

## **Policy Against Title IX Sexual Harassment and Sexual Misconduct**

### **I. Policy Statement**

It is the policy of Olivet Nazarene University to provide a work and educational environment free of all forms of sex discrimination. Accordingly, the University has established a Policy Against Title IX Sexual Harassment and Sexual Misconduct ("Policy") that articulates the University's behavioral standards and descriptions of prohibited conduct. The Policy and related procedures – the Title IX Sexual Harassment Investigation and Resolution Procedures ("Title IX Sexual Harassment Procedures") and Sexual Misconduct Investigation and Resolution Procedures ("Sexual Misconduct Procedures") – outline the University's approach to addressing reports of Title IX Sexual Harassment, Sexual Misconduct, and other alleged or suspected violations of this Policy, taking into account the University's status as a private institution of higher education and its unique mission and culture. The University is committed to the prompt and equitable resolution of all alleged or suspected violations of this Policy about which the University knows or reasonably should know to the fullest extent possible under the circumstances. Because the University's approach to resolving alleged or suspected violations of this Policy is grounded in its mission and purpose as an educational institution, its approach is educational, rather than legal or judicial. As a result, the University retains the discretion to exercise its academic and educational judgment in investigating and resolving alleged or suspected violations of this Policy in a manner that is consistent with applicable laws and regulations.

The University is committed to complying with the requirements of Title IX of the Education Amendments of 1972 ("Title IX") and the U.S. Department of Education's regulations implementing Title IX, the Violence Against Women Reauthorization Act of 2013, and the Illinois Preventing Sexual Violence in Higher Education Act. The University is also committed to complying with Title VII of the Civil Rights Act of 1964 ("Title VII") and the Illinois Human Rights Act ("IHRA"), which prohibit discrimination on the basis of sex in employment (Title VII and IHRA) and in higher education and places of public accommodation (IHRA).

Consistent with Title IX and its implementing regulations (see 34 C.F.R. § 106 et seq.), the University prohibits Title IX Sexual Harassment that occurs within its Education Programs and Activities (as defined below). For purposes of this Policy, Title IX Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

### **II. Scope**

This Policy applies to all students, faculty, and staff, to other members of the University community, and to contractors, consultants, and vendors doing business or providing services to the University.

This Policy applies to Title IX Sexual Harassment that occurs in the United States and within the University's Education Programs and Activities and is committed by a current

administrator, faculty member, staff, student, contractor, guest, or other member of the University community. For purposes of this Policy, Title IX Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. Reports or complaints of Title IX Sexual Harassment will be governed by the University's **Title IX Sexual Harassment Procedures**.

This Policy also applies to Sexual Misconduct that occurs on-campus and off-campus, when the off-campus conduct: (i) occurs during a University sponsored employment or education activity or program; (ii) adversely impacts the education or employment of a member of the University community; or (iii) otherwise threatens the health and/or safety of a member of the University community. For purposes of this Policy, Sexual Misconduct includes sex-based discrimination and harassment that does not fall within the definition of Title IX Sexual Harassment. It also includes Title IX Sexual Harassment that occurs outside the University's Education Programs and Activities or outside the United States (such as in a study abroad program). Reports or complaints of Sexual Misconduct will be governed by the University's **Sexual Misconduct Procedures**.

Where a complaint or report of conduct that allegedly or potentially includes acts of both Title IX Sexual Harassment and Sexual Misconduct, and where the allegations involve the same parties or are otherwise materially related, the allegations will be consolidated and addressed using the **Title IX Sexual Harassment Procedures**.

### **III. Definitions of Prohibited Conduct**

#### **A. Title IX Sexual Harassment**

Title IX Sexual Harassment is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

##### **1. Quid Pro Quo Sexual Harassment**

Quid Pro Quo Sexual Harassment is an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.

##### **2. Hostile Environment Sexual Harassment**

Hostile Environment Sexual Harassment is unwelcome conduct determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it effectively denies a person access to the University's education programs and activities.

