

# Anti-Discrimination Policy

## USER'S MANUAL

**MICHIGAN STATE**  

---

**U N I V E R S I T Y**



## **Table of Contents**

I. PURPOSE OF THE MANUAL .....	4
A. State and Federal Laws the Manual is Based On.....	4
B. Reporting Discrimination, Harassment and Retaliation.....	4
II. ADP JURISDICTION .....	5
III. TIME LIMITATION FOR FILING AN ADP COMPLAINT .....	5
IV. PROHIBITED DISCRIMINATION, HARASSMENT AND RETALTAION .....	5
V. DEFINITIONS .....	6
VI. DISCRIMINATION .....	8
A. Disparate Treatment Discrimination.....	8
B. Disparate Impact.....	9
VII. HARASSMENT .....	9
VIII. DISABILITY DISCRIMINATION.....	10
IX. DISABILITY ACCOMMODATION DETERMINATIONS .....	10
A. Verified Individualized Services and Accommodations (VISA) or Verified Individualized Services and Temporary Adjustments (VISTA).....	11
B. A Statement of Employee Accommodation Determination (SEAD).....	11
C. Appeals of Accommodation Determinations.....	11
D. Standards for Deciding Appeals of Student and Prospective Student Accommodation Decisions.....	11
E. Standards for Deciding Appeals of Employee Accommodation Decisions.....	12
X. PREGNANCY.....	13
A. Pregnant and Parenting Students .....	13
B. Pregnant Employees.....	15
XI. UNEQUAL PAY.....	15
XII. RETALIATION AND RETALIATORY HARASSMENT .....	16
XIII. INAPPROPRIATE LIMITATION .....	16
XIV. FIRST AMENDMENT.....	16
XV. OIE COMPLAINT PROCEDURES.....	17
A. OIE's Role.....	17
B. Intake of Reports.....	18
C. Investigator Processing of Assigned Incident Reports.....	19



D. Investigator Meeting with Claimant and Respondent .....20

E. Interim/Supportive Measures .....21

F. Informal Resolution .....21

G. Investigation Process .....22

    1. Interviews of Claimant, Respondent, and Witnesses .....22

    2. Collection of Relevant Evidence .....23

    3. Evidence Does Not Substantiate a Policy Violation.....23

    4. Formal Investigations.....23

H. Other options .....26



## I. PURPOSE OF THE MANUAL

The Anti-Discrimination User's Manual (Manual) explains how the prohibitions in the Anti-Discrimination Policy (ADP or Policy) will be applied and sets forth the standards and procedures for addressing reports of possible violations.

Nothing in the Manual is intended to supersede or contradict the ADP.

Questions regarding the Manual should be directed to the Office of Institutional Equity (OIE).

### A. State and Federal Laws the Manual is Based On

The Manual is based on state and federal laws, regulations, court decisions, and other guidance, including but not limited to, Titles IV, VI, and VII of the Civil Rights Act of 1964, the Michigan Elliott Larsen Civil Rights Act, Titles I, II, and III of the Americans with Disabilities Act, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, Section 504 of the Rehabilitation Act, the Michigan Persons With Disabilities Civil Rights Act, the Equal Pay Act of 1963, the Pregnancy Discrimination Act of 1978, Section 106 - Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, the Uniformed Services Employment and Reemployment Rights Act (USERRA), Title IX of the Educational Amendments of 1972, Genetic Information Nondiscrimination Act of 2008 (GINA), Pregnant Workers Fairness Act, (PWFA) and the PUMP for Nursing Mothers Act.

The Manual may be updated as changes in the law dictate. To the extent that the University is subject to rules, regulations, court decisions, guidance or other laws that are different than what is stated in this Manual, those rules, regulations, court decisions, guidance, or laws will be followed.

### B. Reporting Discrimination, Harassment and Retaliation

All University responsible employees and volunteers who are not otherwise exempted by the [University Reporting Protocol: Relationship Violence, Sexual Misconduct and Stalking](#), and/or applicable law must promptly report incidents of sexual harassment, including all forms of gender-based harassment, relationship violence, stalking and sexual misconduct 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 or which occurred at a University-sponsored event or on University property.



All University community members are encouraged to report discrimination or harassment based on age, color, gender, gender identity,<sup>1,2</sup> disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status,<sup>3</sup> or weight to OIE.

## II. ADP JURISDICTION

The Manual applies to those covered by the ADP.

The ADP applies to all University community members, including faculty, staff, students, registered student organizations, student governing bodies, the University's administrative units, and to the University's contractors in the execution of their University contracts or engagements, with respect to the following:

1. All educational, employment, cultural, and social activities occurring on the University campus;<sup>4</sup>
2. University-sponsored programs occurring off-campus, including but not limited to cooperative extension, intercollegiate athletics, lifelong education, and any regularly scheduled classes;
3. University housing;
4. Programs and activities sponsored by student governing bodies, including their constituent groups, and registered student organizations; and
5. Any other activities that constitute unlawful acts of discrimination and harassment.

## III. TIME LIMITATION FOR FILING AN ADP COMPLAINT

Consistent with the time limitations imposed by federal and state administrative agencies, complaints of possible violations of the ADP must be made to OIE within 180 calendar days of the date of the alleged discrimination, harassment or retaliation. The 180-day time limitation period may be waived for good cause as determined by the Director.

## IV. PROHIBITED DISCRIMINATION, HARASSMENT AND RETALTAION

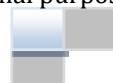
---

<sup>1</sup> Including gender expression.

