

**MICHIGAN STATE UNIVERSITY**

**RELATIONSHIP VIOLENCE AND SEXUAL MISCONDUCT AND  
TITLE IX POLICY**

**August 14, 2020**

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## **I. INSTITUTIONAL VALUES**

Michigan State University (“MSU” or the “University”) strives to provide an academic and work environment that fosters the values of safety; mutual respect; dignity; equity; responsibility; and clear and timely communication. Relationship violence, sexual misconduct, and stalking are in direct conflict with our institution’s values and policies and present barriers to fulfilling the University’s missions.

The University’s commitment to preventing and responding to relationship violence, sexual misconduct, and stalking applies to admissions, employment, and access to and treatment in University programs and activities.

Additionally, the University complies with Title IX of the Higher Education Amendments of 1972, 20 U.S. C. § 1681 et seq. (“Title IX”), which prohibits discrimination based on sex in education programs or activities; Section 1557 of the Affordable Care Act (“ACA”), which prohibits sex discrimination in applicable health programs or activities; and Title VII of the Civil Rights Act of 1964, which prohibits sexual harassment in employment; as well as other federal and state laws (including the Elliott-Larsen Civil Rights Act).

## **II. PURPOSE AND APPLICATION**

All faculty, staff, academic staff, students (including graduate students and professional students) volunteers, and other members of the MSU community are expected to comply with the provisions in this Policy. This Policy:

- Defines relationship violence (dating violence and domestic violence), sexual misconduct (including sexual harassment and sexual assault), stalking, and retaliation prohibited by the University and Title IX. (Section III).
- Provides contact information for confidential and other resources available to all individuals. (Section V).
- Explains equitable supportive measures that may be offered to all parties. (Section X).
- Explains the process for responding to and addressing reports and formal complaints of prohibited conduct, including retaliation. (Section XII).
- Sets expectations for University faculty, staff, and academic staff on reporting conduct. (Section VI).

This Policy provides a fair process whether or not reported conduct is specifically prohibited or covered by Title IX and highlights divergences in coverage, definitions of prohibited conduct, and procedures. Additionally, specific Title IX definitions of prohibited conduct are set forth in text boxes.

Discrimination that does not also involve harassment based upon sex (actual or perceived), gender, gender identity, gender expression, sexual orientation, and sexual identity will be reviewed under the University’s Anti-Discrimination Policy.

Reports (verbal, in-person, in-writing, electronic, or other means) of conduct prohibited by this Policy are reviewed by the University's Office of Institutional Equity (OIE) under the direction of the Title IX Coordinator or their designee.

### III. PROHIBITED CONDUCT

The following section sets forth conduct that is strictly prohibited by the University. The University prohibits sexual harassment as defined by Title IX as well as relationship violence, sexual misconduct, and stalking as defined by the University.

- "RVSM": This Policy uses the acronym "RVSM" to include "relationship violence" (a broad term encompassing domestic violence and dating violence); "sexual misconduct" (a term that includes sexual assault, sexual harassment, and sexual exploitation); and stalking.
- Title IX: Additionally, the University prohibits sexual harassment (which includes sexual assault, domestic violence, dating violence, and stalking) as defined by the Title IX regulations.

**A. Sexual Harassment:** Form of discrimination that includes verbal, written, or physical behavior, directed at someone because of that person's sex (actual or perceived), gender, gender identity, gender expression, actual or perceived sexual orientation, sexual identity, or based on gender stereotypes, when that behavior is unwelcome and meets any of the following criteria:

- Submission or consent to the behavior is reasonably believed to carry consequences, positive or negative, for the individual's education, employment, University living environment, or participation in a University activity or program. This can also be referred to as "quid pro quo". Examples of this type of sexual harassment include:
  - Pressuring an individual to engage in sexual behavior for some educational or employment benefit;
  - Making a real or implied threat that rejecting sexual behavior will carry a negative consequence for the individual.
- The unwelcome behavior is so severe, persistent, or pervasive that it causes an unreasonable interference with the individual's work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, University living, or participation in a University activity or program. This can be referred to as "hostile environment". Examples of this type of sexual harassment include but are not limited to:
  - Unwelcome sexual advances or requests for sexual favors;
  - Unwelcome commentary, including but not limited to drawings, written statements, social media posts, or verbal statements, about an individual's body, genitals or sexual activities;
  - Unwelcome teasing, joking, or flirting based on actual or perceived gender identity, gender expression, or sexual identity/orientation; and
  - Verbal abuse of a sexual nature or based upon gender, gender identity, gender expression, sexual identity, sexual orientation, or gender stereotypes.

Behaviors or communications may be verbal or nonverbal, written, or electronic. Such conduct does not need to be directed at or to a specific individual in order to constitute sexual harassment but may consist of generalized unwelcome and inappropriate behaviors or communications based on sex, gender identity, sexual identity, gender expression, actual or perceived sexual orientation, or gender stereotypes.

Determination of whether reported conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the reported incidents occurred. Sexual harassment is often a pattern of offensive behaviors. A single incident may also constitute sexual harassment, depending on the severity of the conduct and on factors such as the degree to which the conduct affected the educational experience, the employee's work or academic environment, or patient care; the type of conduct; and the relationship between the respondent and the claimant.

A person's subjective belief alone that behavior is offensive does not necessarily mean that the conduct rises to the level of a policy violation. The behavior must also be objectively offensive.

Sexual harassment may also be prohibited by Title IX.

**Title IX Sexual Harassment** means conduct **on the basis of sex** that satisfies one or more of the following:

1. An employee of the University conditioning a provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
2. Unwelcome conduct that is so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the University's education, program, or activity as determined by a reasonable person standard.
3. Other "sexual offenses" defined in the following statutes and described in this Policy: "sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). These other sexual offenses under Title IX are defined in more detail below.

**B. Sexual Assault:** Sexual Assault is a broad term that includes the following prohibited conduct.

1. **Non-Consensual Sexual Contact:** The intentional touching of intimate body parts of another person in a sexual manner without consent, causing another to touch intimate body parts without consent, or the disrobing or exposing of another without consent. Intimate body parts include but are not limited to, the mouth, neck, buttocks, anus, groin, genitalia, or breast; however, sexual contact can occur with any part of the body.

This conduct may also be prohibited by Title IX as **fondling**.

Under Title IX, **fondling** means the touching of the private body parts of another person for the purpose of sexual gratification without consent.

- 2. Non-Consensual Sexual Penetration (Attempted or Actual):** Non-consensual penetration or attempted penetration of a genital, anal, or oral opening of another person by use of an object, instrument, digit, or other body part. An “object” or “instrument” means anything other than a respondent’s genitalia or other body part. This includes forcing an individual to use an object, instrument, or digit to penetrate another individual as well as oral penetration by a sex organ of another person.

