

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

JOHN DOE,)	
)	
Plaintiff,)	CASE NO. 1:17-cv-01335
)	
v.)	Judge Solomon Oliver, Jr.
)	
OBERLIN COLLEGE,)	
)	
Defendant.)	
)	

**DEFENDANT OBERLIN COLLEGE’S
MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Defendant Oberlin College (“Oberlin”) hereby moves this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an Order dismissing the Complaint filed by Plaintiff John Doe (“Plaintiff”) on the grounds that the Complaint fails to state any claims upon which relief can be granted.

The reasons supporting this Motion are set forth in detail in the attached memorandum in support.

Dated: August 21, 2017

Respectfully submitted,

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CASE NO. 1:17-cv-01335

Judge Solomon Oliver, Jr.

**DEFENDANT OBERLIN COLLEGE'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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STATEMENT OF ISSUES

- I. Does Plaintiff John Doe state a claim for a violation of Title IX, 20 U.S.C. § 1681, when Plaintiff does not demonstrate that Defendant Oberlin College's challenged conduct was motivated by sex-based discrimination?
- II. Does Plaintiff state a claim for breach of contract against Oberlin for expelling Plaintiff after he was found to be responsible for committing sexual assault in accordance with Oberlin's sexual misconduct policy when Oberlin fairly administered its policy?
- III. Does Plaintiff state a claim for breach of the covenant of good faith and fair dealing when such a claim is not cognizable under Ohio law?
- IV. Does Plaintiff state a claim for negligence when Oberlin's only duties to Plaintiff are set forth in its written policies and sound in contract?
- V. Does Plaintiff state a claim for negligent infliction of emotional distress when he does not allege that he was in danger of suffering physical harm?

INTRODUCTION AND SUMMARY OF THE ARGUMENT

After an extensive investigation and a full hearing, Defendant Oberlin College (“Oberlin”) found that Plaintiff John Doe (“Plaintiff”) sexually assaulted Jane Roe (“Ms. Roe”) in the early morning hours of February 28, 2016, in violation of Oberlin’s Sexual Misconduct Policy (the “Policy”). Oberlin expelled Plaintiff due to his misconduct.

Now, Plaintiff attempts to improperly litigate the disciplinary findings against him by alleging that Oberlin violated Title IX, 20 U.S.C. § 1681, and various Ohio laws. As a general rule, “courts should refrain from second-guessing the disciplinary decisions made by school administrators.” *Doe v. College of Wooster*, No. 16-cv-979, -- F.Supp.3d --, 2017 WL 1038982, at *4 (N.D. Ohio Mar. 17, 2017) (quoting *Davis v. Monroe Cty. BOE*, 526 U.S. 629, 648 (1999)). As a result, courts, including those in this District, consistently dismiss similar Title IX lawsuits based solely on the Plaintiff’s disappointment with the outcome of a fairly administered disciplinary process. Moreover, Plaintiff’s state law claims fail as a matter of law.

Plaintiff’s Title IX claim (Count III) fails because Plaintiff has not alleged facts that show sex-based discrimination motivated Oberlin’s investigation and adjudication of the sexual assault allegations against him. Plaintiff’s breach of contract claim (Count I) fails because Oberlin followed the procedures in its Policy. Plaintiff’s claim for breach of the covenant of good faith and fair dealing (Count II) is duplicative of Count I and therefore not recognized under Ohio law. Also, where a contract governs the relationship between a student and college, a student may not bring a claim for negligence (Count IV). Finally, Plaintiff has not alleged that he was in danger of physical harm, as required for a claim of negligent infliction of emotional distress (Count V). For all of these reasons, and as described in more detail below, the Court should grant Oberlin’s motion and dismiss Plaintiff’s Complaint.

FACTUAL ALLEGATIONS¹

I. Oberlin's Sexual Misconduct Policy and Student Discipline Process.

Since its founding in 1833, Oberlin, a private college, has established itself as a progressive leader in promoting equity and social justice. Oberlin's Policy can be found on its website.² At the beginning of the Policy, Oberlin affirms its commitment to ensuring "an equitable and inclusive campus free of violence, harassment, and discrimination," and includes its Statement of Non-Discrimination as a foundational framework for the Policy. Policy, at 7, 9-10. The Policy establishes Oberlin's standards for acceptable student conduct and sets forth the procedures by which Oberlin would investigate and adjudicate alleged violations of sexual misconduct. Compl. at ¶ 15 (Doc. No. 1). The Policy prohibits certain conduct by students, including "Sexual Assault," which the Policy defines as "[h]aving or attempting to have sexual intercourse or sexual contact with another individual without consent." *Id.* at ¶ 19 (quoting the Policy, at 17). The Policy makes clear that "[i]t is the responsibility of both parties who engage in sexual activity to ensure that effective consent is obtained for each sexual act and over the entire course of each sexual encounter." Policy, at 19. Effective consent is not possible when a party to the encounter is incapacitated. *Id.* at 20.

When a report of sexual misconduct is made, Oberlin's Title IX team conducts an initial assessment of the report. *Id.* at 34-35. The Title IX team determines the appropriate manner of resolution, and may refer the report for informal resolution or for further investigation and

¹ While Oberlin strongly disagrees with many of the facts asserted by Plaintiff in his Complaint, for purposes of this Motion only, Oberlin accepts the truth of Plaintiff's well-pleaded allegations.

² See https://new.oberlin.edu/office/equity-diversity-inclusion/policies/sexual_misconduct_policy.pdf. A copy of the Policy is attached hereto at Exhibit A. Given that Plaintiff refers to the Policy in his Complaint, *see e.g.* Compl. at ¶¶ 6, 15-34, 37-40, 174-191, and the Policy is central to Plaintiff's claims, the Court may consider the Policy in resolving Oberlin's motion to dismiss. *Bassett v. Natl. Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008); *see also* Compl. at ¶ 37 (alleging that the Policy is "at issue in this case").

formal resolution. *Id.* at 35.

The Title IX coordinator, in consultation with the Title IX team, oversees any such investigation. *Id.* at 36. Upon receipt of an investigator's report, the Hearing Coordinator, in consultation with the Title IX team, makes a threshold determination "as to whether there is sufficient factual information upon which a [Hearing Panel] *could* find a violation" of the Policy. *Id.* (emphasis added). If this threshold is met, the matter may be sent to a Hearing Panel for resolution. *Id.* at 37-39.

The Hearing Panel consists of three specially trained administrators who receive annual training on topics that include, among other areas: non-discrimination; factors relevant to a determination of witness credibility; the evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; and the imposition of sanctions in response to a finding of sexual misconduct. *Id.* at 39. The Hearing Panel "will make factual findings, determine whether College policy was violated, and recommend appropriate sanctions and remedies." *Id.* at 44. The Hearing Panel determines the Responding Party's responsibility by a preponderance of the evidence, which means it is "'more likely than not' . . . that the Responding Party is responsible for the alleged violation," as required by guidance issued by the Department of Education's Office of Civil Rights ("DOE") in 2011. *Id.* at 46.

If the Hearing Panel makes a finding of responsibility by majority vote, it recommends sanctions to the Hearing Coordinator who, in consultation with the Title IX Coordinator, reviews them for fairness and consistency, and imposes an appropriate sanction. *Id.* The outcome of the hearing is provided in writing to both the Reporting Party and Responding Party. *Id.* at 48. A student who is found responsible for sexual misconduct may appeal the Hearing Panel's finding to the Dean of Students (or his/her designee), limited to one of three bases: (1) the finding was

the result of procedural or substantive error that significantly affected the outcome; (2) there is new evidence that was previously unavailable, despite the reasonable efforts of the party, that could substantially impact the finding; or (3) the sanction imposed was significantly disproportionate to the violation. *Id.* at 48-49. The appeals officer provides a written decision on the appeal, which is final, to both the Reporting Party and Responding Party. *Id.* at 49.

II. Plaintiff's Disciplinary Matter.

Plaintiff was expelled as a student from Oberlin on October 11, 2016, after a Hearing Panel found him responsible for committing sexual assault on another student. Compl. at ¶¶ 1, 6, 148-158. The disciplinary matter at issue in Plaintiff's Complaint began as a result of an encounter between Plaintiff and Jane Roe in Plaintiff's residence hall during the early morning hours of February 28, 2016. *Id.* at ¶¶ 66-73. On March 9, 2016, Ms. Roe reported to Dr. Meredith Raimondo, Oberlin's Title IX coordinator at the time, that Plaintiff had sexually assaulted her. *Id.* at ¶¶ 38, 74. On March 16, 2016, Dr. Raimondo emailed Plaintiff, notifying him that Oberlin was investigating a report that he sexually assaulted Jane Roe "while she was incapacitated due to alcohol and unable to consent to sexual activity." *Id.* at ¶ 74. On March 18, 2016, Dr. Raimondo appointed Joshua D. Nolan to investigate Ms. Roe's allegations. *Id.* at ¶ 75. In addition to Dr. Raimondo, Mr. Nolan interviewed 10 people with knowledge of the events surrounding the sexual encounter between Plaintiff and Ms. Roe. *Id.* at ¶ 79. On July 7, 2016, Mr. Nolan issued a report that summarized the results of his investigation. *Id.* at ¶ 78.

On October 5, 2016, Oberlin convened a hearing to weigh the charges against Plaintiff. *Id.* at ¶ 117. A few days earlier, Plaintiff selected Assistant Dean Adrian Bautista to serve as his advisor during the hearing. *Id.* at ¶¶ 118-119; Policy, at 33.³ At the hearing, Ms. Roe testified

³ Under the Policy, the parties select an advisor of their choice. Policy, at 33.

about her level of intoxication during the night and morning at issue due to the amount of alcohol and marijuana she consumed. *Id.* at ¶ 124. She testified that during the sexual encounter, Plaintiff grabbed her neck and forced her mouth onto his penis after he stopped having vaginal intercourse with her. *Id.* at ¶ 121. Ms. Roe went on to testify that she physically resisted Plaintiff's efforts to force her to perform oral sex. *Id.* at ¶ 122. When asked to explain how Plaintiff should have known that she was intoxicated during this encounter, Ms. Roe responded: "Um, I made the statement, 'I am not sober right now.' When I was in his room. And I said, 'I don't feel very sober right now.' And that was when I was laying on my back." *Id.* at ¶ 124.

On October 11, 2016, Oberlin notified Plaintiff and Ms. Roe in writing that Plaintiff had been found responsible for misconduct because "the preponderance of the evidence established that effective consent was not maintained for the entire sexual encounter that occurred on February 28, 2016." *Id.* at ¶ 148. The hearing panel determined that Ms. Roe "was incapacitated and not capable of giving consent when asked to perform oral sex." *Id.* at ¶ 153; *see also id.* ¶¶ 151-152. Oberlin expelled Plaintiff from the college on the same day. *Id.* at ¶¶ 1, 158.

Plaintiff appealed the decision of the hearing panel on October 24, 2016. *Id.* at ¶ 159. In support of his appeal, Plaintiff included statements from two students, J.B. and H.H., and a letter from a physician who discussed subjective and objective indications of intoxication. *Id.* at ¶¶ 163-167. Oberlin denied Plaintiff's appeal on November 21, 2016, and upheld his expulsion. *Id.* at ¶¶ 169, 171. Oberlin rejected the testimony from J.B. on the ground that it "did not challenge the factors that that led to the determination' that Doe should have known Roe was incapacitated." *Id.* at ¶ 169. Oberlin rejected the statement of H.H. on the ground that she could have testified as a witness at the hearing, and also rejected the testimony of the physician on the basis that she "was not there to examine anyone the night of the incident and has never met [Ms.

Roe]” *Id.* at ¶¶ 169-170. On June 23, 2017, Plaintiff filed this lawsuit against Oberlin.

LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 556).

LAW AND ARGUMENT

The Supreme Court has cautioned that, when evaluating a Title IX claim, “courts should refrain from second-guessing the disciplinary decisions made by school administrators.” *Monroe Cty. BOE*, 526 U.S. at 648; *see also Wood v. Strickland*, 420 U.S. 308, 326 (1975) (advising that “[i]t is not the role of federal courts to set aside decisions of school administrators”). Plaintiff’s Complaint asks the Court to disregard this instruction and re-adjudicate private, internal administrative disciplinary processes, the result with which Plaintiff disagrees. In short, Plaintiff wants this Court to act as a policy maker and substitute its judgment for that of Oberlin. Courts, including those in this District, consistently refuse to assume this role. This Court should do the same and dismiss Plaintiff’s Complaint in its entirety.

I. Plaintiff’s Title IX Claim (Count III) Should Be Dismissed For Failure to State a Claim Upon Which Relief Can Be Granted.

Title IX prohibits Oberlin from discriminating “on the basis of sex.” 20 U.S.C. § 1681(a). Plaintiff’s Complaint describes *his* version of the events that took place between him and Jane Roe. However, this Court’s review of Plaintiff’s claims is “substantially circumscribed; the law does not allow this Court to retry the [College’s] disciplinary proceeding.” *Doe v. Univ. of the South*, 687 F.Supp.2d 744, 755 (E.D. Tenn. 2009) (quoting *Gomes v. Univ. of Maine Sys.*,

365 F.Supp.2d 6, 14 (D. Maine 2005)); *see also Yu v. Vassar College*, 97 F.Supp.3d 448, 461 (S.D.N.Y. 2015) (“The Court’s role, of course, is neither to advocate for best practices or policies nor to retry disciplinary proceedings.”). In short, the Court is not charged with making “an independent determination as to what happened between the Plaintiff John Doe and [Jane Roe]” during their sexual encounter. *Univ. of the South*, 687 F.Supp.2d at 755. Instead, the sole question before the Court is whether Oberlin discriminated against Plaintiff based on his sex when Oberlin expelled him for sexually assaulting another student.

Title IX claims that arise from sexual misconduct disciplinary proceedings may be analyzed under the “erroneous outcome” and “selective enforcement” standards. *Mallory v. Ohio Univ.*, 76 Fed.Appx. 634, 638 (6th Cir. 2003); *Univ. of the South*, 687 F.Supp.2d at 756. Under the erroneous outcome standard, “a plaintiff attempts to demonstrate that he was innocent of the charges presented and wrongly found to have committed an offense in an educational institution’s disciplinary proceedings.” *Doe v. Case Western Reserve Univ.*, No. 14CV2044, 2015 WL 5522001, at *4 (N.D. Ohio Sept. 16, 2015) (citing *Yusuf v. Vassar Coll.*, 35 F.3d 709, 715 (2d Cir.1994)). Under the selective enforcement standard, “a plaintiff attempts to show that, regardless of the student’s guilt or innocence, the severity of the penalty and/or the decision to initiate the proceeding was affected by the student’s gender.” *Id.*⁴

Under each of these standards, “a plaintiff must demonstrate that the educational institution’s challenged misconduct was motivated by sex-based discrimination.” *Case Western*, 2015 WL 5522001, at *4 (citing *Mallory*, 76 Fed.Appx. at 639). Here, Plaintiff describes what

⁴ Some courts have recognized the “deliberate indifference” and “archaic assumptions” standards in evaluating certain Title IX claims. Neither standard applies here. The “deliberate indifference” standard applies “where a plaintiff seeks to hold an institution liable for sexual harassment[,]” *Mallory*, 76 Fed.Appx. at 638, and Plaintiff has not alleged that Oberlin subjected him to sexual harassment. The “archaic assumptions” standard is limited to claims involving unequal athletic opportunities. *Doe v. Cummins*, 662 Fed.Appx. 437, 451 n.9 (6th Cir. 2016).

he believes to be a “flawed disciplinary process,” Compl. at Prayer for Relief, ¶ (a), and asks the Court to accept that it must have been caused by sex-based discrimination. But Plaintiff has offered nothing that establishes either the Policy, or the implementation of the Policy in Plaintiff’s case, was motivated by sex-based animus toward male students. Therefore, Plaintiff’s Title IX claim fails as a matter of law and must be dismissed.

A. Plaintiff’s Failure to Offer More Than Conclusory Allegations of Gender Bias is Fatal to His Title IX Claim Under the Erroneous Outcome Standard.

“While school disciplinary boards must be impartial, ‘they are entitled to a presumption of honesty and impartiality absent a showing of actual bias.’” *College of Wooster*, 2017 WL 1038982, at *4 (quoting *Doe v. Univ. of Cincinnati*, 173 F.Supp.3d 586, 601 (S.D. Ohio 2016)). To meet the erroneous outcome standard, Plaintiff must show that Oberlin’s “disciplinary hearing process constitutes a pattern of decision-making whereby the disciplinary procedures governing sexual assault claims is [*sic*] discriminatorily applied or motivated by a chauvinistic view of the sexes[.]” *Case Western*, 2015 WL 5522001, at *5. Mere “allegations of a procedurally or otherwise flawed proceeding that has led to an adverse and erroneous outcome combined with a conclusory allegation of gender discrimination is not sufficient to survive a motion to dismiss.” *Vassar College*, 35 F.3d at 715. Rather, “a plaintiff must allege *facts* sufficient to give rise to an inference that the school *intentionally discriminated* against plaintiff *because* of his or her sex.” *Case Western*, 2015 WL 5522001, at *6 (emphasis added) (quotation and citation omitted).

Allegations sufficient to state a Title IX claim can be similar to those sufficient to state a Title VII discrimination claim, such as “statements by members of the disciplinary tribunal, statements by pertinent university officials, or patterns of decision-making that also tend to show the influence of gender.” *Sahm v. Miami Univ.*, No. 14-cv-698, 2015 WL 2406065, at *4 (S.D.

Ohio May 20, 2015) (quoting *Vassar College*, 35 F.3d at 715). The allegations in Plaintiff's Complaint do not demonstrate that Oberlin discriminated against him on the basis of his sex.

First, the Policy on its face is gender-neutral in that it clearly and unambiguously applies to all students regardless of sex. Further, the Policy prohibits sex-based discrimination. Policy, at 9-10.

Second, Plaintiff has not alleged that any Oberlin officials, including members of the Hearing Panel, engaged in sex-based discrimination when implementing the Policy regarding the complaint made against him. For example, the allegations regarding Dr. Raimondo, even if true, do not help establish gender bias. Plaintiff claims that Dr. Raimondo, one of many Oberlin administrators who helped draft the Policy and Oberlin's Title IX coordinator who received Ms. Roe's report, was motivated "by her views on feminism" in formulating the Policy. Compl. at ¶¶ 11, 208; *see also id.* ¶ 55. Contrary to what Plaintiff may believe, feminism does not seek to engender bias against men. Rather, feminism is the "theory of the political, economic, and social equality of the sexes." *Feminism Definition*, Merriam-Webster.com, available at <https://www.merriam-webster.com/dictionary/feminism> (emphasis added) (last visited Aug. 17, 2017). Plaintiff's allegation that Dr. Raimondo strove to achieve *equality* among the sexes in the formulation and execution of the Policy, therefore, disproves, rather than supports, his Title IX claim. As noted above, the Policy is gender neutral on its face. Further, the Complaint is devoid of any allegation that Dr. Raimondo engaged in any conduct during Plaintiff's disciplinary process that demonstrates bias against males.

Third, the Complaint fails to plead any factual allegations that support the conclusion that Oberlin discriminated against him based on his sex. The Sixth Circuit has noted that "one case by an individual who was subjectively dissatisfied with the result [of a disciplinary proceeding]

does not constitute a pattern of decisionmaking.” *Mallory*, 76 Fed.Appx. at 640 (internal quotation and citation omitted).

Similarly, Plaintiff’s conclusory arguments that colleges and universities are under political and public pressure to wrongly find accused male students responsible for violating sexual misconduct policies have been repeatedly rejected by the courts. The Complaint identifies public criticism levied against Oberlin *and other universities* for the manner in which allegations of sexual assault on campus are investigated and adjudicated. Compl. ¶¶ 36, 46-49. In one instance, a female Oberlin student allegedly complained that Oberlin took too long in adjudicating her sexual misconduct complaint. *Id.* at ¶ 36. The same student also apparently complained that Oberlin did not adequately punish the male student by suspending him after he accepted responsibility for engaging in the misconduct. *Id.*⁵ The Complaint also notes that in November 2015, approximately 18 months after Oberlin adopted its revised Policy, *id.* at ¶ 40, Oberlin learned that it was one of “hundreds” of colleges and universities throughout the nation being investigated by the DOE as to whether its sexual assault disciplinary proceedings comply with Title IX, *id.* at ¶¶ 48-49.