<sup>2</sup> Please note that gender-based harassment, including harassment on the basis of gender, gender identity, gender expression and sexual orientation, is also encompassed within the Relationship Violence and Sexual Misconduct and Title IX Policy, and thus, falls within the scope of mandatory reporting in accordance with the University Reporting Protocol: Relationship Violence, Sexual Misconduct, and Stalking Policy.

<sup>3</sup> Including military status.

<sup>4</sup> Campus includes any physical location owned or operated by the University or used for an educational purpose by MSU.



The ADP prohibits discrimination and harassment based on the following protected categories: age, color, gender, gender identity,<sup>5</sup> disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status,<sup>6</sup> and weight. The ADP also prohibits retaliation and retaliatory harassment against individuals who oppose discrimination or harassment, report discrimination or harassment, or participate (or reasonably expect to participate) in any manner in an investigation, proceeding, hearing, or Interim Measure under the ADP or RVSM.

## V. DEFINITIONS

**Adverse action** – In the employment context, a demotion as evidenced by a decrease in wages or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, termination of employment, or other indices that might be unique to a particular situation. In the education context, being given a grade not based on class or test performance; denial of access to a course, program, organization, or housing; denial of support, services or other assistance given to other students; denial of an award that otherwise would have been received.

**Age** – The chronological length of time a person has lived.

**Claimant** - a person who may have experienced prohibited conduct regardless of whether the person makes a report or seeks action under the ADP. This term does not imply pre-judgment concerning whether the person was subjected to prohibited conduct. In matters where there is no identified claimant or claimants willing to participate in the investigation process, the University may be named as the claimant.

**Color** – A person's skin color complexion.

**Disability Status** – A physical or mental impairment that substantially limits one or more major life activities (actual disability); a record of having such impairment (record of); or being regarded as having such impairment (regarded as).

**Employment opportunity** - Job access and placement, retention, promotion, professional development, and salary.

**Gender** – Socially constructed roles, behaviors, activities, and attributes that a given society deems masculine or feminine.

**Gender Identity** – The way in which a person conceptualizes and expresses themselves as a gendered being or the language a person uses to describe their internal understanding of their gender. Also, one's innate and personal experience of gender.

---

<sup>5</sup> Including gender expression.

<sup>6</sup> Including military status.



Height – The distance from the top to the bottom of an individual standing upright.

Marital Status – A person's state of being single, married, separated, divorced, or widowed.

Material Adverse Action – In the context of a complaint or report of retaliation, an action that might have dissuaded a reasonable person from making or supporting a charge of discrimination or harassment.

National Origin – Persons who: (1) are from a particular country or part of the world, (2) are of a particular ethnic group, (3) have a particular accent, or (4) appear to be of a certain ethnic background, even if they are not. An “ethnic group,” is a group of people sharing a common language, culture, ancestry, race, and/or other social characteristics.

Party - either or both the claimant(s) and the respondent(s).

Political Persuasion – An individual’s political beliefs, party affiliation, or civic activities.

Protected Activity – A person’s good faith (1) opposition to discrimination or harassment, (2) report of discrimination or harassment, (3) participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or Interim Measure under the ADP or RVSM.

Race – Includes ancestry, physical differences that groups and cultures consider socially significant, and ethnic groups. The term race includes traits that have been historically associated with race, which would include at least hair texture and protective hairstyles (defined as including at least such hairstyles as braids, locks, and twists). It also includes people who appear to be of a certain race, even if they are not.

Reasonable Person – A legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.

Religion - Sincerely held religious, ethical or moral beliefs, including traditional organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism and religious beliefs that are new, uncommon, not part of a formal church or sect, or only held by a small number of people. Social, political, or economic philosophies, or personal preferences, are not "religious" beliefs.

Respondent - is a person, registered student organization (RSO), or entity (e.g., the University, or a department, college or office) that has been accused of prohibited conduct. This term does not imply pre-judgment concerning whether the person, RSO,



or entity committed the prohibited conduct.

**Sex** - The designation that refers to a person's biological, morphological, hormonal, and genetic composition. One's sex is typically assigned at birth and classified as either male or female. "Assigned-at-birth" serves to imply that sex assignment is without the agency of the individual. Sex includes, but is not limited to, pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.

**Sexual Orientation** – The language a person uses to describe themselves as a sexual being. One's sexual identity may or may not align with one's sexual behavior or sexual attractions. A few common sexual identity terms include bisexual, pansexual, lesbian, gay, and straight.

**Veteran Status** – A person who is serving or has served in the active military, naval, or air service.

**Weight** – The heaviness of a person.

## VI. DISCRIMINATION

Except as set forth below, or as determined by OIE in its discretion based on specific facts and circumstances, the following standards will be used in determining whether an individual has been discriminated against in violation of the ADP based on each of the thirteen protected categories in the ADP.

A. **Disparate Treatment Discrimination** - Disparate treatment discrimination may be demonstrated by direct or indirect evidence.

1. **Direct Evidence** – Claimant must produce evidence which if established proves discriminatory intent without inference or assumption.
2. **Indirect evidence**
  - I. To demonstrate indirect or circumstantial evidence of discrimination, claimant must produce evidence of the following: (a) they are a member of a protected category; (b) they suffered an adverse action; and (c) other similarly situated individuals outside of claimant's protected category were treated more favorably.
  - II. **Legitimate Non-Discriminatory Reason** - If claimant produces circumstantial evidence of discrimination, respondent must offer a legitimate, nondiscriminatory reason for the adverse action.