This conduct may also be prohibited by Title IX as **non-consensual sexual penetration**.<sup>1</sup>

Under Title IX, **non-consensual sexual penetration** means non-consensual penetration or attempted penetration of a genital, anal, or oral opening of another person by use of an object, instrument, digit, or other body part. An “object” or “instrument” means anything other than a respondent’s genitalia or other body part. This includes forcing an individual to use an object, instrument, or digit to penetrate another individual as well as oral penetration by a sex organ of another person.

- 3. Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

This conduct is also prohibited by Title IX.

Under Title IX, **incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

- 4. Statutory Rape:** Sexual intercourse, where there is no force or coercion, with a person who is under the statutory age of consent under state law.

This conduct may also be prohibited by Title IX.

Under Title IX, **statutory rape** means sexual intercourse, where there is no force or coercion, with a person who is under the statutory age of consent under state law.

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<sup>1</sup> For ease of understanding, this Policy uses the term “non-consensual penetration” to encompass all conduct defined by 20 U.S.C. 1092(f)(6)(A)(v).

**5. Sexual Exploitation:** Taking or attempting to take non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the person being exploited. Examples include:

- In situations where an individual has a legitimate expectation of privacy, surreptitiously observing or attempting to observe another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, or in which the person observed or induced to perform such act has not attained 18 years of age.
- In situations where an individual has a legitimate expectation of privacy, the non-consensual recording, sharing, or streaming of images, photography, video, or audio recordings of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved, or in which the person recorded, viewed, or induced to perform such act has not attained 18 years of age.
- Exposing one's genitals or inducing another to expose their genitals in non-consensual circumstances, or in which the person induced to perform such act has not attained 18 years of age.
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- Masturbation in public, whether or not genitals are exposed.
- Arranging for others to have non-consensual sexual contact or penetration with a person.
- The recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a sex act induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

**C. Relationship Violence:** Relationship Violence is a broad term that encompasses domestic violence and dating violence.

- 1. Domestic Violence:** An act of violence (actual or an attempt to cause physical injury to another) or threat to cause violence to another, committed by an individual who is a current or former spouse or intimate partner of an individual, a person with whom the individual shares a child in common, a person who is cohabitating with or has cohabited with the individual as a spouse or intimate partner.

This conduct may also be prohibited under Title IX.

Under Title IX, **domestic violence** means assault or assault and battery to another person committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws under state law, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state.

**2. Dating Violence:** Violence (actual or an attempt to cause physical injury to another) or threat to cause violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

This conduct may also be prohibited by Title IX.

Under Title IX, **dating violence** means assault or assault and battery committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

**D. Stalking:** Engaging in a course of conduct that is directed at a specific person or persons that would cause a reasonable person to feel fear for themselves or for the safety of others, or to suffer substantial emotional distress.

Stalking includes cyberstalking, which utilizes electronic formats such as the internet, social networks, social media apps, blogs, texts, cell phones and other devices. Stalking may include behavior that occurs outside the context of a relationship.

- A “course of conduct” means two or more acts directed at a specific person or persons. In the context of stalking, this can include, but is not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.
- The term “reasonable person” is a legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a communal ideal of reasonable behavior.

This conduct may also be prohibited by Title IX.

Under Title IX, **stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

**E. Retaliation:** An act or attempted act taken because of a person’s participation (or expectation of participation) in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person’s good faith:



- opposition to prohibited conduct
- report of prohibited conduct to the University; or,
- participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or supportive measure under this Policy.

This conduct may also be prohibited by Title IX.<sup>2</sup>

Under Title IX, intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or 34 C.F.R. Part 106 constitutes **retaliation**.

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, provided information, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Charging an individual with a violation under a separate policy for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**IV. Consent:** This Policy defines consent as the voluntary, willful, and unambiguous agreement to engage in a specific sexual activity during a sexual encounter.

- Consent must be clear and communicated through mutually understandable words or actions that indicate a willingness to participate in the sexual act.
- Consent cannot be gained by ignoring or acting in spite of the objections of another.
- Consent can be withdrawn at any time and for any reason.
- Assumptions about consent or willingness to engage in sexual activity should never be made.
- Consent cannot be inferred from:
  - Silence, passivity, or lack of resistance alone;
  - A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else);

<sup>2</sup> The University is not required to address complaints alleging retaliation according to the requirements of the grievance process for formal complaints of sexual harassment (34 C.F.R. 106.71). Retaliation complaints should be reported as described in this policy, and, if a formal complaint alleging retaliation is filed, the University will follow the formal grievance process for RVSM Prohibited Conduct.

- Attire;
- The spending of money;
- Stereotypes;
- Consent given to another person (*i.e.*, consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person); or
- Consent previously given (*i.e.*, consenting to one sexual act does not imply consent to another sexual act).
- Consent cannot be obtained using physical force, violence, duress, intimidation, coercion or the threat-- expressed or implied-- of bodily injury. Whether a party used such methods to obtain consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.
- Consent may never be given by:
  - Individuals under the state age of consent;<sup>3</sup>
  - Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled; or
  - Persons who are incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments.
    - The relevant inquiry in determining responsibility is whether the respondent knew or should have known that the claimant was incapacitated when viewed from the position of a sober, reasonable person.

## V. REPORTING

Those impacted by relationship violence, sexual misconduct, or stalking may: 1) reach out to a confidential resource (listed below) to learn about options; 2) report to local police or the Michigan State University Police Department (MSU PD); and/or 3) report to the Title IX Coordinator through the Office of Institutional Equity (OIE). Those impacted may choose to report to law enforcement, to the University, to both, or to neither as the individual may choose.

**To discuss options, the formal complaint process, resources, and supportive or interim measures in a confidential setting, contact:**

- **MSU Center for Survivors, (<https://centerforsurvivors.msu.edu/>)**
- **MSU Safe Place (<http://safeplace.msu.edu>)**
- **MSU Employee Assistance Program (<http://eap.msu.edu>)**
- **University Ombudsperson (<https://www.msu.edu/unit/ombud/index.html>)**
- **MSU Counseling and Psychiatric Services (CAPS) (<http://caps.msu.edu/>)**
- **MSU Sexual Assault Health Care Program (<https://centerforsurvivors.msu.edu/msu-sexual-assault-healthcare-program/>)**

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<sup>3</sup> Under Michigan law, consent to sexual contact of any kind cannot be given by someone who is under the age of thirteen (13). Consent cannot be given by someone who is under the age of sixteen (16) or if there is a five year difference between someone under the age of 16 and the other person. Consent to sexual penetration with an authority figure cannot be given by someone who is under the age of eighteen (18). An “authority figure” is someone who is charged with control or supervision of a minor or someone who maintains a dominant role which places the minor in a position of special vulnerability. For example, a teacher is in a position of authority over a student; a doctor, nurse, or other health care professional is in a position of authority over a patient; and a psychologist is in a position of authority over a client.