These allegations do not support an inference of gender bias, and a court within this District has already held that similar accusations are insufficient to state a Title IX claim. In *College of Wooster*, the plaintiff alleged that, during the period preceding his disciplinary hearing on allegations of sexual misconduct, the College of Wooster was subjected to substantial criticism from its students and the media for how the college handled complaints of sexual assault. 2017 WL 1038982, at *4. Specifically, the plaintiff cited to a student newspaper article highlighting the need for awareness of a “rape culture” on campus that was biased against

⁵ Here, Plaintiff did not accept responsibility for misconduct in lieu of proceeding with a hearing.

victims, including a comment from a rape survivor criticizing the college for enabling sexual assaults “by sweeping them under the rug[.]” *Id.* (quoting plaintiff’s complaint). In addition, the complaint cited to an article written by a Wooster professor who revealed that she is unnerved “when tensions flare on campus regarding issues of sexual assault and violence.” *Id.* (same). The court concluded that these comments were “gender neutral” and “[a]t most . . . demonstrate that Wooster has previously been criticized by the press and student body for being biased against alleged victims of sexual assault.” *Id.* at *5. This criticism “does not, however, suggest a basis for discrimination against male students.” *Id.*

The *College of Wooster* court is not unique in holding that criticism by the student body, the public at large, or the DOE, of a college’s previous handling of sexual misconduct claims is not evidence of sex discrimination. In particular, Ohio federal district courts reject the notion that a college discriminates against male students in investigating and adjudicating reports of sexual misconduct in response to pressure from the DOE. For example, the Southern District of Ohio recently concluded that “it is not reasonable to infer that [a college] has a practice of railroading students accused of sexual misconduct simply to appease the [DOE] and preserve its federal funding.” *Univ. of Cincinnati*, 173 F.Supp.3d at 602; *see also Doe v. Miami Univ.*, No. 15cv605, 2017 WL 1154086, at *9 (S.D. Ohio Mar. 28, 2017) (rejecting claim that university found male students responsible for sexually assaulting a female student in response to, among things, bad press and a complaint by the DOE), *appeal docketed*, No. 17-3396 (6th Cir. Apr. 20, 2017)).

Federal district courts outside of Ohio have likewise concluded that “pressure from the federal government to investigate sexual assault allegations more aggressively . . . by an investigation directed at the University . . . says nothing about the University’s alleged desire to

find men responsible because they are men.” *Doe v. Univ. of Colo., Boulder*, No. 16-cv-1789, 2017 WL 2311209, at *11 (D. Colo. May 26, 2017). *See also Sterrett v. Cowan*, 85 F.Supp.3d 916, 937 (E.D. Mich. 2015) (holding that a conclusory allegation that defendants were induced by a letter from the DOE to discriminate against plaintiff because of his gender fails to state a claim under Title IX), *opinion vacated and appeal dismissed* (6th Cir. 15-1121) (Oct. 1, 2015).

Likewise, Plaintiff’s allegation that more men are affected by the Policy because more sexual assault complaints at Oberlin are brought by women does not support a Title IX claim. Compl. ¶¶ 52-55. Plaintiff claims that every respondent subject to Oberlin’s formal sexual misconduct resolution process in the Fall of 2015 and at least part of Spring 2016 was found responsible for at least one charge of misconduct with “[u]pon information and belief, the vast majority” of respondents being men and the “vast majority of their accusers” being women. *Id.* at ¶ 209 (emphasis added); *see also id.* at ¶ 54.⁶ Of course, Oberlin is “not responsible for the gender makeup of those who are accused by other students of sexual misconduct[.]” *King v. DePauw Univ.*, No. 2:14-cv-70-WTL-DKL, 2014 WL 4197507, at *10 (S.D. Ind. Aug. 22, 2014) (emphasis in original).⁷

The mere fact that Plaintiff, a male, was accused by a female of sexual misconduct is

⁶ Plaintiff fails to mention that only a small minority of sexual misconduct reports that Oberlin receives proceed to formal process. According to Oberlin’s Spring 2016 Campus Climate Report, which Plaintiff relies on in his Complaint, *see* Compl. ¶¶ 52-54, of the approximately 100 reports of potential sex-based discrimination and harassment that Oberlin received during the 2015-16 academic year, about 20% were referred to a full investigation. Spring Campus Climate Report, at 5-6. Among the 20% of reports referred to a full investigation, only about one-half of those over which the Responding Party was subject to Oberlin’s disciplinary process proceeded to formal process. *Id.* at 6. A copy of the Spring 2016 Campus Climate Report is attached hereto at Exhibit 2.

⁷ *See also e.g., Doe v. Regents of the Univ. of California*, No. 15-cv-02478-SVW-JEM, 2016 WL 5515711, at *5 (C.D. Cal. July 25, 2016) (“[T]he Court cannot plausibly infer, as Plaintiff does, that a higher rate of sexual assault committed by men against women, or filed by women against men, indicates discriminatory treatment of males accused of sexual assault in consequent proceedings.”).

insufficient to support an assertion that his gender played a role in finding him responsible for that misconduct. *See Pierre v. Univ. of Dayton*, No. 15-cv-362, 2017 WL 1134510, at *11 (S.D. Ohio Mar. 27, 2017) (“The University has no control over the gender of a student who accuses another student of sexual misconduct, nor over the gender of the student so accused.”). Plaintiff offers no allegations that, if believed, would demonstrate that Oberlin would have approached the sexual assault report at issue any differently if a female student, rather than Plaintiff, had been accused of sexual misconduct. *See Sahm*, 110 F. Supp. 3d at 779 (dismissing Title IX claim because plaintiff did not assert any facts showing that Miami University [of Ohio] would have treated a female accused of sexual assault any differently).

The allegations in Plaintiff’s Complaint do nothing to allege that Oberlin’s investigation and discipline against Plaintiff were motivated by gender. Compl. ¶¶ 8, 9, 67, 69, 80, 97. Rather, Oberlin’s “focus on the ability to consent merely demonstrates [its] policy decision to punish those who engage in sexual conduct with another person when the first person is aware of the other’s inability to consent.” *Mallory*, 76 Fed.Appx. at 639.

Finally, Plaintiff’s allegations concerning his Hearing Advisor, Associate Dean Bautista, do not save his Title IX claim. Under the Policy, the parties select an advisor of their choice. Policy, at 33. Plaintiff criticizes Mr. Bautista for retweeting a comment from a group called “End Rape on Campus” that stated, “To survivors everywhere, we believe you.” Compl. ¶ 58. But this retweet, allegedly made after Oberlin found Plaintiff responsible for sexual misconduct, “does not equate to gender bias because sexual-assault victims can be both male and female.” *Cummins*, 662 Fed.Appx. at 453. In addition, Mr. Bautista’s role was limited to advising Plaintiff; he had no role in the decision-making process or Plaintiff’s appeal. *See* Policy, at 33. In short, Plaintiff has not cited to “any comments that targeted him based on his gender—as

opposed to his status as a student accused of sexual assault—or any conduct suggestive of gender bias.” *Doe v. Univ. of Massachusetts-Amherst*, No. 14-30143, 2015 WL 4306521, at *8 (D. Mass. July 14, 2015).⁸

Plaintiff has not set forth any evidence that Oberlin was motivated by sex-based discrimination in finding him responsible for sexual assault. Rather, Plaintiff merely challenges the outcome of his disciplinary proceedings, which is insufficient to state a Title IX claim.

B. Plaintiff’s Inability to Allege Facts that Oberlin Treats Female Students Accused of Sexual Assault More Favorably Fails to Satisfy the Selective Enforcement Standard.

To survive a motion to dismiss under the selective enforcement standard, a Title IX Plaintiff must set forth evidence “‘that a female was in circumstances sufficiently similar to [plaintiff’s] and was treated more favorably by the University.’” *Case Western*, 2015 WL 5522001, at *6 (quoting *Mallory*, 76 Fed.Appx. at 641, citing *Curto v. Smith*, 248 F.Supp.2d 132, 146-47 (N.D.N.Y. 2003)). Here, Plaintiff has offered no allegation that a similarly-situated accused female was treated more favorably by Oberlin’s disciplinary process or its administrators. *See Mallory*, 76 Fed.Appx. at 641; *Routh v. Univ. of Rochester*, 981 F. Supp.2d 184, 211-212 (W.D.N.Y. 2013).

In fact, Plaintiff’s Complaint fails to identify any female counterpart to support his Title IX claim. *See Cummins*, 662 Fed.Appx. at 452 n.10 (declining to even consider the selective enforcement standard because plaintiffs “do not allege that a similarly accused female was treated differently under [the University’s] disciplinary process”). Instead, Plaintiff limits such an allegation to the conclusory statement that “[u]pon information and belief, Oberlin has not

⁸ Also, the fact that Mr. Bautista left Plaintiff’s hearing early, *see* Compl. ¶ 147, does not establish sex-based discrimination. *See Univ. of Cincinnati*, 173 F.Supp.3d at 595, 608 (dismissing Title IX claim even though plaintiff’s advisor left the misconduct hearing early due to a scheduling conflict).

acted comparably with respect to allegations of sexual misconduct made against female students.” Compl. ¶ 215.⁹ This conclusory allegation does not constitute “*facts* sufficient to give rise to an inference that the school intentionally discriminated against the plaintiff *because* of his or her sex,” as required to state a Title IX claim. *Case Western*, 2015 WL 5522001, at *6 (quotation and citation omitted) (emphasis added). Plaintiff fails to state a claim for which relief can be granted under Title IX’s selective enforcement standard.

II. **Plaintiff’s Complaint Fails to State a Claim for Breach of Contract (Count I).**¹⁰

“Contracts for private education have unique qualities and must be construed to allow the institution’s governing body to meet its educational and doctrinal responsibilities.” *Valente v. Univ. of Dayton*, 438 Fed.Appx. 381, 384 (6th Cir. 2011) (quoting *Ray v. Wilmington Coll.*, 667 N.E.2d 39, 42 (Ohio App. 1995)). “Courts therefore will not interfere with a private university’s right to make regulations, establish requirements . . . and enforce disciplinary rules absent *a clear abuse of discretion.*” *Id.* (citations and internal quotations omitted) (emphasis in original). In determining whether Oberlin abused its discretion, the issue is not whether Oberlin should have believed Ms. Roe’s or Plaintiff’s version of the events, nor whether it strictly adhered to its procedural rules. *See Valente*, 438 Fed.Appx. at 384; *McDade v. Cleveland State Univ.*, No. 14AP-275, 2014 WL 4557015, at *4 (Ohio App. Sept. 16, 2014). Instead, the issue is whether Oberlin “acted unreasonably, arbitrarily, or unconscionably.” *Ray*, 667 N.E.2d at 42.

Plaintiff claims that a contractual relationship existed between him and Oberlin, and that the Policy was part of that contract. Compl. ¶¶ 174-175. In particular, Plaintiff claims Oberlin

⁹ Jane Roe, the complainant against Plaintiff in the disciplinary proceedings, is not a counterpart for purposes of Plaintiff’s claim. *Case Western*, 2015 WL 5522001, at *6 (citation omitted).

¹⁰ If the Court dismisses Plaintiff’s Title IX claim, as it should, the Court can decline to exercise supplemental jurisdiction over Plaintiff’s remaining state-law claims (Counts I, II, IV and V). *Mallory*, 76 Fed.Appx. at 641; *Case Western*, 2015 WL 5522001, at *8.

breached its contract with him in three ways: (1) failing to apply the Policy's definition of "incapacitation" in finding him responsible for sexual assault, *id.* ¶¶ 176-181; (2) failing to apply the preponderance of the evidence standard, *id.* ¶¶ 182-186; and (3) failing to explain the Panel's rationale for finding him responsible for sexual assault, *id.* ¶¶ 187-189. Oberlin abided by its Policy and did not abuse its discretion in finding Plaintiff responsible for sexual misconduct. The Policy does not guarantee a particular outcome, but rather sets guidelines for conduct and procedures for investigating alleged violations. The fact that Plaintiff disagrees with the outcome cannot in and of itself be grounds for a breach of contract claim. Accordingly, Plaintiff has failed to state a claim for breach of contract as a matter of law.

A. Oberlin Followed Its Policy in Concluding that Jane Roe Did Not Provide Effective Consent for the Entirety of the Sexual Encounter.

Oberlin's Policy provides that incapacitation is one of many barriers that prohibits an individual from effectively consenting to sexual activity. Policy at 20. The Policy defines incapacitation as a state "where an individual cannot make an informed and rational decision" or is "physically helpless." *Id.*; Compl. at ¶ 176. The Policy notes that the "impact of alcohol and drugs varies from person to person" and "can have a cumulative effect over time [so that] a person who may not have been incapacitated at the beginning of sexual activity may become incapacitated and therefore unable to give effective consent as the sexual activity continues." Policy at 20-21.¹¹

At the hearing, Ms. Roe testified to the amount of drugs and alcohol she consumed prior to the sexual encounter with Plaintiff, as well as that she told Plaintiff during the encounter, "I am not sober right now." Compl. ¶ 124. Ms. Roe also testified that she physically resisted Plaintiff's efforts to force her to perform oral sex. *Id.* ¶¶ 121-122. The Hearing Panel found that

¹¹ Plaintiff omitted this portion of the Policy's definition of "incapacitation" from his Complaint. *See* Compl. ¶¶ 176-181.

Ms. Roe “was incapacitated and not capable of giving effective consent when asked to perform oral sex.” *Id.* ¶¶ 151-152. In doing so, Oberlin did not clearly abuse its discretion, nor did it act unreasonably, arbitrarily, or unconscionably. Rather, Oberlin “adhered to its misconduct procedure.” *Pierre v. Univ. of Dayton*, 143 F.Supp.3d 703, 713 (S.D. Ohio 2015).

B. Oberlin Followed Its Policy in Applying the Preponderance of the Evidence Standard.

Plaintiff claims that Oberlin failed to apply the preponderance of the evidence standard because the Hearing Panel did not have sufficient evidence to find him responsible for sexual assault. *See e.g.*, Compl. ¶ 182. To find a student responsible for sexual misconduct under the preponderance of the evidence standard, the Hearing Panel needed to decide only whether it is “more likely than not” that Plaintiff was “responsible for the alleged violation.” Policy, at 46.¹²

As an initial matter, “[a] university is not a court of law, and it is neither practical nor desirable it be one.” *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 635 n.1 (6th Cir. 2005) (citation omitted). Even so, the Hearing Panel has discretion to assess the credibility of the evidence and witnesses, including whether Ms. Roe was incapacitated at the time of the alleged assault. *See Univ. of Dayton*, 143 F. Supp. 3d at 713 (“the issue before this Court is not whether the [hearing board] should have believed a certain party’s version of events”); *Univ. of the South*, 687 F. Supp. 2d at 755 (it is not for the courts to review “whether a sexual assault occurred, whether any such acts were consensual, or who, as between John Doe and the Complainant is credible”).

Even Plaintiff’s one-sided account of Oberlin’s investigation and adjudication of Ms. Roe’s sexual misconduct report identifies a host of evidence from which the Hearing Panel

¹² Notably, the DOE mandates that colleges and universities use the preponderance of the evidence standard of proof in disciplinary proceedings for alleged sexual misconduct. *Pierre v. Univ. of Dayton*, No. 15-cv-362, 2017 WL 1134510, at *8 (S.D. Ohio Mar. 27, 2017) (citing Russlynn Ali, Dear Colleague Letter, U.S. Dept. of Educ. at 11 (Apr. 4, 2011), available at <https://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201104.html>.)

could—and *did*—conclude that it is “more likely than not” that Plaintiff violated the Policy. *See e.g.*, Compl. ¶¶ 121-124. In particular, Ms. Roe testified at the hearing that she told Plaintiff during their sexual encounter, “I am not sober right now[,]” and that she physically resisted Plaintiff’s efforts to force her to perform oral sex on him, including by grabbing her neck. *Id.* Plaintiff has not shown how, faced with this evidence, Oberlin abused its discretion in applying the preponderance of the evidence standard, as set forth in its Policy and mandated by the DOE.

C. Oberlin Followed Its Policy By Explaining the Panel’s Rationale in Writing for Finding Plaintiff Responsible for Sexual Misconduct.

The Policy dictates that the outcome of a sexual misconduct disciplinary hearing will be communicated in writing to the Responding Party, in this case, Plaintiff. Policy, at 48. Oberlin did so, as acknowledged in the Complaint. On October 11, 2016, Oberlin issued a decision letter that found Plaintiff responsible for sexual misconduct because “the preponderance of the evidence established that effective consent was not maintained for the entire sexual encounter that occurred on February 28, 2016.” Compl. ¶ 148. This letter, according to Plaintiff, went on to explain that, after Ms. Roe told Plaintiff she was “not sober,” Ms. Roe “was incapacitated and not capable of giving effective consent when asked to perform oral sex.” *Id.* ¶¶ 151-152.

III. Plaintiff’s Claim for Breach of the Covenant of Good Faith and Fair Dealing (Count II) is Not Cognizable under Ohio Law and Should be Dismissed.

“[U]nder Ohio law, a breach-of-contract claim subsumes any claim for breach of the duty of good faith and fair dealing.” *Alshaibani v. Litton Loan Serv., LP*, 528 Fed.Appx. 462, 465 (6th Cir. 2013) (citing *Lakota Local Sch. Dist. BOE v. Brickner*, 671 N.E.2d 578, 583-84 (Ohio Ct. App. 1996)). Plaintiff admits that his claim for breach of the covenant of good faith and fair dealing overlaps with his breach of contract claim. Compl. ¶ 194; *see College of Wooster*, 2017 WL 1038982, at *12 (a plaintiff “cannot use the same facts to allege a breach of the implied duty of good faith and fair dealing”). In addition, Plaintiff alleges that Oberlin violated the Policy by

denying his appeal and upholding his expulsion. Compl. ¶ 195. But Plaintiff does not explain how Oberlin violated any duty by doing so. For students found responsible for sexual assault, the Policy permits the imposition of sanctions ranging from suspension to expulsion. Policy at 46. Plaintiff has failed to state a claim for breach of the covenant of good faith and fair dealing.

IV. Plaintiff's Complaint Fails to State a Claim for Negligence (Count IV).

Plaintiff's negligence claim is premised on the same allegations that support Plaintiff's breach of contract claim—that Oberlin failed to follow the Policy. *Compare* Compl. ¶ 221 with ¶¶ 174-176, 182, 187-188. Ohio law does not provide for a negligence claim against a college or university in the context of student disciplinary proceedings when, as here, a “contract governs the relationship between the parties” and the “duties [Plaintiff] identifies all arise from his contractual relationship with [Oberlin.]” *Valente*, 438 Fed.Appx. at 387; *College of Wooster*, 2017 WL 1038982, at *12; *see also e.g., Wolfe v. Cont'l Cas. Co.*, 647 F.2d 705, 710 (6th Cir. 1981) (“Under Ohio law, the existence of a contract action generally excludes the opportunity to present the same case as a tort claim.”). Plaintiff has no cause of action in tort for the same alleged conduct as his legally deficient breach of contract claim. *See supra* Sec. II.

Furthermore, Plaintiff's claim for negligence within the college setting “‘is essentially one for educational malpractice’ which is not recognized in Ohio.” *Buescher v. Baldwin Wallace Univ.*, No. 13-cv-2821, 2014 WL 1910907, at *4 (N.D. Ohio May 12, 2014) (quoting *Lemmon v. Univ. of Cincinnati*, 750 N.E.2d 668 (Ohio Ct. Claims 2001)); *Pierre*, 2017 WL 1134510, at *10 (same); *see also e.g., Baker v. Oregon City Schools BOE*, No. L-11-1109, 2012 WL 762482, at

¶ 5 (Ohio Ct. App. Mar. 9, 2012). Given that Ohio courts do not recognize a cause of action for educational malpractice, Plaintiff's negligence claim fails as a matter of law.¹³

V. Plaintiff's Complaint Fails to State a Claim for Negligent Infliction of Emotional Distress (Count V).

Plaintiff's claim for negligent infliction of emotional distress largely overlaps with his negligence claim, premised on Oberlin's alleged "unsupportable decision to find him responsible and expel him." Compl. ¶ 227. In Ohio, recovery for negligent infliction of emotional distress is limited to "such instances as where one was a bystander to an accident or was in fear of physical consequences to his or her own person." *Heiner v. Moretuzzo*, 652 N.E.2d 664, 669 (Ohio 1995) (citation omitted). Such a claim is "recognized only where there is cognizance of a real danger, not mere fear of non-existent peril." *Muehrcke v. Housel*, 909 N.E.2d 135, 142 (Ohio Ct. App. 2008) (internal quotation and citation omitted). Plaintiff does not allege that he witnessed an accident or was otherwise in fear of physical injury. *See e.g.*, Compl. ¶¶ 224-29. Plaintiff's claim for negligent infliction of emotional distress must therefore be dismissed.

CONCLUSION

For the reasons set forth herein, Oberlin requests that this Court dismiss Plaintiff's Complaint in its entirety with prejudice.

¹³ Even if Ohio law recognized such a claim, Plaintiff has failed to properly plead the elements of a negligence claim. *See Ellis v. Greater Cleveland R.T.A.*, 25 N.E.3d 503, 507 (Ohio Ct. App. 2014) ("To establish a cause of action for negligence, the plaintiff must show (1) the existence of a duty, (2) a breach of duty, and (3) an injury proximately resulted therefrom.").

Dated: August 21, 2017

Respectfully submitted,

/s/ David H. Wallace

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EXHIBIT A

OBERLIN

COLLEGE & CONSERVATORY

SEXUAL MISCONDUCT POLICY

THIS POLICY APPLIES TO ALL FORMS OF SEXUAL AND/OR GENDER-BASED HARASSMENT, DISCRIMINATION AND VIOLENCE, INCLUDING SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE.

