



WESTERN MICHIGAN UNIVERSITY
Institutional Equity

Hearing Advisor Training

Presenter:

Felicia Crawford
Director Title IX Compliance
(Title IX Coordinator)



Main Objective:

**You will feel adequately
prepared to support someone
in the hearing process**

You will know more about...

Objectives



Rights and responsibilities under law & policy



The basic grievance procedures



The key aspects of Advising



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 has 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 and 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>



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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 Complainant 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 Team. 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 Appeals team. The sanction may be appealed through the Vice President for Student Affairs (students) or the relevant HR/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 this 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



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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, Public Safety and Institutional Equity.
2. **Title IX Coordinator:** oversee grievance procedures, conduct intake meetings, coordinates informal resolutions and supportive measures, communicates to all parties.
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, Human Resources and Institutional Equity. Subject matter experts may be consulted as needed.

5. **Appeals Team:** Member 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.
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.



Advisor Resource Guide



Material Customized, with permission*, to fit WMU Policy and Procedures

AUTHORS:

Abbey Marr, Esq. | Assistant Director, SUNY Student Conduct Institute Jessica Morak, Esq. | Associate General Counsel, City University of New York Gemma Rinefierd, Ed.D. | Director of Student Affairs, SUNY Adam J. Wolkoff, J.D./Ph.D. | Assistant Director, SUNY Student Conduct Institute

ADDITIONAL CONTENT CREDITS:

Chantelle Cleary, Esq. | Grand River Solutions (Incident Timeline) Scott Roberts, Esq. | Hirsch Roberts Weinstein (Cross-Examination Strategies)

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Advisor Resource Guide Overview

1. Roles of the Advisor

- Descriptions
- Privacy and confidentiality

2. Pre-hearing preparations

- Case assignment and orientation
- Investigative report review
- Relevance

3. Overview of the hearing process

4. After the hearing

- Assisting your advisee in understanding the outcome
- Reviewing appeal options

5. Process Considerations

- Identities and cultural perspectives
- Trauma-informed practice
- Self-care



Roles of the Advisor

Advisors have two major roles, which may be performed by the same person, or performed by two or more individuals on behalf of the advisee.

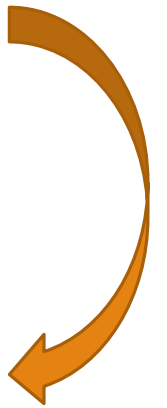
1

Serve as a support person for the parties and perform advising throughout the grievance process.

2

Conduct cross-examination should the matter proceed to a hearing.

