

STUDENT SEXUAL MISCONDUCT POLICY

I. Introduction

- A. Prohibition of Sexual Misconduct. Sexual Misconduct, including sexual assault and other forms of discrimination on the basis of sex, is unacceptable behavior and is subject to discipline by the University of Rochester. The University of Rochester takes all complaints of this nature very seriously. This Policy describes the prohibited behaviors, explains the procedures for addressing complaints, sets forth possible sanctions, and provides information about the rights of, and the resources available to support, individuals who believe that a University of Rochester student has engaged in Sexual Misconduct.

Sexual Misconduct includes discrimination based on sex, sexual orientation, and gender identity or expression in compliance with Title IX of the Education Amendments of 1972 and other laws and policies. Examples of Sexual Misconduct include sexual harassment, pregnancy discrimination, sexual assault, dating and domestic violence and stalking.

Retaliation for complaining about Sexual Misconduct or participating in an investigation or a hearing involving a complaint of Sexual Misconduct is also prohibited, and will be considered a violation of (and adjudicated pursuant to) this policy if perpetrated by a student. Clear definitions of behaviors prohibited by this policy are included in Section below. This policy addresses Sexual Misconduct by students. Harassment and discrimination complaints not related to sex, (e.g., harassment on the basis of race, religion, disability, etc.) will be addressed pursuant to the Standards of Student Conduct procedures (if the alleged behavior was committed by a student) or by University policy 106 (if the alleged behavior was committed by faculty, staff or visitors).

The New York State Student Bill of Rights concerning Sexual Misconduct can be found in Appendix D to this policy.

- B. Response to Reports of Sexual Misconduct:

Students, faculty, staff members, visitors and others who believe that a University of Rochester student has committed Sexual Misconduct are encouraged to report the incident to University Public Safety or another Responsible Employee.¹ After a report is made to a Responsible Employee, he/she/they report it to the Title IX coordinator. The reported victim is offered support in such areas as obtaining medical care or counseling and assistance with making a police report if desired. The University may also take interim steps to protect that individual and/or the community, which can include removing the accused student from campus or other actions deemed appropriate under the circumstances. A disciplinary action may follow, which would involve an administrative hearing on campus. More specific information about the response to reports of Sexual Misconduct can be found below.

Options for students who may experience Sexual Misconduct are described in detail in Appendix C to this policy, as well as throughout the policy itself.

- C. Title IX Coordinator:

Morgan Levy serves as the University's Title IX Coordinator. Ms. Levy oversees and provides leadership for the staff members who carry out investigations, compliance-related responsibilities and reporting of Sexual Misconduct. In addition to Ms. Levy, deputy Title IX Coordinators have been designated in each of the schools of the University. Any student, applicant, faculty or staff member who has concerns about Sexual Misconduct is encouraged to seek the assistance of Ms. Levy or a school's Deputy Title IX Coordinator. Ms. Levy can be reached by phone at 585.275.7814 or email at TitleIX@Rochester.edu. Please see Appendix V for contact information for each of the Deputy Title IX Coordinators.

- D. Application of this Policy to Off-campus Behavior:

The University may investigate and respond (in accordance with this policy) to complaints of Sexual Misconduct by students that is reported to have occurred either on or off campus. Students may be subject to discipline for off campus conduct if it is associated with a University activity or raises considerable concerns that the individual or group poses a threat to the safety or welfare of the University community.

¹ A definition and list of Responsible Employees is included below on page 5.

E. Distinction from Criminal Law:

Some of the prohibited behaviors described in this policy are also violations of criminal law. When the University responds to a complaint under this policy it investigates and, if appropriate, issues sanctions using the standards described in this policy. There are significant differences between the standards for findings of a violation of this policy and the standards required for a determination of guilt under criminal law.

II. **Important Definition: Consent**

As used in this policy, consent refers to Affirmative Consent. **Affirmative Consent** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Whenever the word "consent" is used in this policy, it should be understood to mean affirmative consent as defined here.

There are several important principles to keep in mind:

- Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions and if confusion or ambiguity on the issue of consent arises anytime during the sexual interaction it is essential that each person stops and clarifies, verbally, willingness to continue.
- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is **incapacitated**, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual cannot otherwise consent. Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent.

Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings, or the inability to communicate for any reason. Among other circumstances, individuals may experience a blackout state in which they appear to be giving consent, but do not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication.

When a person's incapacitation is in question, the relevant standard that will be applied is whether the individual(s) knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could not consent to the sexual activity.

- Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.
- When consent is withdrawn or can longer be given, sexual activity must stop.
- According to New York State law, an individual cannot give valid consent if the individual is under 17 years old.

III. **Prohibited Behaviors²**

² For information regarding New York state definitions of some of the terms used in this policy please see the "Think Safe" document produced by University DPS and located online at http://www.publicsafety.rochester.edu/2016_ThinkSafe.pdf. The University's definitions of sanctionable conduct may be different than state law.

The following behaviors are prohibited by this policy, and if engaged in by any student, may result in discipline. Throughout this policy, the term “Sexual Misconduct” shall be used to refer to any or all of the acts defined below.