III. Pretext - If respondent offers a legitimate nondiscriminatory for the adverse action, claimant must then prove that the legitimate nondiscriminatory reason was false or a pretext and that discrimination was actually a motivating factor for the decision. To demonstrate pretext, there must be more than claimant's mere subjective belief that they were discriminated against. Pretext may be established by showing the legitimate nondiscriminatory reason:

- Had no basis in fact;
- Did not actually motivate the adverse action;
- Was insufficient to warrant the adverse action.

B. Disparate Impact - Disparate impact discrimination may be demonstrated by showing that a facially neutral policy or practice had a disproportionate effect on a protected category. Disparate impact discrimination may be demonstrated by proof of the following:

1. Claimant must prove that a neutral policy had a substantial adverse impact on a protected category.
2. Respondent must show that the substantial adverse impact on the protected category was related to the job or required as a business necessity.
3. Claimant must show that there were less restrictive alternatives.

## VII. HARASSMENT

Harassment violates the ADP when a University community member is subject to unwelcome conduct based on a protected category that:

1. Is objectively and subjectively severe, persistent or pervasive; and
2. Creates an unreasonable interference with the individual's work or educational experience.

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

In determining whether behavior is harassment, the totality of the circumstances, including the nature of the behavior and the context in which it occurred, must be considered. Harassing conduct often involves a pattern of offensive behavior. A single incident may also constitute harassment, depending on the severity of the conduct and on factors such as the degree to which the conduct affected the student's education or the employee's work environment; the type of conduct; and the relationship between



the alleged harasser and the student or employee. The conduct does not have to be directed at a specific person or persons to constitute harassment.

The conduct must be objectively severe, persistent, or pervasive, and there must be a showing that the claimant subjectively perceived the conduct to be severe, persistent, or pervasive.

Severe means of a great degree, significantly more than minimal. Persistent means repeatedly engaging in conduct. Pervasive means having a widespread presence in or impact on an environment.

To demonstrate an unreasonable interference with work or education, there must be a showing that the conduct interfered with claimant's ability to do their job or altered their educational experience, and that this interference was unreasonable. Thus, the interference must be substantially disruptive. The conduct need not be so egregious, however, that it causes economic or psychological injury.

#### VIII. DISABILITY DISCRIMINATION

To demonstrate disability discrimination, claimant must demonstrate: (1) they have a disability; (2) they are otherwise qualified to participate in the educational program or perform the essential functions of the job, with or without accommodation; and (3) they suffered an adverse action, or were excluded from participation in, denied the benefits of, or subjected to discrimination under the program by reason of their disability.

Claimant is otherwise qualified if they meet the essential requirements of the educational program or can perform the essential functions of the position, with or without reasonable accommodation.

If claimant provides evidence of discrimination, respondent must offer a legitimate, nondiscriminatory reason for the decision. If respondent offers a legitimate nondiscriminatory reason for the decision, claimant must then prove that the legitimate nondiscriminatory reason was false, or a pretext and that discrimination was actually a motivating factor for the decision. To demonstrate pretext, there must be more than claimant's mere subjective belief that they were discriminated against. Pretext may be established by showing the legitimate nondiscriminatory reason:

- Had no basis in fact;
- Did not actually motivate the adverse action;
- Was insufficient to warrant the adverse action.

#### IX. DISABILITY ACCOMMODATION DETERMINATIONS



Employees, applicants for employment, students, and prospective students needing accommodations are required to self-identify as a person with a disability with the Resource Center for Persons with Disabilities (RCPD) via secure/confidential web registration at <https://myprofile.rcpd.msu.edu>; make a written request for an accommodation with RCPD and provide medical documentation of the disability and of the need for an accommodation. After documentation of a disability has been provided and a needs assessment completed, reasonable accommodations are determined.

- A. Verified Individualized Services and Accommodations (VISA) or Verified Individualized Services and Temporary Adjustments (VISTA) – A VISA/VISTA is a document that communicates a student’s accommodation needs to faculty. Students are responsible for providing the VISA/VISTA to faculty, ideally prior to or during the first week of class or as soon as possible. Faculty and students should direct any questions about the VISA/VISTA or the implementation of the accommodations to RCPD. VISAs and VISTAs are not retroactive.
- B. A Statement of Employee Accommodation Determination (SEAD) – A SEAD communicates to supervisor’s an employee’s accommodation needs. The Office of Employee Relations (OER) conducts the accommodation process for employees. If there are circumstances in which an accommodation needs to be revisited, the SEAD may be re-opened and possibly amended by OER. SEADs are not retroactive.
- C. Appeals of Accommodation Determinations - Current and prospective students, employees, faculty, instructors and supervisors who disagree with a disability determination or the decision to grant or deny an accommodation, may appeal the decision to the Office of the ADA Coordinator. Appeals must be filed with the Office of the ADA Coordinator within 30 calendar days of the party’s notification of the decision. The Office of the ADA Coordinator may extend this timeline for good cause. Either party (the student/employee or the instructor/supervisor/unit) may file an appeal. MSU’s ADA Coordinator or designee will gather and review information from the parties, witnesses, RCPD or OER. The ADA Coordinator or designee may meet individually or as a group with those involved if needed before issuing the University’s final determination. To file an appeal, complete the [appeal form](#) and submit to:

The ADA/Section 504 Coordinator  
Office for Civil Rights & Title IX Education and Compliance  
Suite 107, Olds Hall East Lansing, MI 48824  
Phone: (517) 353-3960  
Email: [ocr@msu.edu](mailto:ocr@msu.edu)

- D. Standards for Deciding Appeals of Student and Prospective Student Accommodation Decisions - In determining what accommodations are appropriate for a student with a disability, the University must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student



an equal opportunity to participate in the University's program. Academic adjustments may include auxiliary aids and services, as well as modifications to academic requirements as necessary to ensure equal educational opportunity. Examples of adjustments include arranging for priority registration; reducing a course load; substituting one course for another; providing note takers; recording devices; sign language interpreters; extended time for testing; and equipping school computers with screen-reading, voice recognition, or other adaptive software or hardware. The University is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the University's program or impose an undue burden.

