

Anti-Discrimination Policy

USER'S MANUAL

August 30, 2024

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.	PROHIBITED DISCRIMINATION, HARASSMENT AND RETALTAION.....	5
IV.	DEFINITIONS.....	6
A.	General Policy Definitions.....	6
B.	Identity Definitions and Representations.....	7
V.	DISCRIMINATION	9
A.	Disparate Treatment Discrimination.....	10
B.	Disparate Impact.....	10
C.	Disability Discrimination.....	11
D.	Failure to Accommodate.....	11
VI.	HARASSMENT	12
VII.	UNEQUAL PAY.....	12
VIII.	RETALIATION AND RETALIATORY HARASSMENT.....	13
IX.	INAPPROPRIATE LIMITATION	13
X.	FIRST AMENDMENT.....	14
XI.	ISR COMPLAINT PROCEDURES	14
A.	Language Assistance.....	14
B.	Reasonable Accommodation.....	14

C. ISR's Role 15

D. Intake of Reports 16

E. Investigator Processing of Assigned Incident Reports 17

F. Investigator Meeting with Claimant and Respondent 17

G. Participation 18

H. Informal Resolution 19

I. Investigation Process 20

 1. Interviews of Claimant, Respondent, and Witnesses 20

 2. Collection of Relevant Evidence 21

 3. Closure 21

 4. Formal Investigations 21

J. Other options 23

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 Investigation, Support and Resolution (ISR).

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 [Mandatory Reporting for Relationship Violence, Sexual Misconduct and Stalking Policy \(RVSM Mandatory Reporting Policy\)](#), 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 to ISR discrimination or harassment based on age, color, gender (including gender identity and gender expression), genetic information, disability status, ethnicity, height, marital status, national origin, political persuasion, race, religion, sex (including pregnancy and sexual orientation), military or veteran status, and weight¹.

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 campus²;
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; and
4. Programs and activities sponsored by student governing bodies, including their constituent groups, and by registered student organizations.

III. PROHIBITED DISCRIMINATION, HARASSMENT AND RETALIATION

The ADP prohibits discrimination and harassment based on the following protected identities age, color, gender (including gender identity and gender expression) genetic information, disability status, ethnicity, height, marital status, national origin, political persuasion, race, religion, sex (including pregnancy and sexual orientation), military or veteran status, 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.

¹Please 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 Mandatory Reporting for Relationship Violence, Sexual Misconduct, and Stalking Policy.

²Campus included any physical location owned or operated by the University or used for educational purpose by MSU.



IV. DEFINITIONS

A. General Policy Definitions

- a. **Adverse action:** in the employment context, a demotion, termination, decrease in wages or salary, a loss of benefits, or other harm with respect to an identifiable term or condition of employment. In the education context, may include, but is not limited to, 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; or denial of an award or scholarship that otherwise would have been received. In the context of retaliation, an adverse action is an action that might have dissuaded a reasonable person from engaging in a protected activity.
- b. **Claimant:** a person who reportedly experienced prohibited conduct under this Policy regardless of whether the person makes a report or seeks action under this Policy.
- c. **Continuing Adverse Effect:** prohibited conduct may have a “continuing adverse effect” if it causes or threatens to cause a substantial negative impact on the safety of the University community or the functions, services, or property of the University. This would include, but is not limited to, causing an unreasonable interference with the educational or work environment of a member or members of the University community or on the campus generally.
- d. **Executive Director:** the OCR Executive Director of Support, Investigation, and Resolution, their designated or other appropriate designee.
- e. **Hostile Environment:** when conduct is both subjectively and objectively offensive and is either so severe, persistent or pervasive that it limits or denies a person’s ability to participate in or benefit from an educational program or activity, or unreasonably interferes in the person’s workplace environment.
- f. **Party:** an individual who is a claimant and/or a respondent.
- g. **Protected Activity:** includes a report of discrimination or harassment, participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or interim or supportive measure under the ADP or RVSMTIX Policy, opposition to discrimination or harassment, request for accommodation related to disability, religion, pregnancy, childbirth or pregnancy related condition, and/or student request for a modification related to pregnancy, childbirth, pregnancy related condition or parenting status.
- h. **Qualified individual with a disability:** an individual who, with or without reasonable accommodation, can perform the essential functions of the job, or who meets the academic and technical standards requisite for admission or participation in the university’s educational program or activity.
- i. **Reasonable Person:** a person using ordinary care and judgment under same or similar circumstances.