WMU-provided advisors will serve in the 2nd role





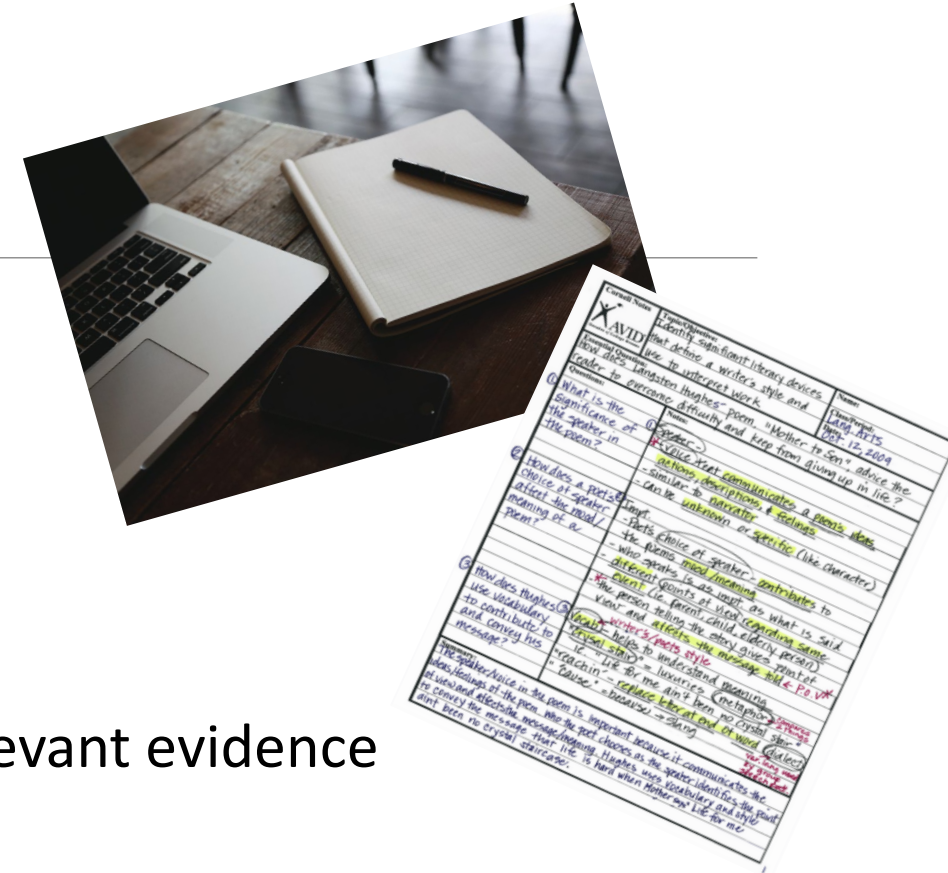
Privacy and Confidentiality

- WMU employee advisors are removed from any reporting responsibility as a Designated Official, for the associated parties, while serving in the advisor role. This means they do not have a duty to report information about the alleged incident to the Title IX Coordinator.
- 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 their advisors.
- Advisors will be asked to sign a non-disclosure agreement.





Pre-Hearing Preparation



Notification of case assignment

- Orientation session, review decorum, receipt of the Investigative Report

Meeting with Advisee

- Review the Investigative Report together
- Highlight missing information, credibility issues, relevant evidence corroborating your advisees narrative
- Determine which questions to ask which party
- It may be helpful to map out a timeline of events
- Send questions to Title IX Coordinator; may make changes/additions at the hearing

(Possible) Meeting or call with the Hearing Officer



Pre-Hearing Preparation

Purpose of Cross-Examination: The purpose of cross-examination during the hearing is not to cover every topic, question, or piece of evidence in the case. At this point in the process, all parties will have had the opportunity to provide evidence as well as review and comment on all of the evidence that has been gathered.

In addition, the decision-maker has had the ability to ask direct questions of the witness. Rather than repeat every fact in these case materials, **use cross-examination to highlight important facts**, especially those that corroborate your advisee's narrative. The Investigative Report may be lengthy, so use this opportunity to focus the decision-makers on the most critical points.



Overview of the Hearing Process

Questioning:

1. Advisor poses question to the Hearing Officer
2. Hearing Officer makes a decision on relevance
3. Hearing Office says “Proceed” or “Irrelevant” and provides rationale
4. If “Proceed” the person may answer the questions
5. If “Irrelevant” Hearing Officer may offer a way to remedy the question

The hearing will be recorded. Make note of any questions/concerns about relevancy determinations for review later, if needed.



Irrelevant Questions

1. Question about Complainant's prior sexual behavior or predisposition
 - (unless it's offered to prove that someone other than the respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.)
2. Question regarding Privileged Information
3. Questions about Undisclosed Medical Records
4. Duplicative Questions





Relevant

vs.

Directly Related

Evidence is relevant when it tends to prove or disprove an issue in the complaint.

Evidence is directly related when it is connected to the complaint.

It may be relevant or irrelevant.

Only evidence that is directly related and relevant will be relied upon by the decision maker.



