



WESTERN MICHIGAN UNIVERSITY
Institutional Equity

Appeal Committee Training

Presenter:

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Director Title IX Compliance
(Title IX Coordinator)



Main Objective:

You will feel adequately
prepared to make an
appeal decision

You will know more about...

Objectives



Rights and responsibilities under law & policy



The basic grievance procedures and roles



The key aspects appeals



Important considerations



Title IX and Sexual Misconduct

U.S. Department of Education, Title IX of the Education Amendments Act, 1972:

"No person in the United States shall, on the basis of sex [or gender], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."



Title IX and Sexual Misconduct

Under Title IX and WMU Policy, you have the right to an education and employment free from sexual and gender-based discrimination, harassment and violence. This includes discrimination based on pregnancy and parenting.

In 2015, WMU implemented a policy prohibiting sexual and gender-based harassment and violence, intimate partner violence and stalking. The policy applies to faculty, staff students, vendors and visitors and covers prohibited behavior on and off campus. The Policy and procedures have been updated to reflect regulatory changes effective August 14, 2020.



Title IX Discrimination vs. WMU Sexual Misconduct Policy

- Jurisdiction: Occurred in the United States, in a building owned or controlled by the University with a complainant that was participating or attempting to participate in a University activity (current employee or student), where the University has control over the Respondent.
- Definition of Sexual Harassment is narrow: “so severe, and pervasive and objectively offensive that it effectively denies a person equal access to the Recipient’s education program or activity”
- Jurisdiction: Anything involving a current or former member of the WMU community, regardless of location, requires and assessment and possible response.
- Definition of Sexual Harassment is broad: “sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and an objective standard”



Prohibited Behaviors

- Sexual harassment
- Gender-based harassment
- Non-consensual sexual intercourse
- Non-consensual sexual contact
- Sexual exploitation
- Harm to others
- Stalking
- Intimate partner violence
- Retaliation

Complete definitions at the end of the presentation for reference
and in the WMU policy at wmich.edu/sexualmisconduct



Upon University Notice of Harassment or Violence

**We must respond
promptly, effectively, and equitably to:**

- Assess and investigate
- Stop the behavior
- Remedy the effects
- Prevent the recurrence



Grievance Procedures

<https://wmich.edu/sexualmisconduct>





Report

vs.

Formal Complaint

- Can be submitted [online](#) by anyone and may be completed anonymously
- The parties involved may be unaware that a report was submitted
- Requires careful review and assessment to determine next steps
- For transparency, all reports are de-identified and the aggregate data are shared here:

<https://wmich.edu/sexualmisconduct/data>

- Can be submitted by the Complainant or their parent/guardian
- In cases where the Complaint is unwilling or unable to proceed with a resolution, the Title IX Coordinator may file a Formal Complaint
- Requires a prescribed response in alignment with the Grievance Procedures

Grievance Procedure Major Steps

- 1 Incident reported to a Designated Official
- 2 A signed formal complaint initiates the grievance process. Complainant may request an informal or formal resolution (investigation and hearing).
- 3 For an informal resolution, Title IX Coordinator meets with parties separately until a signed agreement is reached.
- 4 Investigation: parties are interviewed, evidence report is created and made available for review by all parties for 10 days, investigative report is created and made available for review by all parties for 10 days then given to the hearing officer.
- 5 Hearing: The hearing officer and advisor for each party is given time to ask questions of complainant, respondent and witnesses. The hearing officer makes a decision on responsibility using the preponderance of the evidence standard. The Disciplinary Authority makes a decision on disciplinary action.

Grievance Procedure Additional Details

- 1 Title IX Coordinator responds, IE conducts an assessment using the Coordinated Response Team as needed. Report evaluated for dismissal under Title IX. The dismissal may be appealed. Emergency removal requests must be evaluated by an individualized safety and risk analysis. Respondent can appeal the removal decision to the Appeal Committee. Supportive measures* provided, as needed.
- 5 The University must provide an Advisor to each party. The finding may be appealed by either party to the Appeal Committee. The sanction may be appealed through the Vice President for Student Affairs (students) or the relevant Human Resources/Collective Bargaining process (employees).