- A. **Sexual Harassment** is (1) any unwanted verbal, visual, written, electronic or physical conduct, of a sexual nature (2) that is intended to cause or could reasonably be expected to cause an individual or group to feel intimidated, demeaned, abused or fearful or have concern for their personal safety (3) because of their sex, sexual orientation, or gender identity or expression or because of their perceived or actual affiliation or association with individuals or groups identified by such characteristics. Sexual harassment prohibited under this policy can be classified as either hostile environment sexual harassment or quid pro quo sexual harassment.
- a. **Hostile Environment Harassment:** A hostile environment based on sex, sexual orientation, or gender identity or expression exists when the conduct:
- is sufficiently *severe or pervasive* (meaning that the conduct is either of an extraordinarily severe or egregious nature or has been repeated with sufficient frequency or continually); in other words, typically a single offense or occasional, episodic instances of offensive behavior will not qualify as sufficiently severe or pervasive, but a single egregious offense (e.g., sexual assault) would, *and*
 - objectively and subjectively has the effect of
 - unreasonably interfering with an individual’s work or equal access to education or
 - creating an intimidating, intolerable, or offensive work or academic environment.

Mere offensiveness is not enough to create a hostile environment.

In determining whether harassment has created a hostile environment, the University will consider not only whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as violating this policy. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students’ education or individual’s employment;
 - The nature, scope, frequency, duration, and location of incident or incidents;
 - The identity, number, and relationships of persons involved;
 - The nature of higher education.
- b. **Quid Pro Quo Harassment:** Quid Pro Quo harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity:
- are conditioned upon, either explicitly or implicitly, submission to unwelcome sexual advances or requests for sexual favors, or
 - such submission is a factor in decisions affecting that individual’s employment, education, living environment, or participation in a University program or activity.

Sexual harassment can take many forms:

- It can occur between equals (e.g., student to student) or between persons of unequal power status (e.g. student leader to first-year student). Although sexual harassment often occurs in the context of an exploitation of power by the individual with the greater power, a person who appears to have less power in a relationship can also commit sexual harassment (e.g., student harassing faculty member).
- It can be committed by an individual or may be a result of the collective actions of an organization or group.
- It can be committed against an individual, an organization or a group.
- It can be committed by an acquaintance, a stranger, or someone with whom one has a personal, intimate or sexual relationship.

- It can occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- It does NOT have to include intent to harm, be directed towards a specific individual, or involve repeated incidents.

The following types of behavior may constitute sexual harassment:

- Unwanted comments about an individual's body, clothing or lifestyle that have sexual implications or demean the individual's sexuality or gender;
- Unwanted sexual flirtations, leering or ogling;
- Unwanted sexual advances and propositions;
- Unwanted display of sexually demeaning objects, pictures or cartoons in areas visible to other members of the University community;
- Threats or insinuations that an individual's refusal or willingness to submit to sexual advances will affect the individual's terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity;
- Unwanted and intentional sexual touching, patting, pinching, or brushing another's body or clothing;
- Stalking in person or by electronic means;
- Dating or domestic violence;
- Sexual assault.

For additional examples, please see appendix B.

- B. **Sexual Violence** is a type of sexual harassment. It includes sexual assault, sexual exploitation, dating or domestic violence, and stalking.
- **Sexual Assault.** Consistent with federal law, the University defines sexual assault as including:
 - Actual or attempted sexual contact, however slight, with another person without that person's consent. Sexual assault includes, but is not limited to:
 - a. Involvement in any sexual contact with the victim is unable to consent;
 - b. Intentional and unwelcome touching of, or coercing, forcing, or attempting to force another person to touch a person's intimate parts (defined as genital area, anus, groin, inner thigh, buttocks, or breast), including over a person's clothing;
 - c. Sexual intercourse without consent, including acts commonly referred to as "rape." This includes penetration of vagina or anus with a body part or object and forced oral sex.
 - d. Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- C. **Dating or Domestic Violence** is abuse or violence by a person against another with whom the person is or was engaged in an intimate, romantic or family relationship, which causes or could reasonably be expected to cause significant physical, emotional or psychological harm. Dating or Domestic Violence includes:
- Battering that causes bodily injury;
 - Purposefully or knowingly causing reasonable fear of bodily injury;
 - Emotional abuse creating fear of bodily injury or property damage;
 - Repeated communication through any means, anonymously or not, with intent to intimidate, terrify or threaten.
- D. **Sexual Exploitation** occurs when a person takes non-consensual, sexual advantage of another for one's benefit or the benefit of another party. Examples of sexual exploitation include but are not limited to observing or recording others engaged in sexual or private activity (such as undressing or showering) without the consent of all involved; or taking intimate pictures of another and then distributing the pictures to others without the photographed person's consent or in a way that exceeds the bounds of consent; or exposing one's genitals in non-consensual circumstances; or engaging in sexual activity with another while knowingly infected with a sexually transmitted disease (STD) without informing the other person of such infection.
- E. **Stalking** is conduct directed at a specific person that would cause a reasonable person to fear harm to his/her/their health or safety, or that of a person he/she/they are close to, such as a friend or family member, or suffer substantial emotional distress. Stalking, when committed on the basis of sex, is a form of sexual harassment.
- Stalking behaviors can include but are not limited to the following:

- a. Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, texts, written letters, gifts, or other communications that are undesired by the recipient;
 - b. Pursuing, following, waiting or showing up uninvited at or near a residence, workplace, classroom, or other place frequented by the victim;
 - c. Surveillance, including by the use of technology, or other type of observation, including staring or “peeping”;
 - d. Gathering information about an individual from friends, family co-workers, or devices
- F. **Retaliation** is any adverse action taken by a member of the University community against a person because of the person’s participation in a complaint or investigation of Sexual Misconduct that is intended to, or could reasonably be expected to, dissuade a reasonable person from making a claim or participating in an investigation in the future.
- G. **Aiding or facilitating** is any action or course of action that assists, promotes or encourages the commission of a violation under this policy. Aiding or facilitating may also include failing to take action to prevent an imminent act when it is reasonably prudent and safe to do so. Taking action may include direct intervention, calling Public Safety or local law enforcement or seeking assistance from a person in authority.
- H. **Failing to Control Guests.** Students’ failure to take reasonable steps to prevent their guests from violating the code of conduct may result in those students being charged for a violation of this policy.