To report sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, please contact:

Rebecca Mosely
Title IX Coordinator
(440) 775-8555
rebecca.mosely@oberlin.edu
Cox 202

-or-

Safety and Security
(440) 775 - 8444 (24 hour line)
(440) 775 - 8911 (24 hour emergency line)

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OBERLIN COLLEGE SEXUAL MISCONDUCT POLICY EMERGENCY INFORMATION AND RESOURCE GUIDE

What To Do If You Have Experienced or Are Experiencing Sexual Misconduct: Any student, employee, or member of the Oberlin College community who has experienced sexual misconduct or violence is encouraged to immediately notify law enforcement and/or seek immediate medical assistance. Oberlin College Safety and Security will provide transportation upon request. You are also encouraged to report the misconduct or violence promptly to the College by notifying any of the on-campus reporting options listed here.

Emergency Assistance

Emergency Response

911 (Emergency Services)
Oberlin College Safety and Security
(440) 775-8911 (24 hours)

Health and Safety

The Nord Center Sexual Assault Care Unit
(800) 888-6161
(24 hour hotline)

Counseling/Crisis Response

Lorain County Rape Crisis
(800) 888-6161 (24 hours)
Lorain County Mental Health Crisis Hotline
(800) 888-6161 (24 hours)

Confidential Resources and Reporting Options:

All individuals are encouraged to make a prompt report to law enforcement and to the College. An individual may seek confidential support as designated below. Confidential resources will not share information with the College nor will speaking with a confidential resource trigger action by the College under most circumstances. We encourage all individuals to make a prompt report to the College using the reporting options below, but we recognize that individuals may choose to make a report of sexual misconduct to any College employee. With the exception of confidential resources, all Responsible Employees, including student employees or volunteers who have a responsibility for student welfare, are trained and required to share the report with a central Title IX Team to ensure a prompt and equitable review, investigation and resolution.

Confidential Resources and Support

Students

Oberlin College Counseling Center
(440) 775-8470
Office of Religious and Spiritual Life
(440-775-5191)
Student Advocate

Lorain County Rape Crisis
(800) 888-6161
(24 hour hotline)

Employees

Lorain County Rape Crisis
(800) 888-6161
(24 hour hotline)
Employee Assistance Program
(800) 989 - 3277

Reporting Options

On Campus

Safety and Security | (440) 775-8911 (24 hours)
Dean of Students | (440) 775-8462
Title IX Coordinator | (440) 775- 8555
Human Resources | (440) 775-5573

Off Campus

Oberlin Police Department | (440) 774-1061
Mercy Allen Hospital | (440) 986-4000
Lorain County Prosecutor | (440) 329-5389

1. INTRODUCTION

Executive Summary

Purpose

Oberlin College will not tolerate any type of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, which are referred to in this policy as sexual misconduct. The College is committed to taking all appropriate steps to eliminate these forms of sexual misconduct, prevent their recurrence, and address their effects. This policy outlines the College's institutional values, prohibited conduct, resources, reporting options, and processes for the review, investigation and resolution of reports of sexual misconduct.

Scope of Policy

This policy applies to all members of the Oberlin College community, including students, employees, and visitors. This policy applies to both on campus and off campus conduct. In particular, off-campus conduct is subject to this policy if the conduct occurred in the context of an education program or activity of the College or had continuing adverse effects on campus or in an off-campus education program or activity.

Notice of Non-Discrimination

Oberlin College does not discriminate on the basis of race, color, sex, marital status, religion, creed, national origin, disability, age, genetic information, military or veteran status, sexual orientation, family relationship to an employee of Oberlin College, and gender identity and expression, or any other protected class.

Title IX Coordinator

Rebecca Mosely, the Title IX Coordinator, oversees the College's central review, investigation and resolution of reports of sexual harassment, misconduct, stalking and intimate partner violence under the College's report processes and coordinates the College's compliance with Title IX.

Title IX Review

Oberlin College's Title IX review consists of an inter-department team which includes, as appropriate, the Title IX Coordinator, a designee from the Dean of Students, a designee from the Dean of the College or the Dean of the Conservatory, the Manager of Employee and Labor Relations, and the Director of Safety and Security. This team, which is overseen by the Title IX Coordinator, is responsible for the prompt and equitable review and resolution of any reports under the Student, Staff, or Faculty Report Processes. The members of the team will vary based upon the roles of the parties involved. In all cases, the Title IX Team will be limited to a small number of individuals who need to be informed in order to provide effective and equitable review and timely resolution of reports while protecting the privacy of parties as fully as possible.

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Reporting

Oberlin College will take immediate action in all allegations of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, to protect the safety of the community and individuals involved. The College encourages anyone who has experienced, witnessed or has information pertaining to a potential violation of the Sexual Misconduct Policy to take an active role in reporting this behavior.

Students and employees are encouraged to report information regarding an incident of sexual misconduct to designated employees of the College. These reporting options are: Safety and Security, the Title IX Coordinator, the Dean of Students Office, or the Manager of Employee and Labor Relations. The College recognizes, however, that an individual may choose to report to *any* College employee, even those not specifically designated as a reporting option. Consistent with this policy, any Responsible Employee who receives such a report is required to share the report with a central review team to ensure consistent application of College policy for all individuals.

Oberlin College encourages all community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Community members who exercise this obligation will be supported by the College and protected from retaliation.

Statement Against Retaliation

It is a violation of Oberlin College policy to retaliate in any way against a student or employee because they raised allegations of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, or participated in the College's resolution of the report. The College will take immediate and responsive action to any report of retaliation.

Privacy Statement

In any report, investigation, or resolution of an allegation of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, every effort will be made to protect the privacy and confidentiality interests of the individuals involved in a manner consistent with the need for a thorough review of the allegation and the protection of the Reporting Party and broader campus community.

Confidential Resources

Oberlin College realizes that not every individual is prepared to make a formal report for resolution. There are several confidential resources available for both students and employees who are seeking assistance, but do not wish to make a report to the College or law enforcement.

Resources

Oberlin College is committed to providing on campus resources and support to Reporting Parties and Responding Parties, whether or not an individual wishes to pursue formal disciplinary action. There are also many off campus resources available to individuals who experience sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence.

Interim Measures

Upon receipt of a report, the College will take interim measures to protect the parties involved. These may include no contact directives, changes in class or work schedules, changes in living arrangements, interim suspension, College-imposed leave, or any other measures that the College deems appropriate in consultation with the parties.

Formal Resolution Procedures

Reports against a student will be resolved by the Student Formal Resolution Process.
Reports against a non-faculty employee will be resolved by the Staff Formal Resolution Process.
Reports against a faculty member will be resolved by the Faculty Formal Resolution Process.

Appendices

The Appendices contain a chart which provides a visual overview of the process of resolution of reports of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence and a list of key implementers named in this policy along with contact information.

Statement of Purpose

Oberlin College students, employees, alumni, guests, and visitors have the right to be free from sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, on campus and in their interactions with each other. Sexual misconduct is the term used in this policy for sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, as well as other forms of prohibited conduct as defined in this policy.

Because all members of the Oberlin community have a right to and a stake in creating a campus free of violence, harassment, and discrimination, this policy applies to all students, employees, and visitors to campus.

Introduction: Ensuring an Equitable Campus Free of Violence, Harassment, and Discrimination

Oberlin College seeks to ensure an equitable and inclusive campus free of violence, harassment, and discrimination. Therefore, Oberlin College will not tolerate sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, in any College program or activity, including the academic, employment or residential setting. When used in this policy, sexual misconduct includes sexual violence, intimate partner violence, and stalking. This prohibition also includes all forms of discrimination or harassment based on sex, marital status, sexual orientation, and/or gender identity and expression. Such conduct violates community expectations and is prohibited by state and federal law. The Sexual Misconduct Policy affirms the Oberlin community's commitment to these principles and describes the process the College uses to resolve reports of sexual misconduct.

Reports of sexual misconduct will be investigated and resolved in a timely and equitable fashion. Because sexual misconduct has such a grave impact on the kind of community required to ensure the fullest educational and occupational opportunities, parties who are found responsible for violating

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the Sexual Misconduct Policy will be subject to appropriate sanctions. These sanctions are intended to ensure that such forms of misconduct do not continue and may include suspension, termination, and expulsion.

Oberlin College will provide appropriate support to all community members who are involved in the reporting or investigation of sexual misconduct in order to ensure access, provide equitable resolution, and to stop and address the effects of discrimination. In particular, the College is committed to ensuring that anyone who experiences sexual misconduct receive appropriate support, reporting options, and resolution to reports to ensure access to the full range of educational and occupational opportunities. Appropriate interim remedies and support are available even if an individual chooses not to pursue any action under this Policy.

Oberlin College views this policy as a primary resource in preventing and responding to sexual misconduct. Therefore, retaliation against anyone who makes a report, cooperates with an investigation, or participates in a grievance procedure is a violation of College policy. Retaliation should be reported promptly to the Title IX Coordinator for investigation pursuant to this policy and may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying allegations of sexual misconduct, discrimination, and/or harassment.

All members of the campus community are expected to play a role in preventing and responding to sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. Reporting any knowledge of sexual misconduct is especially important, since it allows the College to connect a Reporting Party to resources and support and to foster individual and campus safety. Members of the community have different expectations in regard to reporting, described as follows:

- *Responsible Employees* who become aware of potential misconduct are **required** to report it promptly to the Title IX Coordinator. Such reporting ensures timely support for all parties and enables an effective and consistent institutional response. Responsible Employees include all employees who serve in supervisory positions, whether paid or unpaid. A supervisor is anyone who has the authority to hire, promote, discipline, evaluate, grade or direct faculty, staff or students. This includes everyone who manages or supervises others, including (but not limited to) faculty department program chairs, teaching faculty, resident advisors, coaches and anyone who leads, administers, advises or directs University programs. It also includes student employees or student volunteers who have the responsibility for the welfare of other students.
- *All other employees* are **expected** to report any information about potential misconduct to the Title IX Coordinator, in recognition of the community understanding that centralized reporting is an important tool to address, end, and prevent sexual misconduct and other forms of gender- and/or sexual-related discrimination and harassment.
- *Students* who are not Responsible Employees are **strongly encouraged** to report any information about sexual misconduct, including reports or partial reports, to the Title IX Coordinator.
- *Confidential professional resources*, including professional and pastoral counselors, are **not permitted** to report any information about sexual misconduct without the consent of the patient/client, unless the information involves suspected abuse of a minor or there is an imminent risk of harm to self or others.
- A *Confidential student advocate* is available to support students and only reports general information about incidents of sexual misconduct (what type of misconduct, when and where the incident took place) in a way that does not identify the student, unless the student consents to report identifying information.

Required reporting is not meant to undermine a Reporting Party's agency to choose how to respond to experiences of sexual misconduct, but rather to ensure that all community members are fully empowered and informed about options for support and safety and information is shared with the College so that it may take immediate corrective action to eliminate, prevent and address a hostile environment.

Any member of the community who intervenes to prevent sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence (when safe to do so), seeks the support of peers or colleagues, or reports such conduct to the Title IX Coordinator or another Responsible Employee will be supported by the College and protected from retaliation.

This policy uses they, them and theirs as third person singular gender-neutral pronouns, in recognition that individuals accessing this policy may have a range of gender identities and forms of self-identification.

Academic, Intellectual, and Expressive Freedom

This policy recognizes the central importance of academic freedom to the campus community and embraces respect for intellectual and expressive freedom. This policy upholds these values by prohibiting sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. As the American Association of University Professors notes, "the freedom to teach and to learn is inseparable from the maintenance of a safe and hospitable learning environment" (AAUP, "Campus Sexual Assault Procedures," 2012). Further, this policy reflects guidance from the Office for Civil Rights which states that "the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution" (OCR Title IX and Sexual Violence FAQ L-1, 2014). This policy recognizes that effective learning may include engagement with difficult, offensive, or historically charged materials, and that such pedagogical experiences do not constitute violations of this policy, which is designed to stop, address, and prevent the recurrence of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence.

Scope of the Policy

The policy applies to all Oberlin community members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors, alumni and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College property. This policy applies to sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, both on and off campus. In particular, off-campus conduct is subject to this policy if the conduct occurred in the context of an education program or activity of the College or had continuing adverse effects on campus or in an off-campus education program or activity.

Statement of Non-Discrimination

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Oberlin College is committed to creating an institutional environment free from discrimination and harassment for students and employees. Thus, discrimination and harassment based on the following categories are prohibited: race, color, sex, marital status, religion, creed, national origin, disability, age, genetic information, military or veteran status, sexual orientation, family relationship to an employee of Oberlin College, and gender identity and expression. In addition, should any applicable law be enacted in the future prohibiting discrimination and/or harassment based on a category not listed above, or should there be other changes in the applicable law governing discrimination and/or harassment, this Policy will be deemed amended to the extent necessary to reflect such changes. In affirming the prohibition against discrimination and harassment on these bases, Oberlin College also affirms its compliance with applicable laws.

The Sexual Misconduct Policy covers conduct prohibited under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin, and Title IX, the 1972 amendment to the Higher Education Act of 1965 which prohibits discrimination based on sex in higher education. This policy also reflects the provisions of the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), a federal statute enacted in 1990, and the Campus Sexual Violence Elimination (SaVE) Act, which was passed as part of the reauthorization of the Violence Against Women Act (2013). Oberlin policy also aligns with Ohio law, including Ohio Revised Code Chapter 2907: Sex Offenses and Chapter 4112, which prohibits discrimination in various contexts based on race, color, religion, sex, military status, national origin, disability, age, or ancestry. Section 1185.02 of the Codified Ordinances of Oberlin prohibits discrimination in housing based on race, color, religion, sex, sexual orientation, ancestry, handicap, familial status, or national origin of any prospective owner, occupant or user of the housing.

The Oberlin College non-discrimination statement includes all forms of gender- and/or sex-based discrimination and affirms that the College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. The Sexual Misconduct Policy implements the College non-discrimination statement by prohibiting sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. Oberlin College's Sexual Misconduct Policy, in keeping with this federal law, reflects the understanding that sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, can and do affect individuals of all genders. These protections thus apply to all Oberlin community members and visitors of any gender, gender identity, gender expression or sexual orientation. Oberlin College will respond promptly and equitably to reports of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

Other forms of discrimination and harassment prohibited by the College are addressed under the [Oberlin College Policy on Discrimination and Harassment](#).

Title IX Compliance: Title IX Coordinator and Team

Rebecca Mosely serves as the college's interim Title IX coordinator and can be reached at:
(440) 775-8555
rebecca.mosely@oberlin.edu
Cox 202

The Title IX Coordinator oversees the College's central review process for receiving, investigating,

and resolving reports of sexual misconduct to ensure that the College has taken prompt and equitable action to eliminate any hostile environment, prevent its recurrence and address its effects. The Title IX Coordinator promotes overall institutional compliance with Title IX and related laws, including adherence to procedural time frames, documenting and reporting data, and providing training and education to policy implementers and to the campus community for prevention purposes. Members of the community are encouraged to consult the Title IX Coordinator regarding questions and concerns about reporting, support and interim measures for anyone experiencing or affected by sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, and regarding information about options and processes to resolve the report. The Title IX Coordinator is trained in relevant applicable laws and the dynamics of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence.

The Title IX Coordinator is assisted by Title IX Deputy Coordinators. The Title IX Deputy Coordinators are available to meet with any member of the community and assist the Title IX Coordinator in ensuring institutional compliance. Deputy Title IX Coordinators are chosen to reflect the diversity of the Oberlin community, including roles as faculty, staff, and students, and help increase access to College Title IX programs and processes. The Deputy Title IX Coordinators are:

Title IX Deputy Coordinator for Athletics:

Erica Rau
Phillips Gym, Room 102
440-775-8505
Erica.rau@oberlin.edu

Title IX Deputy Coordinator

Chris Jenkins
Bibbins 113F
440-775-8200
cjenkins@oberlin.edu

Title IX Deputy Coordinator for Faculty:

[name]
[campus address]
[phone number]
[email]

Title IX Deputy Coordinator for Staff:

[name]
[campus address]
[phone number]
[email]

The Title IX Coordinator also manages the Title IX Team. The Title IX Team supports the Title IX Coordinator and enables institutional compliance by ensuring effective and prompt response to reports as well as reviewing and implementing plans for education, prevention, and training. At a minimum, this group includes the Title IX Coordinator, Title IX Deputy Coordinators, and the Director of Safety and Security. Depending on the roles of the parties involved in a report, a designee from the appropriate divisional dean (Dean of Students, Dean of the College or Dean of the Conservatory) or the Manager of Employee and Labor Relations may join the group. In all cases, the Title IX Team will be limited to a small number of individuals who need to be informed in order to provide effective and equitable review and timely resolution of reports while protecting the privacy of parties as fully as possible.

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Students, employees, or other individuals may direct questions or reports related to the application of Title IX to the Title IX Coordinator, Deputy Title IX Coordinators, and/or the U.S. Department of Education Office for Civil Rights:

Office for Civil Rights Cleveland Office
1350 Euclid Avenue, Suite 235
Cleveland, OH 44115
(216) 522 – 4970
OCR.Cleveland@ed.gov

Questions or reports involving employees may also be directed to the U.S. Equal Opportunity Employment Commission:

U.S. Equal Employment Opportunity Commission
Cleveland Field Office
Anthony J. Celebrezze Federal Building
1240 E. 9th Street, Suite 3001
(800) 669 – 4000

Privacy vs. Confidentiality

The College is committed to protecting the privacy of all individuals involved in a report or an investigation filed under the Sexual Misconduct Policy. All College employees who participate in the College's Title IX response, including the Title IX Coordinator, Title IX Deputy Coordinators, Title IX Team members, investigators, and Hearing Panel members receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all involved individuals in a manner consistent with the need for a thorough review of the report. All College proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX, and state and federal law. No information shall be released from such proceedings except as required or permitted by law and College policy.

To ensure all members of the community understand how the College protects the privacy of individuals, please be aware that privacy and confidentiality have distinct meanings.

Privacy: Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who “need to know” in order to assist in the active review, investigation or resolution of the report, including the issuance of interim measures. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These designated campus and community professionals include mental health providers, ordained clergy, trained rape crisis counselors and attorneys, all of whom have legally protected confidentiality. In addition, by policy, the College has designated a Confidential Sexual Misconduct Advocate with whom students, staff, and employees may consult or seek support. All of these professionals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others or the report involves suspected abuse of a minor. For students in particular, the College has also designated

Confidential Student Sexual Misconduct Advocates who will provide the same expectations of confidentiality. Sharing information with the Confidential Sexual Misconduct Advocate or a Confidential Student Sexual Misconduct Advocate will not trigger a College investigation into an incident against the person's wishes.

Limits on Confidentiality.

State and federal law as well as the ethical obligation to provide an educational and occupational environment free of violence and discrimination place some limits on confidentiality for most members of the community, with the exception of those with legally-protected confidentiality. Members of the community should be aware of their reporting responsibilities in the following areas:

- **The College Requirement to Report.** Responsible Employees who receive information, including partial information, about sexual misconduct are required to report all information, including the names of the parties and any known details of the incident, to the Title IX Coordinator. Required reporting is an important tool for enabling the College to respond effectively and prevent sexual misconduct in a manner that is supportive of individual autonomy and respectful of individual and campus safety. Sharing all reports with the Title IX Coordinator helps to ensure that individuals affected by sexual misconduct receive prompt remedies to stop, prevent, and address discrimination and harassment, and that individuals are fully informed about remedies, accommodations, resources and options. Sharing this information also enables the College to tailor our education and prevention programs to the types of sexual misconduct reported on campus. Individual reports are vital to seeing patterns of misconduct, which will, in turn, help the College as an educator and employer respond to community needs.

Required reporting also helps to ensure that a Reporting Party and all other members of the community are connected to appropriate resources. Thus, required reporting helps to increase a Reporting Party's choices and create a campus climate that challenges silence about sexual misconduct.

Required reporting helps ensure that sexual misconduct is always treated in a serious manner. Required reporting also helps the Title IX Coordinator to ensure that every member of the campus community is provided with consistent information about resources, accommodations, options; to ensure that individual and campus safety are addressed; and, to allow the College to tend to its many obligations under Title IX, the Campus SaVE Act, the Clery Act, and other state and federal laws.

Under Title IX, the College is required to take immediate and corrective action if a Responsible Employee knew or, in the exercise of reasonable care, should have known about sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, that creates a hostile environment. In general, a Responsible Employee includes any employee who:

- Has the authority to take action to redress the harassment; or
- Is required to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe that the employee has the authority or responsibility to take action.

Thus, all employees with supervisory and leadership responsibilities on campus are considered Responsible Employees. This includes, for example, faculty, coaches, administrators, Resident Advisors and other student employees or student volunteers with a

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responsibility for student welfare. The only employees who are exempt from the requirement to report are those with legally-protected confidentiality.

Community-wide reporting ensures that anyone who experiences such misconduct is quickly connected to resources and options and enables the College to address patterns of misconduct. Therefore,

- All other employees are **expected** to report any knowledge of sexual misconduct.
- All students who are not Responsible Employees are **strongly encouraged** to report any knowledge of sexual misconduct.
- **The Protection of Minors:** All members of the Oberlin community are required to report any reasonable cause to suspect that a minor (under 18 years old) is experiencing abuse or neglect based on information shared by the minor, any other individual, or one's own observations or knowledge. An Oberlin community member suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the Title IX Coordinator or the Director of Safety and Security. College policy should be understood to align with any mandatory reporting requirements under Ohio law.
- **Ohio Felony Reporting Requirements:** Under Ohio law, all residents of Ohio must report felonies, including sexual assault. This legal requirement means that the Title IX Coordinator or Safety and Security will report any potential felony or any crime of violence to the Oberlin Police Department. An individual who experiences potential felony sexual misconduct may choose how to participate in any subsequent criminal investigation.
- **Ohio Medical Professional Reporting Requirements:** In Ohio, medical professionals also have legally mandated reporting responsibilities. However, the medical professional must deem the patient medically stable before reporting and must communicate to the patient that the patient does not have to report and/or speak to the police. If the patient chooses not to speak to police at the time of the medical examination, the medical professional does not need to report the patient's name - only the date, general time, and general location of the incident.