A conversation or contact with a confidential resource generally will not result in a report to the University.

Anyone who becomes aware of prohibited conduct is encouraged to immediately report to the MSU PD and to the Title IX Coordinator through OIE. Reporting obligations for employees are set forth in Section VI.

Reports may be submitted in person, by mail, by telephone, or by electronic mail, using the links and contact information listed below. Reports may be made at any time (including during non-business hours) by using the telephone number, email, online reporting form, or by mail to the OIE address, listed below. Reports may be submitted in person at the OIE Office during business hours or by appointment if after business hours.

**A. Report a Crime to the Police**

MSU Police Department  
1120 Red Cedar Road  
East Lansing, MI 48824  
(517) 355-2221  
Emergencies: 911

The MSU PD can help to determine jurisdiction and connect persons with appropriate law enforcement agencies if the reported conduct did not occur on campus.

**B. Report to the Office of Institutional Equity**

**Office of Institutional Equity<sup>4</sup>**  
Office of Institutional Equity  
408 W. Circle Dr., Suite 4, Olds Hall  
East Lansing MI 48824  
(517) 353-3922  
[oie@msu.edu](mailto:oie@msu.edu)  
Reporting Form<sup>5</sup>: <https://oie.msu.edu/file-a-report/index.html>

Melody Werner, Ed.D.  
Deputy Title IX Coordinator  
Director, Office of Institutional Equity  
[oie.melodywerner@msu.edu](mailto:oie.melodywerner@msu.edu)

Reports may also be submitted directly to the Title IX Coordinator.

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<sup>4</sup> The Title IX Coordinator has designated OIE to implement the Initial Assessment and Investigation portions of this Policy. Reports submitted to OIE result in receipt of the report by the Title IX Coordinator.

<sup>5</sup> The reporting form is not considered a formal complaint under this Policy.

**Title IX Coordinator**

Tanya Jachimiak, JD  
Office for Civil Rights and Title IX Education and Compliance  
408 W. Circle Dr. Suite 105, Olds Hall  
East Lansing MI 48824  
(517) 353-3922  
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**VI. REPORTING OBLIGATIONS FOR RESPONSIBLE EMPLOYEES**

University faculty, staff, academic staff, and volunteers, unless specifically exempted under the Reporting Protocols for Relationship Violence and Sexual Misconduct, must promptly report incidents of prohibited conduct that they observe or learn about in their professional capacity or in the context of their work and that involve a member of the University community (student, employee, MSU Health Care patient, or other individuals) or which occurred at a University-sponsored event or on University property.

The Reporting Protocols for Relationship Violence and Sexual Misconduct set forth the specific reporting obligations for employees and volunteers and can be found at [Link]. In accordance with University policies and applicable union collective bargaining agreements, failure to report as required under the Protocols may result in corrective or disciplinary action, up to and including dismissal.

**VII. LIMITED DRUG AND ALCOHOL-RELATED IMMUNITY FOR STUDENTS**

The University considers the reporting and adjudication of allegations under this Policy to be of paramount importance. While the University does not condone underage drinking or illegal use of controlled substances, students who report – or participate in an OIE investigation of – prohibited conduct will not be disciplined by the University for a violation of the University’s drug and alcohol possession or consumption policies that may have occurred in connection with the reported incident.

Students are also protected by a Michigan law that provides amnesty for alcohol-related crimes if an underage individual, after consuming alcohol, presents (or accompanies an underage person presenting) at a health facility or agency for treatment or observation as a result of sexual assault.

**VIII. SIMULTANEOUS INVESTIGATIONS**

Conduct that may be investigated for violating this Policy (relationship violence, sexual misconduct, and stalking) may also constitute a crime. This Policy and the grievance process set forth herein are not a substitute for criminal or civil legal action. Therefore, the University encourages individuals to promptly report alleged criminal conduct to the MSU PD or a local law enforcement agency.

The Title IX Coordinator and OIE staff are required to inform the MSU PD of all reports they receive regarding relationship violence, sexual violence, and stalking. OIE’s notification does not obligate the claimant to communicate with the police or to participate in a law enforcement investigation.

The MSU PD is required to notify OIE of all reported incidents of relationship violence, sexual misconduct, and stalking. The MSU PD shares information about ongoing investigations with OIE to the extent that sharing such information will not interfere with law enforcement proceedings.

If a criminal complaint is filed in addition to a formal complaint with OIE, OIE will not wait for the conclusion of any criminal investigation or proceedings before commencing its own investigation; however, OIE's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the University may take interim measures and will offer to provide supportive measures to all parties.

## **IX. PRIVACY OF INFORMATION**

The University will seek to protect the privacy of parties in compliance with applicable laws and regulations. The University will keep private the identity of any individual who has made a report or formal complaint of prohibited conduct under this Policy; the identity of any claimant; the identity of any respondent; and the identity of any witness. The privacy of information exceptions include disclosures that may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute or regulations, are required by law, and/or are necessary to carry out the purposes of this Policy (including providing supportive measures, interim measures, any initial assessment, investigation, hearing, and/or appeal). Reports, including the identities of the parties and the reported conduct, may be referred to other units for consideration under additional University policies.

Additionally, as required by an agreement with the U.S. Department of Education, summaries of all final Title IX investigation reports and final determinations involving employee respondents are included in the respondent's personnel file.

## **X. INTERIM AND SUPPORTIVE MEASURES**

**A. Supportive Measures:** The University offers non-disciplinary, non-punitive individualized services as appropriate, as reasonably available, and without fee or charge to a claimant or a respondent before or after the filing of a formal complaint or where no formal complaint has been filed, and regardless of whether the claimant chooses to speak with MSU PD or other law enforcement.

Supportive measures are designed to restore or preserve equal access to MSU's education programs or activities, including but not limited to protecting the safety of all parties or the University's educational or employment environment or to deter conduct prohibited under this policy. Supportive measures will not unreasonably burden the other party.

Supportive measures may include referrals to counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; mutual no contact directives; ASMSU Safe Ride services; changes in work or housing locations; leaves of absence; increased security and monitoring of certain areas of the campus; and other similar measures.

To the extent possible, the University will not disclose the provision of supportive measures to a claimant or respondent unless necessary to provide the supportive measures.

**B. Emergency Removal of Students:** The University may remove any student from its

program or activity on an emergency basis if there is an immediate threat to the physical safety of any students or other individuals arising from allegations under this Policy. Prior to removal, the University must undertake an individualized safety and risk analysis, and, where such analysis determines a credible safety risk exists, provide the party with notice and an opportunity to challenge the decision immediately following the removal.