1. **Fundamental Alteration** - The University is not required to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing the determination that a specific standard or requirement is an essential program requirement that cannot be modified, the Office of the ADA Coordinator considers whether that requirement is educationally justified. The requirement should be essential to the educational purpose or objective of a program or class. Considerable deference will be given to decisions made by the University, including what is or is not an essential program requirement.
  2. **Undue Burden** - The University is not required to provide an academic adjustment or auxiliary aid if it can show that the requested adjustment or aid would pose an undue financial or administrative burden. Generalized conclusions are not sufficient to support a claim of undue burden. Instead undue burden must be based on an individualized assessment of current circumstances that show a specific academic adjustment or auxiliary aid would cause significant difficulty or expense.
- E. **Standards for Deciding Appeals of Employee Accommodation Decisions** - The University must provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. There are several possible reasonable accommodations the University may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.
1. **Reasonable** - A modification or adjustment is reasonable if it seems reasonable on its face, i.e., ordinarily or in the run of cases. This means it is reasonable if it appears to be feasible or plausible. An accommodation also must be effective in meeting the needs of the individual. In the context of job performance, this means that a reasonable accommodation



enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally, a reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

2. **Undue Hardship** - Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the University in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the University. A case-by-case basis analysis will be made in determining whether a particular accommodation would cause undue hardship.

## X. PREGNANCY

### A. Pregnant and Parenting Students

The University is committed to creating an accessible and inclusive environment for pregnant and parenting students. Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs or activities. The prohibition includes discriminating against or excluding a student from an education program or activity, extracurricular activity, athletic program, or other program or activity of the University, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. The prohibition extends to any rule concerning a student's actual or potential parental, family, or marital status, which treats the student differently on the basis of sex.

The University provides reasonable academic adjustments/accommodations to pregnant students, including leaves of absence and adjustments/accommodations related to course work, if requested and deemed medically necessary as a result of pregnancy, childbirth, false pregnancy or termination of a pregnancy. Specific adjustments/accommodations will vary, but may include:

- a larger desk;
- breaks during class, as needed;
- permitting temporary access to elevators;
- rescheduling of tests or exams;
- excusing absences due to pregnancy for as long as medically necessary;
- submitting work after a deadline missed due to pregnancy or childbirth;
- providing alternatives to make up missed work;



- the opportunity to earn back credit or points from classes missed due to pregnancy if the absences were medically necessary;
- allowing excused absences for parenting students (both male and female) who need to take their children to doctors' appointments or to take care of their sick children.

The University excuses absences from class for pregnancy or childbirth, for the period during which a doctor deems the absences medically necessary. Upon return to school, the student will be reinstated to the status they held when they left and given the opportunity to make up missed work. The student may choose how they want to make up the missed work, including but not limited to the following alternatives:

- Retaking the semester;
- Taking part in an online course credit recovery program;
- Taking additional time in a program to continue at the same pace, and finish at a later date;
- Rescheduling of tests or exams.

If a grade is based in part on class attendance or participation, the student must be given the opportunity to earn back the credits they missed due to medically necessary pregnancy or childbirth absences, so they are reinstated to the status they held before the absences.

A student cannot be denied participation in an internship or other opportunity to work in the field, because of their pregnancy. A pregnant student may be required to submit a doctor's note for continued participation, if required for all students who have other medical conditions.

A student cannot be excluded from participating in any extracurricular activity, school club, academic society, or interscholastic sports because they are pregnant or have given birth. This includes activities that are part of the University's educational programs, even if the activity is not directly operated by the University. A student may be required to submit a doctor's note if the program or activity requires students with other medical conditions to do so.

Extended absences due to complications related to pregnancy (e.g., gestational diabetes, placenta previa, preeclampsia, cesarean deliveries, etc.) may also be a temporary disability. Thus, students who experience complications related to their pregnancy or childbirth, may also need to register with and seek accommodations from the Resource Center for Persons with Disabilities (RCPD). Adjustment requests for pregnancy or pregnancy related conditions that are not temporary disabilities, may be made to the Title IX Coordinator or to OIE.



## B. Pregnant Employees

Although pregnancy itself is not an impairment within the meaning of the Americans with Disabilities Act, and thus is never on its own a disability, some pregnant employees may have impairments related to their pregnancies that qualify as disabilities.

### 1. Accommodations for Pregnant Employees under the ADA

A pregnant employee may be entitled to reasonable accommodation for limitations resulting from pregnancy-related conditions that constitute a disability, or for limitations resulting from the interaction of the pregnancy with an underlying impairment.

