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**UNIVERSITY OF MIAMI POLICY AND PROCEDURE MANUAL**

TITLE:	Sexual Misconduct Policy	REFERENCE:	Title IX of the Education Amendments of 1972; Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act")
CATEGORY:	University-wide	PAGE:	1 of 8
		SUPERSEDES:	N/A
APPROVER:	Donna Shalala President	VERSION:	1
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**PURPOSE**

The University of Miami ("University") seeks to maintain a safe learning, living, and working environment. To that end, this policy prohibits sexual misconduct, which includes sexual harassment, sexual assault, relationship violence, and stalking. This policy also prohibits retaliation against an individual for making a good faith report of conduct prohibited under this policy.

The purpose of this policy is to provide a single document for students, employees, faculty and others affected by sexual misconduct to access information regarding: the University's rules and procedures and available University and community resources. This policy is part of the University's commitment to prevent sexual misconduct and to create an environment where all individuals know how to report an incident of sexual misconduct.

**POLICY**

It is the policy of the University that sexual misconduct committed by a student, employee, or faculty is strictly prohibited. For purposes of this policy, sexual misconduct includes the sexual harassment, sexual assault, dating and domestic violence, stalking, and retaliation (collectively referred to as "Prohibited Conduct"). Conduct under this policy is prohibited regardless of the sexual orientation, gender, gender identity, or gender expression of the Complainant or the Respondent.

This policy applies to UM students ("Students"); UM employees, including all officers, professional staff and administrators ("Employees"); UM faculty, including adjunct and visiting faculty ("Faculty"); contractors, vendors, or other third parties within UM's control ("Third Parties"); and visitors or guests of UM ("Guests"). Students, Employees, Faculty, Third Parties,

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and Guests are collectively referred to as a “Covered Person” or “Covered Persons”. This policy applies to acts committed by Covered Persons when:

- (1) the conduct occurs on UM premises;
- (2) the conduct occurs in the context of an UM employment or educational program or activity, including, but not limited to UM-sponsored study abroad, research, or internship programs; or
- (3) the conduct occurs outside the context of an UM employment or educational program or activity, but has continuing adverse effects on UM premises or in any UM employment or educational program or activity

Other forms of discrimination, including discrimination based on race, religion, national origin, age and disability, as well as any other form of sex-based discrimination not covered by this policy, are addressed by: (1) the [University’s Equal Opportunity/Affirmative Action Policy](#); and (2) the [Equal Opportunity/Non-Discrimination Policy in the Student Rights and Responsibility Handbook](#). This policy supersedes any conflicting information contained in those policies with respect to the definitions or procedures relating to the conduct prohibited by this policy.

## **DEFINITIONS**

**Complainant** is defined as an individual who complains of sexual misconduct in the manner provided under this policy.

**Consent** is defined as intelligent, knowing, and voluntary agreement to engage in specific activity and shall not be construed to include submission obtained by force, intimidation, threat, blackmail, extortion, or any other method of coercion or duress. For purposes of this definition, “giving in” is not the same as providing consent.

**Covered Person** is defined as students, faculty, employees/staff of the University, as well as any other third party having business relations with the University or guest visiting the University.

**Dating violence** is defined as is violence committed by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

**Domestic violence** is defined as abusive behavior that is used by an intimate partner to gain or maintain power and control over the intimate party and can take the form of assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, false imprisonment or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

**Respondent** is defined as the individual who is alleged to have engaged in sexual misconduct.

**Retaliation** is defined as any adverse action taken against an individual for making a good faith report of Prohibited Conduct or participating in any investigation or proceeding under this policy. Retaliation includes threatening, intimidating, harassing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy.

**Sexual assault** is defined as non-consensual, oral, anal, or vaginal penetration by or union with the sexual organ of another or by any other object. It also includes non-consensual sexual touching (fondling) or intentional contact with the breasts, buttocks, groin, or genitals.