Overview of the Hearing Process

Hearing Officer opens the hearing, sets the tone and gives instruction

Hearing Officer asks Investigator(s) questions, if any

Hearing Officer asks Complainant questions, if any

Hearing Officer asks Respondent questions, if any

Hearing Officer asks Witness(es) questions, if any

Advisor for Complainant asks Complainant questions, if any

Advisor for Complainant asks Respondent questions, if any

Advisor for Complainant asks Witness(es) questions, if any

Advisor for Respondent asks Complainant questions, if any

Advisor for Respondent asks Respondent questions, if any

Advisor for Respondent asks Witness(es) questions, if any





After the hearing

- The advisee will receive the outcome – finding and sanction, if applicable – within 30 days of the hearing.
- Plan to review the outcome with your advisee
- Appeal of Finding: 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 appealing a finding, but only if they affect the outcome of the matter:

- procedural irregularity;
 - newly discovered evidence; and/or
 - when it is determined that the Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias.
- Appeal of Sanction: Process based on student or employee affiliation



Important Considerations



Identities and Cultural Perspectives

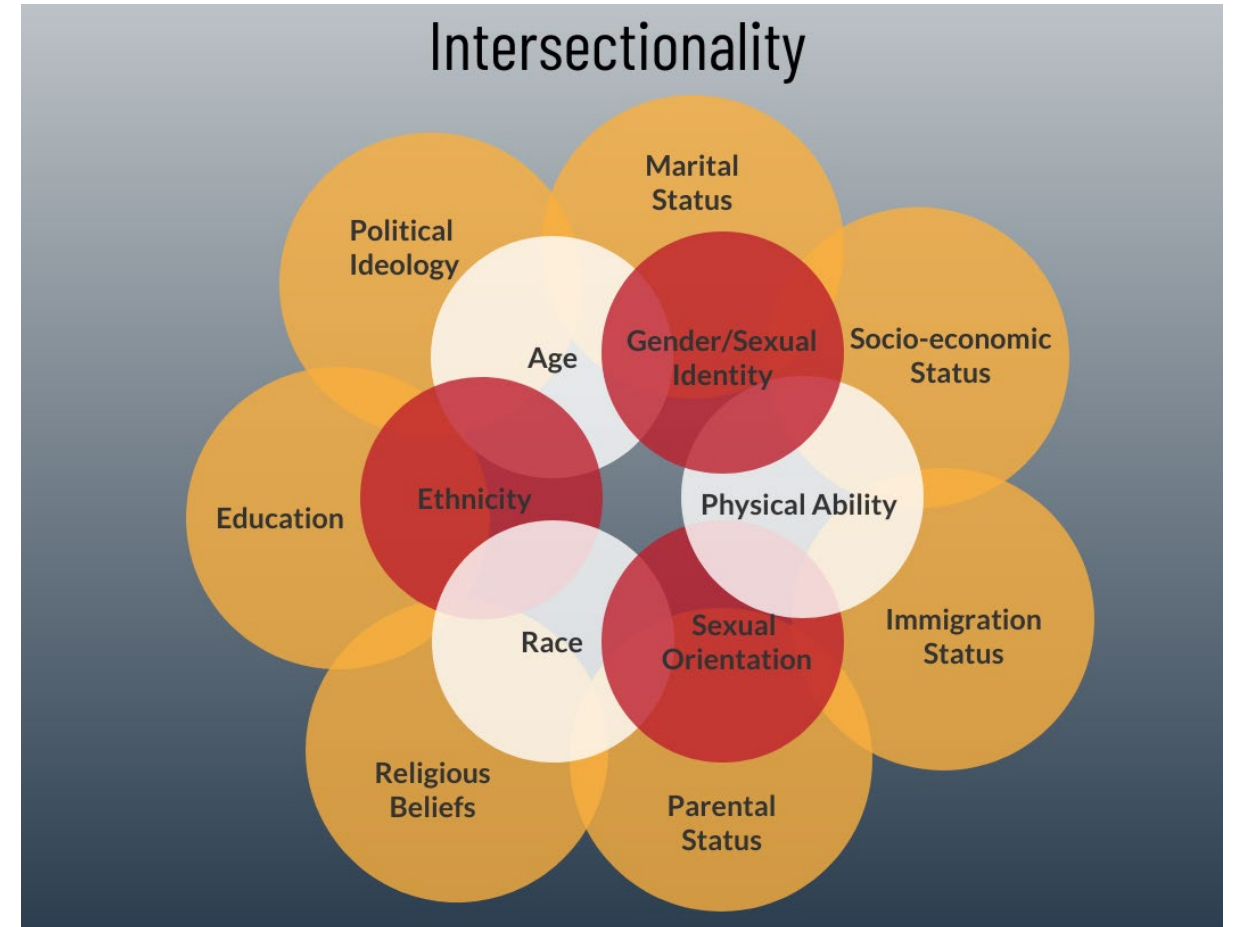
Cultural competence is the **capacity to effectively communicate and connect with individuals with lived experiences different than your own**. It is more than just the mere recognition that differences exist across cultures and communities. It requires an introspective and honest assessment of your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

Advisors should strive to practice cultural competence in all aspects of the campus process.