IV. **Reporting Statement**

The University can only act to prevent Sexual Misconduct from reoccurring in the future, and to remediate such conduct that has occurred, if it is made aware of such conduct. The University encourages individuals to report incidents of Sexual Misconduct so steps can be taken to remediate and prevent such conduct from occurring again. All members of the University community are encouraged to report any instances or claims of Sexual Misconduct, to the Title IX Coordinator. Responsible Employees who receive or learn of reports or concerns of Sexual Misconduct as defined within this policy **must promptly** (as soon as practical and no later than 48 hours) report to the University Title IX Coordinator.

Responsible Employees at the University of Rochester include professional and student staff members in the Office of Residential Life, including resident advisors (RAs), community assistants (CAs), graduate head residents (GHRs), graduate community assistants (GCAs) and graduate housing assistants (GHAs). Other Responsible Employees include University Public Safety, the professional staff members in student life offices in each of the University’s schools, and the Deputy Title IX Coordinators at each school and within the Department of Athletics.

No employees other than those listed here have the role and authority to respond to and correct Sexual Misconduct.

V. **Reporting Options and Confidentiality**

As a community, we believe it is imperative that students are able to access support services offered by the University even if they do not wish to formally report the incident to the University. You have the opportunity to speak with someone who can answer questions about something you experienced or observed and discuss options for moving forward without fear that doing so will automatically set into motion a formal investigation. In order to make the best decision about where to go for this conversation, it is important that you understand the places on campus where you can speak with full confidentiality and the places that can offer privacy; as well as the difference between the two.

A. **Confidential Resources:**

Individuals who are **confidential** resources will not report information to law enforcement or college officials without your permission, except in extreme circumstances, such as a health and/or safety emergency, imminent threat to self or others, or where there is mandatory reporting of suspected child abuse. Accordingly, sharing information with a confidential resource will not result in a report to the University, an investigation, or disciplinary action. In order to initiate an investigation or disciplinary action, a report must be made through one of the non-confidential options described in this policy.

Confidential Resources are not required to report the details of an incident to the Title IX Coordinator, however, they are asked to submit a **proxy report** with information regarding the date, time and location of the incident as well as the type of conduct that occurred. The proxy report does not need to include any personally identifiable information regarding the individuals involved in the incident.

Honoring your request for confidentiality may limit our ability to meaningfully investigate and pursue disciplinary action against an accused individual.

There are two types of Confidential Resources available to you: University and Off-Campus.

1. **University Confidential Resources include:**

- **University Counseling Center:** 585-245-3113

River Campus Office (585) 275-3113

Third Floor, UHS building

738 Library Road

Susan B. Anthony Circle

Eastman School Office (585) 275-3113

ESM Living Center, Room 107

A limited number of appointments available.

Call (585) 275-3113 to schedule an appointment.

<https://www.rochester.edu/ucc/contact/index.html>

- **University Health Service:** Licensed medical professionals acting in accordance with their professional responsibilities: 585-275-2662

UHS River Campus Office

Phone: 585-275-2662

1st Floor, UHS Building

738 Library Road, River Campus

UHS Medical Center Office

Phone: 585-275-2662

Room 1-5077, UR Medical Center (The entrance is at 250 Crittenden Blvd.)

UHS Eastman School Office

Phone: 585-274-1230

Room 106, ESM Student Living Center

<https://www.rochester.edu/uhs/contact/LocationHours.html>

- **Non-professional counselors and advocates:** These individuals can also assist you without sharing information that could identify you. At the University of Rochester, this includes:

University Chaplains

Phone: 585-275-4321

500 Wilson BLVD

<https://www.rochester.edu/chapel/communities.html>

2. **Off-campus Confidential Resources include:**

- Off-campus counselors and advocates: RESTORE, 1-800-527-1757. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency.
- Local Sexual Assault Nurse Examiner (SANE) hospitals and programs: Strong Memorial Hospital, Rochester General Hospital
- Off-campus healthcare providers: Strong Memorial Hospital, Rochester General Hospital

Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and

counseling services, including emergency compensation. More information may be found here: <https://ovs.ny.gov/sites/default/files/brochure/ovs-brochure-final-web.pdf>, or by calling 1-800-247-8035. Options are explained here: <https://ovs.ny.gov/help-crime-victims> .

B. **Privacy versus Confidentiality**

Even UR offices and employees who are not Confidential Resources will maintain your *privacy* to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution. A list of offices that can provide private guidance related to sexual misconduct can be found online at <https://www.rochester.edu/sexualmisconduct/resources.html>.

The University will seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless we determine that failure to investigate may result in harm to you or other members of the UR community. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

If you disclose an incident to a non-confidential resource, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator will weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you. The factors to be considered include, but are not limited to:

- whether the accused has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation from previously noted behavior,
- the increased risk that the accused will commit additional acts of violence;
- whether the accused used a weapon or force;
- whether the victim/survivor is a minor; and
- whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

C. **Public Awareness/Advocacy Events**

If you disclose a situation through a public awareness event such as "Take Back the Night," candlelight vigils, protests, student organization or other event or forum, or other public event, the UR is not obligated to begin an investigation. UR may use the information you provide to inform the need for additional education and prevention efforts.

D. **Institutional Crime Reporting**

Reports of certain crimes occurring in certain geographic locations will be included in the UR Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the victim/survivor.