**Sexual harassment** is defined as physical or verbal abuse of a sexual nature, including graphic commentaries about an individual’s body, sexually degrading remarks used to describe an individual, or unwelcome propositions or physical advances of a sexual nature. “Sexual harassment” also includes the threat or insinuation that sexual submission or the lack thereof will be used as a basis for employment or academic decisions affecting or interfering with an individual’s employment, academic standing, and/or academic or career development.

**Stalking** is defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for her/his safety or the safety of others, or to suffer substantial emotional distress. “Stalking” includes the concept of 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.

**Title IX Coordinator** is the University’s representative responsible for monitoring compliance with this policy, as well as related federal statutes and regulations concerning the prohibition of sexual misconduct in higher education. The Title IX Coordinator is also responsible for providing education, training, and notifications; overseeing complaints; and coordinating the University’s investigation, response, and resolution of all reports under this policy.

**PROCEDURE**

**I. INVESTIGATION AND ADJUDICATIVE PROCESSES**

**A. FILING A COMPLAINT**

Generally, the process for investigating complaints of Prohibited Conduct is determined by the status of the Respondent, as set forth below.

<b>Complainant:</b>	<b>Respondent:</b>	<b>Entity Responsible for Investigation:</b>	<b>Entity’s Contact Information:</b>
Student	Student	Dean of Students	
	Law students		(305) 284-4551
	Medical students		(305) 243-7978
	All other students		(305) 284-5353
Student	Faculty	Workplace Equity and Performance	(305) 284-3064
		Office of Vice Provost for Faculty Affairs	(305) 284-2002
Student	Employee/Staff/Third Parties/Guests	Workplace Equity and Performance	(305) 284-3064
Employee/Staff	Faculty	Workplace Equity and Performance	(305) 284-3064
Employee/Staff/Third Parties/Guests	Employee/Staff/Third Parties/Guests	Workplace Equity and Performance	(305) 284-3064
Faculty	Faculty	Office of Vice Provost for Faculty Affairs	(305) 284-2002

Faculty	Employee/Staff	Workplace Equity and Performance	(305) 284-3064
		Office of Vice Provost for Faculty Affairs	(305) 284-2002

Where a Respondent is both a student and an employee, the procedures set forth in the Student Rights and Responsibilities Handbook will apply. In other instances where the Respondent has multiple roles or in instances involving Third Parties or Guests, the University’s Title IX Coordinator will determine which of the procedures will apply based on the facts and circumstances of a particular incident, such as which role predominates and the role most applicable in the incident.

In addition to the entities described above, the University offers resources to provide support and guidance throughout the investigation and resolution of a complaint of Prohibited Conduct. For comprehensive information on emergency assistance, hospitals, as well as other support on-campus, in the surrounding community, and concerning academics, housing, and work, please review the *Resources for Working Through Incidents of Sexual Assault*; or contact the Sexual Assault Response Team Hotline at (305)798-6666. The Title IX Coordinator is available to meet with any student, employee, third Party, or guest to discuss this policy. The University also has several Deputy Title IX Coordinators who assist the Title IX Coordinator in the performance of their functions. A current list of the Title IX Coordinator and Deputy Title IX Coordinators is posted at the [Title IX Webpage](#).

**B. PROTECTIVE MEASURES AND ACCOMMODATIONS**

Upon receipt of a complaint of Prohibited Conduct, the University will take and/or make available reasonable and appropriate measures to protect the Complainant and the Complainant’s continued participation in their University employment or educational programs and activities. Such protective measures and accommodations, which may be temporary or permanent, may include separation orders, residence modifications, academic accommodations, work schedule modifications, and other reasonable and appropriate measures. Reasonable and appropriate protective measures are available for Complainants regardless of whether an investigation under the applicable procedures is pursued. The University also will take and/or make available such measures and accommodations for Respondents where reasonable and appropriate under the circumstances.