Requests to Protect the Confidentiality of Reporting Parties.

If a person who reports an incidence of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence (in this policy called the Reporting Party) requests that their name or other identifiable information not be shared with the person alleged to have engaged in such conduct (in this policy called the Responding Party), or requests that the College take no formal action in response to a report, the College will honor the Reporting Party's request to the extent possible based on a careful balancing of such requests with any legal reporting requirements, the risk of harm to any individual and the College's duty to maintain a safe and non-discriminatory environment for all.

The Title IX Coordinator, with the assistance of the Title IX Team, will assess such requests by examining the seriousness of the reported conduct, whether the reported misconduct was perpetrated with a weapon, the respective ages and roles of the Reporting and Responding Parties, whether there have been other reports of misconduct or discrimination by the Responding Party, whether the College possesses other means to obtain relevant evidence of sexual misconduct, whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group, and the rights of the Responding Party to receive notice and relevant information before disciplinary action is initiated.

Where possible, the Title IX Team will honor requests for confidentiality or that no action be taken so

long as the College can meet its obligation to stop, address, and prevent the recurrence of the discriminatory conduct. If the College is unable to take action consistent with the wishes of the Reporting Party, the Title IX Coordinator will inform the Reporting Party about the chosen course of action, which may include an investigation and potential disciplinary action against the Responding Party. The Reporting Party will not be compelled to participate in a formal hearing if they choose not to participate. The College, however, may choose to move forward with an investigation and potential disciplinary action if there is an individual or public safety concern and sufficient independent information exists to establish that this Policy has been violated. Any action taken by the College will be designed to stop any sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, address its effects, and prevent its occurrence. In all instances, the College will take immediate action as necessary to protect and assist the Reporting Party.

If the College honors the request for confidentiality, the Reporting Party must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against a Responding Party may be limited.

Public Awareness Events.

Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, survivor speak outs, or other forums in which community members disclose experiences with sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, are not considered to be reporting events. Disclosing one's personal experience in this context does not serve as notice to the College of sexual misconduct and will not trigger its obligation to investigate or take action with respect to information shared. Such events, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about Title IX, support, resources and option for resolution to attendees at these events.

Timely Warning.

If a report of sexual misconduct discloses a serious or continuing threat to the Oberlin community, the College may issue a campus-wide timely warning notice to protect the health or safety of the community. The timely warning will not include any identifying information about the Reporting Party. Even where there is no imminent threat, the College may provide campus-wide notifications on reported sexual misconduct. At no time will the College release the name of the Reporting Party to the general public without the express written consent of the Reporting Party. The release of the Responding Party's name to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

2. PROHIBITED SEXUAL MISCONDUCT

Definitions of Prohibited Conduct

Oberlin College prohibits all forms of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. Each of these terms encompasses a broad range of behaviors. In general, sexual violence refers to physical sexual acts perpetrated without a person's consent or where a person is incapable of giving consent for any reason, including incapacitation. Intimate partner violence refers to any act of violence or threatened

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act of violence (sexual, physical, verbal, emotional, economic, or otherwise) against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person. Conduct which prevents or impairs an individual's access to educational or occupational benefits or opportunities based on sex, gender identity and/or expression, or sexual orientation, constitutes harassment and is also prohibited.

Sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, may vary in their severity. The following descriptions represent behaviors that violate community standards and a person's rights, dignity and integrity (please note that this is not an exhaustive list):

A. Sexual Harassment or Gender-Based Harassment:

Sexual harassment is any unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and/or other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment occurs when any of the following conditions are present:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity; or,
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both the subjective perspective of the person who experiences such conduct and objective standard of a reasonable person's perception of such conduct.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to establish the existence of a hostile environment, particularly if the harassment is physical. Conduct which is pervasive or persistent, even if not severe, may also create a hostile environment.

Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, sex or gender and/or sex or gender stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual and gender-based harassment:

- May be blatant and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- May or may not include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Reporting Party has an intimate or sexual relationship.
- May be committed by or against an individual or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.

- May occur in the classroom, in the workplace, in athletic facilities, in residential settings, or in any other setting.
- May be a one-time event or part of a pattern of behavior.
- May be committed in the presence of others, when the parties are alone, or through the use of technology.
- May affect the Reporting Party and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual or gender-based harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

Physical conduct:

- Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
- Unwanted sexual advances

Verbal conduct:

- Making or using derogatory comments, epithets, slurs or humor
- Intentionally using incorrect pronouns or an incorrect name when a person has clearly stated their preferred name and pronouns.
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
- Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes

Visual conduct:

- Leering, making sexual gestures, displaying of suggestive or demeaning objects or pictures, cartoon or posters in a public space or forum
- Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading images. This example should not be understood to constrain academic freedom in teaching, research, or creative activity, or to limit intellectual and/or expressive rights.
- Letters, notes or electronic communications containing comments, words, or images described above

Quid pro quo conduct:

- Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
- Offering educational or employment benefits in exchange for sexual favors
- Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
- Making or threatening reprisals after a negative response to sexual advances

B. Sexual Assault: Having or attempting to have sexual intercourse or sexual contact with another individual without consent. This includes sexual intercourse or sexual contact achieved by the use or threat of force or coercion, where an individual does not consent to the sexual act, or where an individual is incapacitated and thus incapable of consent..

Sexual assault includes the following acts:

Related to Non-consensual Sexual Intercourse: Having or attempting to have sexual

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intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.

Related to Non-consensual Sexual Contact: Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth or any other part of the body that is touched in a sexual manner.

C. Sexual Exploitation: Occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances (such behavior may also constitute *Public Nudity*);
- knowingly exposing another individual to a sexually transmitted infection without their knowledge;
- hazing and/or bullying related to sex or gender; and
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

D. Intimate Partner Violence: Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Responding Party. Intimate partner violence can encompass a broad range of behavior including all of the above categories of sexual misconduct. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and all racial, social, and economic backgrounds.

E. Stalking: A course of conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

F. Retaliation: Any adverse action or attempt to retaliate or seek retribution against a Reporting Party, Responding Party, or any individual or group of individuals involved in a report, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can

be committed by any individual or group of individuals. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others, and in varying modes, including in person and in electronic and online communication. Retaliation can also include adverse employment or educational actions made or taken against an individual because of their good faith participation in the reporting, investigation, and/or resolution of an alleged violation of this policy and/or any conduct that would discourage a reasonable person from engaging in further protected activity.

G. Public Nudity: Public nudity occurs when a person exposes one's private parts or engages in sexual conduct or masturbation in any public place or in any place where the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity. This prohibition aligns with Ohio law on public indecency ([Ohio Revised Code 2907.90](#)). This policy's prohibition against public nudity should be understood as a strategy to prevent the development of hostile environments. It is not intended to place constraints on academic freedom, which protects intellectual and expressive representations of the body and classroom materials which may include nudity.

H. Evaluation of spouses, intimate partners, or family members: Because of the concern with power dynamics as well as the importance of addressing conflicts of interest, Oberlin College prohibits employees from participating in evaluative personnel decisions (including those related to hiring, performance review, compensation, and termination) about other employees with whom they are in a sexual, intimate, and/or familial relationship.

I. Prohibited Relationships by Persons in Authority: Because of the potential negative impact on individuals as well as the College learning and working community, faculty and staff members are prohibited from engaging in sexual relationships with students to whom they are not married or in formal domestic partnerships, even when both parties believe the conduct is consensual. This prohibition reflects an understanding that power inequalities due to role differences between faculty/staff and students affect the possibilities of effective consent. This prohibition also reflects the College's commitment to respecting the integrity and character of the unique teaching relationship that exists between faculty and students. Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

Effective Consent , Coercion, and Incapacitation

Obtaining effective consent of all sexual partners is crucial in order to prevent sexual violence and is required by the Sexual Misconduct Policy. Effective consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. It is the responsibility of both parties who engage in sexual activity to ensure that effective consent is obtained for each sexual act and over the entire course of each sexual encounter. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts. Consent may be withdrawn at any time, and at that time, all sexual activity must cease unless and until additional unambiguous consent is given.

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The following are essential elements of effective consent:

- *Informed*: all parties demonstrate a clear and mutual understanding of exactly what they are consenting to.
- *Freely and actively given*: there is no coercion, force, threats, intimidation, or pressure.
- *Mutually understandable*: expressed in words or actions that indicate a clear willingness to participate in each sexual act. Silence does not equal consent.
- *Specific to a given situation*: consent is not indefinite. Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time.

Because consent should be positively communicated through words or actions in an ongoing fashion, consent cannot be inferred or assumed based on silence, lack of verbal objection, lack of physical resistance, previous sexual relationships, and/or a current sexual relationship.

Barriers to Effective Consent.

Effective consent cannot be obtained through the use of fraud or force (actual or implied), threats, intimidation, or coercion. A lack of perceptible resistance (verbal or physical attempts to communicate a lack of consent) does not constitute evidence that consent was given. Under the following conditions, effective consent is not possible:

- **Age**: In the state of Ohio, consent to sexual activity cannot be given by minors under the age of 16.
- **Force**: Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Reporting Party resists the sexual advance or request. However, resistance by the Reporting Party will be viewed as a clear demonstration of non-consent.
- **Coercion**: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Examples of coercion include threatening to disclose private information about someone's sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.
- **Incapacitation**: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if they are asleep, unconscious, or otherwise unaware that sexual activity is occurring. The use of alcohol or other drugs does not, in and of itself, negate a person's ability to give consent, but a level of intoxication can be reached, short of losing consciousness, in which a person's judgment is so impaired that they become incapacitated and thus are not capable of giving consent. 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 impact an individual's:
 - decision-making ability;
 - awareness of consequences;
 - ability to make informed judgments; or
 - capacity to appreciate the nature and the quality of the act.

Because the use of alcohol and other drugs can have a cumulative effect over time, a person who may not have been incapacitated at the beginning of sexual activity may become incapacitated and therefore unable to give effective consent as the sexual activity continues.

Evaluating incapacitation also requires an assessment of whether a Responding Party, or a sober, reasonable person in the Responding Party's position, knew or should have known, that the Reporting Party was incapacitated. If the person who wants to engage in sexual activity is too intoxicated to judge another's communications about consent, that person has an obligation to cease the activity. A person's responsibility for obtaining consent is not diminished by use of alcohol and/or other drugs. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent.

3. RESOURCES AND SUPPORT

The College is committed to treating all members of the community with dignity, care and respect. Any individual who experiences or is affected by sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, whether as a Reporting Party, a Responding Party, or a third party, will have equal access to support and counseling services through the College. Interim remedies are also available to all parties regardless of what course of action a Reporting Party chooses.

The College recognizes that deciding whether or not to report sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, either to the College or law enforcement, can be difficult. All individuals are encouraged to seek the support of trained professionals on campus and in the local community, regardless of when or where the incident occurred. These professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to any party in the event that a report and/or resolution under this policy is pursued.

As detailed below, there are Confidential Resources which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private, but are not considered confidential. These resources will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a report under this policy.

Confidential Resources

The College encourages all community members to make a prompt report of any incident of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, to the College, and where relevant, to local law enforcement. For individuals who are not prepared to make a report, or who may be unsure what happened, but are still seeking information and support, there are several legally-protected confidential resources available as designated below. These confidential resources will not share information with the College or anyone else without the individual's permission.

On Campus Confidential Resources

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These resources are not required to report information they receive to other Oberlin personnel and/or law enforcement, unless they believe there is a threat of immediate harm to the individual or to others or there is reasonable cause to suspect abuse of a minor under 18 years of age.

- **The Oberlin College Counseling Center**
(440) 775-8470
Provides confidential counseling and medical services.
- **Office of Religious and Spiritual Life**
(440-775-5191)
In Ohio, a member of the clergy (a representative of an officially recognized faith) acting in their official capacity of providing spiritual counsel, support, or ministry is not required to report sexual misconduct.
- **Student Advocate**
The Student Advocate is required to share non-identifying information about an incident with the Title IX Coordinator, but seeking assistance from a Confidential Student Advocate will not trigger a College investigation into an incident against the person's wishes. Please contact:
TBD
- **Confidential Peer Student Advocates**
Confidential Peer Student Advocates are required to share non-identifying information about an incident with the Title IX Coordinator, but seeking assistance from a Confidential Peer Student Advocate will not trigger a College investigation into an incident against the person's wishes.
[Name]
[Phone]
[Email]

Off Campus Confidential Resources

- **Lorain County Rape Crisis**
(800) 888-6161 (24-hour Hotline. The hotline may be staffed by Oberlin students. When calling, ask for a rape crisis on-call advocate; you can request an advocate who is not an Oberlin student.)
(440) 233-7232 (Business hours)
Lorain County Rape Crisis provides a 24 hour, 7 day a week hotline where a call is answered by members of a specially trained crisis team that offers comfort and reassurance during sexual assault evidence collection, advocacy and support throughout legal proceedings, short-term crisis intervention and individual or group support, referrals for psychological counseling, support for family members and significant others, and community education on rape awareness and prevention.
- **Cleveland Rape Crisis Center**
(216) 619-6192 (24 Hour Hotline)
Cleveland Rape Crisis Center is dedicated to serving survivors of sexual violence and sex trafficking and those who support them with free comprehensive healing and advocacy services, and to creating social change in the community through education, training, and activism.

Limited Confidential Medical Resources

In Ohio, medical professionals have legally mandated reporting responsibilities. However, the medical professional must deem the patient medically stable before reporting and must communicate to the patient that the patient does not have to report and/or speak to the police. If the patient chooses not to speak to police at the time of the medical examination, the medical professional does not need to report the patient's name – only the date, general time, and general location of the incident.

- **Student Health Services**
(440) 775-8180
Student Health Services provides primary care services to Oberlin College students for a broad spectrum of illnesses and injuries as well as follow-up care as needed. While Student Health Services is required to notify law enforcement about a report of sexual assault under limited circumstances, SHS will not notify the College without the consent of the patient.
- **The Nord Center Sexual Assault Care Unit**
(800) 888-6161 (24 hour line)
The Sexual Assault Care Unit (SACU) at the Nord Center is where residents of Lorain County can go to obtain medical care immediately after experiencing sexualized violence. Hospitals in the area, such as Mercy Allen, will refer patients to the SACU, unless the patient needs to obtain medical care in the hospital for mental or physical reasons. The SACU has capabilities that hospitals do not, such as privacy, an added level of comfort, and high-quality equipment that is used in the process of evidence collection. Safety and Security can provide free rides to the SACU. Parties will be asked to identify themselves to Safety and Security for transportation purposes, but will not be required to give a report or a reason for the ride to the Nord Center. A party requesting a ride may take a support person as well.

Campus Resources

In addition to the confidential resources listed above, Oberlin community members have access to a variety of resources provided by the College. The staff members listed below are trained to support individuals affected by sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, and, as Responsible Employees, to coordinate with the Title IX Coordinator consistent with the College's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

- **Class Deans**
To reach your class dean, or to find out who your class dean is, call the Dean of Students office at (440) 775-8462.
Class deans are available on weekdays during regular office hours and can provide support, connect students to resources, and help arrange interim remedies. To access the Dean on Call after working hours, contact Safety and Security.
- **The Edmonia Lewis Center for Women and Transgender People (ELC)**
elc@oberlin.edu
The ELC is a collective of students, staff, and administrators who strive to transform existing

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systems of oppression based on sex, gender, race, class, sexuality, age, ability, size, religion, nationality, ethnicity, and language. The ELC hold regular office hours during the academic semester.

- **HIV Peer Testers**
hiv@oberlin.edu
The HIV Peer Testers are student volunteers who are trained to provide free, confidential, anonymous oral HIV antibody tests to students of Oberlin College. Please note that while your test results are confidential, HIV peer testers are required to report to the Title IX Coordinator if they learn about an instance of sexual misconduct.
- **The Multicultural Resource Center**
(440) 775-8802
The MRC supports the academic and personal needs of historically underrepresented students, especially students of color, LGBTQ students, first generation, and lower income students.
- **Office of the Ombudsperson**
(440) 775-6728
If you need help resolving a conflict, want to raise a concern, or are just exploring your options, the Ombuds Office can help. The ombudsperson can listen, offer information about Oberlin's policies and procedures, accept suggestions from community members who seek confidential channels for raising responsible concerns, and work for orderly and responsible change in systems. Please note that the confidentiality of the Office of the Ombudsperson does not cover sexual misconduct and members of that office are required to report to the Title IX Coordinator if they learn of an instance of potential sexual misconduct.
- **Oberlin Student Cooperative Association (OSCA) Sexual Offense Policy Advocates (SOPAs)**
(440) 775-8108
SOPAs help OSCA members respond to issues concerning sexualized violence. Secondary responsibilities include self-education, support education, and maintaining accessibility.
- **Sexual Information Center**
(440) 775-8135
The Sexual Information Center is a student-run non-profit organization dedicated to nonjudgmental, unbiased and confidential comprehensive sexuality and sexual health education. Education and counseling are offered through a trained, knowledgeable volunteer staff.

Community Resources

Students, faculty and staff may also access resources located in the local community. These community agencies can provide crisis intervention services, counseling, medical attention and assistance in dealing with the criminal justice system. All individuals are encouraged to use the resources that are best suited to their needs, whether on or off campus.

It may be helpful to have someone who can help an individual explore their off-campus options and guide them through legal processes; an advocate can provide assistance in this area. Lorain County Rape Crisis and Cleveland Rape Crisis offer advocacy support.

- **Genesis House**
(866) 213-1188
Genesis House provides a comprehensive range of family-focused services for Lorain County Victims of Domestic Violence. Such services provide the tools to maximize their opportunity to survive, obtain physical and mental well-being and independence, and minimize the trauma involved in coping with family violence.
- **Buckeye Region Anti-Violence Organization**
(866) 862-7286
BRAVO provides survivor advocacy and assistance regarding hate crimes, discrimination, domestic violence, and sexual assault.
- **Family Planning Services of Lorain County**
(440) 322-7526
Family Planning Services of Lorain County (FPS) is a non-profit, reproductive healthcare organization with medical offices in Elyria and Lorain, Ohio that provides confidential, high quality and low-cost reproductive health care to men and women. You can obtain an exam, birth control, emergency contraception, pregnancy testing, STI screening and treatment, health education and more.
- **Lorain Planned Parenthood**
(440) 242-2087
Lorain Planned Parenthood provides services including abortion referral, birth control, general health care, HIV testing, LGBT services, men's health care, the morning-after pill (emergency contraception), pregnancy testing and services, STI testing, treatment and vaccines, women's health care.
- **The Preterm Clinic**
(216) 991-4000
The Preterm Clinic provides safe, compassionate abortion care and related services in a standard-setting, environmentally sustainable facility.

4. Reporting

Introduction

To report a violation of the Sexual Misconduct Policy, contact the Title IX Coordinator or other designated administrator below. These administrators are specifically trained in the dynamics of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, and Oberlin College's Sexual Misconduct Policy. A report can be made in person, by telephone, by email, or online using an intake form (available on the website of the Office of Equity Concerns). A report can also be made anonymously.

Oberlin College encourages timely reporting of sexual misconduct. Prompt reporting helps ensure the preservation of evidence and timely investigation. The College does not, however, limit the time frame for reporting, and will respond to a report regardless of when or where the incident occurred.

When the College becomes aware of a report of sexual misconduct, it is committed to offering prompt, effective, and sensitive assistance to a Reporting Party (student or employee) and to

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protecting the community from harm. The College recognizes its legal obligation to take immediate and effective steps in response to an allegation of sexual misconduct, including an initial Title IX assessment of the allegation, instituting interim measures to protect the Reporting Party, and, based on the outcome of informal or formal resolution, taking action to end any sexual misconduct, prevent its recurrence, and address its effects on the Reporting Party or any other member of the community. The College is committed to providing a fair, equitable, and timely process to all parties.

The College strives to empower a Reporting Party by allowing as much personal control over various steps of the sexual misconduct response process as the circumstances of the reported misconduct and legal and policy requirements allow. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. Oberlin College strongly encourages anyone who has experienced sexual misconduct to report it for their own protection and support as well as for the safety of the College community. At the time a report is made, a person does not have to decide whether or not to request any particular course of action, nor does a person need to know how to label what happened. The College provides support that can assist each individual in making these important decisions, and to the extent legally possible, will respect an individual's autonomy in deciding how to proceed. At all times, the College will balance respect for the stated preferences of the Reporting Party with its obligation to protect individual and campus safety.