- j. **Respondent:** a person, registered student organization (RSO), or unit (e.g., the University, or a department, college, or office) that has been reported to have engaged in prohibited conduct³.
- k. **Student:** a person enrolled or participating in a collegiate-level, University-sponsored program or course, regardless of program level; full-time or part-time status; credit, degree, or certificate awarded; location; or mode of instruction. A person remains a student until graduation or completion of the program, permanent dismissal, or non-attendance for three full, consecutive semesters (including summer semester). This definition includes a person who is on a leave of absence, recess, withdraws, or graduates after an alleged violation of student conduct policies.
- l. **University Program or Activity:** all of the operations of Michigan State University.

B. Identity Definitions and Representation

MSU's Anti-Discrimination Policy is intended to protect members of MSU's community from conduct that interferes with their access to MSU's programs and services when the conduct is based on the community member's protected identity, including their physical characteristics and personal histories.

As MSU is a global community, and identity-related language can be understood differently depending on cultural and individual experience, the definitions below are provided to help classify identity-based conduct according to the categories outlined in this Policy.

Conduct based on a community member's perceived identity or identities or association with an identity or identities will be evaluated as conduct based on those identity or identities. Additionally, conduct based on intersections of the identities defined here (as well as their stereotypes and expectations) will be evaluated as identity-based conduct under this Policy.

The definitions below are informed by local, state, and federal law governing MSU's obligations to prevent and respond to discrimination.

Harassment based upon sex (actual or perceived), gender, gender identity, gender expression, sexual orientation, and sexual identity will be reviewed under the University's RVSMTIX Policy.

- a. **Age:** the chronological length of time a person has lived. Conduct based on the protected category of age includes invoking stereotypes based on age as well as youth, including stereotypes related to the actual or perceived generational membership of an individual.
- b. **Color:** a person's skin color or complexion.

³ A person with administrative responsibility for a policy, procedure, or action may be designated to respond to a complaint on behalf of an RSO or unit but will not be named a "Respondent."



- c. **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).
- d. **Ethnicity:** an individual's shared common language, culture, ancestry, race, and/or other social characteristics, sometimes shared with other groups of people.
- e. **Gender:** socially constructed roles, behaviors, activities, and attributes that a given society deems masculine or feminine. Gender is a social construct framed by a society's understanding of masculinity and femininity as related to roles, behaviors, expectations, activities, identities, and attributes. This term is often understood as a binary, however, historically and presently, gender is expansive and dynamic. Discrimination and harassment based on any of the key elements of an individual's gender is prohibited. Non-comprehensive identity terms in this category may include: woman, man, cisgender, transgender, non-binary, genderqueer, gender non-conforming, agender, two-spirit.
- f. **Gender Expression:** the way in which someone expresses their gender, either consciously or unconsciously. This can encompass everything that communicates our gender to others, including clothing, hairstyle, body language, manner of speaking, social interactions, and gender roles. Most people have some blend of masculine and feminine qualities that comprise their gender expression, and this expression can also vary depending on the social context. There is not always a direct translation between gender identity and gender expression. A person's gender expression may or may not align with the way people attribute gender to that person.
- g. **Gender Identity:** a person's individual understanding of their own gender and the language they use to describe this understanding (e.g., pronouns). This can also be considered one's innate and personal experience of gender. Non-comprehensive identity terms in this category may include: woman, man, cisgender, transgender, non-binary, genderqueer, gender non-conforming, agender, two-spirit.
- h. **Genetic information:** Information about an individual's genetic composition, including information from genetic tests and the genetic tests of an individual's family members, as well as information about family medical history and the manifestation of a disease or disorder in an individual's family members.
- i. **Height:** the distance from the top to the bottom of an individual while fully extended.
- j. **Marital Status:** a person's state of being single, married, separated, divorced, or widowed. MSU recognizes its community members' decisions to employ family structures not recognized by the legal system and will respect those wherever they do not conflict with rights granted by law.
- k. **National Origin:** a person's, or their ancestor's, place of origin (such as country, region, particular part of the world), or shared ancestry. Conduct based on traits or characteristics linked to an individual's national origin, including physical, cultural (e.g. attire, diet, dominant religion or distinct religious identity, name commonly associated with a particular shared ancestry), linguistic (e.g. accent, lack of fluency in English, or speaking a