Additional information regarding emergency removal procedures and the appeal process may be obtained by contacting the Title IX Coordinator.

- C. Administrative Leave of Employees:** The University may place non-student employees on administrative leave prior to or following the filing of formal complaint and through final resolution of the formal grievance process. More information regarding administrative leave of faculty and academic staff may be found at [https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/tenure\\_discipline\\_dismissal.html](https://hr.msu.edu/policies-procedures/faculty-academic-staff/faculty-handbook/tenure_discipline_dismissal.html). For information regarding staff, please contact the MSU Office of Employee Relations.
- D. Other Interim Measures:** Other interim measures may be available on a case by case basis. Any interim employment action will be taken consistent with the University's rights as an employer.
- E. Violation of Interim Measures:** Parties who fail to abide by interim measures may be subject to discipline.

## **XI. ADVISORS OR SUPPORT PERSONS**

Claimants and respondents may each have one advisor and one support person of their respective choice present at any meeting related to this Policy. The advisor and support person should not be a witness or otherwise have any conflicting role in the process.<sup>6</sup> A witness may have an advisor or support person at any meeting related to this Policy. An advisor may be an attorney.

If a party has an advisor and/or a support person during an investigation, the advisor and support person generally provide advisement and support.

If a hearing is conducted, parties must have an advisor to conduct questioning of the other party and/or witnesses, as parties may never personally question each other. If a party does not have their own advisor for a hearing, the University will provide the party (at no fee or charge) with an advisor of its choice, for the purpose of conducting questioning. A claimant or respondent may request a University-provided advisor through the Resolution Office.

An advisor or support person who is verbally abusive; disruptive to the investigative or hearing process; or persists in trying to substantively interfere with the University process after a warning to cease and desist may be asked to leave and may be precluded from attendance at future meetings or conferences.

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<sup>6</sup> Under Title IX, a party is not precluded from selecting an advisor who may also be a witness or serve in a conflicting role.

## **XII. INITIAL ASSESSMENT**

Upon receipt of a report (verbal, in-person, electronic, in writing, or other means), OIE will conduct an initial assessment, which will include outreach to the claimant and determination of whether a Campus Security Authority report is required under the Clery Act.<sup>7</sup>

**A. Notification of Supportive Measures and Formal Complaint Process:** OIE, on behalf of the Title IX Coordinator, will promptly notify the claimant in writing about the availability of supportive measures, interim measures, confidential resources, and other resources<sup>8</sup> with or without the filing of a formal complaint; the availability of University-provided advisors; the process for filing a formal complaint; and the opportunity to meet with OIE to discuss options.

Meeting with OIE to discuss options does not obligate a claimant to file a formal complaint, nor does a formal complaint need to be filed prior to meeting with OIE.

The University will consider the claimant's wishes with respect to supportive measures.

**B. Preliminary Review:** OIE may gather information to determine coverage under this Policy and whether closure is appropriate.

**C. Closure:** A report may move to closure if (1) a claimant cannot be identified; (2) specific circumstances prevent gathering information sufficient to reach a determination as to whether the reported conduct is covered under this Policy, which may include a claimant's declining to file a formal complaint or not responding to OIE's outreach; or (3) the report is not covered under the criteria for a formal grievance process, described below.

Notwithstanding, a claimant or the Title IX Coordinator may file a formal complaint after a report has been moved to closure. At such point in time, OIE will re-open the report.

Supportive measures may remain available to the parties even if the matter moves to closure.

OIE may refer reports, including information contained in a report, to another unit on campus if appropriate for consideration under other University policies and laws. Other units include Academic Human Resources, Office for Employee Relations, and the Dean of Students Office.

**D. Formal Complaint:** The formal grievance process is initiated only when a formal complaint is signed and filed by the claimant or the Title IX Coordinator.

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<sup>7</sup> The Clery Act requires the University to annually disclose campus crime statistics, including reported incidents of domestic violence, dating violence, stalking, and sexual assaults that meet the definition of forcible and non-forcible sex offenses under federal law. The Clery Act also requires the University to issue "timely warnings" to the campus community when a Clery Act crime (1) occurs on campus, in or on certain non-campus buildings or property (as defined by law), or on public property immediately adjacent to and accessible from campus and (2) poses a serious or continuing threat to students and employees. Timely warnings and statistical disclosures do not contain any personally identifying information about claimants.

<sup>8</sup> The University provides written information about rights and resources as required by the Violence Against Women Reauthorization Act of 2013 and its implementing regulations.

1. **Content:** The formal complaint must set forth the specific allegations of prohibited conduct against the respondent(s), must be signed (in writing or electronically), and must request that the University investigate the allegation(s).
  2. **Anonymity:** A claimant cannot be anonymous once a formal complaint is signed.
  3. **Consolidation:** The University may consolidate formal complaints involving more than one claimant or more than one respondent, including where the allegations of prohibited conduct arise out of the same facts or circumstances. When consolidated, complaints proceed through the formal grievance process jointly, but determinations regarding responsibility will be made as to each party and allegation.<sup>9</sup>
  4. **Formal Complaint Required (Employee Respondents):** The Title IX Coordinator must consider filing a formal complaint if the University knows or reasonably should know that an employee, including faculty, staff, or academic staff, is alleged to have engaged in any prohibited conduct set forth in this Policy.<sup>10</sup> The University will exercise reasonable care to prevent and promptly correct any prohibited conduct. The Title IX Coordinator or designee may also refer the report to the respondent's unit and to Academic Human Resources or the Office of Employee Relations, as appropriate.
- E. Coverage Determinations:** If after the submission of a report, a formal complaint is signed by a claimant or the Title IX Coordinator and the information in the formal complaint meets either the University RVSM coverage criteria and/or the Title IX coverage criteria, the University will follow the formal grievance process. If a formal complaint meets both the University RVSM coverage and the Title IX coverage, Title IX regulations require that the formal grievance process include all of the procedural requirements specific to the Title IX regulations, as set forth in this Policy.
1. **University RVSM Coverage:** If the conduct in the formal complaint is University RVSM prohibited conduct (Section III) and the following criteria are met, the University will proceed under the formal grievance process.
    - a. **Claimant**<sup>11</sup> is an individual who is reported to have been subjected to conduct prohibited by this Policy.
    - b. **Respondent** is an individual who has been reported to have engaged in prohibited conduct.
    - c. The reported conduct occurred or is occurring:

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<sup>9</sup> The University may also investigate and resolve potential violations of the Anti-Discrimination Policy jointly with complaints under this Policy, in accordance with the formal grievance process outlined in this Policy.