*Supportive Measures

May include:

- referral to counseling, medical, and/or other healthcare services;
- safety planning;
- transportation and escort on campus;
- changing class schedule, including the ability to take an “incomplete,” drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty);
- changing residence building, work schedule or job assignment;
- referral for academic accommodations and support services, such as tutoring;
- instituting a no contact order;
- or any other remedy that can be tailored to the individuals involved in order to achieve the goals of the Policy

The acceptance or rejection of supportive measures must be documented by the Title IX Coordinator and kept in the case file.



Roles in the Grievance Procedures



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

1. **Designated Official:** an official designated by Policy to promptly report disclosures or observations of sexual misconduct to the Title IX Coordinator; members of the Board of Trustees, the President, members of the President's Cabinet, Deans, Supervisors, Academic Advisors, Residence Life staff with on-call responsibilities, and administrators and staff in Intercollegiate Athletics, Human Resources, Office of Student Conduct (OSC), Public Safety and Institutional Equity (IE).
2. **Title IX Coordinator:** oversee grievance procedures, conduct intake meetings, coordinates informal resolutions and supportive measures, communicates to all parties, coordinates training.
3. **Investigator:** Assess cases for investigation, conduct investigations, prepare reports, answer questions during a hearing
4. **Coordinated Response Team:** As needed, the team will evaluate 1) non-routine requests for protective measures, 2) when to refer a person for an individualized safety and risk analysis 3) when to proceed without complainant participation 4) when to notify law enforcement for a timely warning assessment and 5) other unique case circumstances. Representative from any of the following areas; Public Safety, Student Affairs, Academic Affairs, HR and IE. Subject matter experts may be consulted as needed.

5. **Appeal Committee:** Members may hear appeals for Title IX dismissals, emergency removals, finding (case decision), and sanction/disciplinary action
6. **Advisor:** In cases that proceed to a hearing, the advisor is responsible for asking questions on behalf of the Party. An advisor is required; if a Party does not have an advisor, the University will provide one at no charge. A party may choose to use their own lawyer as an advisor.
7. **Hearing Officer/Decision Maker:** An external consultant or lawyer that conducts the hearing and issues a decision on the finding.
8. **Hearing Facilitator:** Person who facilitates the technical aspects of the hearing; admitting parties and witnesses into virtual rooms at appropriate times.
9. **Disciplinary Authority:** Makes a decision on level of discipline based on hearing outcome, investigative report and past conduct record. Director of Student Conduct for students, Human Resources or Administration for employees.

Individuals serving in certain roles on a case may not serve in an additional role on that case.



Appeal Type and Committee Member(s)

- 1 Title IX Dismissal Appeal – Executive Director Institutional Equity or designee
 - 2 Emergency Removal Appeal – Not identified yet, need a process for the emergency removal; appeal member can't be a part of the original decision
 - 3 Finding Appeal – University employees from different areas
 - 4 Sanction Appeal – Vice President of Student Affairs or Designee (student cases), Human Resources Grievance Designee or Collective Bargaining Grievance Officer or Board, as appropriate (employee cases).
- New



Privacy and Confidentiality

- Title IX require institutions to keep confidential the identity of complainants, respondents, and witnesses to a sexual harassment report, investigation, or adjudication, except under narrow circumstances defined under Title IX and the Family Educational Rights and Privacy Act (FERPA). The same rules prohibiting the parties from sharing confidential information also bind appeal committee members.
- Each member will be asked to sign a confidentiality agreement prior to reviewing a case.