language other than English),⁴ and caste or similar systems of social stratification can be evaluated as based on national origin.

- l. **Political Persuasion:** an individual's political beliefs, party affiliation (or non-affiliation), or civic activities.
- m. **Race:** affiliation with or membership in one or more social groups that share common physical features or ancestry. The term race includes traits that have been historically associated with race, which would include at least hair texture and protective hairstyles (e.g. braids, locks, and twists).
- n. **Religion:** sincerely held religious, ethical, or moral beliefs and related practices including commemoration or observance. This includes those identified with traditional organized religions as well as 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, and personal preferences are not religious beliefs for the purposes of this policy.
- o. **Sex:** the designation that refers to a person's biological, morphological, hormonal, and genetic composition. One's sex is commonly assigned at birth and classified as either male or female. MSU and its data systems uses the term "Legal Sex" to distinguish this designation from gender. In accordance with applicable state and federal law, discrimination and harassment based on sex includes, but is not limited to, discrimination or harassment based on pregnancy, which includes, but is not limited to, pregnancy, childbirth, false pregnancy, miscarriage, termination of pregnancy, abortion services, lactation, conditions arising in connection with pregnancy, and recovery from any of these conditions, in accordance with federal law.
- p. **Sexual Orientation/Identity**⁵: the language a person uses to describe themselves as a sexual being. Frequently referred to as "sexual identity." One's sexual identity may or may not align with one's sexual behavior or sexual attractions. Non-comprehensive identity terms in this category may include asexual, bisexual, demisexual, gay, lesbian, pansexual, queer, questioning or unsure, same-gender loving, straight.
- q. **Veteran/Military Status:** service in the military of the United States of America or its territories, including army, naval, air, marine, or coast guard service, or reserves.
- r. **Weight:** Weight covers the full spectrum of body masses.

V. DISCRIMINATION

Discrimination is conduct that is based on an individual's protected identity or identities that:

- Harms a term or condition of an individual's employment or an individual's access to education or participation in a University program or activity (see definition of Adverse Action);

⁴ Concerns related to English proficiency requirements for admission to the University will not be evaluated under the ADP.

⁵ MSU and its data systems use the term "sexual identity."



- Is used as the basis for, or a factor in, decisions of an individual's employment, education or participation in a University program or activity, except a required or permitted by law⁶; or
- Results in differential enforcement of a facially neutral policy or practice.

In addition to the analysis explained above, investigations involving certain forms of discrimination may involve additional legal standards or reference additional university processes as detailed below.

A. Disparate Treatment Discrimination

Disparate treatment discrimination is when a person is treated differently based on a protected identity.

Disparate treatment discrimination may be demonstrated by direct or indirect evidence. Direct evidence is found where a preponderance of the evidence establishes discriminatory intent without inference or assumption. In the absence of direct evidence, OCR will evaluate whether a preponderance of the evidence establishes that (1) Claimant asserts a claim based on their protected identity; (2) Claimant suffered an adverse action; and (3) other similarly situated individuals outside of the Claimant's protected identity were treated more favorably.