<sup>10</sup> In compliance with current Michigan law, if more than one allegation has been made against an employee that resulted in a finding of no misconduct, the Title IX Coordinator will take all appropriate steps to ensure the matter is being investigated thoroughly, including hiring an outside investigator for future cases involving that employee. State School Aid Act of 1979, Section 388.1865b, §265b(i).

<sup>11</sup> Title IX refers to a claimant as a complainant. For purposes of this policy, claimant and complainant are synonymous.



- i. On campus;
- ii. Off-campus in a University-sponsored program or activity, including but not limited to cooperative extension, intercollegiate athletics, lifelong education, any regularly scheduled classes; and locations including buildings owned or controlled by student organizations officially registered with University Student Affairs and Services. This includes fraternities and sororities registered with University Student Affairs and Services.
- iii. Off-campus in a program or activity sponsored by a student governing body, including their constituent groups, or registered student organization; or
- iv. Off-campus and outside of a University-sponsored program or activity but the conduct has continuing adverse effects on the campus or on a University-sponsored program or activity.

**2. Coverage Under Title IX:** If the conduct in the complaint is prohibited conduct as defined by Title IX (Section III) and the following criteria are met, the formal grievance process will include all of the procedural requirements specific to Title IX:

- a. **Claimant** is (a) an individual who is reported to have been subjected to Title IX Sexual Harassment (as defined above) in the United States; (b) is a student, employee or third party (including patients); and (c) is participating in, or attempting to participate in, the institution's education program or activity at the time of filing a formal complaint.
- b. **Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited by Title IX (Title IX Sexual Harassment, as defined above).
- c. The conduct occurred or is occurring in the context of a **University education program or activity**, including:
  - i. Locations, events, or circumstances in which the University exercises substantial control over both the respondent and the context in which the reported Title IX Sexual Harassment occurred or is occurring.
  - ii. Locations include buildings owned or controlled by student organizations officially registered with University Student Affairs and Services (officially recognized student organizations). This includes fraternities and sororities registered with University Student Affairs and Services.

**F. Dismissal Determinations:** Once a formal complaint is filed, it will proceed to an investigation under Section XIII unless dismissed for the reasons set forth below.

**1. Title IX Formal Complaint Dismissal**

- a. The formal complaint must be dismissed under Title IX if the formal complaint does not meet all of the coverage requirements in Section XII.E.2 and/or the allegations would not, even if proven, meet the definition of Title IX Sexual Harassment.
- b. The formal complaint may be dismissed if (i) the claimant requests that the complaint be withdrawn, or (ii) specific circumstances prevent gathering evidence sufficient to reach a determination.

- c. Appeal: If a formal complaint is dismissed under Title IX, claimant and respondent shall receive notice of the dismissal, including notation as to the reason for the dismissal and an explanation of their rights to appeal to the University Equity Review Officer or designee within five (5) calendar days of the notice of dismissal.<sup>12</sup>

## 2. University RVSM Formal Complaint Dismissal

- a. The formal complaint must be dismissed if the complaint does not meet all of the coverage requirements in Section XII.E.1 and/or the allegations would not, even if proven, meet a definition of prohibited conduct.
- b. The formal complaint may be dismissed if (i) the claimant requests that the complaint be withdrawn; (ii) neither claimant nor respondent are affiliated with the University at the time of the filing of the formal complaint; or (iii) specific circumstances prevent gathering evidence sufficient to reach a determination.
- c. If a formal complaint is dismissed, claimant and respondent shall receive notice of the dismissal, including notation as to the reason for the dismissal and an explanation of their rights to appeal to the University Equity Review Officer or designee within five (5) calendar days of the notice of dismissal.<sup>13</sup>

**G. Referrals of Other Forms of Prohibited Conduct:** If a report also implicates other forms of conduct prohibited by the University beyond conduct prohibited by this Policy, the conduct may be referred to the appropriate University office during or after the allegations set forth in the formal complaint are resolved, except those circumstances covered under limited immunity and as long as such referral does not constitute retaliation as prohibited by this Policy.

## XIII. FORMAL GRIEVANCE PROCESS

The major stages of the formal grievance process are: 1) the investigation; 2) the hearing; 3) the decision; and 4) the appeal. If a respondent is found to be responsible for violating this Policy, the sanction will be included in the decision and may be referral to the appropriate process for discipline or corrective action.

### A. Overview of Standards and Process

- 1. **Timeframe for Completion of Formal Grievance Process; Extension for Good Cause:** An investigation after the filing of a formal complaint will, in most cases, be completed within ninety (90) days, and a written decision following a hearing, if applicable, will be issued within sixty (60) days following the investigation. These time periods may be temporarily extended for good cause at the discretion of the University's Title IX Coordinator or

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<sup>12</sup> The bases for appeal of a dismissal of a formal complaint are the same as those listed in Section XIII.E related to appeal of a determination of responsibility.

<sup>13</sup> The bases for appeal of a dismissal of a formal complaint are the same as those listed in Section XIII.E related to appeal of a determination of responsibility.

designee, if deemed necessary to conduct a thorough investigation, to protect the rights of all parties, or for other reasonable considerations, including absence of a party, a party's advisor, or a witness; or the need for language assistance or accommodation of disabilities. Parties will be sent written notice of any delay or extension, including the reason for the delay or extension.

2. **Equitable Treatment:** All procedures, rules, and practices adopted as part of the formal grievance process will apply equally to both parties. Parties will receive identical copies of all investigation reports and written decisions.
3. **Presumption of Non-Responsibility and Standard of Evidence:** A respondent is presumed to be not responsible for the reported conduct until a determination regarding responsibility is made at the conclusion of the applicable formal grievance process. The presumption may be overcome only where a preponderance of the evidence supports a finding that the respondent is responsible for violating this Policy.
4. **Standard of Proof:** The standard of proof is "preponderance of evidence." "Preponderance of the evidence standard" means that the respondent will be found responsible if, based upon all relevant evidence, it is "more likely true than not" that respondent is responsible for the reported conduct. If the evidence on a particular allegation is equally balanced, then that allegation is not "more likely true than not."
5. **Relevance:** Evidence is considered relevant if it has a tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in making a determination regarding responsibility.
6. **No Conflicts of Interest:** The University does not allow conflicts of interest or bias for or against claimants or respondents generally or an individual claimant or respondent by its Title IX Coordinator(s), investigators, Resolution Officers, or other persons making decisions regarding allegations under this Policy, grievance process, or related practices or protocols. A conflict of interest exists when an individual's knowledge of the matter or personal or professional relationship with a claimant, respondent, or witness would preclude the individual from being able to investigate or decide the case fairly and impartially. Any concern regarding bias or conflict of interest should be submitted to the Title IX Coordinator immediately.
7. **Burden of Gathering Evidence:** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties. Notwithstanding, the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a nurse practitioner, physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so.
8. **Experts:** Parties may propose medical or scientific experts. The Title IX Coordinator will determine whether an expert is needed and shall not utilize medical or scientific experts that have an actual or apparent conflict of interest or bias for or against claimants or

respondents generally or an individual claimants or respondent. Any expert witness determined to have an actual or apparent conflict of interest shall be prohibited from serving as an expert witness or otherwise participating in the investigation or grievance process of the matter for which the conflict exists absent a waiver by all parties. If a decision maker relies on an expert, the expert will be identified in any final written report or decision and will reflect that the Title IX Coordinator determined that the expert did not have a conflict of interest.