**C. PRIVACY AND CONFIDENTIALITY**

The University is committed to protecting the privacy of Covered Persons involved in a report under this policy. Privacy generally means that information related to a report of Prohibited Conduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, resolution of the report, and related issues. The University also is committed to providing assistance to help Covered Persons make informed choices. With any report under this policy, the University will make reasonable efforts to protect the privacy interests of Covered Persons involved in a manner consistent with the need for a careful investigation and adjudication of the allegations.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual’s medical and

related records is generally protected by the Health Insurance Portability and Accountability Act (HIPAA).

1. CONFIDENTIAL RESOURCES, REPORTERS AND RESPONSIBLE EMPLOYEES

The individuals listed below as “Confidential Resources” are prohibited from breaching confidentiality unless: (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a person under the age of 18, or (iv) as required or permitted by law, court order, or this policy.

There are three (3) categories of individuals at the University with whom a Covered Person can discuss an incident of Prohibited Conduct:

a. CONFIDENTIAL RESOURCES

Confidential Resources for Students include the Student Health Center, the Counseling Center, the licensed clinical social worker in the Dean of Students Office, and members of the clergy in the different religious houses on campus.

Confidential Resources for Employees and Faculty include the Faculty Staff Assistance Program, and medical providers or licensed counselors at a University of Miami medical facility.

Confidential Resources are not required to report any instances of Prohibited Conduct to the Title IX Coordinator, the Deputy Title IX Coordinators, or the University of Miami Police Department.

Sexual Assault Response Team (SART) volunteers are also considered Confidential Resources. However, under the Clery Act, the incident of Prohibited Conduct must be reported to the University of Miami Police Department solely for statistical purposes and the reporting requirements of the University’s annual security report. In such instances, the report to the University of Miami Police Department will not contain the names of the Complainants or Respondents.

b. REPORTERS

Reporters are designated offices or individuals within the University where a report of Prohibited Conduct can be made. Reporters are required to advise the Title IX Coordinator or the Deputy Title IX Coordinators of the Prohibited Conduct and share all details of the incident. A list of Reporters is set forth below:

<b>Reporter:</b>	<b>Contact Information:</b>
Title IX Coordinator/Deputy Coordinators	<a href="http://www.miami.edu/index.phy/wep/">www.miami.edu/index.phy/wep/</a>
Dean of Students – Undergraduate and Graduate	(305) 284-5353
Dean of Students – Law	(305) 284-4551
Dean of Students – Medical	(305) 243-7978
Office of Workplace Equity and Performance	(305) 284-3064
UM Department of Public Safety – Gables	(305) 284-6666

Campus Security – RSMAS	(305) 710-7991
Campus Security – Medical	(305) 243-6000

**c. RESPONSIBLE EMPLOYEES**

Responsible Employees are those University Employees and Faculty in a managerial, leadership, or supervisory position who have significant responsibility for the welfare of Students, Employees or Faculty. This group includes: managerial, supervisory or leadership Employees or Faculty in Student Affairs, Residential Life (including resident advisors and area directors), Athletics (including team coaches and assistant coaches), Human Resources, Risk Management, and in each of the schools within the University. Responsible Employees are required to advise the Title IX Coordinator or the Deputy Title IX Coordinators of the Prohibited Conduct and share all details of the incident.

**2. REQUEST OF CONFIDENTIALITY/REQUEST THAT PROHIBITED CONDUCT NOT BE INVESTIGATED**

If a Covered Person wants to inform a Responsible Employee, or a Reporter of an incident of Prohibited Conduct but also wants to maintain confidentiality and/or request that no investigative or disciplinary measures be taken, the Responsible Employee, or Reporter, will advise the Covered Person that the University will consider the request, but cannot guarantee that the University will be able to honor the request. In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee, or Reporter, will inform the Title IX Coordinator of the Covered Person’s request. Responsible Employees and Reporters will not pressure a Covered Person to request confidentiality and will honor and support the Covered Person’s wishes, including the desire to fully investigate an incident of Prohibited Conduct. By the same token, Responsible Employees and Reporters will not pressure a Covered Person to make a full report if the Covered Person is not ready to do so.