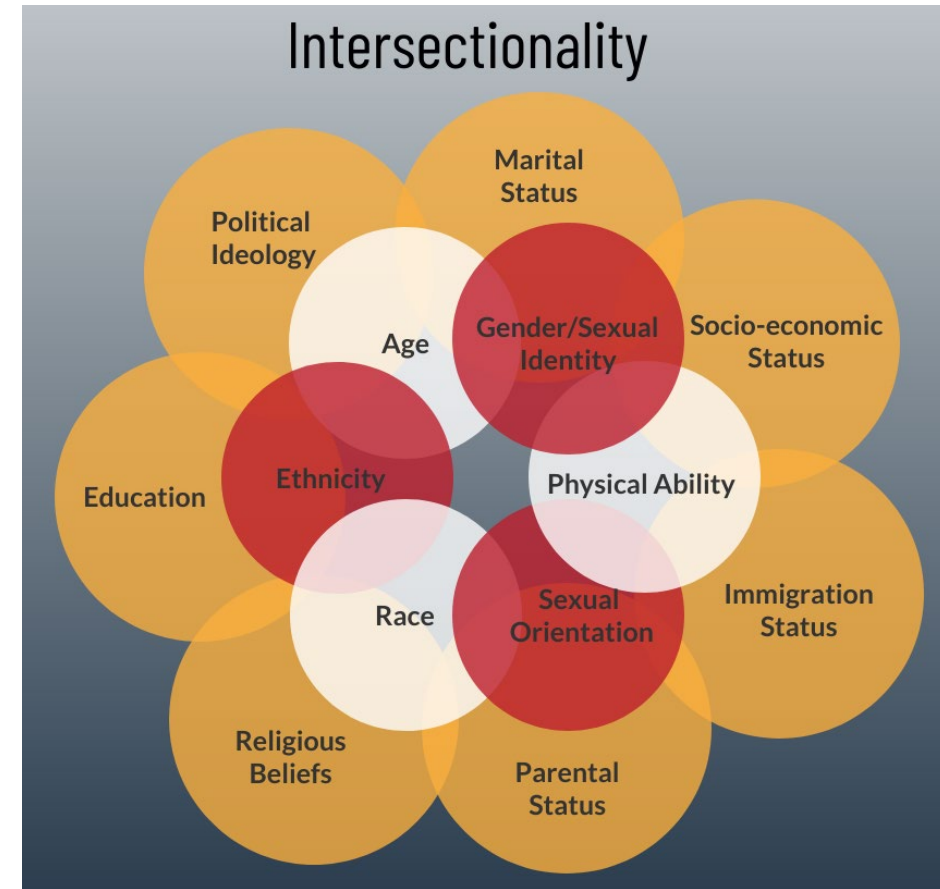




Identities and Cultural Perspectives

“Cultural competence is the **capacity to effectively communicate and connect with individuals with lived experiences different than your own**. It is more than just the mere recognition that differences exist across cultures and communities. It requires an introspective and honest assessment of your own world-view and a willingness to identify and challenge your own assumptions and biases”.¹

Appeal Committee members should strive to practice cultural competence when reviewing information and communicating with parties.



<https://www.sallyspencerthomas.com/hope-illuminated-podcast/78>

¹ Advisor Resource Guide, SUNY Student Conduct Institute, September 2021



Objectivity and Recusal

- Evaluate each case on the facts, not on assumptions or bias for or against individuals based on their identity or group membership.
- Some cases involve detailed descriptions of consensual and/or non-consensual sex acts, violence and other forms of abuse, the use of alcohol and other drugs.
- Conflicts of interest: Consider whether you have a personal connection to a party, if you served/will serve in another role on the case, or if you have a personal conviction or bias that may prevent you from participating objectively or that would bring your objectivity into question
- If you have a conflict of interest, or are unable to proceed for any reason, ask the Title IX Coordinator to remove you from the case. You do not need to give an explanation.

**It is important to be forthcoming so that the each party
may have equitable access to the process.**



Sanction Appeal



After the hearing

- Each party will receive the outcome – finding and sanction, if applicable – within 30 days of the hearing.
- Appeal of Sanction: Either party may appeal the finding within five calendar days of the date on the written notice of the outcome. The following are the accepted bases for appeal, but only if they affect the outcome of the matter:
 - procedural irregularity; and/or
 - the disciplinary authority had a conflict of interest or bias.
- The underlying investigation and the determination of responsibility will provide the foundation for any further review of the sanction; no new investigation or finding with respect to responsibility will occur.