VI. **Interim Protective/Mitigating Measures**

We will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices based on the following analysis:

- a. If it could improve safety
- b. Prevent retaliation
- c. And/or avoid an ongoing hostile environment

We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed. In addition, students accused of Sexual Misconduct may be subject to other interim actions, such as summary suspension. The University's policy on Interim Actions and Other Restrictions is at page 18 of the Standards of Student Conduct.

Interim measures may include:

- **Issuing Active Avoidance Orders:** If a student's presence on campus poses an actual or perceived threat to your physical or emotional safety and well-being and/or sense of personal safety and security, the University can issue an Active Avoidance Order (AAO). Information about AAOs can be found in the Active Avoidance Policy at page 15 of the Standards of Student Conduct.

- **Helping Coordinate Alternative Housing, Transportation, and Classes:** The University will discuss alternative housing, transportation to and from campus, and classes when that support is appropriate.

VII. **Medical Amnesty and Sexual Misconduct**

The health and safety of every student at the University of Rochester is of utmost importance. The University of Rochester recognizes that student who have been drinking and/or using drugs (whether the use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University of Rochester strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institutional officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to University of Rochester officials or law enforcement will not be subject to the University of Rochester's code of conduct action for violations of the alcohol and/or other drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault.

VIII. **Advisors**

Any student who wishes to speak with anyone at the University regarding an incident of Sexual Misconduct has the right to be accompanied by an advisor of choice (at the party's own expense, if the advisor is a paid advisor) who can assist and advise throughout the student Sexual Misconduct hearing process, including during all meetings and hearings related to such process.

While all advisors are welcome, the following requirements and prohibitions apply during meetings and hearings:

- The advisor is there to provide support to the student and not to advocate for him/her/them. Accordingly, advisors may not speak during the hearing process. Advisors may not question witnesses, speak to the board, or make statements or arguments.
- Advisors may confer quietly with their advisee on occasion, but if there is a need for an extended discussion, the student should ask for a break in the proceedings.
- Advisors may not direct the student how to answer a question. Advisors may not confer with their advisees or write notes to them when a question to them is pending-students should provide their own response to the question, not the response their advisor believes would be best.
- As this process is not a legal process, formal rules of evidence do not apply. Objections to questions or evidence are not permitted.
- Advisors generally should conduct themselves quietly and professionally and must not disrupt the proceedings.

If an advisor is not adhering to these or other ground rules of any proceeding, then the advisor may be removed from the proceeding and the proceeding will continue without opportunity for the party to secure a new advisor. Proceedings will not be delayed or adjourned based on the unavailability of a party's desired advisor.

IX. **Conduct Process for Sexual Misconduct**

The University's judicial officer, who works within the Office of the Dean of Students (ODOS), is responsible for adjudicating complaints of Sexual Misconduct by students. The judicial officer may designate another staff member to perform the duties of the judicial officer at any time. Any time the term "judicial officer" is stated in this document it should be interpreted to mean judicial officer or designee.

In consultation with the Title IX Coordinator, the judicial officer determines whether or not an administrative hearing is an appropriate response to the complaint after reviewing the investigative reports prepared by DPS. Upon this review the judicial officer decides whether or not there is sufficient cause to initiate the conduct process or pursue alternative means for resolution. The judicial officer may:

- A. Dismiss the complaint;

- B. Decide that the complaint can be processed through informal means of resolution, such as mediation. NOTE: mediation or other informal dispute resolution processes are not available in those cases where the allegation includes sexual violence, including sexual assault, dating violence or domestic violence; or
- C. Decide that the complaint contains reasonable grounds to believe that the University's policies, rules, or regulations have been violated and charge the student, on behalf of the University, accordingly. If this action is taken, the process is explained below.

A. Timeline

Timeline for process: When a student requests that the University investigate and respond to a report of Sexual Misconduct, DPS will begin an investigation which typically takes approximately two weeks to complete. The judicial officer requests a meeting with the involved students within two business days of receiving the final investigative report from DPS. If an administrative hearing is necessary, students receive two weeks advance notice of the hearing date. The total expected timeline from time of report to outcome is typically 4 weeks but the process may take longer to complete.

If a report has been filed with both an outside police agency, and the University, the University will generally continue to investigate and, if appropriate, conduct a hearing pursuant to this policy without regard to the timing or progress of the criminal proceeding. However, in some cases, the University may delay temporarily its internal processes while a law enforcement investigation is ongoing. Such delays will not last more than ten days except when law enforcement authorities specifically request and justify a longer delay.

B. Order of Conduct Process

1. **Initial Meeting(s):** When a student is reported to have engaged in behavior that violates this Policy, the judicial officer reaches out to the student and schedules an initial meeting. During this meeting the student has the opportunity to read available reports and share his/her/their perspective about what happened.
 - a. During this meeting the judicial officer may work with the student to determine whether or not the student accepts responsibility for the possible policy violation. If the student accepts responsibility, and the declarant³ agrees to resolve the issue without a hearing, the complaint can be resolved at that time. If a student needs to participate in a formal conduct hearing, a pre-hearing conference meeting can be scheduled.
2. **Pre-Hearing Conference Meeting(s):** The judicial officer meets with the declarant and the respondent separately to provide and explain the hearing notification letter which outlines the charges to be addressed in the hearing and to discuss the date, time and location of the hearing. The hearing date is generally no less than 2 weeks from the issuance of this notification letter. During this meeting the judicial officer also explains the hearing process in detail, answers any questions and provides access to the relevant investigative reports prepared by DPS for the process. The judicial officer also explains deadlines for submitting evidence and names of potential witnesses (typically this information is due one week prior to the hearing). Please note that character witnesses are not permitted in hearings.
3. **Hearing:** Sexual Misconduct hearings can use multiple forums as determined by the judicial officer: (a) video conference from multiple locations either on campus or away from campus (b) private conference room spaces on campus (c) audio only phone conference. No matter the forum for the hearing, respondents and declarants shall never communicate directly to each other or see each other; all hearings are chaired by the judicial officer along with at least one additional University administrator chosen by the judicial officer who has received annual training on issues related to acts of sexual or gender-based misconduct, including how to conduct an investigation and hearing process in a way that protects the safety of the declarant and promotes accountability, the effects of trauma, impartiality, the rights of the respondent (including the right to a presumption that the respondent is not responsible until a finding of responsibility is made pursuant to this policy), and applicable University policies and procedures. Through an objective and fair process guided by the fundamental fairness standards below, the judicial