Pursuing Oberlin College's process does not mean a Reporting Party waives the right to a criminal or other legal process and vice versa. To the contrary, the College encourages a Reporting Party to explore all options, including resolving a report through both Oberlin's processes and external law enforcement. Individuals who report a violation of the Oberlin College Sexual Misconduct policy will be informed about the process of reporting sexual misconduct to law enforcement. The College will assist parties who are reporting sexual misconduct to make contact with community agencies that provide advocates to people who are seeking civil protection orders. The College will honor any such order of protection or similar lawful order issued by a criminal or civil court. Participation in a College investigation or adjudication process does not supersede any rights or obligations of participating parties in any other legal processes.

On receiving a report, the Title IX Coordinator will arrange a meeting with the Reporting Party in order to provide a written explanation of the individual's rights and options.

Emergency Reporting Options

In case of a safety or health emergency, the following resources can provide or connect you to emergency services:

- **Emergency Services**
911 (24 hours)
- **Oberlin Police Department**
(440) 774-1061
- **Safety and Security**
(440) 775-8911 (24 hours)
Safety and Security will seek to honor any request for the gender of an officer who receives a report, staffing permitting.
- **Lorain County Rape Crisis/Nord Sexual Assault Care Unit**
(800) 888-6161 (24 hours)

- **Genesis House**
(866) 213-1188
Genesis House provides a comprehensive range of family-focused services for Lorain County Victims of Domestic Violence. Such services provide the tools to maximize their opportunity to survive, obtain physical and mental well-being and independence, and minimize the trauma involved in coping with family violence.
- **Lorain County Mental Health Crisis Hotline**
(800) 888-6161 (24 hours)

Campus Reporting Options

All of the following offices and individuals are prepared to receive reports of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. On weekends and after business hours on weekdays, Safety and Security is available to help members of the community access reporting options and support resources such as the Dean on Call.

Each of these administrators are Responsible Employees, which means that they are required to share the known details of the report with the Title IX Coordinator in order to connect the Reporting Party to information and support through the central review process.

- **Title IX Coordinator**
Rebecca Mosely, Title IX Coordinator
440-775-8555
Available during weekday working hours to coordinate a fair and equitable response to reports of sexual misconduct.
- **Safety and Security**
(440) 775 – 8911 (emergency); (440) 775-8444 (non-emergency)
Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student and can reach the Dean on Call at any time. Available 24 hours a day, 7 days a week.
- **Office of the Dean of Students**
(440)775-8462
The Office of the Dean of Students is open during weekday working hours.
- **Human Resources**
(440) 775-8430
The Office of Human Resources is available during weekday working hours to provide assistance to employees on a range of issues.

Anonymous Reporting Options

Any individual may make an anonymous report concerning an act of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. An individual may report the incident without disclosing their name, identifying the

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Responding Party or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. Currently, an anonymous report can be made by submitting a written document through campus mail to the Rebecca Mosely, Title IX Coordinator, Cox 202.

The Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Director of Safety and Security, compliance with all Clery Act and Campus SaVE Act obligations.

Off Campus Reporting Options

Conduct that may be criminal in nature can be reported to local law enforcement.

- **Oberlin Police Department**
Non-emergency: 440-774-1601
Emergency: 911
- **Lorain County Prosecutor**
(440) 329-5389

Conduct that may implicate civil rights can be reported to external regulatory agencies.

- **Office for Civil Rights, Cleveland Office**
(216) 522 - 4970
OCR.Cleveland@ed.gov
The OCR serves students and employees facing discrimination and promotes systemic solutions to civil rights problems. An important responsibility is resolving reports of harassment, discrimination and retaliation.
- **U.S. Equal Employment Opportunity Commission, Cleveland Field Office**
(800) 669 - 4000
The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
(800) 669 - 4000

Reporting Considerations

A. Timeliness and Location of Incidents.

Reporting Parties and third-party witnesses are encouraged to report sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, as soon as possible in order to maximize the College's ability to respond promptly and effectively. Timely reporting enables the College to provide greater options for support, investigation and adjudication, especially as relates to crisis counseling, the preservation of evidence, and security and law enforcement responses. The College does not, however, limit the time frame for reporting.

The College encourages reporting, regardless of when or where the incident occurred, and regardless of whether the Responding Party is a student or employee of Oberlin College. In every report, the College will support the Reporting Party and provide information and assistance. If the Responding Party is not a member of the Oberlin community, or is no longer a student or employee, the College will still seek to meet its Title IX obligations by taking steps to end the harassment, prevent its recurrence, and address its effects. While the College's ability to take disciplinary action may be limited given the participants' current standing, the College will assist a Reporting Party in identifying any external reporting options, including law enforcement.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct is subject to this policy if the conduct occurred in the context of an education program or activity of the College or had continuing adverse effects on campus or in an off-campus education program or activity.

If an individual experiences sexual and/or gender harassment online, in a public space like a street, or in a private space like a house party and doesn't know who is responsible for the conduct, that person is still encouraged to report their experience to the Title IX Coordinator to ensure they are offered appropriate support. These reports also enable the College to keep track of any patterns related to such events and thus identify effective interventions, such as increased lighting, online bystander training, or other education and prevention campaigns.

B. Amnesty for Alcohol or Other Drug Use

Oberlin College will most effectively be able to prevent, stop, and address the effects of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, when as many people who experience such conduct and those who witness it share what they know. To encourage reporting, an individual who reports sexual misconduct, either as a Reporting Party or a third-party witness, will not be subject to disciplinary action by the College for their personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

C. Coordination with Law Enforcement

The College will inform a Reporting Party about the option to pursue criminal action for incidents of sexual misconduct that may also be crimes under Ohio law. If requested, the College will assist a Reporting Party in making a criminal report and cooperate with law enforcement agencies to the extent permitted by law. Either party may also choose to seek professional legal advice if they are navigating both College and legal processes.

The College's policy, definitions and burden of proof may differ from Ohio criminal law. In some respects, College policies offer greater protection than state law. A Reporting Party may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Responding Party, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the evidence gathering stage of a criminal investigation. The College will nevertheless communicate with the Reporting Party regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation. The College may not, by federal law, wait to address reports of sexual misconduct until any external legal processes are resolved.

D. Statement against Retaliation

It is a violation of College policy to retaliate in any way against an individual because they reported an allegation of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. The College recognizes that retaliation can take many forms, use multiple modes of communication including in person and electronic and online communications, may be committed by or against an individual or a group, and that a Reporting Party, Responding Party, or third party may commit or be the subject of retaliation.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

E. Reports Involving Minors or Suspected Child Abuse

In accordance with Ohio law, Oberlin College requires all members of the community to report any suspected child abuse or neglect involving a minor under the age of 18 years.

All College employees, whether designated as a mandatory reporter under Ohio state law or not, are required to immediately report any suspected child abuse or neglect to the Title IX Coordinator and the Director of Campus Safety. The source of abuse does not need to be known in order to file a report.

The College will report all suspected child abuse and neglect, including sexual misconduct, to law enforcement and/or child protective services. The College must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee or student to investigate suspected child abuse. This is the role of child protective services and law enforcement authorities.

In addition to notifying the Title IX Coordinator and Director of Campus Safety, any individual may make a direct report as follows:

- If a child is in immediate danger, call 911.
- If there is no immediate danger, contact the Ohio Department of Job and Family Services Child Abuse and Neglect hotline at (855) 642-4453.

5. Interim Measures

Overview

Upon receipt of a report of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, the College will impose reasonable and appropriate interim measures designed to protect the parties and the integrity of any investigation. In imposing these measures, the College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional and physical well-being concerns are being addressed. Interim measures are available, as appropriate, regardless of whether a Reporting Party seeks an investigation or formal resolution.

Interim measures, in and of themselves, are not a resolution to a report. They are temporary actions taken by the College to foster a more stable and safe environment during a period of ongoing exploration of options, investigation and/or adjudication. Interim measures are initiated based on information gathered during a report and are not intended to be permanent resolutions; hence, they may be amended or removed as additional information is gathered. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Reporting Party or the College.

Interim measures may be requested by the parties or imposed by the College on its own initiative. For example, a Reporting Party or a Responding Party may request a no contact notice or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community and/or the integrity of the process.

All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure. Failure of the parties to comply with interim measures may result in disciplinary action, even if the initial report of sexual misconduct is later not proven.

The College supports the right of students and employees to seek a protection order from a civil or criminal court. The College honors any existing protection orders provided to Safety and Security by members of the College community.

Range of Measures

Interim measures will be implemented at the discretion of the College. Potential measures, which may be applied to the Reporting Party and/or the Responding Party, include:

- Access to counseling services and assistance in setting up an initial appointment, both on and off campus
- Providing medical services
- Imposition of a campus no contact order
- Imposition of a no trespass order
- Security assistance (examples might include security escorts, increased patrol; accompanying a student during an interview with OPD; transports to hospital or Nord, etc.)
- Transportation assistance
- Academic accommodations (with agreement of the appropriate faculty, who will not be informed of the specific reason for the request with permission of the student):
 - Rescheduling of exams and assignments
 - Providing alternative course completion options
 - Change in class schedule or other academic accommodations, without penalty to the party
- Providing academic support services, such as tutoring
- Change in work schedule or job assignment
- Residence modifications:
 - Change in on-campus housing
 - Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
 - Receive requests for assistance from College support staff in completing housing relocation

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- Limit an individual or organization's access to certain College facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Interim suspension or College-imposed leave
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

Interim Suspension or Leave

Where the report of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension. Employees may be placed on administrative leave or suspended depending on their employment classification.

Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which the student or employee might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

6. Title IX Review, Investigation, and Resolution

Overview

Upon receipt of a report, the College's Title IX Team will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and the Reporting Party's expressed preference for resolution in determining the appropriate course of action to eliminate the conduct at issue, prevent its recurrence and address its effects.

At the conclusion of the assessment, the Title IX Team may refer the report for informal resolution, which includes the identification of remedies to stop the sexual misconduct, address its effects, and prevent its recurrence. Informal resolution does not involve disciplinary action against a Responding Party. Alternatively, the Title IX Team may refer the matter for formal resolution. Formal resolution begins with an investigation. The goal of the investigation is to gather all relevant facts and determine if there is sufficient information to refer the report to an adjudication or grievance process in order to determine responsibility and impose disciplinary action if appropriate.

The initial steps for any resolution of a report of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, against a student, staff member, or faculty member will involve the same stages: an initial assessment, investigation, and the determination to pursue either informal or formal resolution.

Informal resolution options are the same for reports against a student, staff or faculty member. Similarly, the investigative process is the same for all three. For formal resolution, however, there are three distinct procedures to address student misconduct, staff misconduct and employee misconduct. The nature of these procedures reflect the differing nature of each constituent's relationship to the College, but all contain similar hallmarks of prompt and equitable process.

The Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of any investigation. These records will be kept confidential to the extent permitted by law.

The Role of the Title IX Team

The Title IX Team, led by the Title IX Coordinator, assists in the review, investigation and resolution of reports. At a minimum, this group includes the Title IX Coordinator, Title IX Deputy Coordinators, and the Director of Safety and Security. Depending on the roles of the parties involved in a report, a designee from the appropriate divisional dean (Dean of Students, Dean of the College or Dean of the Conservatory) or the Manager of Employee and Labor Relations may join the group. In all cases, the Title IX Team will be limited to a small number of individuals who need to be informed in order to provide effective and equitable review and timely resolution of reports while protecting the privacy of parties as fully as possible. Regular members of the Title IX Team receive annual training in strategies to protect parties who experience sexual misconduct or other forms of sex- and/or gender-related harassment and discrimination and to promote individual and institutional accountability.

Although a report may be made to any Responsible Employee, all reports received by Responsible Employees will be referred to the Title IX Coordinator to ensure consistent application of the policy to all individuals and to allow the College to respond promptly and equitably to eliminate the sexual misconduct, prevent its recurrence, and address its effects. The Title IX Team helps to meet these goals by overseeing the resolution of all reports under this policy. The Title IX Team will also ensure that all students and employees, whether Reporting Parties or Responding Parties, have appropriate guidance throughout the investigation and resolution of the report. The Title IX Team also reviews and implements interim remedies to provide protection and security while a resolution is being reached.

Advisors, Support Persons and Attorneys

All parties are entitled to advice and support during the process. In addition, the parties may consult the Title IX Coordinator, who does not participate directly in formal resolution. Attorneys may not participate in the proceedings outside of the role of advisor as described below.

1. Advisor: In any hearing, the Reporting Party and Responding Party may choose to be assisted by an advisor of their choice. The parties may select their own advisor, or may select an advisor from a list of campus community members who have undergone Title IX training to guide a party through the pre-hearing and hearing process. An outside advisor will be required to meet with the Hearing Coordinator or the Title IX Coordinator in advance of any participation in the proceedings to be informed about College expectations regarding confidentiality of the process. The advisor may accompany the party to any College investigative, administrative meeting, or hearing. The advisor may not address the panel during the hearing, or otherwise delay, disrupt, or interfere with any meeting or proceeding. Attorneys serving as advisors must adhere to the

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expectations of the role as described in this policy.

2. Support Person: A Reporting Party and Responding Party may also choose to be assisted by an emotional support person of their choice. To serve as a support person, the individual will be required to meet with the Hearing Coordinator or the Title IX Coordinator in advance of any participation in the proceedings to be informed about College expectations regarding confidentiality of the process.

The support person cannot be a witness in the proceedings. The support person is a silent and non-participating presence who is there solely to observe and provide moral support during the hearing itself. This person is not to address the Hearing Panel, except to ask for a short recess if one of the parties requires some time to compose themselves or collect their thoughts. The support person may not delay, disrupt, or interfere with any meeting or proceeding. The Hearing Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of a support person and whether the person may remain at the proceedings. While the support person may be present to hear testimony, no written materials are to be shared with support persons.

Absent extenuating circumstances, witnesses and others involved in an investigation or hearing are not entitled to have a support person present.

3. Role of the Attorney/Outside Agreements: The College prohibits outside attorneys, or family members acting as attorneys, from participating in proceedings under this policy in any manner other than the role of advisor outlined above. As noted, parties have a right to an advisor of their choice, and may choose an attorney to fill this role at their own expense. The College will not recognize or enforce agreements between the parties outside of these procedures.

Initial Title IX Assessment

In every report of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, the College will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may be initiated depending on a variety of factors, such as the Reporting Party's wish to pursue formal or informal resolution, the risk posed to any individual or the campus community, and the nature of the allegation.

The first step of the assessment will usually be a preliminary meeting between the Reporting Party and the Title IX Coordinator or a member of the Title IX Team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full scale interview. At this meeting, the Reporting Party will be provided with information about support and advocacy resources, interim remedies and options for resolution.

As part of the initial assessment of the report, the Title IX Team will ensure the following steps have been taken:

- Assess the nature and circumstances of the allegation
- Address immediate physical safety and emotional well-being needs of the Reporting Party or any other individual
- Notify the Reporting Party of the right to notify (or decline to notify) law enforcement if the conduct is potentially criminal in nature
- Notify the Reporting Party of the right to seek medical treatment to address physical health and the importance of preservation of evidence
- Assess the reported conduct for the need for a timely warning under federal law
- Provide the Reporting Party with information about:
 - On and off campus resources
 - The range of interim accommodations and remedies
 - An explanation of the options for resolution, including informal resolution and formal resolution
- Discuss the Reporting Party's expressed preference for manner of resolution and any barriers to proceeding
- Explain to the Reporting Party the College's policy prohibiting retaliation
- Make the Reporting Party aware of the availability of an advisor, advocate, or support person
- Assess for pattern evidence or other similar conduct by Responding Party
- Enter non-identifying information about the report into the University's daily crime log if the conduct is potentially criminal in nature

At the conclusion of the Title IX assessment, the Title IX Team will determine the appropriate manner of resolution and, if appropriate, refer the report either for informal resolution or for further investigation and, if the appropriate threshold is met, formal resolution.

The determination as to how to proceed will be communicated to the Reporting Party in writing. Depending on the circumstances and requested resolution, the Responding Party may or may not be notified of the report or resolution. A Responding Party will always be notified when the College seeks action that would directly impact a Responding Party, such as protective measures that restrict their movement on campus, the initiation of an investigation, or the decision to involve the Responding Party in informal resolution.

If the Title IX Team recommends formal resolution, a Hearing Coordinator will be assigned to facilitate the adjudication through a specially trained Hearing Panel. The Hearing Coordinator will be an administrator trained in campus policy and the dynamics of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. The Hearing Coordinator's role is to ensure that procedures are timely and impartial and that all parties are informed appropriately at each step of the process.

Informal Resolution

Informal resolution eliminates a potential hostile environment by identifying and implementing remedies to stop sexual misconduct, address its effects, and prevent its recurrence. Because it does not involve a formal adjudication process, it does not result in disciplinary action against the Responding Party.

Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through individual and community remedies designed to maximize the Reporting Party's access to all employment, educational, and extracurricular opportunities and benefits at the College and to eliminate a potential hostile environment.

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In addition to the range of interim measures previously described, the College may also:

- Provide targeted and/or broad-based training and educational programming for relevant individuals and groups;
- Provide increased monitoring, supervision or security at locations or activities where the misconduct occurred;
- Facilitate a meeting with the Responding Party with the agreement of both parties, with both parties present or through indirect action by the Title IX Coordinator; and,
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

The College will not compel a Reporting Party to engage in mediation, to directly confront the Responding Party, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual assault. Depending on the form of informal resolution used, it may be possible to maintain anonymity of Reporting Parties and witnesses.

The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary for all parties, and a Reporting Party can request to end informal resolution at any time. At that time, the report may be referred for formal resolution. Factors that will shape the Title IX Team's recommendation will include the nature of the report, the Reporting Party's stated preference, and relevant evidence about patterns of conduct.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be initiated within 30 business days of the initial report.

Investigation

Based on the findings of the initial Title IX assessment, the College may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX Team, will oversee the investigation. Information gathered during the investigation will be used to evaluate the appropriate course of action, provide for the safety of the individual and the campus community, and offer remedies as necessary to address the effects of the conduct cited in the report. An investigation is also required if the Title IX Team believes that disciplinary action may be appropriate.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals involved in the investigation, including the Reporting Party, the Responding Party, and any third-party witnesses, will be treated with appropriate sensitivity and respect. Throughout the investigation and resolution processes, both parties will receive timely notice of any meeting at which their attendance may be requested or required. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.

The College will designate an investigator who has specific training and experience investigating allegations of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator will gather information from the Reporting Party, the Responding Party, and any other individuals who may have information relevant to the determination. The investigator will also gather any available physical evidence, including documents, communications between the parties,

and other electronic records as appropriate. The investigator may consider prior allegations of, or findings of responsibility for, similar conduct by the Responding Party. The Reporting Party and Responding Party will have an equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information.

The investigation will be completed expeditiously, usually within 20 business days, although the complexity of a report may require a longer time frame. The time frame may be extended for good cause to ensure the integrity and completeness of the investigation, to accommodate the availability of witnesses, to address College breaks or vacations, or other legitimate reasons. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing.

Threshold Determinations and Request for Review from Insufficient Threshold:

At the conclusion of the investigation, the investigator will prepare a written report synthesizing the facts for review by the Title IX Coordinator and a Hearing Coordinator. The investigator is not charged with reaching a determination as to responsibility, which is a function reserved for the Conduct Conference or the Hearing Panel (when the responding party is a student), the review administrator (when the responding party is staff), or the review panel (when the responding party is faculty).

Upon receipt of the investigative report, the Hearing Coordinator, in consultation with the Title IX Coordinator, and as appropriate, the Title IX Team, will review the report and make a threshold determination as to whether there is sufficient factual information upon which a Hearing Administrator or Body could find a violation of this policy. This threshold determination does not involve making a determination of responsibility, nor does it involve assessing the credibility of the parties. If the threshold has been established, the Hearing Coordinator will issue a notification letter to the Responding Party and the Reporting Party and refer the report for the appropriate resolution procedures.

If the Hearing Coordinator, in consultation with the Title IX Coordinator, determines that this threshold has not been reached (that is, that there is no evidence which could support a policy violation), the Reporting Party and Responding Party will be notified in writing. The Reporting Party will have the opportunity to seek review by the appropriate divisional head or the Manager of Employee and Labor Relations (or their designee) by submitting a written request for review within 5 business days of receipt of the notification. Where a designee is chosen, the identity of this individual will be shared with both parties.

If a request for review is filed, the Responding Party will be notified and have the opportunity to respond within 5 business days. The divisional head or the Manager of Employee and Labor Relations (or their designee) may affirm the threshold finding, reverse the finding or remand the matter for additional investigation as warranted. The divisional head or the Manager of Employee and Labor Relations (or their designee) will render a decision in writing, to both parties, within 10 business days of receipt of the request for review and the response to such request. The decision of the divisional dean or the Manager of Employee and Labor Relations (or their designee) affirming the threshold finding that there is insufficient information to proceed is final.

The Title IX Team always has the discretion to determine if additional measures are necessary to achieve resolution or provide support for the parties. In a report where the investigation does not move forward to formal resolution, informal resolution may be an appropriate course of action.

