

## POLICIES AND PROCEDURES SEXUAL MISCONDUCT

The University of Dayton **Sexual Misconduct Policy** includes **Sexual Assault** (including acquaintance or date rape), **Non-Consensual Sexual Contact**, **Sexual Exploitation** and **Student to Student Sexual Harassment**. Because violation of this Policy demonstrates a profound lack of respect for the dignity of each person, the University of Dayton will not tolerate sexual misconduct in any form.

*A primary assertion of both our religious and civil traditions is the inviolable dignity of each person. Recognition of and respect for the person are central to our life as a Christian and educational community and are what allow us to pursue our common mission while being many diverse persons. Thus, discrimination, harassment, or any other conduct that diminishes the worth of a person are incompatible with our fundamental commitment as a Catholic university conducted in the Marianist tradition.*

*Every person, regardless of race, color, creed, national origin, gender, sexual orientation, age or disability shall be treated with respect and dignity. No person shall be subject to any sexual, racial, psychological, physical, verbal or other similar harassment or abuse,...(Statement on Dignity, March 1999)*

In addition to the University's Statement on Dignity, additional fundamental principles form the basis for this policy:

- Sexual Misconduct encompasses a wide range of behaviors, all of which must be confronted directly by the UD community.
- Sexual Misconduct hinges on the concept of consent, i.e. sexual permission. Because consent is so critical to this issue, it is defined in considerable detail in this policy.
- The use of alcohol or drugs blurs the distinction between consent to engage in any and all levels of sexual activity and coercion or manipulation to do so.
- Real or perceived power differentials between individuals may create an intentional or unintentional atmosphere of coercion or manipulation.
- Educational and preventative measures, including effective policies and programming, are necessary components of UD's commitment to reducing sexual misconduct in our community.
- Responding effectively to sexual misconduct necessitates the coordinated efforts of Residential Programs, Public Safety, the Counseling and Health Centers, Campus Ministry, the Women's Center and individual faculty and staff.
- UD will take seriously every report of sexual misconduct, offering complainants appropriate support and allowing them to maintain as much control as possible over the situation. At the same time UD will ensure that those accused are treated fairly in the University's processes.

This Sexual Misconduct Policy has been developed to reaffirm our institutional principles and to provide recourse for those individuals whose rights have been violated. In fact it serves a dual purpose: as a measure for determining, after the fact, if behaviors have trespassed on community values and as a preventative guide on the expectations we have for sexual communication, sexual responsibility and sexual respect. Accordingly, when an allegation of sexual misconduct is brought to a member of the University's faculty or staff and someone is

found to have violated one or more aspect of this policy, serious sanctions will be used to ensure that such actions are never repeated.

When sexual misconduct occurs at the University of Dayton, the standards of the campus community are certainly violated. In addition, Ohio Revised Code on sexual imposition, rape, sexual battery and gross sexual imposition may also be violated. Those found responsible of such violations may be subject to criminal prosecution in addition to any University disciplinary action.

### **Sexual Assault:**

Sexual Assault is vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation, *without consent* (see below).

***PASS: Immediate Level 3 suspension upon being found responsible and continued Level 3 suspension for a minimum of two full semesters.***

### **Non-Consensual Sexual Contact:**

Non-Consensual Sexual Contact is any sexual touching, including contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of another, or touching another with any of these body parts, *without consent* (see below). Non-Consensual Sexual contact includes disrobing or exposure *without consent* (see below).

#### **Sexual Assault and Non-Consensual Sexual Contact:**

- Can be committed by a man or a woman against a person of the same or opposite sex.
- Can be committed by current or former lovers, friends and acquaintances.
- Committed in connection with any UD program whether on or off campus, is prohibited. This applies to academic, educational, extra-curricular, athletic, residential and other University programs.
- Cannot be excused by the accused's use of alcohol or drugs.
- When reported, cannot lead to retaliation against the person who brings a complaint, participates in an investigation, or pursues legal action. Such behavior by the accused or other related persons, including acquaintances, friends and family members, will not be tolerated.

#### **Consent exists when:**

- A person freely, actively, and knowingly agrees at the time to participate in a particular sexual act with a particular person.
- It is demonstrated by mutually understandable words and/or actions which indicate a willingness to participate in mutually agreed upon activity at every stage of sexual activity.

#### **There is no Consent when:**

- It is only inferred from a person's silence or lack of resistance.
- There is threat of physical force, harm or intimidation<sup>1</sup> or there is coercion<sup>2</sup>
- A person is a minor.

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<sup>1</sup> Intimidation exists when one person uses their physical presence to threaten or menace another or when the knowledge or prior violent behavior is used to threaten or menace another.

<sup>2</sup> Coercion exists when a person engages in extortive threats, sexual pressuring or oppressive behavior that violates the University community's expectation of respect for the dignity of another person by causing the object of the behavior to engage in unwanted sexual activity. (Coercion can be differentiated from seduction by a repetition of the coercive activity in the face of resistance, the degree of pressure applied, or the initiator's knowledge that the pressure is unwanted.)

- A person is intoxicated and/or is incapacitated<sup>3</sup> by the use of alcohol or drugs, or is asleep or unconscious. The perspective of a “reasonable person” will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another’s ability to give consent.

### **Sexual Exploitation:**

Sexual Exploitation is taking non-consensual, unjust or abusive sexual advantage of another for the exploiter’s personal advantage or benefit, or for the benefit or advantage of anyone other than the person being exploited.

Examples of sexual exploitation include (but are not limited to):

- the secret recording (audio or video) of sexual activity
- complicity in voyeurism
- peeping tommyery
- the knowing transmission of HIV or a STD
- inducing incapacitation with the intent to take sexual advantage of another (whether or not sexual activity actually takes place.)

### **Student to Student Sexual Harassment:**

Sexual Harassment is any pattern of sexually-oriented verbal, visual or physical attention, including electronic communications, by one person upon another, that is unwanted, causes discomfort or embarrassment, and/or creates in intimidating, hostile or offensive environment.

Examples of sexual harassment include but are not limited to:

- Inappropriate comments of a sexual nature
- Unwelcome and repeated flirtations and sexual advances
- Sexually explicit questions, jokes, teasing, or anecdotes
- Touching, patting, hugging, whistling, pinching, brushing against a person’s body, or unwanted staring
- Graphic commentary about an individual’s body, sexual prowess, sexual deficiencies, sexual activity, experience or orientation
- Crude or offensive language of a sexual nature
- Derogatory or demeaning comments based on gender or sexual orientation, whether sexual or not
- Displaying objects or pictures that are sexual in nature and that create a hostile or offensive environment

Students who believe they are being or have been sexually harassed by a member of the UD faculty or staff or an employee of a UD vendor or contractor, should refer to the University’s Human Resources policy on Sexual Harassment. Copies of this policy may be obtained at the Office of Human Resources (#118 St. Mary’s Hall) and other areas that maintain copies of the official University Policy Manual (e.g. Roesch Library, Office of University Administration, offices of all academic deans, etc.)

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<sup>3</sup> Indicators of intoxication and/or incapacitation include but are not limited to: amount of person’s consumption, slurred speech, bloodshot eyes, shaky equilibrium, vomiting, outrageous or unusual behavior, and unconsciousness.