If a Covered Person discloses an incident of Prohibited Conduct to a Responsible Employee or a Reporter, but wishes to maintain confidentiality or requests that no investigation be conducted or disciplinary action be taken, the University will weigh such a request against the University’s obligation to provide a safe, non-discriminatory environment. There will be times when the University may not able to honor a Covered Person’s request in order to comply with this obligation. In determining whether it can honor a Covered Person’s request for confidentiality, the following factors will be considered:

- The increased risk that the alleged perpetrator will commit additional acts of Prohibited Conduct, such as:
  - Whether there have been other Prohibited Conduct complaints about the same Respondent;
  - Whether the Respondent has a history of arrests or records from a prior school indicating a history of violence;
  - Whether the Respondent threatened future sexual violence or other violence against the Covered Person or others; and
  - Whether the Prohibited Conduct was committed by multiple perpetrators.
- Whether the Prohibited Conduct was perpetrated with a weapon;
- Whether the Covered Person is a minor;

- Whether the University possesses other means by which to obtain relevant evidence of the Prohibited Conduct; and/or
- Whether the Covered Person's report reveals a pattern of Prohibited Conduct at a given location or by a particular group.

The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue disciplinary action. The ultimate decision as to whether the request for confidentiality will be honored will be made by the Title IX Coordinator. If the University determines that it cannot maintain confidentiality, the University will inform the Covered Person prior to starting an investigation and will, to the extent possible, only share information with those individuals responsible for the investigatory and disciplinary processes.

### 3. CLERY ACT REPORTING

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education, but does so in a manner that does not include any identifying information about persons involved in an incident.

#### D. **POLICIES AND PROCEDURES CONCERNING ADJUDICATIVE PROCESS**

The chart below identifies the procedures that will govern the investigative and adjudicative processes of an allegation of Prohibited Conduct:

<b>Complainant:</b>	<b>Respondent:</b>	<b>Applicable Policies/Procedures:</b>
Student	Student (Undergraduate/Graduate)	Disciplinary Procedures for Reported Incidents of Gender Discrimination, Sexual Violence or Sexual Harassment in the <a href="#">Student Rights and Responsibilities Handbook</a> .
	Law students	School of Law Policy on <a href="#">Harassment, Discrimination and Retaliation</a>
	Medical students	School of Medicine Student Rights Responsibilities Handbook
Student	Faculty	Procedures of the Committee on Professionalism Conduct in the <a href="#">Faculty Manual</a>
Student	Employee/Staff/Third Parties/Guests	Human Resources' Policy on <a href="#">Sexual Harassment</a>
Employee/Staff	Faculty	Procedures of the Committee on Professionalism Conduct in the <a href="#">Faculty Manual</a>

Employee/Staff/Third Parties/Guests	Employee/Staff/Third Parties/Guests	Human Resources' Policy on <a href="#">Sexual Harassment</a>
Faculty	Faculty	Procedures of the Committee on Professionalism Conduct in the <a href="#">Faculty Manual</a>
Faculty	Employee/Staff	Human Resources' Policy on <a href="#">Sexual Harassment</a>

For further information or if you have any questions or concerns, please review the University's [Title IX Webpage](#) or call the Title IX Coordinator at (305) 284-3064.

## **II. POLICY VIOLATIONS**

A student, employee, or faculty determined to have engaged in Prohibited Conduct shall be in violation of this policy, and subject to disciplinary action, up to and including separation from the University. Third Parties or Guests who violate this policy may have their relationship with the University terminated and/or their privileges and access to the University's premises revoked. The University reserves the right to take action against a Covered Person who commits an act of Prohibited Conduct outside the scope of this policy. The University applies the preponderance of the evidence standard when determining whether this policy has been violated. "Preponderance of the Evidence" means that it is more likely than not that a policy violation occurred.

## **III. POLICY INTERPRETATION; APPLICABLE LEGAL REQUIREMENTS**

This policy is designed to comply with applicable legal requirements, including Title IX of the Education Amendments of 1972; relevant provisions of the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"). UM does not discriminate on the basis of sex, sexual orientation, gender, or gender identity or expression in its education or employment programs and activities.