An individual who is temporarily unable to perform a job due to a medical condition related to pregnancy or childbirth must be treated the same way as any other temporarily disabled employee. Pregnancy discrimination involving failure to accommodate may be demonstrated through evidence of the following: (1) claimant belongs to the protected class, (2) claimant sought accommodation, (3) claimant was not accommodated, and 4) others similar in their ability or inability to work were accommodated. If claimant demonstrates each of the elements, the burden shifts to respondent to offer a legitimate, non-discriminatory reason for denying the accommodation. If respondent offers a legitimate, non-discriminatory reason for denying the accommodation, the claimant must then establish that the respondent's reason was pretextual.

### 2. Accommodations for Pregnant Employees under the PWFA

In accordance with the Pregnant Workers Fairness Act, reasonable accommodations are available to qualified employees, who have known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an undue hardship. Employees who are seeking these accommodations, or who have questions, may contact the Office of Employee Relations, (517) 884-0799.

## XI. UNEQUAL PAY

The Equal Pay Act (EPA), upon which the ADP is based in part, requires that employees be given equal pay for equal work. The jobs need not be identical, but they must require equal skill, effort, and responsibility, which are performed under similar working conditions.

Unequal pay may be established upon a showing that: 1) employees of the opposite sex were paid different wages; 2) for equal work on jobs requiring equal skill, effort, and responsibility that are; 3) performed under similar working conditions.



If the elements are established, there must then be a showing that the pay differential was justified by: 1) a seniority system; 2) a merit system; 3) a pay system based on quantity or quality of output; or 4) a disparity based on any factor other than gender.

## XII. RETALIATION AND RETALIATORY HARASSMENT

The University prohibits retaliation and retaliatory harassment against individuals who oppose discrimination or harassment, report discrimination or harassment, or participate in an OIE investigation, even if the University finds that no violation of the ADP occurred.

To demonstrate retaliation there must be a showing that: (1) claimant engaged in protected activity; (2) respondent had knowledge of the protected activity; (3) claimant suffered a material adverse action or was subject to severe, persistent or pervasive harassment because of their protected activity; (4) “but for” claimant’s protected activity, the material adverse action would not have occurred.

If claimant produces evidence of the elements, respondent must offer proof of a legitimate, non-retaliatory reason for the adverse action. If respondent offers proof of a legitimate non-retaliatory reason for the decision, claimant must then prove that the legitimate non-retaliatory reason was false or a pretext and that their protected activity was a motivating factor for the decision.

## XIII. INAPPROPRIATE LIMITATION

The ADP states that “even if not illegal, acts are prohibited under this policy if they. . . [d]iscriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities” on the basis of any of the protected categories. ADP, art II.1. (Emphasis added).

The ADP states that “[l]imitations are inappropriate if they are not directly related to a legitimate University purpose.”

The University must be able to articulate a legitimate purpose for the limitation. These purposes could include, but are not limited to, providing for the safety of University community members or the public, furthering the business of the University, complying with a legal mandate or another University policy, or furthering an educational objective or a core value or the mission of the University. The limitation must be directly related to such a University purpose.

## XIV. FIRST AMENDMENT

The ADP states that its prohibitions “are not intended to abridge University community





members' rights of free expression or other civil rights." Thus, nothing in the ADP or this Manual shall be interpreted to abridge First Amendment rights or to infringe academic freedom, as defined in the Faculty Handbook, the Faculty Rights and Responsibilities policy, the Outside Speakers Sponsored by Registered Student Organizations policy, and the document entitled Student Rights and Responsibilities at Michigan State University. 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 the ADP. To violate the ADP, speech or expressive conduct must constitute discrimination or harassment, as defined above. Speech or expressive conduct that constitutes discrimination or harassment is neither legally protected expression nor the proper exercise of academic freedom. The University makes clear, through this and other policies and statements, that free speech is fundamental to the University's philosophy and will be protected.

## XV. OIE COMPLAINT PROCEDURES

- A. OIE's Role – OIE is responsible for the University's compliance with federal and state laws and University policies and procedures regarding discrimination, harassment, relationship violence, stalking, and sexual misconduct. OIE is responsible for investigating all allegations of prohibited discrimination and harassment. OIE collaborates with other campus offices to encourage best practices to promote a culture of inclusion. OIE conducts an impartial, fair, and unbiased investigation into allegations of violations of the ADP. OIE determines if the ADP was violated.
1. Neutrality - OIE investigators are neutral factfinders. Investigators do not provide advice, suggestions, or support. Investigators provide referrals to campus and community resources and facilitate the implementation of requested interim and protective measures.
  2. Privacy and Non-Confidentiality – Privacy and confidentiality have distinct meanings. 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. Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to another person without express permission of the individual or as otherwise permitted or required by law. Information reported to or shared with OIE is private, but not confidential. Except when necessary to protect the health, safety or welfare of a party or witness, information provided by the parties and witnesses is not confidential and will be disclosed to the other party and included in the investigation report. Information provided by the parties may also be disclosed in response to subpoenas by law enforcement and pursuant to the Freedom of Information Act. The parties are not restricted from discussing and sharing information relating to their investigations with others, so long as the information is not protected by the Family



Educational Rights and Privacy Act (FERPA). However, parties are cautioned that disparaging remarks may be viewed as retaliatory or defamatory. Retaliation, including retaliatory harassment, is prohibited under the ADP and the RVSM.