If ISR finds sufficient evidence of discrimination, it will then evaluate whether there was a legitimate, nondiscriminatory reason for the adverse action. If OCR finds a legitimate nondiscriminatory reason for the adverse action, OCR will determine whether the legitimate nondiscriminatory reason was false, or a pretext, and discrimination was actually a motivating factor for the adverse action. A finding of pretext requires more than Claimant's mere subjective belief that they were discriminated against. Pretext may be established by showing the proffered 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 Discrimination

ISR will evaluate whether a facially neutral policy or practice had a disproportionate adverse effect on individuals of a protected identity; whether there was a substantial legitimate justification for the policy or practice; and, if so, whether there was an alternative policy or practice that would achieve the legitimate objective but with less of a discriminatory effect.

⁶ Current interpretation of the First Amendment requires the University to allow registered student organizations with a religious purpose to impose membership and leadership eligibility requirements based on religion. Title VII permits Bona Fide Occupational Qualifications (BFOQs) on the basis of sex, religion or national origin in rare circumstances when reasonably necessary to carry out a particular job function in the normal operation of an employer's business or enterprise.



C. Disability Discrimination

A claim may be brought under the ADP related to reasonable accommodations or modifications. Circumstances under which an ADP claim related to accommodations or modifications can be brought are:

- Disparate treatment insofar as the requested accommodations or modifications were denied as not reasonable under the applicable policy but were provided to another similarly situated person who does not share Claimant's protected identity;
- A failure or refusal to implement a granted modification or accommodation;
- Harassment or retaliation related to a modification or accommodation.

To demonstrate disability discrimination, there must be a showing that Claimant (1) has a disability; (2) is otherwise qualified to participate in the educational program or perform the essential functions of the job, with or without accommodation; and (3) suffered an adverse action, or was 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 ISR finds sufficient evidence of discrimination, it will then evaluate whether there was a legitimate, nondiscriminatory reason for the decision. If OCR finds a legitimate nondiscriminatory reason for the decision, ISR will determine whether the legitimate nondiscriminatory reason was false, or a pretext, and that discrimination was actually a motivating factor for the decision. A finding of pretext requires 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.

D. Failure to Accommodate

To demonstrate a failure to accommodate claim, the evidence must demonstrate that (1) Claimant has a disability; (2) Claimant is otherwise qualified for the job or educational program; and (3) Respondent failed to implement the accommodations/modifications in the Accommodation Letter⁷.

⁷ Because a failure to accommodate claim and the requirement of making modifications to academic requirements are contained in the ADA and Section 504's definition of disability discrimination, they necessarily involve direct evidence of discrimination. That means if the investigator accepts the claimant's version of the facts, no inference is necessary to conclude that the claimant has proven this form of discrimination.



Whether an accommodation or modification constitutes a “fundamental alteration” or is “essential to the program of instruction” is decided by the ADA Coordinator in an appeal of the accommodation determination. The ADA Coordinator’s decision is final, and thus, not subject to review in an ADP investigation.

VI. HARASSMENT

Harassment is unwelcome conduct that is based on an individual’s protected identity or identities that unreasonably interferes with an individual’s education or work environment such that it creates a hostile environment.

A hostile environment exists where a preponderance of the evidence establishes that (1) Claimant was or is subject to unwelcome conduct based on a protected identity or identities that (2) is objectively and subjectively severe, persistent or pervasive; and (3) creates an unreasonable interference with the individual’s work or educational experience.

A person’s subjective belief alone that behavior is offensive is not sufficient to establish 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 Respondent and Claimant. 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 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 find an unreasonable interference with work or education, a preponderance of the evidence must establish 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.

VII. UNEQUAL PAY BASED ON SEX⁸

The Equal Pay Act (EPA), upon which the ADP is based in part, requires that employees

⁸ The analysis set forth here is specific to the Equal Pay Act. Unequal pay claims based on protected identities other than sex/gender will be evaluated as disparate treatment or disparate impact discrimination as explained above.

be paid 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.

