to dealing with sexual misconduct. Once made aware of potential sexual misconduct, this policy addresses how the University will proceed consistent with its institutional policies and values, its legal obligations under Title IX and other applicable state and federal laws. There is a separate policy and protocol for reporting alleged Sexual Harassment that can be found at <http://www.udmercy.edu/hr/current-employees/sexual-harrasment/index.htm#policy>.

Sexual Misconduct is unwanted conduct of a sexual nature that constitutes sexual harassment, sexual assault, relationship violence (including domestic violence and dating violence) or stalking, and includes related acts of retaliation.

Definitions and Principles of Sexual Assault

Sexual assault is a forcible act or non-forcible act or sexual contact that occurs without the consent or permission of the other person.

For the purposes of the Sexual Misconduct and Sexual Assault violations, the following definitions shall apply:

Consent

Consent is an understandable exchange of affirmative words or actions that indicate a willingness to participate in mutually agreed-upon, sexually explicit touching or sexual penetration. Consent must be informed and freely given. The willingness to participate must be clearly indicated prior to any sexual activity, *and again*, prior to sexual penetration. If at any time during the sexual interaction any confusion or ambiguity should arise on the issue of consent, it is *imperative* that each individual involved in the activity stop and clarify, verbally, the other's willingness to continue.

1. A verbal "no," even if it may sound indecisive or insincere, constitutes lack of consent.
2. When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent.
3. It is expected that, after consent has been established, a person who changes his/her mind during the sexual activity will communicate through words or actions, his/her decision to no longer proceed.
4. Past consent to sexual activity does not imply future ongoing consent, and the fact that two persons are in an ongoing relationship shall not preclude the possibility that sexual misconduct or sexual assault might occur within that relationship.
5. A student's use of alcohol and/or other drugs shall not diminish a student's responsibility to obtain consent.

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Incapacity

Incapacity is when a person is considered incapable of giving consent if he/she is asleep, unconscious and/or losing and regaining consciousness, or clearly mentally or physically incapacitated, for example, by alcohol and/or other drugs (signs of being incapacitated include, but are not limited to, difficulty walking, inability to speak in a coherent manner, vomiting or the presence of vomit, etc.).

Sexually Explicit Touching

Sexually explicit touching is the unwanted touching of another person in a sexual manner. Examples of sexually explicit touching include, but are not limited to, the touching, either directly or through clothing, of another person's genitalia, breasts, inner thigh, or buttocks of any person with a clothed or unclothed body part or object.

Sexual Penetration

Sexual penetration is defined as any degree of insertion of a penis, hand, finger, tongue, or any object into a person's anus or vulva, or any degree of insertion of genitalia into the mouth.

Coercion

Coercion is the use of force, or the threat of force, the use of a threat of immediate or future harm, or the use of physical or severe and/or pervasive emotional intimidation to cause or attempts to cause another person to engage in or submit to certain activities. Coercion also includes the administration of a drug, intoxicant or similar substance that impairs the faculties of a person.

Relationship violence

Relationship violence means a violence committed by a person who is or has been in a social relationship or a romantic or intimate nature with the victim. Relationship violence includes:

Domestic violence: An intra-family offense that results in physical injury, including physical pain or illness, or that caused or was intended to cause reasonable fear or imminent serious physical injury or death.

Dating violence: An offense against an intimate partner (romantic, dating, or sexual relationship) that results in physical injury, including physical pain or illness or that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

Stalking is a course of conduct directed at a specific individual with the intent to cause (or where the person knows, or should know, it would cause the individual) that individual to fear for his or her safety or the safety of another person, feel seriously alarmed, disturbed, frightened or suffer emotional distress.

Communication

Clear communication between two individuals is required by the University of Detroit Mercy's Sexual Misconduct and Sexual Assault definitions, which require each participant to obtain and give consent before engaging in any sexual activity. Relying solely upon nonverbal communication can lead to miscommunication. Communication is a foundational process that affects all of our relationships and interactions. Basic elements of communication take on even greater significance when they pertain to intimate and possible sexual relationships. Healthy communication demonstrates a respect for the dignity of each person, allows mutual self-expression and requires careful listening. Individuals take responsibility to communicate effectively by articulating their thoughts and feelings and asking for clarification when they are uncertain or where they do not understand. The effectiveness of communication increases when individuals are aware of their own personal motivations and when individuals are sensitive to the meaning intended by another. Open, honest and direct communication requires courage and commitment to the process of communication and to each other.