Formal Resolution

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Disciplinary action against a Responding Party may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

The specific procedures for Formal Resolution will vary based upon the role of the Responding Party:

- For a *report against a student*, disciplinary action may be taken by the Hearing Administrator at the conclusion of a Conduct Conference in which a student accepts responsibility or is found to be responsible, or after a Formal Panel Hearing reaches a finding of responsibility and recommends appropriate sanctions. See Section 7: *Procedures for Formal Resolution for Reports against Students*.
- For a *report against a staff member*, disciplinary action may be taken at the conclusion of the review by the appropriate divisional head or their designee or Manager of Employee and Labor Relations, in consultation with the Title IX Coordinator. See Section 8: *Procedures for Formal Resolution for Reports against Staff*.
- For a *report against a faculty member*, disciplinary action may be taken at the conclusion of a review by a panel composed of members of the General Faculty Professional Conduct Review Committee. See Section 9: *Procedures for Formal Resolution for Reports against Faculty*.

Time Frame for Resolution

The College seeks to resolve all reports within 60 business days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 business days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Reporting Party and Responding Party can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

The College as Reporting Party

On some occasions, Oberlin College will assume the function of the Reporting Party. This approach may be taken in instances of multiple reports about a single Responding Party, when a Reporting Party chooses not to participate in the hearing process, or other occasions when the College has sufficient evidence to reach a threshold determination that a report should be referred to formal resolution. In these instances, the Hearing Coordinator will appoint an administrator as the institutional representative to serve as the Reporting Party.

Support for Parties after Formal Resolution

The Title IX Coordinator is available to provide support and to identify campus and external resources to assist all parties and witnesses once a resolution has been reached. The goal of such support is to address any personal needs and to facilitate the participation of all individuals in the campus community in whatever ways are appropriate given any sanctions that may have been imposed.

7. Procedures for Formal Resolution for Reports against Students

Overview

Formal resolution of a report under the Sexual Misconduct Policy will occur either through a Conduct Conference or through adjudication before a Hearing Panel, which typically consists of a three specifically trained administrators.

If resolution involves a Conduct Conference, the Hearing Coordinator will meet with the Reporting Party and Responding Party to determine responsibility and render a decision as to what sanctions, if applicable, should be implemented. If resolution involves a Hearing Panel, the Hearing Coordinator will be responsible for facilitating the formal resolution process, including the appointment of three trained administrators to serve on each panel. These appointments will take into account the need for a timely process and any conflicts of interest.

The Hearing Coordinator and all Hearing Panelists must participate in annual training on non-discrimination; the dynamics of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.

The Hearing Panel is supported by the Hearing Coordinator, who is present at Hearing Panel meetings, but is not be a voting member of the panel. The Hearing Coordinator will meet with all involved parties prior to the hearing, be present during the hearing to serve as a resource for the Hearing Panel and the parties on issues of policy and procedure, and to ensure that policy and procedure are appropriately followed throughout the hearing.

In most cases, it should be possible to convene a Hearing Panel; however if the hearing must be heard at or after the end of the semester or academic year or during Winter Term and/or a full Hearing Panel cannot reasonably be convened, those cases may be heard by the Dean of Students (or designee) or the College may substitute an alternate method of adjudication at its discretion.

Conduct Conference

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A Reporting Party or Responding Party may request resolution through an administrative Conduct Conference, in which the Hearing Coordinator will meet with the Reporting Party and Responding Party to determine responsibility and, if applicable, render a decision as to what sanctions should be implemented. Both parties and the Hearing Coordinator must agree that the matter is appropriate for resolution by a Conduct Conference. Depending upon the nature and severity of the allegations, the Hearing Coordinator may decline to handle the matter administratively and refer the case to a Hearing Panel.

A Conduct Conference is appropriate when the Responding Party has admitted to the misconduct and there is no discernible dispute in the relevant facts of the investigation report; however, at the discretion of the Hearing Coordinator, it may also be used when the facts are in dispute. The investigative report will serve as the primary evidence in making a determination of responsibility.

All parties must have notice, the opportunity to review the investigative report in advance, and the opportunity to present any additional relevant information to the Hearing Coordinator. In reaching a determination as to whether this policy has been violated, the Hearing Coordinator will reach a determination by a preponderance of the evidence (whether the conduct was more likely than not to have occurred). Based on the outcome of the Conduct Conference, the Hearing Coordinator will issue an appropriate sanction. The Hearing Coordinator may also recommend remedies for the Reporting Party and remedies for the Oberlin community. On the conclusion of the Conduct Conference, the Title IX Coordinator is responsible for reviewing, adjusting, and implementing these remedies in order to eliminate the hostile environment and prevent its recurrence.

Both a Reporting Party and Responding Party may appeal the determination of the Hearing Coordinator as provided in the Appeal section below.

Pre-Hearing Procedures

The pre-hearing process, described below, is crucial to ensuring a fair and equitable process. The Hearing Coordinator is responsible for managing the pre-hearing process. The timelines described below are designed to ensure that the parties have adequate notice to review information and submit related requests to the Hearing Coordinator, as well as to allow the Hearing Coordinator sufficient notice to arrange witnesses or address related concerns. In consultation with the Title IX Coordinator, the Hearing Coordinator may make appropriate adjustments to the timeframes provided to achieve these goals as well as ensure a timely and equitable process. The Hearing Coordinator will have the authority to designate reasonable time frames with respect to the notice provisions regarding witnesses, prior sexual history and/or pattern evidence.

1. Notice of Charges

Following the threshold determination that there is sufficient information to move forward with a hearing, the Hearing Coordinator will send a Notification Letter to both the Reporting Party and the Responding Party. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific policy violation(s) that are alleged to have taken place.

2. Acceptance of Responsibility

If a Responding Party wishes to accept responsibility for the charges, they may request an administrative conference with the Hearing Coordinator. In this instance, the Responding Party will provide a written acceptance of the facts of the allegation. The Hearing Coordinator will then convene a Hearing Panel. The Hearing Panel's role will be solely to determine appropriate sanctions. The investigative report will serve as the primary evidence in making this determination. The Reporting Party, the Responding Party, and the

Hearing Panel retain the right to call witnesses in order to assess sanctions and will follow the time frames and procedures described in this description of pre-hearing procedures.

3. Pre-Hearing Meeting with Reporting Party and Responding Party

Following the Notification Letter, the Hearing Coordinator will contact the Reporting Party and Responding Party to schedule separate meetings with each party. At this pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Reporting Party and/or Responding Party have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Reporting Party or Responding Party to this initial meeting.

4. Notice of Hearing

Once each party has met with the Hearing Coordinator, a Notice of Hearing is sent to the Reporting Party and the Responding Party. The Notice provides the parties with the date, time, and place of the hearing, as well as the names of the individual panelists on the Hearing Panel. In general, the hearing will be scheduled within 10 business days of the date of the Notice of Hearing. This time frame may be extended for good cause, with written notice to the parties of the extension and the reason for the extension.

5. Composition of the Hearing Panel

The Reporting Party and the Responding Party may each submit a written request to the Hearing Coordinator that a member of the Hearing Panel be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within 2 business days of receipt of the Notice of Hearing.

6. Pre-Hearing Review of Documents.

Both parties will be afforded similar and timely access to any documents and information used at a hearing. The Reporting Party and the Responding Party will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least 5 business days prior to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements from or interviews with both parties, and any other documentary information that will be presented to the Hearing Panel. Review of these documents will take place at a secure and private location on campus, with access facilitated by the Hearing Coordinator or Safety and Security.

The Hearing Panel must review all pertinent information regarding the incident in question prior to the date of the Hearing Panel.

Information and/or witnesses not provided as part of the investigation may not be introduced at the Hearing Panel without permission of the Hearing Coordinator.

7. Relevance

The Hearing Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Hearing Coordinator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

8. Witnesses

The Reporting Party, Responding Party, and the Hearing Panel all have the right to present

witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character. In general, neither party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the College's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the College's investigation, the following must be submitted to the Hearing Coordinator via e-mail or in hardcopy format:

- The names of any witnesses that either party intends to call;
- A written statement and/or description of what each witness observed, if not already provided during investigation;
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
- The reason why the witness was not interviewed by the investigator, if applicable.

The Hearing Coordinator will determine if any proffered witness has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Hearing Coordinator may also require the investigator to interview the newly proffered witness.

If witnesses are approved to be present, the Reporting Party and the Responding Party are provided with a list of witnesses and any relevant documents related to their appearance at the hearing in advance of the hearing date, with the understanding that the Reporting Party and Responding Party will have the opportunity to submit additional witness information to the Hearing Coordinator in advance of the hearing date after reviewing any additional investigative documents.

9. Prior Sexual History and/or Pattern Evidence

Prior Sexual History of a Reporting Party: In general, a Reporting Party's prior sexual history, character or reputation is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Reporting Party and the Responding Party, and the Responding Party alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Reporting Party with other individuals is not relevant and will not be permitted. In addition, prior sexual history may be considered under *very limited* circumstances to explain injury or demonstrate motive or intent.

Pattern Evidence by a Responding Party: Where there is evidence of a pattern of conduct similar in nature by the Responding Party, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the panel's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Responding Party. Pattern evidence may also be relevant to prove intent, state of mind, absence of mistake or identity. Where there is a prior finding of responsibility for a similar act of sexual misconduct, the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

The Hearing Coordinator, in consultation with the Title IX Coordinator, may choose to introduce this information, with appropriate notice to the parties. Alternatively, a party may request in writing that information under this section be admitted. A request to admit

such information must be submitted to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.

To aid in an advance determination of relevance of prior sexual history and/or pattern evidence, the following must be submitted before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- A written statement and/or description of the proposed information, if not already provided during investigation; and
- A summary of why this information is relevant to making a decision of responsibility at the hearing.

If this information is approved as appropriate for presentation at the hearing, the Reporting Party and Responding Party will be provided with a brief description of the approved information before the hearing.

10. Request to Reschedule Hearing

Either party can request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Hearing Coordinator with an explanation for the request at least 3 business days prior to the hearing.

11. Consolidation of Hearings

At the discretion of the Hearing Coordinator, in consultation with the Title IX Coordinator, multiple reports may be consolidated against a Responding Party in one hearing, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Reporting Parties, multiple Responding Parties, or related conduct that would regularly have been heard under the Code of Student Conduct.

Hearing Procedures

The Hearing Coordinator is responsible for the administration of all procedures related to the panel hearing.

1. Attendance at Hearing

If a party does not attend a hearing for any non-emergency or non-compelling reason, the hearing may be held in their absence at the discretion of the Hearing Coordinator. The College will not require a Reporting Party to participate in or attend a hearing, although the College's ability to present evidence may be limited in the instance that a Reporting Party chooses not to participate in the hearing.

If a Responding Party who is a student withdraws from the College prior to the conclusion of an investigation or formal resolution under this policy, the Responding Party's academic transcript will be marked Withdrawal Pending Disciplinary Action. If a Responding Party who is a student chooses not to participate, the College will move forward with the hearing and imposition of sanction, if any, in absentia. If the report is finally resolved while the Responding Party is absent, the Responding Party's academic transcript will be marked with the final outcome in accordance with regular practice under this policy.

A Reporting Party or Responding Party may also request alternative testimony options that would not require physical proximity to the other party. Options include placing a privacy

screen in the hearing room or allowing the Reporting Party or Responding Party to speak outside the physical presence of the other by using appropriate technology to facilitate participation. The Hearing Coordinator must review any proposed alternative in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the Reporting Party or Responding Party more comfortable, they are not intended to work to the disadvantage of the other party. Thus, when one party requests alternative testimony options, the other party may participate in a similar manner.

2. Participants in Hearing Procedures

The Hearing Panel is a closed hearing and is not open to the public. The individuals who may appear before the Hearing Panel are: the Reporting Party; the Responding Party; any individuals serving as an approved advisor or support person; any individuals appearing as witnesses; and any relevant administrators necessary to facilitate the hearing.

3. Safeguarding of Privacy

All parties involved in a hearing are required to keep the information learned in preparation for the hearing and at the hearing private. No copies of documents provided are to be made or shared with any third parties. All copies provided must be returned to the College at the conclusion of the hearing and any appeals. Any breach of this duty is subject to further disciplinary action by the College. The College expectation of privacy during the hearing process should not be understood to limit any legal rights of the parties during or after resolution. The College may not, by federal law, prohibit the Reporting Party from disclosing the final outcome of a formal process (after any appeals are concluded). All other conditions for disclosure of hearing records and outcomes are governed by FERPA and any other applicable privacy laws.

4. Hearing Panel Protocol

The hearing is intended to provide a fair and ample opportunity for each party to present relevant information and witnesses. The Hearing Panel will make factual findings, determine whether College policy was violated, and recommend appropriate sanctions and remedies. The hearing is not comparable to a criminal trial; it is not designed to be adversarial in nature. The Hearing Panel is the mechanism by which the College assesses whether College policy has been violated, and as appropriate, takes formal disciplinary action regarding a violation of College policy.

Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the Reporting Party, the Responding Party, and witnesses.

The Hearing Panel will choose one member of the panel to serve as chair. A hearing will be called to order by the panel chair. The Hearing Coordinator serves as a non-voting advisor to the Hearing Panel and the parties on issues of policy and procedure. The chair will explain the hearing process and will provide an opportunity to all parties to ask procedural questions prior to initial statements and the presentation of information.

The investigator will provide a brief statement summarizing the investigation. The statement should focus on the areas of agreement and disagreement in order to assist the Hearing Panel in prioritizing areas of inquiry. The Hearing Panel, Reporting Party, or Responding Party may make brief inquiries of the investigator at this juncture, as there will be additional opportunity to ask questions of the investigator after the Hearing Panel has heard from the Reporting Party, the Responding Party, and any witnesses.

The Reporting Party has the option to supplement the information provided to the panel with a brief statement. This is not intended to be a retelling of the event. The Hearing Panel

may pose questions to the Reporting Party, including questions submitted in writing to the Hearing Panel by the Responding Party. The Responding Party will not be permitted to question the Reporting Party directly. In the event that the College serves as the Reporting Party, the designated institutional representative will have the same opportunity to make a statement.

After the Reporting Party is finished, the Responding Party has the option to make a brief statement. The Hearing Panel may pose questions to the Responding Party, including questions submitted in writing to the Hearing Panel by the Reporting Party. The Reporting Party will not be permitted to question the Responding Party directly.

The panel may hear from witnesses on behalf of the Reporting Party and the Responding Party. Each witness will be questioned by the Hearing Panel, and, as appropriate, the Reporting Party and the Responding Party. Under some circumstances, the Reporting Party or the Responding Party may be asked to present a list of written questions to the panel, which will determine the relevance of the questions and pose any questions deemed relevant.

The Hearing Panel, the Reporting Party, and Responding Party may then question the investigator. The investigator is not permitted to offer an opinion on the credibility of any individual or as to the ultimate issue.

At the conclusion of the presentation of all witnesses, the Reporting Party and Responding Party will have the option to address briefly any outstanding issues of fact.

5. Questioning of Witnesses

It is the responsibility of the Hearing Panel to assure that the information necessary to make an informed decision is presented. The panel members may play an active role in questioning both parties and witnesses involved in the case. At times, the panel members may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context.

At no time will the Reporting Party or the Responding Party be permitted to directly question one another. As outlined above, the parties may submit questions directed at the other party to the Hearing Panel in writing, which may be posed at the discretion of the Hearing Panel. Similarly, the panel members are under no obligation to allow either party to directly question witnesses, and the panel may require that questions to witnesses be submitted in writing.

Both parties are encouraged to prepare a written list of questions in advance. The parties may also submit questions in writing to the chair throughout the course of the hearing. The chair, in consultation with the panel, will determine the appropriateness and relevance of the questions.

Parties and other individuals who offer information at a hearing are expected to respond honestly, and to the best of their knowledge. The Hearing Panel reserves the right to recall any party or witness for further questions and to seek additional information necessary to make a decision.

6. Deliberation

After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded.

The panel members will conduct their deliberations in private. The panel must complete their deliberations within 2 business days, but every attempt will be made to complete the

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deliberations promptly. The Hearing Coordinator can remain for deliberations, but cannot participate in the deliberations or vote.

The Hearing Panel will determine a Responding Party's responsibility by a preponderance of the evidence. This means that the Hearing Panel will decide whether it is "more likely than not," based upon all of the relevant information, that the Responding Party is responsible for the alleged violation. The Hearing Panel must reach a decision on responsibility by majority vote. The votes of individual panel members will not be shared with the parties.

If the panel finds the Responding Party responsible, the panel will then recommend appropriate sanctions to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will review the recommendations for fairness and consistency and impose an appropriate sanction.

The findings of the Hearing Panel will be documented in writing by the Hearing Panel chair. The findings will detail the findings of fact and the basis/rationale for the decision of the Hearing Panel, making reference to the evidence that led to the finding. This report will be submitted by the Hearing Panel chair to the Hearing Coordinator at the time of the decision.

Sanctions

A Hearing Panel that finds a Responding Party responsible for a violation of this policy will recommend appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Reporting Party and Responding Party will each have the opportunity to present a written statement about impact and/or request sanctions to the Hearing Coordinator in advance of the hearing. The Hearing Panel will review these statements only if the Responding Party has been found responsible for one or more violation.

In general:

- Any student who is determined to have committed sexual assault may receive a sanction ranging from suspension to expulsion. As a general expectation, suspensions should last at least until the Reporting Party has graduated (or otherwise separated) from the College.
- Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from a conduct warning to expulsion.

The Hearing Panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors:

- the impact of the conduct on the Reporting Party;
- the impact of the conduct on the community, its members, or College property;
- the nature and violence of the conduct at issue;
- prior misconduct by the Responding Party, including the Responding Party's prior discipline or criminal history, both at the College or elsewhere, if known
- whether the Responding Party has accepted responsibility for their actions;
- how the College has sanctioned similar incidents in the past, based upon information about such similar incidents that the Hearing Coordinator will provide upon request;
- maintenance of a safe and respectful environment conducive to learning;

- protection of the College community; and,
- any other mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Hearing Panel may also consider educational strategies that, taking into account the impact on the Reporting Party and the safety of the community as a whole, allows a Responding Party to learn about the origins of their behavior, their responsibility for this behavior, and how they can change this behavior. Such strategies may be suggested in addition to, but not in place of, the recommended sanctions.

The Hearing Panel will make a recommendation about the appropriate sanction. The Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances. The Hearing Coordinator will then affirm or modify the recommended sanction.

Sanctions that may be imposed under this policy include, but are not limited to, the following:

- **Warning:** Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- **Censure:** A written reprimand for violating student conduct standards or other College policy. This conduct status specifies a period of time during which the party's or organization's good standing with the College may be in jeopardy. The party is officially warned that continuation or repetition of prohibited conduct during this period may be cause for additional conduct action including probation, suspension, or expulsion from the College.
- **Training:** A requirement that the student receive specific training within a designated time period and at their own expense to prevent further misconduct or discrimination or harassment. Failure to submit documentation of completion of the training within the specified time period may lead to further disciplinary action.
- **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time. For students, privileged activities may include, but are not limited to, elected or appointed student offices, student research, athletics, some student employment, and study abroad. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.
- **Restitution:** Repayment to an affected party, including the College, for damages resulting from a violation of this policy. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.
- **Removal from Campus Housing:** Students may be removed from College housing and/or barred from applying for campus housing due to disciplinary violations of this policy.
- **Suspension:** Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student conduct file and will be permanently recorded on the student's academic transcript unless specified otherwise in the suspension notice.
- **Expulsion:** Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will remain in the student conduct file and will be permanently recorded on the student's academic transcript.
- **Withholding Degree:** The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this policy, including the completion of all sanctions imposed, if any.
- **Revocation of Admission and/or Degree:** Admission to, or a degree awarded by, the College may be revoked for fraud, misrepresentation in obtaining the degree or violation of College policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

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Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

The Hearing Panel may also recommend remedies for the Reporting Party and remedies for the Oberlin community. On the conclusion of the hearing, the Title IX Coordinator is responsible for reviewing, adjusting, and implementing these remedies in order to eliminate the hostile environment and prevent its recurrence.

Outcome Letter

The outcome of the Hearing Panel will be communicated to the Reporting Party and Responding Party simultaneously and in writing, usually within 4 business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.

The letter to each party will include the outcome and the rationale for the outcome. It will also set forth each party's appeal rights, including the time frame for submitting an appeal. Any change in the outcome before it becomes final will also be communicated to the parties in writing.

In addition, the Responding Party will be fully informed of any sanctions.

For reports involving sexual violence, the Reporting Party will be fully informed of any sanctions. For all other reports under this policy, the Reporting Party will be informed of only those sanctions that directly relate to the Reporting Party, consistent with FERPA and other applicable law.

Sanctions imposed are implemented immediately unless the Dean of Students (or their designee) stays implementation in extraordinary circumstances, pending the outcome of the appeal. For students, pending graduation, study abroad, internships/externships, or other events do not typically constitute extraordinary circumstances

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct reports pursuant to FERPA requirements.

Appeals Process

Either party may appeal the final outcome in writing to the Dean of Students (or their designee), who will serve as the Appeals Officer. The appeal must be filed in writing within five business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Reporting Party and/or Responding Party may appeal only the parts of final outcome directly relating to themselves. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The

only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation despite the reasonable efforts of the party, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).
- Sanctions were significantly disproportionate to the violation.

The receipt of the appeal will be acknowledged in writing (which can include email). The written appeal document will be shared with the other party, and the other party will be given the opportunity to respond in writing should they choose to do so. Any response must be submitted to the Appeals Officer within 3 business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the three grounds. If the Appeals Officer determines that the appeal does not properly fit within one of the three grounds, the appeal will be denied.