³ In the conduct process, students who are alleged to have violated the Sexual Misconduct policy are referred to as "respondents" and individuals who have reported that they have been victim of behavior that violates the Sexual Misconduct policy are referred to as "declarants".

officer determines (a) whether, based on a preponderance of evidence (whether it is more likely than not), a violation occurred and (b) appropriate sanction(s) for a finding of responsibility.

4. **Post Hearing Meeting:** After the hearing the judicial officer will communicate with the respondent and declarant to discuss the outcome of the hearing and share information about how to submit an appeal. ¹²

C. Fundamental Fairness in Hearing Process

The fundamental fairness points outlined below apply to all students who participate as declarants or respondents in Sexual Misconduct hearings to determine whether the Sexual Misconduct policy has been violated.

1. All charges must be in writing and presented to the respondent and declarant at the time of notification of the hearing.
2. The notice of charges shall include a reference to the specific provision(s) of this policy alleged to have been violated and the possible sanctions. This notice shall also include, to the extent known, the date, time, location and factual allegations concerning the alleged violation.
3. The respondent and declarant shall be informed of their rights in the pre-hearing conference meeting with the judicial officer.
4. Except in cases where a hearing is required, the respondent and declarant will generally be offered the opportunity to resolve the case through a responsible option. Once a responsible option has been offered each party will be afforded two (2) days to inform the judicial officer whether he/she/they wish to resolve the complaint without a hearing.
5. If a hearing will be held the respondent and declarant shall typically be afforded at least 14 days' notice of the hearing date in writing; however, the judicial officer may extend or shorten time lines to accommodate the academic calendar or other extenuating circumstances.
6. Relevant reports, documents and other evidence may be shared with the respondent and declarant electronically or will be made available for review in the Center for Student Conflict Management prior to the hearing, in the judicial officer's discretion. These materials may not be duplicated by anyone other than the judicial officer. New information may not be submitted after the case file is closed which normally occurs 7 days prior to the hearing, unless extraordinary circumstances have prohibited the inclusion of such information within the standard timeline.
7. The respondent and declarant shall each have the right to be accompanied by an advisor of their choice as described in Section VIII of this policy. Names of potential advisors who are well informed about conduct procedures are available from the Center for Student Conflict Management. Respondents and declarants are strongly encouraged to choose an advisor knowledgeable in the conduct process.
8. The respondent and/or declarant will participate in the hearing while seated in separate hearing rooms connected electronically (unless both parties agree otherwise) in order to allow full participation of the parties.
9. Hearings are recorded. A recording of the hearing will be available for review by the parties and their advisors in the event of an appeal, and shall otherwise be maintained and available for review by the parties for a period of not less than five years after the hearing. The recording remains the property of the University and will not generally be released outside the University.
10. The respondent and declarant shall each have the opportunity to answer questions and to submit the testimony of material witnesses on his/her/their own behalf. Relevant witness statements, public safety reports, residential life incident reports, and depositions shall be acceptable as documentation submitted to a board. All other documentation is subject to review by the judicial officer prior to the time of the hearing. Copies will not be released.
11. All relevant evidence and testimony, including the relevant security reports, the text of statements made by the respondent and declarant prior to the hearing, and any relevant physical evidence shall be available to both respondent and declarant for potential use at the hearing; however, legal rules of evidence shall not apply. The judicial officer will have discretionary authority to determine whether particular questions, evidence or information will be accepted or considered, including whether a particular witness will or will not be called and, if called, the topic(s) that the witness or the parties will be permitted to address.
12. The declarant and the respondent shall have the right to exclude their own prior sexual history with persons other than the other party and/or their own mental health diagnosis and/or treatment from admission in the hearing for purposes of determining responsibility. Past findings of violations of this and other institutional policies (including violations involving Sexual Misconduct) may be considered for sanctioning purposes.

13. The respondent and declarant shall have the opportunity to question (indirectly or directly as determined by the judicial officer) all witnesses present during the hearing. This does not necessarily include the right to confront witnesses in person.
14. The respondent and declarant will be given an opportunity to make impact statements which will become part of the case record to be reviewed by the judicial officer and by any panel considering an appeal.
15. The respondent and declarant as well as all other participants are expected to cooperate during the hearing and be truthful in their testimony and responses to questions. A respondent may choose to refrain from providing testimony or answering questions; however, he/she/they may not then provide a statement on his/her/their own behalf. If a respondent or declarant does not attend a hearing or declines to give testimony or answer questions, the hearing board shall consider the available evidence and decide the case based on consideration of that evidence.
16. The judicial officer shall determine whether it is more likely than not (i.e., by a preponderance of the evidence) that the respondent violated the student Sexual Misconduct policy.
17. The judicial officer will notify the respondent and the declarant of the outcome (including the rationale for the decision and sanctions (if any), and any findings of fact) simultaneously in writing.⁴
18. The respondent and declarant have the right to appeal a final decision to the appeal panel (see below).
19. Both the respondent and the declarant will be informed of the outcome of the hearing and the outcome of any appeal without a commitment to protect the confidentiality of the information. It shall be the decision of each party whether that party will disclose or discuss the outcome of the hearing and/or the appeal.
20. The judicial officer has discretion to modify, expand, or clarify these standards and any other aspect of the conduct process, depending on the circumstances.