3. Information Sharing – OIE does share information with academic and administrative units and human resources on a need-to-know basis when there are reports of a possible violation of the Policy.
4. Evidence Gathering - While the parties to the investigation may provide information and evidence, it is OIE's responsibility to gather relevant evidence to the extent reasonably available. OIE has discretion to determine which parties and witnesses to interview, and the order of party and witness interviews. OIE determines the relevance of any proffered information or evidence. In general, OIE will not consider statements of opinion, rather than direct observations or reasonable inferences from the facts or statements as to any party's general reputation for any character trait.
5. Bi-weekly Status Reports - OIE provides bi-weekly status updates regarding its review and investigation of a reported matter to the parties, Human Resources, the college, department and units.

## B. Intake of Reports

1. OIE receives reports of possible violations of the ADP through OCR's public reporting portal on its website; Emails; Phone calls to OIE; and Walk-ins.
2. Case Managers –Case Managers are OIE employees and in most instances, the initial point of contact with OIE. Case Managers input reports into OIE's Case Management System; gather additional information from reporters, including the names of parties, witnesses, and other relevant facts; run conflict checks and identify duplicate reports; identify other OIE matters involving the same parties and incident; send initial outreach and resource letters to claimants; send notification letters to Human Resources, college, department and unit leaders, and others of reports involving respondent employees and graduate students; and close cases before assignment to an investigator with the approval of the Director.
3. Initial Outreach with Claimants - Case Managers send initial and follow-up outreach and resource communications to potential claimants. The initial outreach and resource communication is generally sent within five (5) business days of OIE receiving a report of a possible violation of the ADP. Alternate methods of communication such as a personal email address, or telephone contact may be utilized as determined by the Case Manager and dictated by relevant facts. The initial communication



contains a meeting request, provides information regarding support services and resources, interim measures and includes a retaliation prohibition notice. Emails to students and employees are sent to their official MSU email.

4. Notification to Community Partners of Alleged Policy Violations – Utilizing the Protocol for Coordinated Response between FASA, OER, OCR, OIE, HCI and Unit Leadership of Reported Violations of the RVSM and Title IX Policy and ADP, Case Managers inform Human Resources, the college, department and unit leaders of a report of a possible violation of the ADP involving respondent employees and when applicable, graduate students. This notification generally occurs within two (2) business days of receiving a report.
5. If claimant expresses an interest in meeting with OIE, or if claimant self-reports a violation of the ADP, the Case Manager will forward the report for assignment to an Investigator. If claimant does not respond to OIE's initial outreach communications, or declines to meet with OIE, the Case Manager reviews the matter for closure with the Director or the Director's designee.

#### C. Investigator Processing of Assigned Incident Reports

1. Upon assignment of an incident report, the Investigator determines whether OIE has jurisdiction to investigate the complaint. If OIE does not have jurisdiction – the Investigator notifies claimant, Human Resources and the college, department or unit, in writing that the file is being closed, and explains the reasons why OIE does not have jurisdiction to investigate the reported conduct.
2. Upon assignment of an incident report, the Investigator also determines whether the complaint was timely filed. If the complaint was not timely filed (within 180 days of the alleged discriminatory or harassing conduct), and good cause for waiving the time limitation has not been demonstrated, the Investigator notifies claimant, Human Resources, and the college, department or unit, in writing that the file is being closed, and explains why the complaint was not timely filed.
3. If the Investigator determines that OIE has jurisdiction to investigate the complaint, and the complaint was timely filed, in most instances, the Investigator will meet with claimant to explain, among other things, OIE's processes, offer resources, provide information about interim and protective measures, discuss informal and formal investigation processes, and to explain the standards for establishing a policy violation as set forth in this Manual. This information allows claimant to make an informed decision whether to move forward with an investigation or pursue informal means of addressing their concerns.



- D. Investigator Meeting with Claimant and Respondent - During the initial meeting with claimant and respondent, the Investigator reviews the content of the Information Form. The Information Form explains OIE's role, the party's roles, the right to have an advisor or support person present during meetings with OIE, non-confidentiality, interim and supportive measures, informal resolution, the investigation process, the investigation timeline, the preponderance of the evidence standard, the prohibition on retaliation, support resources, and the process for seeking reasonable accommodations.
1. Advisor/Support Person - A support person, advisor, attorney or other individual, may accompany the parties to meetings with OIE. The support person, advisor, attorney or other individual may not also be a witness or otherwise have any conflicting role during the investigation. MSU union-represented employees may, at any point in OIE's process, consult with their collective bargaining representative and consult the MSU Office of Human Resources, Employee Relations: 1407 S. Harrison, Suite 130, East Lansing, MI 48823, (517) 353-4434. Students must complete a Family Educational Rights & Privacy Act (FERPA) release before OIE will speak with attorneys, parents or others, or release information from the student's educational record, including records and communications regarding the OIE investigation.
  2. Claimant Meeting - The Investigator will email claimant to schedule a meeting. If claimant does not respond to the initial email within two days, on the third day, the Investigator will send a follow-up email informing claimant that the matter will be closed if no response to the email is received by the close of business that day. If claimant does not respond to the follow-up email, the Investigator will review the matter for closure with the Director.
  3. Respondent Meeting - The Investigator will send an initial outreach communication to respondent. Alternate methods of communication, such as telephone contact may be utilized as determined by the Investigator and dictated by relevant facts.
    - I. The initial communication with respondent contains the following information: the identity of the claimant, the specific section of the policy that respondent is alleged to have violated, the precise conduct allegedly constituting the potential violation, and the date and location of the conduct constituting the policy violation.
    - II. If after two business days respondent has not responded to the Investigator's initial outreach communication, the Investigator will send respondent a follow-up email. The Investigator may use alternate means to contact the respondent as that information may be known or available to the Investigator. If respondent does not



respond to the Investigator's follow-up communication[s], the Investigator will move forward with the investigation.