VIII. RETALIATION AND RETALIATORY HARASSMENT

The University and members of the University Community are prohibited from retaliating against individuals who engage in a protected activity. Retaliation is defined as a materially adverse action taken because of a person's protected activity (includes retaliatory harassment).

A protected activity includes a report of discrimination or harassment, participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or interim or supportive measure under the ADP or RVSMTIX Policy, opposition to discrimination or harassment, request for accommodation related to disability, religion, pregnancy, childbirth or pregnancy related condition, and/or student request for a modification related to pregnancy, childbirth, pregnancy related condition or parenting status.

With respect to a retaliation or retaliatory harassment claim, OCR will evaluate whether a preponderance of the evidence establishes 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; (4) "but for" Claimant's protected activity, the material adverse action or severe, persistent, or pervasive harassment would not have occurred. "But for" does not require that retaliation be the sole cause of the action.

In the context of retaliation, an adverse action is an action that might have dissuaded a reasonable person from engaging in a protected activity.

IX. 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 identities (ADP, at III.1.).



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.

X. FIRST AMENDMENT

As an institution of higher learning, the University values community members’ right to freedom of speech, expression, religion, assembly, and the preservation of academic freedom. This Policy shall not be interpreted to violate a community member’s First Amendment rights, or to chill speech or expression.

This freedom is afforded to all community members regardless of their espoused viewpoint, but these protections are not without limitation. The University also has an obligation under federal and state law to create an environment free from discrimination. As such, the University will respond, as outlined in this Policy, when the reported behavior impedes an individual’s access to the University’s programs or activities or creates a hostile environment.

The determination about whether speech or expression is protected by the First Amendment is a fact-specific inquiry and will be determined on a case-by-case basis. The University acknowledges that there will be instances where a community member will be impacted by an incident that is otherwise protected by the First Amendment. The University remains steadfast in its commitment to support a safe and inclusive environment for all community members and will, as appropriate, provide individual support to preserve and restore community members’ access to the University’s programs and activities.

ISR will not make a finding of responsibility on the basis of speech or expression that is protected by the First Amendment.

XI. ISR COMPLAINT PROCEDURES

- A. Language Assistance - ISR offers translation services through a third-party vendor. If you need language assistance, please let the Investigator or Advisor know and/or contact ISR directly at ocr.isr@msu.edu and request language assistance.
- B. Reasonable Accommodation - If you are an individual with a disability and need accommodation to fully participate in the complaint, investigation, or disciplinary or appellate processes, please contact the following:
 - For **Students**, please contact the University’s Resource Center for Persons with Disabilities (RCPD) at (517) 884-7273 or [by email](#);



- For **Employees**, please contact the Office of Employee Relations at (517) 884-0799 or WorkplaceAccommodations@hr.msu.edu.
- C. ISR's Role – ISR is responsible for the University's compliance with federal and state laws and University policies and procedures regarding discrimination, harassment, related retaliation, relationship violence, stalking, and sexual misconduct. ISR is responsible for investigating all allegations of prohibited discrimination and harassment. ISR collaborates with other campus offices to encourage best practices to promote a culture of inclusion. ISR conducts an impartial, fair, and unbiased investigation into allegations of violations of the ADP. ISR determines if the ADP was violated.
1. **Neutrality** - ISR 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 ISR 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** – ISR 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 ISR's responsibility to gather relevant evidence to the extent reasonably available. ISR has discretion to determine which parties and witnesses to interview, and the order of party and witness interviews. ISR determines the relevance of any

proffered information or evidence. In general, ISR 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 - ISR provides bi-weekly status updates regarding its review and investigation of a reported matter to the parties, Human Resources, the college, department and units.

D. Intake of Reports

1. ISR receives reports of possible violations of the ADP through OCR's public reporting portal on its website; Emails; Phone calls to ISR; and Walk-ins.
2. Support and Intake Coordinators – Support and Intake Coordinators are ISR employees and in most instances, the initial point of contact with ISR. Support and Intake Coordinators input reports into ISR'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 ISR 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 - Support and Intake Coordinators 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 ISR 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 Support and Intake Coordinator 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, ISR, HCI and Unit Leadership of Reported Violations of the RVSM and Title IX Policy and ADP, Support and Intake Coordinators 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 five (5) business days of receiving a report.