If the appeal is based on procedural or substantive error, the Appeals Officer may return the report to the original Hearing Panel with instructions to reconvene to cure the error, or in rare cases where the error cannot be cured, the Appeals Officer can ask that a new hearing occur before a newly constituted Hearing Panel. In the instance that a new hearing occurs, the parties would have the right to appeal that finding.

In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original Hearing Panel to assess the weight and effect of the new information and render a determination after considering the new facts. The reconsideration of the Hearing Panel is final.

Appeals are not intended to be full rehearing of the report. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where at least one of the three specified grounds for appeal is established. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Sanctions imposed are implemented immediately unless the Dean of Students (or their designee) stays implementation in extraordinary circumstances, pending the outcome of the appeal. For students, pending graduation, study abroad, internships/externships, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the party to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Appeals Officer will render a written decision on the appeal simultaneously to the Reporting Party and Responding Party within 15 business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may audio or video record the proceedings, nor are attorneys allowed to participate except as outlined in the section on “Advisors, Support Persons, and Attorneys.” The Hearing Coordinator will audio tape the proceedings for College records.

At the Hearing Coordinator’s discretion, anyone disrupting the hearing may be removed.

Records

The Title IX Coordinator will retain records of all reports, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Reports resolved by means of Title IX assessment or informal resolution are not part of a student’s conduct file or academic transcript.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student’s conduct file. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student’s conduct file.

In addition to the records described above, suspension, expulsion, and withdrawal pending disciplinary action are, in general, permanently recorded on a student’s academic transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Dean of Students Office.

8. Procedures for Formal Resolution for Reports about Staff

Overview

Formal resolution of a report under the Sexual Misconduct Policy will occur through an Administrative Review by the appropriate divisional supervisor (or their designee) or the Manager of Employee and Labor Relations. Administrative Review is not a formal hearing, but involves an assessment of evidence gathered in the investigation to determine if a College policy was violated, and if so, what sanctions are appropriate.

Administrators who make determinations in reports of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, must participate in annual training on non-discrimination; the dynamics of sexual and/or gender-based

harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.

Administrative Review Procedures

Administrative Review is designed to provide a timely, fair, and equitable consideration of the findings of the investigation. The following guidelines apply to the review process:

1. Notice of Charges

Following the threshold determination that there is sufficient information to move forward with an Administrative Review, the administrator who will conduct the review (called the Review Administrator) will send a Notification Letter to both the Reporting Party and the Responding Party. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific policy violation(s) that are alleged to have taken place.

Multiple reports may be consolidated against a Responding Party in a single Administrative Review, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Reporting Parties, multiple Responding Parties, or related conduct that would regularly have been heard under other professional misconduct processes.

If the Reporting Party and Responding Party have questions about process, they may consult the Title IX Coordinator, who does not play a formal role in the review.

2. Review Administrator

The Notification Letter will also provide the name of the Review Administrator. The parties may submit a written request to the Title IX Coordinator to request recusal of the Review Administrator on the basis of bias, conflict of interest or an inability to be fair and impartial. The written request must clearly articulate the grounds for recusal. The Review Administrator will not be removed in the absence of clear evidence of bias, conflict of interest or an inability to be fair and impartial.

3. Acceptance of Responsibility

If a Responding Party wishes to accept responsibility for the charges, they may provide the Review Administrator with a written acceptance of the facts of the allegation. In this instance, the role of the Administrative Review will be solely to determine appropriate sanctions. The investigative report will serve as the primary evidence in making this determination.

4. Evidence and Witnesses

Both parties will be afforded similar and timely access to any documents and information used in the Administrative Review.

The Review Administrator will receive all relevant information acquired through the investigation, including written statements, documents, items, or investigative interviews with the parties or witnesses.

The Review Administrator will, in ordinary circumstances, meet with and ask questions

directly of the Reporting Party and the Responding Party. The Review Administrator may also seek evidence or contact witnesses, whether or not the evidence was previously included or the witnesses were previously interviewed as part of the College's investigation. In general, witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

5. Prior Sexual History and/or Pattern Evidence

Prior Sexual History of a Reporting Party: In general, a Reporting Party's prior sexual history, character or reputation is not relevant and will not be reviewed as evidence. Where there is a current or ongoing relationship between the Reporting Party and the Responding Party, and the Responding Party alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Reporting Party with other individuals is typically not relevant and will not be included in the review. In addition, prior sexual history may be considered under *very limited* circumstances to explain injury or demonstrate motive or intent.

Pattern Evidence by a Responding Party: Where there is evidence of a pattern of conduct similar in nature by the Responding Party, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the Review Administrator's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Responding Party. Pattern evidence may also be relevant to prove intent, state of mind, absence of mistake or identity. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

6. Determination of Responsibility

After the Review Administrator has received all investigative information and any other information or witness statements requested, the Review Administrator will reach a determination as to whether a violation of College policy occurred by a preponderance of the evidence. This standard means that the Review Administrator will decide whether it is "more likely than not," based upon all of the relevant information, that the Responding Party is responsible for the alleged violation.

If the Review Administrator finds the Responding Party responsible, the Review Administrator will then determine appropriate sanctions. The Review Administrator will document the findings and the sanction in writing. This report will be provided to the Title IX administrator for institutional record-keeping purposes.

Sanctions

A Review Administrator that finds a Responding Party responsible for a violation of this policy may impose appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Review Administrator will allow the Reporting Party and Responding Party to present a written statement about impact and/or request sanctions before determining any sanctions.

In general:

- Any employee who is determined to have committed sexual assault will likely receive the sanction of termination.
- Any employee who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from a conduct warning to termination.

The Review Administrator may deviate from the range of recommended sanctions, based upon a full consideration of the following factors:

- the impact of the conduct on the Reporting Party;
- the impact of the conduct on the community, its members, or College property;
- the nature and violence of the conduct at issue;
- prior misconduct by the Responding Party, including the Responding Party's prior discipline or criminal history, both at the College or elsewhere, if known
- whether the Responding Party has accepted responsibility for their actions;
- how the College has sanctioned similar incidents in the past, based upon information about such similar incidents that the Title IX coordinator will provide upon request;
- maintenance of a safe and respectful environment conducive to learning;
- protection of the College community; and,
- any other mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Review Administrator may also consider educational strategies that, taking into account the impact on the Reporting Party and the safety of the community as a whole, allows a Responding Party to learn about the origins of their behavior, their responsibility for this behavior, and how they can change this behavior. Such strategies may be suggested in addition to, but not in place of, the recommended sanctions.

The Review Administrator will consult with the Title IX Coordinator in advance of a final decision in order to take reasonable steps to foster consistency for similar violations and circumstances. The Review Administrator may also consider remedies for the Reporting Party and remedies for the Oberlin community. On the conclusion of the hearing, the Title IX Coordinator is responsible for reviewing, adjusting, and implementing these remedies.

Sanctions that may be imposed under this policy include, but are not limited to, the following:

- **Warning:** Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- **Censure:** A written reprimand for violating employee standards or other College policy. This conduct status specifies a period of time during which the employee's good standing with the College may be in jeopardy. The party is officially warned that continuation or repetition of prohibited conduct may be cause for additional conduct action including probation, suspension, or termination from the College.
- **Training:** A requirement that the employee receive specific training within a designated time period and at their own expense to prevent further misconduct or discrimination or harassment. Failure to submit documentation of completion of the training within the specified time period may lead to further disciplinary action.
- **Disciplinary Probation:** Exclusion from participation in voluntary activities that are not related to core job responsibilities for a specified period of time. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.
- **Restitution:** Repayment to an affected party, including the College, for damages resulting

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from a violation of this policy.

- **Suspension:** For employees, suspension may mean a specified period of removal from some or all duties, with or without pay. Notice of this action will remain in the employment record. Conditions for return to work may be specified in the suspension notice.
- **Termination:** Permanent separation of the employee from the College.

Other sanctions may be imposed instead of, or in addition to, those specified here. More than one of the sanctions listed above may be imposed for any single violation.

The Review Administrator may also recommend remedies for the Reporting Party and remedies for the Oberlin community. On the conclusion of the hearing, the Title IX Coordinator is responsible for reviewing, adjusting, and implementing these remedies in order to eliminate the hostile environment and prevent its recurrence.

Outcome Letter

The Review Administrator will issue an outcome letter simultaneously and in writing to the Reporting Party and Responding Party with the finding and any sanctions.

The letter to each party will include the outcome and the rationale for the outcome. It will also set forth each party's appeal rights, including the time frame for submitting an appeal. Any change in the outcome before it becomes final will also be communicated to the parties in writing.

For reports involving sexual violence, the Reporting Party will be fully informed of any sanctions. For all other reports under this policy, the Reporting Party will be informed of only those sanctions that directly relate to the Reporting Party, consistent with all applicable law.

Sanctions imposed are implemented immediately unless a divisional supervisor (or their designee) stays implementation in extraordinary circumstances, pending the outcome of the appeal.

Appeals Process

Either party may appeal the outcome letter in writing to the Review Administrator, who will refer the appeal to a divisional supervisor (or their designee) or the Manager of Employee and Labor Relations. This person will serve as the Appeals Officer and must not have participated in the investigation and/or Administrative Review of the original case. The appeal must be filed in writing within five business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Reporting Party and/or Responding Party may appeal only the parts of the outcome directly relating to themselves. Dissatisfaction with the outcome is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original investigation and/or Administrative Review

despite the reasonable efforts of the party, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

- Sanctions were significantly disproportionate to the violation.

The receipt of the appeal will be acknowledged in writing (which can include email). The written appeal document will be shared with the other party, and the other party will be given the opportunity to respond in writing should they choose to do so. Any response must be submitted to the Appeals Officer within 3 business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the three grounds. If the Appeals Officer determines that the appeal does not properly fit within one of the three grounds, the appeal will be denied.

If the appeal is based on procedural or substantive error, the Appeals Officer may return the report to the original Review Administrator with instructions to cure the error, or in rare cases where the error cannot be cured, the Appeals Officer can ask that a new Administrative Review occur before an alternate Review Administrator. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original Review Administrator to assess the weight and effect of the new information and render a determination after considering the new facts. The reconsideration of the Review Administrator is final.

Appeals are not intended to be full rehearing of the report. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original administrative review, making changes to the finding only where at least one of the three specified grounds for appeal is established. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Sanctions imposed are implemented immediately unless the Appeals Officer stays implementation in extraordinary circumstances, pending the outcome of the appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the party to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Appeals Officer will render a written decision on the appeal simultaneously to the Reporting Party and Responding Party within 15 business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

Records

The Title IX Coordinator will retain records of all reports, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Reports resolved by means of Title IX assessment or informal resolution are not part of an employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of an employee's personnel record. When there is a finding of responsibility, the College may elect at its discretion to share this information in a reference or letter of recommendation or a request for verification of employment.

9. Procedures for Formal Resolution of Reports against Faculty

Overview

Formal resolution of a report under the Sexual Misconduct Policy will occur through a Review Panel composed of three members of the General Faculty Professional Conduct Review Committee (Edited Fall 2016 on approval of General Faculty Committee). If there are insufficient eligible members of the General Faculty Professional Conduct Review Committee available, the Co-Chairs will identify appropriately trained faculty alternates to serve on the review panel.

A Review Panel provides an assessment of the evidence gathered in the investigation, as well as any additional information or interviews it deems necessary, to determine if a College policy was violated, and if so, recommend what sanctions are appropriate. This recommendation will be submitted to the appropriate Divisional Dean (or their designee).

Members of the General Faculty Professional Conduct Review Committee who make determinations in sexual misconduct reports must participate in annual training on non-discrimination; the dynamics of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.

Review Panel Procedures

The Review Panel is designed to provide a timely, fair, and equitable consideration of the findings of the investigation. The following guidelines apply to the review process:

1. Notice of Charges

Following the threshold determination that there is sufficient information to move forward with a Review Panel, the Co-Chairs of the General Faculty Professional Conduct Review Committee will send a Notification Letter to both the Reporting Party and the Responding Party. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific policy violation(s) that are alleged to have taken place. The Co-Chairs will also notify the appropriate Divisional Dean (or their designee).

Multiple reports may be consolidated against a Responding Party in a single Review Panel, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Reporting Parties, multiple Responding Parties, or related conduct that would regularly have been heard under other professional misconduct processes.

If the Reporting Party and Responding Party have questions about process, they may consult the Title IX Coordinator, who does not play a formal role in the review.

2. Acceptance of Responsibility

If a Responding Party wishes to accept responsibility for the charges, they may provide the Co-Chairs of the General Faculty Professional Conduct Review Committee with a written acceptance of the facts of the allegation. In this instance, the role of the Review Panel will be solely to determine appropriate sanctions. The investigative report will serve as the primary evidence in making this determination.

3. Composition of the Review Panel

Following the Notice of Charges, the Chairs of the General Faculty Professional Conduct Review Committee will supply the Reporting Party and Responding Party with a list of available committee members within three business days. The Reporting Party and the Responding Party may each submit a written request to the Co-Chairs that a member or members of the committee be removed from consideration as a Review Panel member. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within 2 business days of receipt of the notice of the Review Panel members.

The Co-Chairs will constitute a Review Panel of three members from the eligible committee membership or designated alternates.

4. Evidence and Witnesses

Both parties will be afforded similar and timely access to any documents and information examined by the Review Panel.

The Review Panel will receive all relevant information acquired through the investigation, including written statements, documents, items, or investigative interviews with the parties or witnesses.

The Review Panel will, in ordinary circumstances, meet with and ask questions directly of the Reporting Party and the Responding Party. Both the Reporting Party and Responding Party may choose an advisor to accompany them to their meeting with the Review Panel. The Review Panel may also seek evidence or contact witnesses, whether or not the evidence was previously included or the witnesses were previously interviewed as part of the College's investigation. In general, witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

5. Prior Sexual History and/or Pattern Evidence

Prior Sexual History of a Reporting Party: In general, a Reporting Party's prior sexual history, character or reputation is not relevant and will not be reviewed as evidence. Where there is a current or ongoing relationship between the Reporting Party and the Responding Party, and the Responding Party alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any

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prior sexual history of the Reporting Party with other individuals is typically not relevant and will not be included in the review. In addition, prior sexual history may be considered under *very limited* circumstances to explain injury or demonstrate motive or intent.

Pattern Evidence by a Responding Party: Where there is evidence of a pattern of conduct similar in nature by the Responding Party, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the Review Panel's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Responding Party. Pattern evidence may also be relevant to prove intent, state of mind, absence of mistake or identity. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

6. Determination of Responsibility

After the Review Panel has received all investigative information and any other information or witness statements requested and conducted any additional interviews or fact-finding it deems necessary, it will reach a determination as to whether a violation of College policy occurred by a preponderance of the evidence. This standard means that the Review Panel will decide whether it is "more likely than not," based upon all of the relevant information, that the Responding Party is responsible for the alleged violation.

The Review Panel will determine whether the Responding Party is responsible, and if so, recommend appropriate sanctions. The findings and any recommended sanctions should be documented in writing and submitted to the appropriate Divisional Dean (or their designee) and the Title IX Coordinator.

7. Timeline

Ordinarily, the Review Panel will submit its finding and any recommendations within 20 business days following its constitution by the Co-Chairs of the General Faculty Professional Conduct Review Committee.

Sanctions

A Review Panel that finds a Responding Party responsible for a violation of this policy may impose appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Review Panel will allow the Reporting Party and Responding Party to present a written statement about impact and/or request sanctions before determining any sanctions.

In general:

- Any faculty member who is determined to have committed sexual assault will likely receive the sanction of termination.
- Any faculty member who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from a conduct warning to termination.

In the case of suspension or termination, the Review Panel and Divisional Dean (or their designee)

will follow procedures described in the Oberlin College Faculty Guide.

The Review Panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors:

- the impact of the conduct on the Reporting Party;
- the impact of the conduct on the community, its members, or College property;
- the nature and violence of the conduct at issue;
- prior misconduct by the Responding Party, including the Responding Party's prior discipline or criminal history, both at the College or elsewhere, if known
- whether the Responding Party has accepted responsibility for their actions;
- how the College has sanctioned similar incidents in the past, based upon information about such similar incidents that the Title IX coordinator will provide upon request;
- maintenance of a safe and respectful environment conducive to learning;
- protection of the College community; and,
- any other mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Review Panel may also consider educational strategies that, taking into account the impact on the Reporting Party and the safety of the community as a whole, allows a Responding Party to learn about the origins of their behavior, their responsibility for this behavior, and how they can change this behavior. Such strategies may be suggested in addition to, but not in place of, the recommended sanctions.

Sanctions that may be imposed under this policy include, but are not limited to, the following:

- **Warning:** Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- **Censure:** A written reprimand for violating faculty professional conduct standards or other College policy. This conduct status specifies a period of time during which the faculty member's good standing with the College may be in jeopardy. The party is officially warned that continuation or repetition of prohibited conduct may be cause for additional conduct action including probation, suspension, or termination from the College.
- **Training:** A requirement that the faculty member receive specific training within a designated time period and at their own expense to prevent further misconduct or discrimination or harassment. Failure to submit documentation of completion of the training within the specified time period may lead to further disciplinary action.
- **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.
- **Restitution:** Repayment to an affected party, including the College, for damages resulting from a violation of this policy.
- **Suspension:** For a faculty member, suspension may mean a specified period of removal from some or all duties, with or without pay. Notice of this action will remain in the employment record. Conditions for return to work may be specified in the suspension notice.
- **Termination:** Permanent separation of the faculty member from the College.

Other sanctions may be imposed instead of, or in addition to, those specified here. More than one of the sanctions listed above may be imposed for any single violation.

The Review Panel may also recommend remedies for the Reporting Party and remedies for the Oberlin community. On the conclusion of the Review Panel's work, the Title IX Coordinator is responsible for reviewing, adjusting, and implementing these remedies in order to eliminate the

hostile environment and prevent its recurrence.

Outcome Letter

The Divisional Dean (or their designee) will issue an outcome letter simultaneously and in writing to the Reporting Party and Responding Party with the finding and any sanctions the Divisional Dean (or their designee) is determined to impose based on the recommendation of the Review Committee. The outcome letter will ordinarily be delivered within five business days of the Divisional Dean's (or their designee's) receipt of the review panel recommendation.

The letter to each party will include the outcome and the rationale for the outcome. It will also set forth each party's appeal rights, including the time frame for submitting an appeal. Any change in the outcome before it becomes final will also be communicated to the parties in writing.

For reports involving sexual violence, the Reporting Party will be fully informed of any sanctions. For all other reports under this policy, the Reporting Party will be informed of only those sanctions that directly relate to the Reporting Party, consistent with all applicable law.

Sanctions imposed are implemented immediately unless the divisional dean (or their designee) stays implementation in extraordinary circumstances, pending the outcome of the appeal.

Appeals Process

Either party may appeal the outcome letter in writing to the Divisional Dean, who will refer the appeal to the other Divisional Dean (or their designee). This person will serve as the Appeals Officer. The appeal must be filed in writing within five business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Reporting Party and/or Responding Party may appeal only the parts of the outcome directly relating to themselves. Dissatisfaction with the outcome of the review panel is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the review panel (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable to the original review panel or during the investigation despite the reasonable efforts of the party, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).
- Sanctions were significantly disproportionate to the violation.

The receipt of the appeal will be acknowledged in writing (which can include email). The written appeal document will be shared with the other party, and each party will be given the opportunity to respond in writing should they choose to do so. Any response must be submitted to the Appeals Officer within 3 business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and

appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the three grounds. If the Appeals Officer determines that the appeal does not properly fit within one of the three grounds, the appeal will be denied.

If the appeal is based on procedural or substantive error, the Appeals Officer may return the report to the original Review Panel with instructions to cure the error, or in rare cases where the error cannot be cured, the Appeals Officer can ask that a new Review Panel be constituted. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original Review Panel to assess the weight and effect of the new information and render a determination after considering the new facts. Any reconsideration provided by the Review Panel will be communicated as a written recommendation to the original Divisional Dean (the issuer of the outcome letter), who will make any appropriate adjustments to the finding and sanctions. This decision is final.

Appeals are not intended to be full reexamination of the report. In most cases, appeals are confined to a review of the written documentation or record of the original Review Panel, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute their judgment for that of the original Review Panel merely because they disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original review panel, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Sanctions imposed are implemented immediately unless the Appeals Officer stays implementation in extraordinary circumstances, pending the outcome of the appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the party to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Appeals Officer will render a written decision on the appeal simultaneously to the Reporting Party and Responding Party within 15 business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

Records

The Title IX Coordinator will retain records of all reports, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Reports resolved by means of Title IX assessment or informal resolution are not part of a faculty member's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a faculty member's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part a faculty member's personnel record. When there is a finding of responsibility, the College may elect at its discretion to share this information in a reference or letter of recommendation or a request for verification of employment.

10. Primary Prevention, Education, and Training

Role and Scope

Oberlin College recognizes that the most effective way to achieve a campus free of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence is to equip all community members with the skills to recognize and prevent sexual misconduct. The College wants to ensure that all members of the community understand and participate in our shared standards of equity, inclusion, civility, and respect.

In order to achieve these goals, Oberlin College offers regular primary prevention programs and ongoing education and awareness programs for all students and employees. Employees who play a key role in implementing the policy, including those faculty and staff who are likely to receive reports of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, will receive in-depth annual training to ensure a timely, sensitive, respectful, and effective intuitional response. The College is committed to ensuring that all employees understand how to respond to reports of sexual misconduct.