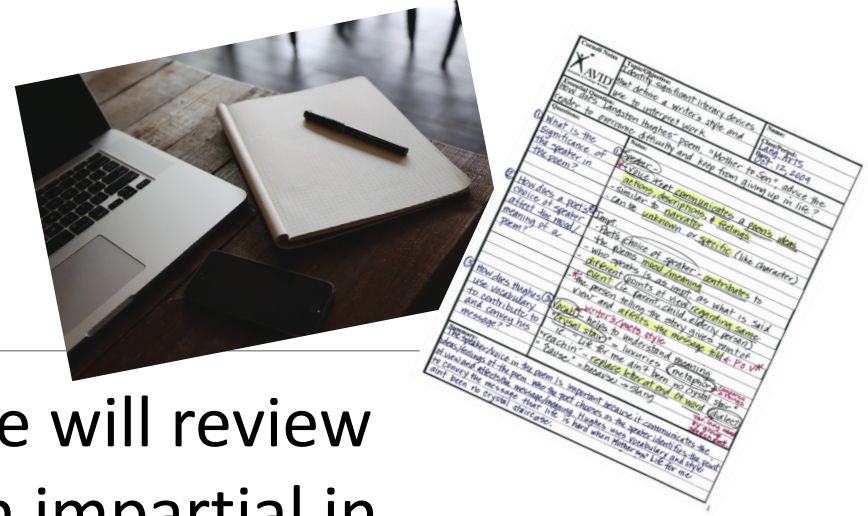


Student Process

- Receipt of the appeal is acknowledged by the OSC, which may include email
- Each Party will be given the opportunity to review and respond in writing to the other Party's appeal.
- Any review of the other Party's appeal and any subsequent response by the opposing Party must be submitted to the OSC within five (5) University business days from the notification of the appeal.
- All appeal documents from each Party will be considered together in one review process.



Student Process



- The Vice President for Student Affairs or designee will review the appeal of student sanctions and must remain impartial in performing this function.
- They will gather relevant facts and information to determine:
 1. Whether there was procedural irregularity, conflict or bias that affected the sanction
 2. If so, what is the appropriate remedy
- They will forward the appeal decision in writing to the OSC and IE.
- The OSC will contact the parties with the outcome.
- The sanction appeal decision is final.



Back to this
Did we...?



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Questions?

Contact
information

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Sexual Harassment

Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

- submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity (e.g., quid pro quo);
- submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual (e.g., quid pro quo); or



Sexual Harassment

...when:

such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance; i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and an objective standard.

NOTE: A single isolated incident of Sexual Harassment may jeopardize equal access to a program or activity if it is sufficiently severe.



Gender-Based Harassment

Acts of verbal, nonverbal, or physical aggression or contact, intimidation, threats, abuse or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature; sexual harassment based on gender, gender identity, gender expression or sexual orientation.



Non-Consensual Sexual Intercourse

Having or attempting to have sexual intercourse with another individual

- by force or threat of force;
- without consent; or
- when that individual is incapacitated

Sexual assault

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact



Non-Consensual Sexual Contact

Sexual contact with another individual

- by force or threat of force
- without consent; or
- when that individual is incapacitated

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.



Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.



Sexual Exploitation-Examples

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and Consent of all parties involved;
- non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, distributing such without the knowledge and Consent of all parties involved;
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
- knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge.
- sex-based bullying; or
- inducing Incapacitation for the purpose of making another person vulnerable to non-consensual activity.



Harm to Others

Behaviors that threaten or endanger the health or safety of any person, which include physical abuse, verbal abuse, threats, intimidation and/or harassment. Non-sexual or non-gender-based Harm to Others will be treated as a violation of the WMU Student Code and will be referred accordingly.



Stalking

A course of physical or verbal conduct directed at another individual on the basis of sex or gender identity, in a manner that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of ***at least two acts***. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual.

Stalking may include cyber stalking, in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.



Intimate Partner Violence

Often referred to as dating violence, domestic violence, or relationship violence; one act or ongoing behavior that includes but is not limited to:

any actual or threatened act of physical, sexual, emotional violence or economic abuse against an intimate partner (person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the initiating individual)



Intimate Partner Violence

- threats, assault, property damage, violence or threat of violence to oneself, an intimate partner, or to the family members or friends of that partner; or
- Sexual Harassment, Non-Consensual Sexual Intercourse, Sexual Exploitation, Harm to Others, Stalking or Retaliation of an intimate partner.



Retaliation

Acts, words, or attempts to take adverse action against the Complainant, Respondent, or any individual or group of individuals because of their good faith Complaint or participation in an investigation and/or resolution of a Complaint. Retaliation may be committed by any individual or group of individuals.

Retaliation may take many forms, including threats, intimidation, pressuring, continued abuse, violence, other forms of harm to others.



Retaliation

Retaliation may also occur by moving someone to a less desirable workspace, altering work hours, removing or limiting privileges. All forms of Retaliation are prohibited under this Policy as well as under state and federal law.