5. If Claimant expresses an interest in meeting with ISR, or if Claimant self-reports a violation of the ADP, the Support and Intake Coordinator will forward the report for assignment to an Investigator. If Claimant does not respond to ISR's initial outreach communications, or declines to meet with ISR, the Support and Intake Coordinator reviews the matter for closure with the Director or the Director's designee.

E. Investigator Processing of Assigned Incident Reports

1. Upon assignment of an incident report, the Investigator determines whether ISR has jurisdiction to investigate the complaint. If ISR 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 ISR does not have jurisdiction to investigate the reported conduct.
2. Upon assignment of an incident report, if the Investigator determines that ISR has jurisdiction to investigate the complaint, the Investigator will meet with claimant to explain, among other things, ISR'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.

F. 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 ISR's role, the party's roles, the right to have an advisor or support person present during meetings with ISR, 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 ISR. The support person, advisor, attorney or other individual may not also be a witness or otherwise have any conflicting role during the investigation. Parties may request a University-appointed advisor by contact OCR Advising Services at ocr.advising@msu.edu. University-appointed advisors are available at no cost to the parties. MSU union-represented employees may, at any point in ISR'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 ISR will speak with attorneys, parents or others, or release information from the student's educational record, including records and communications regarding the ISR investigation.

2. Claimant Meeting – The Investigator will email Claimant to schedule a meeting. The Investigator may use alternate means to contact Claimant as that information may be known or available to the Investigator. If Claimant does not respond to the initial outreach 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.

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 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.
- G. 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. 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 ISR investigation. The Support and Intake 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

H. 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 ISR 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.



I. Investigation Process

1. Interviews of Claimant, Respondent, and Witnesses – ISR interviews claimant, respondent, and relevant witnesses. As soon as practicable, absent extenuating circumstances generally within two (2) business days following an interview with ISR, 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 ISR'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. ISR only interviews witnesses having relevant information, and thus may not interview all witnesses identified by a party or another witness. ISR 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 ISR - Employees may use leave time to attend meetings with ISR.



2. Collection of Relevant Evidence - ISR 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. In limited circumstances, relevant evidence may also include prior or subsequent conduct of the Respondent, where such conduct is substantially similar to the conduct under investigation and where it otherwise meets the definition of relevant evidence. The scope of the prior or subsequent conduct includes only prohibited conduct subject to the ADP and held within OCR databases (i.e., Guardian, Emerald, and S-Drive).
3. Closure- The Investigator, with the approval of the Director, determines whether there is enough information to move forward with a formal investigation. ISR will not conduct a formal investigation if it determines that the reported conduct, even if true, would not meet the definition of discrimination, harassment, or retaliation set forth above. ISR will also not conduct an investigation if it does not have jurisdiction to do so.
 - I. If ISR determines closure is appropriate, 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 ISR's closure decision.
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 ISR 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 ISR 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 – ISR 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 ISR 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 - ISR will make reasonable efforts to complete a formal investigation within 90 business 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
- 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, ISR will move forward with the University as the claimant. If ISR 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 ISR decides to consolidate investigations involving more than one claimant. Claimants will also be notified in writing if ISR 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 ISR's decision based on the standards and timelines in the [Anti-Discrimination Policy Appeal Procedures](#), which the parties are strongly encouraged to read.

J. Other options

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

- Externally, employment-related discrimination



complaints may be filed with:

The Equal Employment Opportunity Commission
Phone: (800) 669-4000
TTY: (800) 669-6820
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

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

The Office for Civil Rights, U.S. Department of Education
Phone: (800) 421-3481
Fax: (202) 245-6840
TDD: (877) 521-2172
Email: OCR@ed.gov

If an individual chooses to utilize the external agency's services in addition to a formal ISR investigation, ISR 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.