9. **Permissive Discussions:** This Policy does not restrict the ability of any party to discuss the allegations under investigation or to gather and present relevant evidence or present witnesses. However, parties are prohibited from discussing or disseminating the allegations in a manner that constitutes retaliation or violates FERPA. Employees may not disclose FERPA-protected information regarding students. In addition, parties should consider whether discussing allegations with a witness or another party would negatively impact a determination of the credibility of the witness or party.
  10. **Evidentiary Decisions:** There are limited circumstances in which prior or subsequent conduct or prior sexual history may be relied upon as evidence.
    - a. **Prior or Subsequent Conduct:** Prior or subsequent conduct of the respondent may be considered in determining pattern, knowledge, intent, motive or absence of mistake. For example, evidence of a pattern may be deemed relevant if the prior or subsequent conduct is substantially similar to the conduct under investigation.
    - b. **Prior Sexual History:** Questions or evidence about a claimant's sexual history, sexual identity, and prior sexual experiences are prohibited. Questions and evidence about a claimant's prior sexual behavior are prohibited subject to two exceptions: i) if offered to prove that someone other than the respondent committed the reported prohibited behavior; or ii) if the question or evidence concerns sexual behavior between the claimant and the respondent and is offered to prove consent for the reported prohibited conduct.
- B. Investigation:** The investigation is a neutral fact gathering process. The investigation shall be fair and impartial and not rely upon stereotypes.
1. **Notice of Investigation:** Upon receipt of a formal complaint and within three (3) business days, OIE will notify the claimant(s) and the respondent(s), in writing, of the initiation of an investigation. In the notice of investigation, OIE will identify the parties; specify the date, time, location, and nature of the reported prohibited conduct; identify potential policy violations; identify the investigator; explain the availability of supportive measures, confidential resources, and the right to an advisor of a party's choosing (including the availability of University provided advisors); and an instruction to the parties to preserve any potentially relevant evidence.
  2. **Meeting Notifications:** The investigator will notify and seek to meet separately with the parties and third-party witnesses. OIE will provide written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient

time for the party to prepare to participate in a meaningful way. Sufficient time is determined on a case by case basis but generally is considered to be five (5) business days.

3. **Evidence Gathering:** The investigator will gather relevant and available information including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and/or medical records (subject to the voluntary, written consent of the applicable party).

Individuals involved in a report of prohibited conduct should preserve evidence to the extent possible. The MSU PD, Center for Survivors, and Safe Place can advise on or assist with the preservation of evidence.

Both claimant(s) and respondent(s) will have an equal opportunity to identify potential witnesses and provide any evidence or other information relevant to the investigation. OIE will review and determine the relevance of any proffered information and evidence.

4. **Status Updates:** The parties will receive regular, bi-weekly updates regarding the status of the investigation.
5. **Witness Statements:** Witness statements may be considered as evidence as permitted by this Policy. Witnesses will be provided an opportunity to review the investigator's summary of their interview.
6. **Evidence Review By Parties:** At the end of the investigation, the investigator will give each of the parties an equal opportunity to inspect and review *all* evidence (inculpatory and exculpatory) that *directly relates* to the allegations in the formal complaint. Each party will have ten (10) calendar days to respond in writing to the investigator, including providing the names and contact information for any additional witnesses for the investigator to consider, and submitting written, relevant questions that a party wants asked of any party or witness, and limited follow-up questions. The investigator will consider the written responses.
7. **Investigation Report and Review Period:** Following the parties' review of the evidence, the investigator will prepare a written investigation report fairly summarizing the investigation and relevant evidence directly related to the allegations. OIE will send the investigation report and *relevant* evidence to the parties and their respective advisors.<sup>14</sup>
8. **Investigator Finding:** If the formal complaint has been dismissed under Title IX; the investigation into prohibited conduct has concluded; and credibility is not at issue or material to the outcome of the formal complaint; the OIE investigator will include the decision regarding responsibility (see Section XIII.D) in the investigation report.
9. **Hearing Eligibility:**
  - a. If the reported conduct falls within Title IX *or* if credibility is at issue and material to the outcome of the formal complaint, the investigator will not determine whether a party is

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<sup>14</sup> Investigators may redact portions of a relevant document that are not directly related to the allegations in the formal complaint and/or that may constitute attorney-client or other legally-recognized privilege.

responsible for violating this Policy. The investigator must forward the matter to the Resolution Office for a hearing and final determination as to whether a party is responsible for violating this Policy.

- b. Parties and advisors will have ten (10) calendar days to review and respond in writing to the investigation report and evidence, including by providing appropriate context and correction, as well as arguments about whether all of the evidence is relevant, the investigator reached a wrong conclusion about the relevance of evidence, or whether relevant evidence has been omitted.
- c. Parties' responses to the investigation report should be provided directly to the Resolution Office. The Resolution Office will make all responses available to all parties.

**C. Hearing:** After the investigation report is distributed to the parties and where the case is eligible for a hearing (Section XIII.B.9 above), the formal complaint proceeds to the Resolution Office for a live hearing. The Resolution Office has been designated by the Title IX Coordinator to implement the formal hearing process.

1. **Resolution Officer:** The Resolution Officer conducts the hearing and will determine whether the respondent is responsible for violating this Policy. The Resolution Officer will be designated by the Title IX Coordinator or their designee and cannot be the same person as the Title IX Coordinator or the investigator(s).
2. **Hearing Decorum:** The Resolution Officer is responsible for conducting an orderly, fair, and respectful hearing. The Resolution Officer has broad authority and discretion to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding disruptive persons.
3. **Notice:** The Resolution Office will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of the hearing, or other meetings, with sufficient time for the party to prepare to participate in a meaningful way.
4. **Recusal:** A party may ask that the assigned Resolution Officer be recused for cause, conflict of interest, or bias. The Associate Director for the Office for Civil Rights and Title IX, in consultation with the Title IX Coordinator, will decide whether the Resolution Officer should be recused. Requests for recusal must be submitted in writing prior to the pre-hearing conference.
5. **Questioning:** At the hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
6. **Cross-examination:** Cross-examination will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Claimants and respondents will not be located in the same room for a hearing. Hearings are conducted virtually with technology that provides for simultaneous audio and visual participation.
7. **Recording:** The University will create a video recording of the hearing and make it available to the parties for inspection and review. Hearings are closed to the public.