D. Potential Sanctions

Typical sanctions for Sexual Misconduct may include disciplinary probation, active avoidance orders, prohibition from various areas and events, and educational assignment to expulsion from the University. Students responsible for assaulting another person should expect, minimally, to be suspended from the University; in many cases, expulsion will result. The full range of other commonly-used sanctions at the University, some of which may be used in cases of Sexual Misconduct, is detailed in the Standards of Student Conduct.

Note about Transcript Notations: As required by law, transcripts of students found responsible for certain Sexual Misconduct violations and suspended or expelled will bear a notation indicating that finding and sanction. The full Transcript Notification Policy can be found on [page 16](#) of this document.

E. Appeals

1. Grounds for Appeal

Appeals are heard by a panel of three staff members who have received training similar to what hearing board members receive. Information regarding how to submit an appeal is provided in the decision letter at the conclusion of the hearing process. An appeal is intended to provide an opportunity to consider previously overlooked, exceptional, or unfair circumstances pertinent to the case. It is not intended to be a rehearing of the events presented at the original hearing.

The only grounds on which an appeal can be made are:

- a. The sanction was not appropriate
- b. New information exists that was not available at the time of the hearing and this information is sufficient to alter the decision
- c. A procedural error occurred during the process that is substantive enough to alter the decision.

2. Process of Appeal

An appeal must be made in writing to the panel as described in the decision letter within the timeline established in the letter officially stating the original decision. Instructions on how to submit an appeal letter are included in the decision letter. The appeal letter should state the grounds on which an appeal is made and what the student believes supports an appeal on those grounds. The appeal panel may review some or all of

⁴ If the respondent is a student in SMD or SON, the judicial officer will disclose the findings, recommendations, and relevant case materials to the appropriate disciplinary body within the school in which the student is enrolled. That body will make the ultimate determination regarding the sanction and will communicate the result to the respondent.

the material from the original hearing when considering an appeal and may consult with anyone they feel would be helpful in deciding the appeal. The appeal panel is not required to meet with the parties, but if it chooses to meet with either party, it must meet with the other party as well.

When one party to the case appeals the decision, the appeal panel notifies the other party that an appeal has been submitted. The second party has 7 days from this notification to respond to the appeal in writing explaining his/her/their perspective of merit of the issues raised. The appeal panel then responds to both parties with a final determination, typically within 7 days of the submission of all appeal documentation.

3. Effect of Appeal

Both parties receive a written decision from the appeal panel. On appeals, the panel may uphold or modify the decision and/or the sanction (if applicable), or the case may be referred back to the original hearing board or a new hearing board for a new or further hearing. At the discretion of the appeal panel and upon the recommendation of the judicial officer, where appropriate, all or some of the sanctions may be suspended pending the final decision.

Appendix A

Title IX Coordinators

University Wide	Morgan Levy, Title IX Coordinator
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	585-275-7814 Morgan.Levy@rochester.edu
Arts, Sciences and Engineering	Dawn Bruner, Deputy Coordinator 510 Wilson Commons, 585-275-4085 Dawn.Bruner@rochester.edu
Eastman School of Arts	John Hain, Deputy Coordinator 26 Gibbs Street, 585-274-1020 jhain@esm.rochester.edu
School of Medicine and Dentistry	Dr. Linda Chaudron, Deputy Coordinator 600 Elmwood Ave, Room 1-4444, 585-276-3782 Linda_Chaudron@URMC.Rochester.edu
School of Nursing	Lydia Rotondo, Deputy Coordinator HWH 4W144/601 Elmwood Ave, ACF 6, 585-275-5693 Lydia_Rotondo@urmc.rochester.edu
Simon School of Business	Karen Platt, Deputy Coordinator 202E Schlegel Hall, 585-275-8041 karen.platt@rochester.edu
Warner School	Brian Brent, Deputy Coordinator 422 LeChase Hall, 585-275-3930 bbrent@warner.rochester.edu
Athletics and Recreation	Kristine Shanley, Deputy Coordinator 1115 Goergen Athletic Center 585-275-6277 Kristine.Shanley@rochester.edu

Appendix B

The following scenarios illustrate how choices during situations common to college life, can result in a finding of a responsibility for violating our code of conduct. These scenarios were designed to clarify details of the policy and do not reflect the factual complexities and ambiguities that Sexual Misconduct allegations typically include.