### 3. Sexual Assault

“Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>1</sup>

- a. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
- b. “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- c. “Sexual Assault with an Object” is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
- d. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- e. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Illinois law.
- f. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Illinois law

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<sup>1</sup> The University’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the University to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

#### **4. Domestic Violence**

Domestic Violence is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Illinois, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Illinois.

#### **5. Dating Violence**

Dating violence is violence committed by a person –

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship will be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship

#### **5. Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress

#### **B. Sexual Misconduct**

##### **1. Non-Title IX Sexual Harassment**

Non-Title IX sexual harassment ("sexual harassment") is unwelcome communication or conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors and other verbal, written or physical conduct of a sexual nature, without regard to whether the parties are of the same or different genders or gender identities. It includes:

- a. Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking as defined above, that occurs outside of the University's Education Programs or Activities or outside the United States;

- b. Unwelcome conduct that does not rise to the level of Hostile Environment Sexual Harassment, as defined in this Policy, but that:
- is sufficiently serious (severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities; or
  - that has the purpose or effect of unreasonably interfering with an individual's work or academic performance

## 2. Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for personal benefit, or to benefit anyone other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses.

Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Exceeding the boundaries of consent;
- Engaging in non-consensual voyeurism;
- Knowingly transmitting an STI, such as HIV, to another without disclosing one's STI status;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals;
- Possessing, distributing, viewing or forcing others to view illegal pornography;
- Inducing incapacitation for sexual purposes includes using, or causing another person or person to use drugs, alcohol, or other means with the intent to affect the ability of an individual to consent or refuse to consent (as "consent" is defined in this Policy) to sexual contact, regardless of whether prohibited sexual contact actually occurs.

## IV. Other Definitions

**A. Consent:** Consent refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.

**B. Incapacitation:** Incapacitation is a state where one cannot make a rational, reasonable decision to engage in sexual activity because they lack the ability to understand the fact, nature, or extent of the act (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction), and/or are physically helpless.

**C. Coercion:** Coercion is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to Coercion for purposes of this Policy unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

**D. Complainant:** the party who has alleged Sexual Misconduct or Title IX Sexual Harassment or to whom Sexual Misconduct or Title IX Sexual Harassment was directed.

**E. Respondent:** the party who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct or Title IX Sexual Harassment

**F. "Education Programs and Activities"** refers to all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Title IX Sexual Harassment occurs, including Title IX Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.

## **V. Understanding Hostile Environment Sexual Harassment**

In considering whether a hostile environment exists for purposes of both Title IX Sexual Harassment and sexual harassment, as defined above, the University will consider the totality of the circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The University encourages members of the University Community to report any and all instances of sexual harassment, even if they are unsure whether the conduct rises to the level of a policy violation. Some specific examples of conduct that may constitute Hostile Environment Sexual Harassment and/or sexual harassment if unwelcome include, but are not limited to:

- Repeated comments about a person's physical appearance;
- Sexually suggestive remarks, insults, jokes, humor, or innuendo;
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes
- Displays of sexually suggestive material, including sexual graffiti, pictures, videos, or posters;
- Using sexually explicit profanity;
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin;
- Sending sexually explicit emails, text messages, or social media posts;
- Commenting on a person's dress in a sexual manner;
- Unwelcome advances or conduct such as touching, patting, caressing, kissing or sexual propositions;
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship;
- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact;
- Sexual advances accompanied by threat of punishment or promise of reward including the withholding or giving of grades and promotions;
- E-mail and Internet use that violates this policy.

## **VI. Understanding Consent**

Consent to engage in sexual activity must be informed, freely given and mutual. Consent must be ongoing, throughout each instance of sexual activity, and for each form of sexual contact. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact. For example, an individual may agree to kiss but choose not to engage in touching of the intimate parts or sexual intercourse. An individual should obtain consent before moving from one act to another. In the state of Illinois, consent can never be given by minors under the age of 17.

- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Relying on nonverbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of verbal or physical resistance or lack of active response alone. Consent cannot be inferred by an individual's manner of dress. In the absence of an outward demonstration, consent does not exist. If at any time

it is apparent to either party that the other party is hesitant, confused or uncertain, both parties should stop and obtain mutual consent before continuing sexual activity.

- A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Further, a person's consent to past sexual activity does not constitute consent to future sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates willingness to engage in sexual activity each time such activity occurs.
- Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.
- Consent does not exist if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual contact.
- Consent can be withdrawn at any time.
- A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following:
  - The individual is incapacitated due to drug or alcohol consumption, either voluntarily or involuntarily;
  - The individual is unconscious, asleep or otherwise unaware that the sexual activity is occurring;
  - The individual is under age (17 years in Illinois); or
  - The individual has a mental disability that impairs his/her/their ability to provide consent.

A finding of a lack of consent can occur even if: (a) the Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent, or (b) the Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

## **VII. Understanding Incapacitation**

Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction), and/or is physically helpless. For example, an individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings, or the inability to communicate for any reason. Where alcohol or other drugs are involved, one does not have to be intoxicated or drunk to be considered incapacitated. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's decision-making capacity,

awareness of consequences and ability to make informed judgments, or capacity to appreciate the nature of the act.

Whether a responding party reasonably should have known that a Complainant was incapacitated will be evaluated using an objective reasonable person standard. The question is whether the Respondent knew, or a sober, reasonable person in the position of the responding party, knew or should have known, that the Complainant was incapacitated. An individual may experience a blackout state in which they appear to be giving consent, but do not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication or impairment. It is the responsibility of each party to be aware of the intoxication level of the other party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent.

#### **VIII. Non-Retaliation**

“Retaliation” is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or the Illinois Preventing Sexual Violence in Higher Education Act, or because an individual has, in good faith, opposed any practices forbidden under this Policy or made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy or the related Sexual Misconduct Procedures or Title IX Sexual Harassment Procedures.

It is a violation of University Policy to engage in Retaliation. This includes action taken against a bystander who intervened to stop or attempted to stop Sex Discrimination, or Title IX Sexual Harassment. Retaliation may take many forms, and may include intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy.

The University will take immediate and responsive action upon receiving any report of Retaliation and may pursue disciplinary action as appropriate.

Reports or Formal Complaints of Retaliation based on a complaint of Title IX Sexual Harassment or participation in the Title IX Sexual Harassment Procedures may be made in the manner specified in the Title IX Sexual Harassment Procedures, and will be processed under those Procedures in the same manner as a report or Formal Complaint of Title IX Sexual Harassment.

Reports of Retaliation based on a complaint of Sexual Misconduct or participation in the Sexual Misconduct Procedures may be made in the manner specified in the Sexual Misconduct Procedures, and will be processed under those Procedures in the same manner as a report of Sexual Misconduct.

The University retains discretion to consolidate a report or Formal Complaint of Retaliation with a report or Formal Complaint of Title IX Sexual Harassment or Sexual Misconduct, as the case may be, for investigation and/or adjudication purposes if the two complaints share a common nexus.

Individuals who engage in Retaliation as defined by this Policy may be subject to disciplinary action that may include, but is not limited to, the sanctions listed in the Title IX Procedures or Sexual Misconduct Procedures, as appropriate, up to and including dismissal or other separation from the University.

#### **IX. Bad Faith Complaints and False Information**

It is a violation of this Policy for any person to submit a report or complaint alleging conduct prohibited under this Policy that the person knows, at the time the report or complaint is submitted, to be false or frivolous. It is also a violation of this Policy for any person to knowingly make a materially false statement during the course of an investigation, information resolution, hearing, or appeal under this Policy. Violations of this Section will be addressed under the Student Code of Conduct for students, the Faculty Handbook for faculty, or other University policies and standards for employees and other persons.