8. **Evidentiary Decisions:** The Resolution Officer makes evidentiary decisions and has discretion to determine relevancy and/or redundancy of the questions and evidence. The Resolution Officer retains the right to exclude questions or evidence that are irrelevant or redundant. Relevant questions regarding credibility are permitted. Before a claimant, respondent, or witness answers a cross-examination or other question, the Resolution Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
9. **Advisor and Support Persons:** Parties may ask questions of the other party and/or witnesses only through an advisor. Parties may have an advisor of their choosing at the hearing. If a party does not have an advisor for a hearing, the University will provide an advisor of the University's choice without fee or charge to the party. Parties may also have a support person present during the hearing subject to FERPA restrictions. Advisors and support persons (if permitted) are required to abide by the rules of decorum.
10. **Failure to Appear or Submit to Cross-Examination:** Participation in the hearing is voluntary and the University cannot compel a party or witness to participate. No inferences or assumptions will be drawn with regard to a party's decision not to provide a statement, be interviewed, or submit to cross-examination. However, failure to answer questions at the hearing will impact the information the Resolution Officer may consider, particularly in Title IX cases.

**Under Title IX**, if a party or witness does not submit to cross-examination at the hearing, the Resolution Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Resolution Officer cannot draw any inferences about the determination regarding responsibility based on a party's failure to appear at the hearing or answer cross-examination or other questions.

- D. Decision Regarding Responsibility:** At the conclusion of the investigation and hearing (where applicable), the decision-maker (the Resolution Officer or investigator) shall evaluate the evidence and decide, based on a preponderance of the evidence, whether the respondent is responsible for violating this Policy. The decision-maker shall objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations shall not be based on a person's status as a claimant, respondent, or witness. The decision-maker will provide the parties and their advisors a date upon which they will receive the written decision.
1. **Written Decision:** The decision-maker shall explain in writing the reasons for determinations regarding responsibility, including findings of fact, conclusions about whether it "is more likely true than not" that respondent is responsible for the reported conduct, and the rationale for the results as to each allegation. The procedural steps in the investigation will also appear in the written decision so that both parties have a thorough understanding of the investigative process that led to the determination regarding responsibility. Where applicable, the decision will also include whether remedies will be provided to the claimant(s) and any disciplinary sanctions.

2. **Simultaneous Notification of Decision:** The Resolution Office will provide the written decision to the parties simultaneously. The parties will also be informed in writing of the right to appeal and the appeal procedures.
- E. **APPEALS:** Claimant(s) and respondent(s) may file a written appeal regarding the determination of responsibility with the University's Equity Review Officer within ten (10) calendar days from the date that a written decision is issued on any of the following bases:
1. Procedural irregularity that affected the outcome of the matter;
  2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against claimants or respondents generally or the individual claimant or respondent that affected the outcome of the matter; and/or
  4. The written decision was arbitrary and capricious.

If an appeal is filed, the other part(ies) will have ten (10) calendar days to respond to the appeal in writing. The response may include a written statement in support of, or challenging, the decision. The Equity Review Officer will review the appeal and any response(s) and issue a written decision within eighteen (18) calendar days of receiving the appeal documents, including any responses. The appeal decision will be issued simultaneously to all parties.

The Equity Review Officer is a neutral individual appointed by the Title IX Coordinator to adjudicate appeals under this process. The Equity Review Officer assigned to an appeal will not be the same person as the Resolution Officer or investigator for the case.

- F. **SANCTIONS, DISCIPLINE, AND REMEDIES:** If a respondent is found responsible for violation of this Policy, the decision-maker (Resolution Officer or investigator) will include a sanction in the decision. If an appeal is filed, the implementation of a sanction or discipline may be delayed until the decision regarding responsibility becomes final.<sup>15</sup>
1. **Student respondent:** If a student is found responsible for violating the Policy, the Associate Director for the Office for Civil Rights and Title IX or designee will determine the appropriate sanction(s) after consultation with the decision-maker and consideration of sanctioning factors. If either party (claimant or respondent) wishes to challenge the sanction(s), they may do so by submitting a written challenge to the Dean of Students Office within ten (10) calendar days after the determination of responsibility becomes final. The Dean of Students Office may modify a sanction if it determines that the sanction is clearly inappropriate or incommensurate with the seriousness of the conduct.
  2. **Faculty, Academic Staff, Staff, or Other respondent:** If a non-student is found responsible for violating the Policy, the sanction will be referral to the appropriate process for discipline or corrective action facilitated by the Office of Employee Relations, Academic Human Resources and/or unit leadership to determine the appropriate personnel action or other

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<sup>15</sup> The determination regarding responsibility becomes final either on the date that the determination of the result of the appeal is sent to the parties, if an appeal is filed; or if an appeal is not filed, the date on which an appeal would no longer be considered timely.



corrective measure. Remedies, sanctions, and discipline as to faculty, staff, and academic staff will be determined and implemented consistent with the University's rights as an employer and applicable collective bargaining agreements.

Institutional discipline for a finding of responsibility may be informed by the nature and the gravity of the misconduct. It may include, but is not limited to: warning, restitution, probation, suspension, dismissal, discharge, change of residence, disenrollment from a course, restriction on enrollment, termination of employment, no contact directives, trespass from campus, prohibition of participation in University programs or activities (which may include graduation), and/or other educational and employment discipline deemed appropriate.

Staff, academic staff, and faculty may be subject to disciplinary action up to and including discharge.

The responsible unit (e.g., Dean of Students Office, Academic Human Resources, Office of Employee Relations) is required to provide the Resolution Office with written notification of the discipline, sanction(s), or corrective actions and confirmation of timely implementation.

Under Title IX, remedies are designed to restore or preserve a claimant's equal access to the University's education programs or activities and may include counseling, academic accommodations, academic support, or employment accommodations. Other remedies may include targeted or broad-based educational programming or training. The Title IX Coordinator or designee is responsible for effective implementation of remedies.

- G. NEW EVIDENCE DISCOVERED AFTER TIME OF APPEAL:** If new, previously unavailable evidence is discovered after an investigation has concluded, a final determination regarding responsibility has been made, and the time to appeal has expired, and the evidence is substantive and material to the case, OIE must re-open the formal grievance process. Any individual may submit newly discovered evidence to OIE, along with a statement explaining why the evidence was previously unavailable despite reasonable diligence to identify relevant evidence earlier. OIE will decide whether the evidence was previously unavailable and is substantive and material to the case. If so, OIE will re-open the matter.