4. Participation – Members of the University community are expected to participate in the University's investigation of reported discrimination, harassment or retaliation. If individuals choose not to participate, the investigation will proceed based on the available information.
- E. Interim/Supportive Measures - When deemed appropriate, interim or supportive measures may be implemented. Either party may request interim or supportive measures. Interim or supportive measures may remain in place until the investigation, appeals, and disciplinary processes are concluded. Interim measures may be available even if a party chooses not to participate in an OIE investigation. The Support and Equity Team can facilitate the implementation of interim or supportive measures, which may include the following:
1. Notifications to professors regarding absences
  2. Schedule changes
  3. Course load reductions
  4. Withdrawals
  5. Course retakes
  6. Coordinating extensions
  7. Alternative housing placement
  8. No-contact directive
  9. Removal of directory information
  10. Removal of parties from campus
  11. Alternative work schedules/locations
  12. Transportation information
  13. Referrals to on- and off-campus services
  14. Interim suspension from employment
  15. Other remedies as deemed appropriate
- F. Informal Resolution - Informal resolution is a process which allows parties to explore a mutually agreeable outcome without invoking a formal investigation. All parties must agree to participate in an informal process which *may* be confidential. Participation in an informal process may be ended at any time by either party. Informal resolution may not be appropriate in all cases. Informal resolution may include the following:
1. Information gathering and initial assessment by OIE of a report.
  2. Referral to the Office of the University Ombudsperson. Whether one is a student, faculty, staff or administrator, the Office of the University Ombudsperson offers a confidential place to discuss academic concerns, administrative issues, workplace issues, or any concern that may relate to MSU students. It also interprets and explains university policies and procedures. The Office of the University Ombudsperson offers an environment where one can talk with a confidential, independent,



- impartial and informal resource about a complaint, conflict or problem.
3. Restorative justice circle or conference.
  4. Referral to the Office of Student Support and Accountability (OSSA) for conflict resolution.
  5. Referral to Residence Education and Housing Services (REHS) for conflict resolution.
  6. Referral to Faculty and Academic Staff Affairs (FASA) for conflict resolution.
  7. Referral to Unit Human Resources Administrators or Office of Employee Relations (OER) for conflict resolution.
  8. Referral to the Dean, Chair, Director, or Vice President for conflict resolution.
  9. Referral to the Worklife Office for conflict resolution.
  10. Referral to the Director, or ADA Coordinator for conflict resolution.
  11. Referral for educational programming or training.

#### G. Investigation Process

1. Interviews of Claimant, Respondent, and Witnesses – OIE interviews claimant, respondent, and relevant witnesses. As soon as practicable, absent extenuating circumstances generally within two (2) business days following an interview with OIE, the Investigator will send claimant, respondent or a witness, a written summary of the oral statement they provided to the Investigator. Claimant, respondent and witnesses have two (2) business days to review and provide the Investigator with corrections to their statement.
  - I. Investigator Meeting with Witnesses – Witnesses are persons believed to have information regarding an incident which may violate the Policy, including but not limited to someone present when the incident occurred, someone the claimant or respondent communicated with about the incident, and/or someone who may have information relevant to the incident. Witness participation in the investigatory process is voluntary. While MSU encourages witnesses to cooperate with the investigative process, MSU cannot compel or require witnesses to participate. During meetings with a witness, the Investigator will discuss the content of the Witness Information Form. The Witness Information Form explains OIE's role, the witness's role, collection and sharing of information, a summary of the investigation process, amnesty for drugs or alcohol possession and consumption violations, the retaliation prohibition, and reasonable accommodations. Witnesses are not notified of the outcome of an investigation. OIE only interviews witnesses having relevant information, and thus may not interview all witnesses identified by a party or another witness. OIE may interview witnesses not identified by either party.



- II. Additional Meetings with Parties, Witnesses – As necessary to clarify or gather additional information relevant to the investigation, the Investigator may ask questions, conduct follow-up meetings with claimant, respondent and any witness, and collect or receive additional evidence at any time until the Final Investigation Report is issued. If additional meetings or evidence is collected after the PIR is issued, the Investigator will provide the parties with the newly collected information and allow the parties two days to provide feedback, or additional information or evidence.
  - III. Release Time to Attend Meetings with OIE - Employees may use leave time to attend meetings with OIE.
2. Collection of Relevant Evidence - OIE is responsible for collecting evidence and determining the relevancy of any evidence that is collected or provided by the parties, or witnesses. Evidence may include but is not limited to, party and witness statements, documents, electronic communications, personnel files, supervisor files, HR files, RCPD files, etc.
  3. Evidence Does Not Substantiate a Policy Violation - The Investigator, with the approval of the Director, determines whether there is enough evidence to move forward with a formal investigation. OIE will not conduct a formal investigation if the evidence does not substantiate a violation of the ADP.
    - I. If OIE determines that the evidence does not substantiate a violation of the ADP, and thus decides not to conduct a formal investigation, the Investigator will promptly notify the party(s), OER/FASA and the college, department or unit, as applicable, of the closure reasons, and any relevant facts or information known to the Investigator which may impact employment/educational decisions or the employment or educational environment. There is no right to appeal OIE's decision not to conduct a formal investigation when the evidence does not substantiate a violation of the ADP.
  4. Formal Investigations - If a formal investigation is conducted:
    - I. Witnesses and Evidence – The Parties may submit the names of witnesses and provide the Investigator with evidence. The Investigator will collect relevant evidence as reasonably available.
    - II. Preliminary Investigation Report – The Investigator will prepare a Preliminary Investigation Report (PIR). The PIR is a draft version of the investigation report, which is provided to claimant and respondent for their review and feedback. The PIR is provided before OIE analyzes the case or makes a finding. The parties may review and provide feedback to the PIR.