In particular:

All new and transfer students and all new employees will receive education in primary prevention and awareness of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence. These training programs will include:

- A statement that the institution prohibits sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence
- The definition of prohibited conduct, including sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, under College policy and state law
- The definition of consent in reference to sexual activity under College policy and state law
- A description of safe and positive options for bystander intervention
- Information on risk reduction
- Information on how to recognize warning signs of abusive behavior in order to mitigate the likelihood of perpetration, victimization, or bystander inaction
- Options and resources for reporting sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence

All continuing students, staff, and faculty will receive regular opportunities to review this information, become acquainted with new policies and best practices, and practice key skills.

The Title IX Coordinator is responsible for oversight, coordination, and assessment of prevention and training programs on campus, in collaboration with the appropriate departments and personnel. The Title IX Team should review campus education and prevention programs on an annual basis to ensure quality and address staffing and resource needs. Training and education may be provided by appropriately trained campus personnel and/or external partners.

11. Policy Review

The Title IX Team is authorized to make minor changes to this policy, such as updating contact information and professional roles or aligning policy language with any new legal requirements. Such changes should be reported to the General Faculty at least once a year. Major changes to the policy beyond those required by law should be submitted to the General Faculty for approval, or, as appropriate, to the General Faculty Council acting as the executive body of the General Faculty. In addition, the Title IX Team will review the policy annually, based on experiences of people involved with the policy, to determine if major changes are required. Any community member with concerns about the policy should contact the Title IX Coordinator to discuss their concerns.

Appendix 1: Resolving Reports of Sexual Misconduct



Resolution has been achieved when 1) the misconduct has been stopped 2) its recurrence has been prevented and, 3) its effects have been addressed.

Appendix 2: Key Policy Implementers

Title IX Coordinator

Rebecca Mosely
Cox 202
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rebecca.mosely@oberlin.edu

Director of Safety and Security

Marjorie Burton
159 West Lorain Street
(440) 775-5782
Marjorie.Burton@oberlin.edu

Student Advocate

TBD

Hearing Coordinator (for Reports Involving Students)

Adrian Bautista
Wilder 105
(440) 775-8462
Adrian.Bautista@oberlin.edu

Divisional Deans

Tim Elgren
Dean of Arts and Sciences
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Andrea Kalyn
Dean of the Conservatory of Music
Bibbins 113
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Manager of Employee and Labor Relations

Kim Wiggerly
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Sharon.Johnson@oberlin.edu

Members of the General Faculty Professional Conduct Review Committee

See College website for the most current membership

EXHIBIT B

OBERLIN

COLLEGE & CONSERVATORY

Office of Equity, Diversity, and Inclusion

Cultivating Campus Climate: How Oberlin Meets the Challenges and Opportunities

*Office of Equity, Diversity, and Inclusion
Campus Climate Report, Spring 2016*

Cultivating a campus climate that supports every student in the highest possible level of achievement is an important area of action for Oberlin College and Conservatory. This update from the [Office of Equity, Diversity, and Inclusion](#) is envisioned as the first in a series of regular reports that will allow members of the Oberlin community to access information about and track the progress of key initiatives designed to create an equitable and inclusive learning environment. It does not constitute a complete overview of the wide range of activities taken by faculty, staff, and students to assess and improve campus climate, but rather provides a snapshot of some key issues that have been the focus of campus concern in 2015–16. As such reports are issued in future semesters, the Office of Equity, Diversity, and Inclusion will seek opportunities to host more comprehensive summaries. To add items to this year's report, please contact the Office of Equity, Diversity, and Inclusion at edi@oberlin.edu.

Why focus on campus climate?

Research on diversity and student success in higher education has identified campus climate as a critical framework for understanding why not all students thrive equally even with access to the same educational opportunities. In seeking ways to address disparities in achievement and experience related to race, class, gender, and other consequential differences, scholars have demonstrated that campus climate – which includes institutional history, policies, and structures, perceptions and attitudes of the campus community, and the external political-economic context – is one important site of intervention. (For more information on this research, the publications of scholars such as [Sylvia Hurtado](#) and [Mitchell Chang](#) provide a good starting point.)

For Oberlin, assessing and shaping campus climate directs our collective attention to the institutional practices and capacities that support students in realizing the highest possible level of achievement. While many of the challenges related to campus climate are connected to deeply rooted historical and contemporary injustices that extend beyond the boundaries of any given campus, this framework can empower institutions of higher education to shape their own structures and practices more intentionally to address the impact of these forces on learning. The focus on campus climate is part of a larger shift in the effort to build equitable colleges and universities away from a focus on the perceived problems with groups of students who may be struggling to the institutional practices that create barriers to student success.

Information from prior organizing

In conversations at Oberlin about equity, diversity, and inclusion in 2015–16, people in the campus community have asked for information about the impact of campus organizing over the past few years. As a first step in beginning to build such an archive, this report includes the following information about the ongoing conversations about best strategies to cultivate an inclusive campus climate since the [Day of Solidarity](#) on March 4, 2013. In Spring 2013, student organizers produced the [“Student Proposals for Institutional Change Around Diversity, Social Justice, and Inclusion at Oberlin College.”](#) Oberlin administrators reviewed the proposal and [responded with a report](#). These documents are provided here in part to address ongoing calls for greater access to information about institutional actions taken to address campus climate issues. Student, staff, and faculty collaborations have generated important outcomes over the past few years, such as the significantly enhanced student support funds to address economic needs that impact an Oberlin education. In acknowledging the significant work still ahead in order to achieve an equitable and inclusive learning environment, this report honors the important efforts to ensure meaningful steps have been taken in recent years.

Report from 2015–16

Planning and capacity building

In the 2015–16 academic year, a wide range of activities occurred across the institution to address campus climate. In particular, the [Oberlin College Strategic Plan 2016-2021](#), approved by the General Faculty on February 24, 2016 and by the Board of Trustees on March 4, 2016, developed a central focus on issues of equity, diversity, and inclusion. The plan authorized the creation of an Equity and Inclusion Implementation Plan that is to be reported to the General Faculty at the beginning of the spring 2017:

Ensure an inclusive and equitable learning environment, including development of an Equity and Inclusion Implementation Plan that addresses the systemic barriers that keep us from reaching our compositional and interactional diversity aspirations and articulates clearly these aspirations. The plan will also identify appropriate strategies to measure and mechanisms to communicate progress, including concrete benchmarks that will be reported to the General Faculty by the beginning of the spring 2017 semester.

– Strategic Recommendation 1.3, p. 16

An Equity and Inclusion implementation group of faculty, staff and students, which will be chaired by Associate Dean of Arts and Sciences [Pablo Mitchell](#) and Special Assistant to the President for Equity, Diversity, and Inclusion [Meredith Raimondo](#), is in the process of forming. For further information, please contact the implementation group co-chairs (pablo.mitchell@oberlin.edu and meredith.raimondo@oberlin.edu).

Administrative offices and faculty and staff across the College and Conservatory collaborated with student leaders and activists and provided support to students on a wide range of issues related to campus climate. This report draws attention to four major areas of particular focus in 2015–16, recognizing that every effort and issue addressed at any level is a part of the College’s comprehensive commitment to student success. The Office of Equity, Diversity, and Inclusion offers its acknowledgement and appreciation to all of the faculty, staff, and students who work hard to ensure a successful and equitable community, often in private and unseen ways.

In 2015–16, Oberlin also engaged in two critical searches for positions that provide significant capacity in the area of campus climate – the Director of the Multicultural Resource Center and the Ombudsperson. Both searches were led by highly engaged committees of faculty, staff, and students, who reviewed campus needs in the process of identifying effective candidates. [Toni Myers](#) returned to campus to serve as the interim director of the MRC, while [Kimberly Jackson-Davidson](#) will move from the Dean of Students office to serve as Ombudsperson. Both Toni and Kim bring strong histories of achievement in relation to enhancing campus climate and supporting equitable pathways to student success.

Specific Campus Climate Concerns

In 2015–16, the Office of Equity, Diversity, and Inclusion collaborated on four major areas of campus climate assessment and response of concern to the entire campus community:

Campus climate around race and the impact of anti-Black and other racisms

In Fall 2016, attention to anti-Black police violence and the emergence of Black Lives Matter as a social movement newly animated students across the country to challenge

their campuses to examine their practices and do better in providing equitable educational environments. [At the University of Missouri and elsewhere](#), Black students and their allies challenged the educational status quo in higher education, especially in relation to compositional diversity, campus experience, and educational outcomes. At Oberlin, students issued [demands](#) addressed to the Board of Trustees, President Krislov, Dean of Students Eric Estes, and other governing bodies. President Krislov [stated in reply](#), “I will not respond directly to any document that explicitly rejects the notion of collaborative engagement” and invited the authors to work together with staff and faculty to address their concerns. Student leaders met with President Krislov, Dean of Student Eric Estes, and Special Assistant to the President for Equity, Diversity, and Inclusion Meredith Raimondo in early March and presented a focused list of priority items for next steps. They are presented below with a schedule for completion and the responsible administrative office.

Action Item	Responsible Office	Date to Be Completed
Enhancements to Afrikan Heritage House (library, lab spaces)	Dean of Students	Fall 2016
First Year Orientation event for Black students, including parents	Dean of Students	Fall 2016
A new landing page on the Oberlin website assembling student support resources in a more accessible way	Dean of Students, Office of Communications	Fall 2016
A data report on compositional diversity at the College	Office of Equity, Diversity, and Inclusion	Fall 2016
An open meeting with President Krislov for Black students	Office of the President	April 2016 (complete)

These collaborative efforts will continue in Fall 2016, with an update on the completion of the action items described above and the identification of next steps.

In recognition of the importance of [Afrikan Heritage House](#) to the campus community, President Krislov authorized the creation of a new Presidential Fellow who will collaborate with the Faculty in Residence, the Dean of Students Office, and the Office of Admissions to enhance programming and interest in this vital program. This position will be filled by a recent Oberlin graduate.

In 2016, the Office of Equity, Diversity, and Inclusion announced the launch of [Think/Create/Engage](#), a new annual series exploring complex topical issues using the tools and resources made available by the synergy of a liberal arts college, a conservatory, and an art museum. A [committee](#) chaired by Professor of Comparative American Studies [Wendy Kozol](#) and Associate Professor of Music Theory [Jan Miyake](#) chose “the Framing of Race” as the theme for calendar year 2016, and issued a call for proposals related to courses, speakers, creative work, workshops, performances, and other events that address the complexities of race, racialization, and racism, as well as antiracism work and histories and strategies of empowerment. An updated list of events that occurred in Spring 2016 and scheduled for Fall 2016 will be posted to the website this summer.

Creating an inclusive climate in relation to race is a multidimensional effort and occurs in both classroom and co-curricular settings. Of the wide range of activities in this area in 2015–16, [Multicultural Resource Center](#) events about the experiences and needs of undocumented students provided an important opportunity for capacity building in light of the College’s [recent partnership with Golden Door Scholars](#). In April, [the 19th Biennial Midwestern Asian American Student Conference](#) highlighted a wide range of academic, artistic, and activist projects, demonstrating the continuing vitality of Oberlin’s long tradition of Asian American student organizing. These are only some of the projects that have and will continue to enable Oberlin to build a fully inclusive campus climate on the basis of race, ethnicity, and national origin.

Gender equity and sexual misconduct

Since 2012, Oberlin has dedicated significant additional resources and planning to address the impact of all forms of sex-based discrimination and harassment on the learning and working environment, which includes all forms of sexual misconduct (in accordance with [guidance from the U.S. Department of Education](#)). Since the implementation of the [Sexual Misconduct Policy](#) in July 2014, the College has dedicated additional staffing and programming resources to both preventing and responding to gender and sexual harassment, including all forms of sexual misconduct. Two notable developments in the last year include the creation of a Presidential Fellow focused on peer education (currently held by [Stevie Kelly ’15](#)) and the stabilization of [Preventing and Responding to Sexual Misconduct](#) (PRSM, or “prism”), a team of peer educators working to empower the entire student community to create a campus free of all forms of sexual misconduct through evidence-based public health strategies. Conservatory Assistant Dean [Chris Jenkins](#) has also joined the Title IX Team as a Deputy Title IX Coordinator. A new website designed to make information and resources even clearer and more accessible will be available by Fall 2016,

The Title IX Team has received and reviewed over 100 reports of potential sex-based discrimination and harassment thus far in 2015–16. Consistent with past semesters, the

most commonly reported concerns include sexual harassment, sexual assault, and/or intimate partner violence between students. Most parties making reports ask for various remedies but also request that the College take no disciplinary action against nor inform the responding party about the report, which the College honors to the extent that it is possible to maintain a safe and equitable learning and working environment. About 20 percent of all reports in 2015–16 were referred to full investigation, and if appropriate, formal investigation. The threshold to move to formal process was met in around half of investigations where the responding party was subject to a College process (some investigations relate to allegations made about individuals who have graduated, left employment with the College, or cannot be identified). When the threshold was met, findings of responsibility on all charges occurred in 70 percent of processes. In the remaining processes, the responding party was found responsible for some but not all of the conduct charges. Sanctions have ranged from deferred probation and education to dismissal, depending on the steps necessary to stop, address the effects of, and prevent the recurrence of sex-based discrimination and harassment in the education program. The Title IX Team continues to review appropriate strategies to share further outcome information while protecting individual privacy.

In Spring 2016, Oberlin worked with the Higher Education Dating Sharing consortium to conduct its first [sexual assault climate survey](#). Results from the anonymous survey, which will help the College gauge to what extent the reports of sexual harassment and assault reflect actual incidence, will be available this summer and will be reported to the campus community in Fall 2016.

While the Title IX Team sees the high volume of reports as a positive sign that members of the campus community are seeking resources when needed, significantly increased reporting has also created challenges in ensuring timely resolution of reports. Moving forward, the Title IX Team will continue to seek strategies to ensure prompt resolution of reports in a way that is both supportive to people who experience sexual misconduct and is fair and equitable to everyone involved in the resolution process. Additionally, the Title IX Team will be working with offices across the College to review and ensure compliance with recently released Department of Education guidance on [civil rights protections for transgender students](#). An update on this review will be available in Fall 2016.

While important steps have been taken since President Krislov appointed a [task force](#) to review College policies and practices in Fall 2012, continued efforts to prevent sexual misconduct and to provide robust support and equitable resolution options for people who experience sex-based harassment and discrimination will remain a significant institutional priority.

Campus climate for Jewish students, faculty, and staff

Oberlin staff have been in conversation with students for the past several years about the climate on campus for Jewish students. Until recently, the primary focus of this conversation was the challenge for students to claim and express any kind of religious and/or spiritual identity at a predominantly secular institution. In significant part due to capacity building in the [Office of Religious and Spiritual Life](#), including the development of a robust [multifaith model of engagement](#), the conversation about religion and spirituality generally and the concerns related to Jewish student community has shifted. In January 2016, a group of Oberlin alums organized a petition and a campus visit to explore concerns with anti-Semitism on campus. Facebook postings by an Oberlin professor further raised concerns with the experiences of Jewish students on campus in Spring 2016.

To address these concerns, Oberlin staff and faculty worked closely with partners including [Oberlin College Hillel](#) and [Chabad at Oberlin](#) to offer students a wide range of opportunities to receive individual and group support, [report discrimination and harassment](#), and/or receive education about anti-Semitism. Hillel, Chabad, the Office of Religious and Spiritual Life, the Departments of Religion and the Jewish Studies Program, and Residential Education sponsored gatherings and programming in Spring 2016, including meetings to discuss a range of issues including anti-Semitism, Zionism, and Jewish community concerns. The General Faculty and Divisional Faculties held meetings devoted to these issues, with particular attention to the educational impact of multiple forms of bias, the priority of creating inclusive educational environments, and the critical value of academic freedom. The Office of Religious and Spiritual Life and the Office of Equity, Diversity, and Inclusion partnered to sponsor a [community conversation](#) on anti-Semitism that included the [Cleveland Anti-Defamation League](#) attended by an estimated 150 faculty, staff, and students.

A planning group is working with campus constituencies and [community partners](#) to ensure continuing engagement with a number of both linked and distinct issues identified by Oberlin students as key priorities for ongoing conversation, including Jewish identity and history, anti-Semitism, hate speech, academic freedom, the politics of the state of Israel, and allyship and coalitions. Members of the planning group have reached out to a wide range of Jewish students for information about their experiences on campus. To date, no student has reported a threat to physical safety or any experience of being barred from opportunity or inclusion on the basis of Jewish identity. The College has received no reports related to discrimination or harassment on the basis of religion, including anti-Semitism, in 2015–16. However, some Jewish students describe challenges in communicating with other students about contemporary anti-Semitism and have raised concerns that some members of the community are not fully aware of the characteristics and occurrence of contemporary anti-Semitism. This concern intersects in important

ways with the campus climate for discussion of Israel. Jewish students of diverse political perspectives have identified a politically challenging climate for discussion of Israel – a concern shared by both supporters and critics of current state policies and practices. Such challenges, which are occurring at colleges and universities across the United States, can have a differential impact on Jewish students, who describe experiences of feeling pressured to hide or disavow affiliations with or interest in Israel, or being pressured to adopt particular positions or be told they are not “Jewish enough.” Despite challenging interpersonal interactions, successful campus events offering a range of perspectives on Israel have occurred without disruption. An important national conversation about when and how critiques of Israel may become anti-Semitic or utilize anti-Semitic tropes has also been a concern of students, faculty, and staff at Oberlin. To address these issues, students across the political spectrum have asked for more opportunities to see speakers model, and themselves to participate in, educational conversations structured to provide respectful conversation across differences of opinion. Developing such opportunities will form one basis for designing programming in upcoming semesters.

Disability and access

There have been extraordinary transformations in access to higher education for students with disabilities in recent decades. At Oberlin, students have called for more than a reduction to formal barriers to education; instead, they envision a robustly inclusive campus environment that celebrates and supports a wide range of capacities that relate to academic and artistic achievement. The Office of Disability Services [Student Accessibility Advocates](#) provide effective peer mentoring to enable students to make use of the wide range of resources and supports at the College, and help ensure fellow students have the knowledge and support to seek full access. The growth of the program is only one of the many steps taken by the [Office of Disability Services](#) to ensure Oberlin students have equitable pathways to success. Campus discussions that moved from the framing of autism as a disability to an exploration of the importance of recognizing [neurodiversity](#) represented another important example of how the College can position itself as an educational leader in this important area, drawing on the expertise of students, parents, experts, and alumni (such as [Steve Silberman '79](#), author of *Neurotribes*, who visited campus in Spring 2016).

As part of Oberlin’s continuing commitment to proactive examination of equity issues, a Disability and Access Working Group convened this year to examine the broad campus climate and make recommendations about opportunities to enhance access. Comprised of faculty, staff, and students and chaired by Associate Professor [Elizabeth Hamilton](#), the working group has surveyed information on best practices on creating access, including strategies of universal design. They have received information from over 1,000 members of the Oberlin community through a survey and listening sessions and are developing a report and recommendations to be shared with the Oberlin community in Fall 2016.

Next steps

This report offers a preliminary glimpse into some of the areas and projects designed to enhance campus climate at Oberlin. Such work necessarily spans every part of the College and Conservatory and includes a wide range of issues and opportunities. By drawing attention to a few specific areas, this report seeks to begin a process of documentation of campus efforts that also responds to requests for greater transparency about both institutional action and challenges before us. It also hopes to help support collective conversation about how to ensure an equitable and inclusive education for all students. One of the founding commitments of campus climate work is the recognition that in addressing the specific issues for any individual or group, Oberlin both meets particular needs and discovers ways to make the campus better for all – a classic example of the ways a rising tide lifts all boats.

In addition to continuing work in the areas identified here, future efforts to address campus climate will likely engage core questions at the heart of scholarship on interactional diversity – how learning is enhanced by meaningful and inclusive opportunities to exchange ideas across diverse perspectives and experiences. At a time when the national climate hardly models generous listening, Oberlin can turn to its core educational mission as a framework for exploring a range of strategies to promote ways of learning together that maximize the value of a residential education, such as a structured dialogue program. Future campus climate work will also likely mean engaging even more fully and systematically with the impact of social media in our in-person and on-campus interactions. Cultivating an inclusive climate of active engagement is a significant challenge at this moment in history – for example, the echo-chamber effect of talking only with people who already agree with you is not just caused by Facebook and Twitter, but is also deeply embedded in histories of racial segregation and other structural challenges in American society. Working to create a space of engaged learning is fundamental to Oberlin’s success as an educational institution that supports, nurtures, and enables academic, artistic, and musical achievement.

For more information or to continue the conversation, please contact Meredith Raimondo, Special Assistant to the President for Equity, Diversity, and Inclusion at (440) 775-8555 or meredith.raimondo@oberlin.edu.

CERTIFICATE OF COMPLIANCE

I hereby certify that this case has not been assigned to a specific track, and that this memorandum adheres to the 20-page limit set forth in Local Rule 7.1.

/s/ David H. Wallace

David H. Wallace
Attorney for Defendant Oberlin College

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2017, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ David H. Wallace

David H. Wallace
Attorney for Defendant Oberlin College