#### **XIV. TRAINING**

The Title IX Coordinator, the Deputy Title IX Coordinators, Investigators, Resolution Officers, Equity Review Officers, and other decision-makers, shall have received annual training, including education on the definition of prohibited conduct (including Title IX Sexual Harassment); issues related to dating violence, domestic violence, sexual assault, and stalking; the scope of the University's education programs and activities; how to conduct an investigation and grievance process, including hearings and appeals processes, that protect the safety of claimants and promote accountability, as applicable; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; the standard of review; evaluating evidence in a fair and impartial manner; cultural awareness; technology to be used at a live hearing; issues of relevance of questions and evidence, including when questions and evidence about the claimant's sexual predisposition or prior sexual behavior are not relevant. Training on the investigation of complaints is provided jointly to MSU PD.

Training materials are maintained for a period of seven years and are publicly available on the website for MSU's Office for Civil Rights and Title IX Education and Compliance.

**XV. COMPLAINTS OR GRIEVANCES RELATED TO MSU HEALTH CARE**

Section 1557 of the Affordable Care Act ("ACA") prohibits sex discrimination in applicable health programs and activities, including MSU Health Care. MSU strongly encourages any student, employee, MSU Health Care patient, or other individual who feels they were subjected to sex discrimination (including but not limited to sexual harassment, sexual abuse and/or sexual assault) to immediately contact OIE, MSU's Title IX Coordinator, or the MSU Police Department and/or the following Health Care Civil Rights Specialist:

Tracy Leahy  
MSU Office for Civil Rights  
Olds Hall, 408 West Circle Drive, Suite 4  
East Lansing, MI 48824  
Phone: (517) 353-3922  
Email: [OIE.TracyLeahy@msu.edu](mailto:OIE.TracyLeahy@msu.edu)

Complaints or grievances related to MSU Health Care and other health programs will be processed and resolved according to the process described in this Policy by, or under the supervision of, a dedicated Health Care Investigator employed or engaged by OIE.

MSU Health Care has a policy which requires its providers to secure informed consent and have a chaperone present for sensitive examinations, as well as appropriate procedures to maximize physical privacy. Patients may also request a chaperone or support person at any time for any examination with an MSU Health Care provider. The Chaperone Policy may be found at <https://healthteam.msu.edu/patients/Chaperone-policy.aspx>.

**XVI. OPTIONS FOR EXTERNAL RESOLUTION OF COMPLAINTS**

Students, employees, MSU Health Care patients, or other individuals who feel they were discriminated against may file sex discrimination complaints related to MSU health care activities or programs with the U.S. Department of Health and Human Services, Office for Civil Rights:

U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Room 509F, HHH Building  
Washington, D.C. 20201  
1-800-368-1019, 800-537-7697 (TDD)  
<http://www.hhs.gov/ocr/office/file/index.html>.

Students and employees who believe they have experienced sex-based discrimination in an educational program at MSU may file a complaint under Title IX with the regional enforcement office of the Office for Civil Rights, U.S. Department of Education, at the following address:

Office for Civil Rights  
U.S. Department of Education  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115-1812  
Telephone: (216) 522-4970  
FAX: (216) 522-2573; TDD: (800) 877-8339  
Email: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

Faculty and staff may file complaints under Title IX with the Office for Civil Rights, U.S. Department of Education, in certain circumstances; under Title VII with the Equal Employment Opportunity Commission; or under the Elliott-Larsen Civil Rights Act with the Michigan Department of Civil Rights.

Equal Employment Opportunity Commission  
Detroit Field Office, Patrick V. McNamara Building  
477 Michigan Avenue, Room 865  
Detroit, MI 48226  
Phone: (800) 669-4000  
Fax: (313) 226-4610  
TTY: (800) 669-6820

Michigan Department of Civil Rights  
3054 West Grand Boulevard, Suite 3-600  
Detroit, MI 48202  
Phone: (313) 456-3700; (800) 482-3604  
Fax: (313) 456-3701  
TTY: (877) 878-8464  
Email: [MDCRServiceCenter@michigan.gov](mailto:MDCRServiceCenter@michigan.gov)

- XVII. DOCUMENTATION:** The University will document actions it takes in response to reports or formal complaints at each stage of the investigation and grievance process and will clearly identify all of the actions it takes that are responsive to reports or formal complaints.
- A.** The University will maintain such records for a minimum of seven years.
  - B.** Regarding each report or formal complaint received, the Title IX Coordinator or designee will document the basis for concluding that the University's response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If a claimant is not provided with supportive measures, the Title IX Coordinator or designee must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- XVIII. NOTICE TO THE UNIVERSITY PRESIDENT AND BOARD OF TRUSTEES:** The Title IX Coordinator or designee provides the University President and Board of Trustees with:

- Written notification if more than one allegation has been made against an employee that resulted in a finding of no misconduct.<sup>16</sup>
- Quarterly reports containing aggregated data of the number of sexual misconduct reports that the office received for the academic year, the types of reports received, including reports received against employees, and a summary of the general outcomes of the reports and investigations.<sup>17</sup>
- Within 30 days of the close of each semester, a report identifying all open and recently resolved complaints and allegations against an employee of the University and copies of all final investigative reports and written determinations issued during the semester.<sup>18</sup>

Reports will be provided in a manner that protects the claimant's anonymity and will not contain specific identifying information of the claimant.

**XIX. FIRST AMENDMENT RIGHTS:** This Policy shall not be interpreted to abridge First Amendment rights or to infringe academic freedom. The protections of the First Amendment must be carefully considered in all complaints involving speech or expressive conduct. The fact that speech or a particular expression is offensive is not, standing alone, a legally sufficient basis to establish a violation of this Policy. In order to violate this Policy, speech or expressive conduct must constitute sexual harassment, as defined above. Speech or expressive conduct that constitutes sexual harassment is neither legally protected expression nor the proper exercise of academic freedom.

**POLICY HISTORY:** The Sexual Harassment Policy was issued by the Office of the President on September 1, 1992 and revised in May 1999, January 2011, and June 2011. The Office of the President issued the expanded Relationship Violence & Sexual Misconduct Policy on January 1, 2015, which was revised on September 8, 2015, August 31, 2016, August 30, 2017, January 8, 2018, April 30, 2018, August 31, 2018, February 8, 2019, and January 3, 2020. This Relationship Violence and Sexual Misconduct and Title IX Policy was issued on August 14, 2020.

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<sup>16</sup> State School Aid Act of 1979, Section 388.1865b, §265b(i)

<sup>17</sup> State School Aid Act of 1979, Section 388.1865b, §265b(h)

<sup>18</sup> Michigan State University Resolution Agreement, OCR Docket #15-18-6901