- III. Submission of Questions - Either party may submit questions in writing to OIE to be asked of the other party. Questions may be submitted at any time during the investigation process up to the deadline for the review of the Preliminary Investigation Report. The opportunity to submit written questions may not be used to harass or intimidate the other party. Submitted questions will be reviewed by the Investigator to determine if they are relevant to the investigation.
- IV. Preponderance of the Evidence Standard - OIE utilizes a preponderance of the evidence standard to determine if the ADP was violated. A preponderance of the evidence is the amount of evidence that causes one to conclude that an allegation is probably true (more likely true than not true). If the evidence on an allegation is equally balanced, then that allegation has not been proven by a preponderance of the evidence. A respondent is presumed not to have violated the ADP unless a preponderance of the evidence establishes a Policy violation. A party's decision not to provide a statement or be interviewed will not be given an adverse inference.
- V. Final Investigation Report - The parties receive copies of the Final Investigation Report (FIR) which includes a determination of whether OIE found a policy violation. The FIR is also sent to HR and the college, department or unit, or to the Office of Student Support and Accountability (OSSA) where applicable.
- VI. Timeline for Completion of Formal Investigations - OIE will make reasonable efforts to complete a formal investigation within 90 calendar days. Delays may occur due to several factors including availability of parties, witnesses, evidence, and academic breaks. The 90-day period does not include the disciplinary and appeal processes.
- VII. Formal Investigations With the University as Claimant - When necessary to meet its commitment to provide an environment free of discrimination, harassment or retaliation, the University may investigate alleged incidents of which it becomes aware, even if no complaint has been filed, the individual(s) involved is unwilling to pursue a complaint or participate in an investigation, or the individual(s) involved has requested to participate anonymously. In those situations, OIE will move forward with the University as the claimant. If OIE decides to move forward with an investigation in these circumstances, efforts will be made to notify impacted individuals that an investigation will be conducted with the University as the claimant. The decision to move forward with an investigation with the University as the claimant, will be reviewed



and approved by the Deputy Director or Director.

VIII. Cases Involving Multiple Claimants – In consultation with the Director, claimants will be notified in writing if OIE decides to consolidate investigations involving more than one claimant. Claimants will also be notified in writing if OIE decides to issue one investigation report involving multiple claimants. The following factors will be considered in deciding whether to consolidate an investigation and investigation report:

- Do the allegations arise out of the same facts and circumstances or same transactions and occurrences?
- Do the allegations involve the same Respondent(s)?
- Do the allegations involve the same or similar issue(s)?
- Do the allegations arise out of the same employee unit?
- What is the relationship of the parties to each other, e.g., student, employee, faculty, etc.?
- Will the consolidation of the investigation or investigation report result in the sharing of private, sensitive or FERPA protected information that should not be made known to others?
- Are there any other circumstances that may make it appropriate/inappropriate to combine the investigations or the investigation reports involving multiple claimants?

IX. Decisions and Findings – Both the claimant and the respondent will be notified concurrently, in writing, of the outcome, the rationale for the outcome, and the process to appeal the findings of the investigator or the Resolution Officer. Identical final reports will be issued to claimants, respondents, and administration. Divergent reports are prohibited.

- Students - If an investigation results in a determination that a student violated the ADP, the matter will be referred to the Office of Student Support and Accountability to determine the appropriate sanction.
- Employees – If an investigation results in a determination that an employee violated the ADP, the matter will be referred to Human Resources/Academic Human Resources to determine the appropriate personnel action.

X. Appeals – In formal investigations, both claimant and respondent may appeal OIE's decision based on the standards and timelines in



the [Anti-Discrimination Policy Appeal Procedures](#) , which the parties are strongly encouraged to read.

#### H. Other options

There are other options for pursuing complaints related to the ADP.

- Externally, employment related discrimination complaints, complaints may be filed with:

The Equal Employment Opportunity Commission

Phone: (800) 669-4000

TTY: (800) 669-6820

[www.eeoc.gov](http://www.eeoc.gov)

The Michigan Department of Civil Rights

Phone: (517) 241-6300

Fax: (517) 335-3882

TTY: (517) 335-3881

[www.michigan.gov/mdcr](http://www.michigan.gov/mdcr)

- Externally, education related discrimination complaints may be filed with:

The Office of Civil Rights, Division of the Department of Education

Phone: (800) 421-3481

Fax: (202) 245-6840

TDD: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

If an individual chooses to utilize the external agency's services in addition to a formal OIE investigation, OIE will continue with their investigation, but its response will generally be directly to the agency.

- MSU Union Represented Employees

MSU union represented employees should also consult their collective bargaining agreements and speak to a union representative about the appropriate process for bringing complaints of discrimination or harassment, or consult the MSU Office of Human Resources, Employee Relations: 1407 S. Harrison, Suite 130, East Lansing, MI 48823, 517-353-5510.