Identities and Cultural Perspectives

This is especially critical when working closely with advisees who are members of one or more marginalized communities, including BIPOC (Black, Indigenous, and People of Color) and LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual) individuals.





Identities and Cultural Perspectives

If you are uncomfortable fully serving in the advisor role for a person because of your personal beliefs or recognized bias, please ask the Title IX Coordinator to remove you from the case.

It is important to be forthcoming so that the advisee may have equitable access to the process.



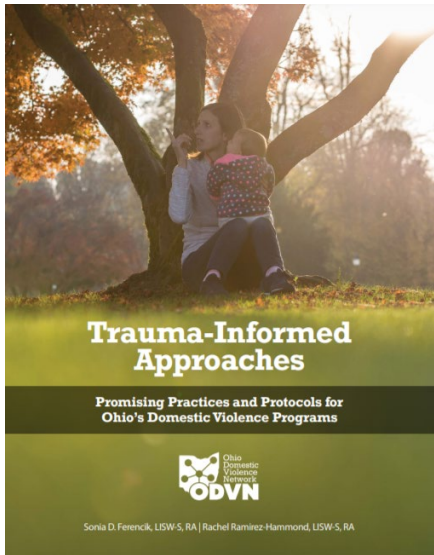
Trauma-Informed Practice

- Participation in this process is often a stressful experience for parties. Be on the lookout for signs that your advisee may be in distress.
- Signs can include: a lack of eye contact, heavy or labored breathing, wringing of hands, rocking back and forth, an inability to sit still, a glazed or blank look, or changes in speech (i.e. disrupted or interrupted speech, garbled speech, or speaking at a much faster pace).
- If you suspect your advisee may be in distress, make sure to ask for a break and consult with your advisee. Explain to your advisee that no party will be penalized or suffer a negative inference from their decision to take multiple breaks during an interview or hearing.
- Encourage your advisee to bring a support person to the hearing to assist .



Trauma-Informed Practice

The evolving research on the neurobiology of trauma teaches us that traumatic incidents impact individuals differently. At a minimum, advisors should have background knowledge in the impact of trauma on those involved in an incident of sexual harassment or violence. We encourage advisors to learn more about this topic and how it may impact memory formation and communication related to an incident.



Deeper dive:

An **amazing** resource for advocates regarding trauma and self-care

https://www.odvn.org/wp-content/uploads/2020/05/ODVN_Trauma-Informed_Care_Manual_2020.pdf





Self-Care

Advisors themselves may need emotional support. You may find yourself emotionally invested with your advisee's case, and that can have secondary impact. Advisors may feel the need to share their own feelings and reactions to the situation. Remember, advisors may not share confidential information related to the case. The best option in this scenario is for the advisor to seek out a confidential resource, such as a counselor or spiritual advisor, to communicate their feelings and reactions.



Self-Care

It is important to be self-aware as this process has the potential to raise personal triggers for you as an advisor. You may find this work particularly challenging if you are participating as an advisor when you have been a victim of sexual trauma. It is not necessary to disclose your trauma to anyone in this process, nor is it a trauma-informed practice to disclose unless there is a specific reason to do so in your role as an advisor. We mention this issue here only to encourage reflection on the difficulties that may arise in this space. Personal experience may make you an excellent advisor, drawing on relatable experiences you may have had.

However it may be too difficult to manage your own processing while helping an advisee navigate this experience.



WESTERN MICHIGAN UNIVERSITY
Institutional Equity

Questions?

Contact
information

Felicia Crawford

Director Title IX Compliance (Title IX Coordinator)
felicia.crawford@wmich.edu, 387-6316, 1220 Trimpe



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.