Clarity in communication, both verbal and non-verbal, is essential during a sexual encounter. Physical expression between two individuals marks the integration of thoughts, feelings and actions in a way that values, esteems and

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respects the dignity of oneself and another. This expression should reflect the depth of intimacy shared in the context of a relationship. Any sign of reservation or hesitation should be clarified verbally, before proceeding.

Alcohol, Drugs and other Substances

Students are urged to exercise caution if they choose to use alcohol, drugs or other substances which affect decision-making ability. The consumption of alcohol and/or the use of drugs or other substances often lowers inhibitions, may cause some people to become more aggressive, and always impairs judgment. Sexual activity with someone who has consumed alcohol, drugs or other substances creates the potential for later confusion concerning questions of consent. Sexual activity with a person who is impaired may be considered a violation of the Student Code of Conduct.

Support and Resources

The University encourages students to make use of appropriate resources and will assist all persons involved in an allegation of sexual assault. Resources for those who believe a violation has occurred include:

Wellness Center (Student Health Center/Personal Counseling) – 313.993.1459 or 313.993.1170

Individual Counseling Service (Dental School) – 313.494.6938

Office of Residence Life – 313.993-1230

Dean of Student's Office – 313.993.1028

University Ministry – 313.993.1560

Department of Public Safety – 313.993.1123

Each office is prepared to offer assistance to students. In addition to the previously mentioned resources on campus, at the request of either/or the complainant and the accused, referrals for off-campus counseling and support services can be provided. All offices respect and support the students' right to privacy.

Other resources available to persons who report being the victim of sexual assault, domestic violence, dating violence, or stalking, include:

<http://www.rainn.org> - Rape, Abuse and Incest National Network

<http://www.wcsafe.org> - Wayne Sexual Assault Forensic Examiners Program

<http://www.ovw.usdoj.gov/sexassault.htm> - Department of Justice

<http://www2.ed.gov/about/offices/list/ocr/index.html> - Department of Education, Office of Civil Rights

Prevention and Education

The University sponsors a variety of educational programs that seek to raise awareness of sexual assault issues and maximize prevention and of such events, including other programs coordinated through the Office of the Dean of Students and Department of Public Safety, through collaborative efforts with all three campuses to prevent sexual misconduct through education, awareness and skill building.

Title IX Coordinator and Deputy Title IX Coordinators

The following have been designated as the Title IX Coordinator to coordinate the University of Detroit Mercy's compliance with the Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, including sexual harassment and sexual assault:

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Interim Title IX Coordinator

Monica Barbour, Associate Vice President

3rd Floor, Fisher Administration Bldg.

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titleix@udmercy.edu

313.993.1951

Title IX Deputy Coordinators

Monica J. Williams, Dean of Students

Student Center Rm. 10, McNichols Campus

leonarmj@udmercy.edu

titleix@udmercy.edu

313.993.1028

Lanae Gill, Director of Residence Life

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313.993.1231

Megan Jennings, Assistant Dean of Students

Law School, Rm. 131

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313.596-0209

Juliette Daniels, Assistant Dean of Student Services and Enrollment

Dental School, Rm. 470

danieljc@udmercy.edu

titleix@udmercy.edu

313.494-6850

Reporting

Individuals who believe that they have been subject to sexual misconduct may choose (a) to report the incident to the University so that appropriate action can be taken, including implementing procedures within the University's disciplinary procedures; (b) to report the incident to the Department of Public Safety and/or (c) to not report the incident. Reports may be made regardless of when the incident(s) occurred.

Students and employees who are unsure about whether they want to report may contact a confidential resource. Going to a confidential resource does not foreclose the opportunity to make a report to the University or file a formal complaint at a later time. Confidential reporters can also help students and employees understand what reporting options are available and assist with the process if they choose to file a formal complaint. **For all students (undergraduate, graduate, Law and Dental), the University's confidential reporters are:**

Annamaria Silveri, RN, LPC, LLP, PhD

313.993.1459

Marjorie Lang, MA, LLPC, JD

313.993.1170

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Natalie Wicks, LMSW, ACSW
313.578.0496

Julie Hamilton, ASCW, CAADC (Dental)
313.494.6938

When reports are made to the Title IX Coordinator or a Title IX Deputy Coordinator, the University has the obligation to review all reports and respond appropriately. Whether or not to report is your choice. The Title IX Coordinators can assist you in filing a formal complaint or can work with you to provide other forms of assistance if you do not want to file a formal complaint.