- Angelique and Aaron have been in an ongoing relationship for a year-and-a-half and have engaged in consensual sexual intercourse. One night while becoming intimate, Angelique stops and says she doesn't feel like having sex that night. Aaron continues to touch her, saying that she got him excited and it wasn't fair of her to lead him on like that. Again Angelique tells him she does not want to have sex, and then is silent. Aaron decides she has given in, and proceeds to have sexual intercourse with her. *This is a violation of the Sexual Misconduct Policy. Aaron had sexual intercourse with Angela without her affirmative consent. The fact that Angela has freely consented to sexual intercourse with Aaron in the past does NOT mean he has her consent in this situation.*
- Robert and Felix have been flirting with each other all night at a party. Around 12:30 a.m., Felix excuses himself to find a bathroom. Robert notices Felix slurring his speech. Robert wonders if Felix went to the bathroom to vomit. When Felix returns, the two begin flirting more heavily and move to a couch. As the conversation continues, the two become more relaxed and more physically affectionate. Robert soon suggests they go back to his room, and Felix agrees. As they walk down the stairs, Robert notices that Felix looks unstable and offers his arm for support and balance. When they get back to his room, Robert leads Felix to the bed and they begin to become intimate. Felix becomes increasingly passive and appears disoriented. Robert soon begins to have sexual intercourse with him. The next morning, Felix thinks they had sex but cannot piece together the events leading up to it. *This is a violation of the Sexual Misconduct Policy. Felix was clearly incapacitated due to alcohol and thus unable to consent to engage in sexual activity with Robert.*
- Erin is talking to several of her friends in the hallway at a crowded party. Chang, a student she knows from chemistry class, comes up behind her and places his arms around her waist. She says hi to Chang and continues her conversation. After a while, she realized that Chang has moved his hands up to her breasts. She turns to him and tells him to stop, saying she doesn't want to be touched in that way and that he should have more respect for her. He laughs, tells her she takes herself too seriously, and again begins to grope her. This is a violation of the Sexual Misconduct Policy. Chang touched Erin in a sexual way without her consent, and continued to do so after she told him to stop. This behavior is a form of Sexual Misconduct.
- Kalliyian and Noah have been together for six months. She often tells her friends stories of Noah's sexual prowess, and decided to prove it to them. One night, she and Noah engage in consensual sexual intercourse. Without Noah's knowledge, Kalliyian sets up her digital camera to videotape them having sex. The next evening, she uploads the video to an online video-sharing site and discusses it with her friends online. *This is a violation of the Standards of Student Conduct prohibition against sexual exploitation. Noah's consent to engage in sexual intercourse with Kalliyian did NOT mean Kalliyian had obtained his consent to videotape it or broadcast the event to others.*
- John and Myra have been intimate for several days. One night, Myra calls John and asks him to come over. When he arrives, Myra kisses John passionately and leads him into the bedroom. They each express their excitement and desire to hook up, and are soon making out heavily in Myra's bed. After a while, John tries to engage in oral sex with Myra. Myra tells John that she really likes him, but that she doesn't feel ready for that. John tells Myra she's just being shy, and ignores her when she repeats that she doesn't feel ready. John then accuses her of leading him on. Eventually, John proceeds with oral sex, although Myra never gave permission. *This is a violation of the Sexual Misconduct Policy. John did not receive consent from Myra and has committed Sexual Misconduct.*
- Pat and Sam have an interest in each other but have never become intimate because Sam has a boyfriend back home. One night Pat and Sam meet at a party and begin making out on the dance floor. Eventually Sam invites Pat back to the dorm room where they have consensual intercourse. Sam's roommate enters the room and finds Sam and Pat in bed. Sam is distraught over the roommate finding them and fears that Sam's boyfriend back home may find out. Sam contacts the RA and claims there was no consent. *This is not a violation of the Sexual Misconduct Policy because it was reasonable, based on Sam's actions, for Pat to believe that Sam had consented.*
- Jen and Vince have been dating since high school and have had a volatile relationship. Late in the first semester of their junior year, Jen and Vince got into a big argument that involved a lot of yelling and screaming. They left each other late at night agreeing to talk more the following day. The next day, during Jen's first class, she receives 27 text messages from Vince. The messages say things like "leave class now or I will break up with you!" "You won't be able to afford the rent if you break up with me!" "I will tell your mother that you cheated on me." "I think the University would like to know about that big party you held for your sorority. You can't study abroad when you are on probation." Jen is scared and upset about the way Vince is asking and tells him to stop texting

her. Vince continues to text her throughout the day. At night as she is going to bed, she sees him standing outside her residence hall staring up at her window. Jen calls the Public Safety. *This is stalking in violation of the Sexual Misconduct Policy as Vince's behavior would cause a reasonable person to fear harm to his or her health or safety.*

(Adapted from Duke University's Sexual Misconduct Policy)

Appendix C

What You Can Do if You or Someone Else May Have Experienced Sexual Misconduct

If you or someone you know has experienced Sexual Misconduct the following options, among others described in the Policy, are available. You can:

- **Meet with the University Title IX Coordinator or the Deputy Title IX Coordinator in your school to discuss the support services available to you and your options for filing a report.** The University Title IX Coordinator is Morgan Levy. Ms. Levy can be reached by calling 585-275-7814 or via e-mail at Morgan.Levy@rochester.edu. Please see appendix B for a list of the Deputy Title IX Coordinators at each school.
- **Make a formal report to University Department of Public Safety (DPS) (585-275-3333):** DPS can help you file a formal report to the University about the incident. DPS can also assist you in making a report to the appropriate legal authority (Rochester Police, Monroe County Sheriff's Office, NY State Police etc.) You can choose to simultaneously report the incident to the University and the appropriate law enforcement agency for investigation and response. You can also choose to only report the incident to local law enforcement or only report the incident to the University. If you choose to make a report to the University, DPS investigators will conduct an investigation, as appropriate and under the direction of the Office of the Dean of Student on the River Campus (ODOS). The ODOS is responsible for adjudicating all cases of Sexual Misconduct at the University in which the accused is a student. If they haven't done so already, staff members from ODOS will then connect with you to discuss your options, including steps in the conduct process, resources available to support you, and the planned process for moving forward. Some things the University may be able to help arrange are (in no particular order):
 - **Issuing Active Avoidance Orders:** If a student's presence on campus poses a perceived, threat to your physical or emotional safety and well-being and/or sense of personal safety and security, the University can issue an Active Avoidance Order (AAO). Please see the Standards of Student Conduct section on Active Avoidance Orders for more information about the issuance of AAOs. AAO's are a University document. Should a student have questions or interest in learning about an Order of Protection, they may contact the Department of Public Safety for an explanation of this process.
 - **Helping Coordinate Alternative Housing, Transportation, and Classes:** The University will discuss alternative housing, transportation to and from campus, and classes when that support is appropriate.
 - **Taking Interim Measures:** The University can determine whether interim measures need to be taken to arrange alternative on campus housing or class schedules or remove the student(s) from campus and/or classes or before a hearing can occur. Please see the Standards of Student Conduct section on interim suspensions for more information regarding that process.
 - **Coordinating an Administrative Hearing: When appropriate, the ODOS will call for the complaint to be resolved through the administrative hearing process.** See below for more information about this process.
 - **Filing a report with the appropriate police department.** DPS can help connect you to the appropriate law enforcement agency if you wish to report the incident to the police. Calling 911 to directly connect to local police is an option as well. The police officers who respond may take a report and explain possible legal options including temporary and permanent orders of protections. You can choose to simultaneously report the incident to the University and the appropriate law enforcement agency for investigation and response.
- Any student who wishes to speak with anyone at the University regarding an incident of Sexual Misconduct has the right to be accompanied by an advisor of choice (at the party's own expense, if the advisor is a paid advisor) who can assist and advise throughout the student Sexual Misconduct hearing process, including during all meetings and hearings related to such process. **Have medical needs attended to at Strong Memorial Hospital (601 Elmwood Avenue) or another local hospital:** Students can utilize the hospital for medical attention. DPS can provide transportation.
- **Contact RESTORE (585-546-2777 or <https://restoresas.org/>):** RESTORE provides a 24-hour confidential hotline as well as advocacy support. RESTORE is not affiliated with the University of Rochester and reports made to RESTORE will not be shared with the University without your consent.
- **Confidentially discuss the incident with a counselor at the University Counseling Center (585-275-3113):** University Counseling Center (UCC) can help provide mental health support during a difficult situation 24 hours a day with their on-call counselor and appointments are also available. **Reports made to UCC or UHS are confidential.**

- **File a proxy report:** If you wish to make a report about the incident to the University without including your name or personally identifiable information you may file a proxy report. Proxy reports are used to gather information about the date, type and location of an incident when the student who experienced the incident does not wish to disclose his/her/their identity and/or participate in the investigatory process.
<https://www.rochester.edu/sexualmisconduct/proxy-report.html>
- **Do nothing:** You may also make it known that you do not want anything to be done with the situation right now. In situations where students indicate that they would not like the University to investigate or respond to the report of the incident the University will most often honor those wishes.⁵ There are, however, some circumstances when concerns about the safety of the University community are raised by the report. In those circumstances the University will investigate and respond as appropriate even without the assistance of the person alleged to have been a victim.

⁵ Please see above for information regarding the criteria the University will use when determining whether or not it will proceed with an investigation without the consent of the reporter. Reports of incidents that give rise to concerns about professional misconduct among medical and nursing students will be investigated and responded to by the University due to professionalism standards in those academic programs.

RESOURCES

The following community and University of Rochester resources are available for assistance.

1. Rochester Area Resources (these agencies are not obligated to report to the University)
 - Rape Crisis Service Hotline 585-546-2777
 - Rochester Police Department 585-428-7210
 - Rochester Police Department, Victims Assistance 585-428-6630
 - Monroe County Sheriff, Victims Assistance 585-428-5495
 - Monroe County District Attorney's Office Victim's Assistance 585-428-5704
 - Monroe County Health Department 585-733-5391
 - Alternatives for Battered Women (ABW) 585-232-7353
 - Gay Alliance of Genesee Valley (GAGV) 585-244-864, ext. 17

2. University of Rochester Resources
 - University Department of Public Safety 585-275-3333
 - Morgan Levy: Title IX Coordinator 585-275-7814
 - Center for Student Conflict Management, 510 Wilson Commons 585-275-4085
 - University Health Service(physician on-call when offices are closed)
 - River Campus Office, UHS Building, 1st floor 585-275-2662
 - Medical Center Office, 1-5000area 585-275-2662
 - Eastman School Office, SLC, room 106 585-274-1230
 - University Counseling Center, UHS Building, 3rd floor 585-275-3113

Appendix D
Student Bill of Rights

Under New York State law, all students have the right to:

1. Make a report to local law enforcement and/or State Police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

QUESTIONS ABOUT POLICIES

For questions about policies, contact the Center for Student Conflict Management (585-275-4085 or conflict.management@rochester.edu) in 510 Wilson Commons. This office oversees the administration of the policies and the resolution of violations and actively engages in a cooperative effort to educate students and organizations about their responsibilities as members of the academic community.

POLICY CHANGES AND UPDATES

The College reserves the right to modify the policies, procedures, and guidelines contained within this booklet without notice. For information about updates or changes, students can contact the Center for Student Conflict Management (585-275-4085) in 510 Wilson Commons, or view the website at: <http://www.rochester.edu/college/dos/conduct>.

In the event of a policy or procedure change, students will be subject to the policies that were in effect at the time of the violation, however, the violation will be adjudicated using current procedures.

ADDITIONAL REGULATIONS

Regulations listed in this handbook are not all-inclusive. Additional rules and regulations are contained in the Official Bulletins of the University of Rochester, the UR Here Student Handbook, the Residential Community Standards material, the Residential Network Acceptable Use Policy, the Housing/Dining Contract Booklet, Residential Area Handbooks, and other notices from Residential Life and other offices.