#### **X. Title IX Coordinator & Title IX Committee**

The University's Title IX Coordinator and members of the Title IX Committee are available to meet with or talk to students, faculty and staff regarding issues relating to this Policy.

##### **Title IX Coordinator**

Tom Ascher  
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The Title IX Coordinator is responsible for implementing this Policy and the related Title IX Sexual Harassment and Sexual Misconduct Procedures. The Title IX Coordinator is also responsible for monitoring compliance with Title IX and its implementing regulations, the Illinois Preventing Sexual Violence in Higher Education Act, and other federal and state laws applicable

to this Policy. This includes coordination of training, education, communications, and administration of the complaint and grievance procedures for the handling of suspected or alleged violations of this Policy.

**Title IX Committee Members:**

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**XI. Educational Programming**

The University will provide the following education programming designed to promote the awareness of Sexual Misconduct and Title IX Sexual Harassment.

**A. Officials with Responsibility for Investigating or Adjudicating Alleged Violations of this Policy**

The University will provide officials responsible for the investigation, adjudication, or informal resolution of misconduct under this Policy with annual training regarding Title IX Sexual Harassment and Sexual Misconduct, including:

- The University's Policy and procedures;
- The relevant federal and State law concerning Sexual Assault, Domestic Violence, Dating Violence, and Stalking;
- Training on at least an annual basis on how to conduct an investigation and hearing process that protects the safety of all participants and promotes accountability;
- The roles of the University, medical providers, law enforcement, and community agencies in ensuring a coordinated response to a reported incident of sexual violence;
- The effects of trauma on a Complainant
- The types of conduct that constitute Sexual Assault, Domestic Violence, Dating Violence, and Stalking, including same-sex violence;
- Consent and the role drugs and alcohol use can have on the ability to consent;
- Cultural sensitivity and compassionate communication skills for dealing with persons reporting or accused of sexual misconduct; and
- Trauma-informed response training.

**B. Primary Prevention and Awareness Programs**

The University will provide primary prevention and awareness programs for all incoming students and new employees that includes the following:

- A statement that the University prohibits the offenses of Sexual Assault, Domestic Violence, Dating Violence, and Stalking, and a description of the University's policies and procedures that prohibit this conduct;
- The definition of consent and inability to consent, in reference to sexual activity, as defined in this Policy and under Illinois law;
- The definition of Title IX Sexual Harassment and Sexual Misconduct, including Sexual Assault, Domestic Violence, Dating Violence, and Stalking (or similar offenses) in this Policy and under Illinois law;
- The definition of retaliation as it relates to Sexual Assault, Domestic Violence, Dating Violence, and Stalking;
- Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of Sexual Assault, Domestic Violence, Dating Violence, and Stalking against a person other than such individual;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- The procedures that a Complainant should follow if Sexual Assault, Domestic Violence, Dating Violence, and Stalking as described in this Policy, has occurred;

- The Complainant’s options for reporting such incidents to the University, to University law enforcement, and to local law enforcement;
- The option for either a party to discuss incidents or accusations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking with a confidential advisor or other confidential resource;
- Available services for both Complainants and Respondents;
- The possible sanctions and protective measures that the University may impose following a final determination under this Policy and related procedures;
- The procedures that the University will use to investigate and resolve allegations of Title IX Sexual Harassment and Sexual Misconduct as described in this Policy, including the standard of proof that is used;
- Information about how the University will protect the confidentiality of the parties, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the parties, to the extent permissible by law;
- Information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for student and employee Complainants and Respondents both on-campus and in the community; and
- Information about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by a party and if such accommodations are reasonably available, regardless of whether the Complainant chooses to report the crime to campus security or local law enforcement.

### **C. Ongoing Prevention and Awareness Campaigns**

The University will also provide ongoing prevention and awareness campaigns for students and employees that include the information covered in the primary prevention and awareness programs.

## **XII. Changes in this Policy**

The University reserves the right to make adjustments and changes in this Policy at any time. Last updated August 26<sup>th</sup>, 2020.