Reporting Obligation for Faculty and Staff

The University recognizes that supervisors (including those who supervise employees and those who supervise students) bear a particularly important responsibility to deter sexual misconduct. Any faculty or staff member (other than those who are statutorily prohibited from reporting) who learns of conduct that may violate this policy must contact the appropriate Title IX Coordinator or Deputy as soon as possible within 24 hours. Only those individuals who are statutorily prohibited from reporting (such as health professionals and certain members of University Ministry to whom the pastoral privilege applies) shall not have a duty to report to the Title IX Coordinators. If in doubt as to whether certain conduct violates this policy, or if you have questions about this policy or its application, call Human Resources for a consultation.

Confidentiality

If you disclose information to another University employee, they are required to report this information to a Title IX Coordinator for investigation.

Title IX requires the University to balance the needs of the individual reporting an incident who may request confidentiality with its obligation to end the harassment and consider the well-being of the community at large. Depending on the facts of the alleged incident, further action, such as a campus security alert, may be necessary. The alert, however, would never contain any information identifying the individual who brought the complaint. If the misconduct is reported to the Title IX Coordinator or Title IX Deputy Coordinator, the University must respond appropriately.

If you are concerned about confidentiality, discuss this issue first with a University confidential reporter, who will be able to explain the various options you may take, the implications for each option and direct you to other on- or off-campus resources as appropriate.

Throughout the course of an investigation, information will be disclosed only to select officials who have an essential need to know in order to carry out their university responsibilities. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted.

In the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student. While the University takes seriously a victim's request for confidentiality, in certain instances where a health or safety emergency exists, or if the University determines such communication is otherwise deemed appropriate, parents may be contacted.

Retaliation

It is a violation of University policy to retaliate in any way against an individual or a group because that individual or group of individuals reported an allegation of sexual misconduct. The University will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. Following a report

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that is made in good faith, an individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation.

Even when a complainant does not specifically request that protective action, the University may take such measures to protect the safety of the University community, to enable the complainant and witnesses to continue studies and work, and to ensure the integrity of an investigation. The range of interim measures varies and, at the sole discretion of the University based on the circumstances, may include the following actions. Requests for interim measures can be made whether or not you decide to file a complaint with the Dean of Students Office, Human Resources or with the Department of Public Safety.

Interim Measures for Students:

- No-Contact orders
- Alternate on-campus housing
- Class schedule modification
- Academic adjustments
- Public Safety escort
- General safety planning

Interim Measures for Employees:

- No-Contact orders
- Administrative leave for the victim or accused
- Work schedule modification
- Public Safety escort
- General safety planning

Help for the Accused/Respondent

Do not contact the complainant (the person who filed the complaint). Contact the Title IX Deputy Coordinator, who will explain (1) the University's procedures for addressing sexual misconduct complaints, (2) the rights and responsibilities of the Complainant and Respondent, (3) the prohibition against retaliation and (4) explain the grievance process.

Rights of the Accused

- You have the right to receive notice of the allegations and an opportunity to be heard and present your description of the events. Witnesses that you identify can also be identified to support your description.
- You have the right to a prompt and equitable investigation.
- You will have the opportunity to fully and completely provide your side to the investigator.
- As a student, you have access to the Wellness Center for support and counseling.
- As a University employee, you have access to the University Employee Assistance Program or the University Psychology Clinic for support and counseling.

Enforcement

The University enforces this policy by means of the student discipline system and through penalties for violations of the Student Code of Conduct. Employees charged with sexual assault will be subject to the University's disciplinary procedures set forth in the Employee Handbook under Workplace Violence. Sexual offenses are viewed as a major violation of both the Student Code of Conduct and the Employee Handbook, subjecting the persons

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responsible to sanctions up to and including permanent separation from the University. Complainants will be informed promptly of all available resources and options, as well as the result of any disciplinary action taken.

A student or employee charged with sexual assault and who has been disciplined by the University of Detroit Mercy, under applicable code of conduct or handbook, may also be charged under Michigan criminal statutes by the Wayne County Prosecutor. A victim may also choose to file civil charges. The commencement and outcome of these actions are independent of one another.

Mandatory Reporting of Child Sexual Assault/Abuse

The Michigan Child Protection Law, MCL 722.621 et. seq. requires the reporting of child (a minor under 18 years of age) sexual assault /abuse to the Michigan Department of Human Services. The persons required to make a report (mandated reporters) include, among others: a physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician and/or social service technician.

The legal definition of sexual assault generally refers to any unwanted sexual activity as outlined by the Michigan Penal Code, Act 328, 1931: <http://legislature.mi.gov/doc.aspx?mcl-750-520g>.