



**WESTERN MICHIGAN UNIVERSITY**  
Institutional Equity

# Title IX Committee Training

Presenter:

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**Felicia Crawford**  
Director Title IX Compliance  
(Title IX Coordinator)

# You will know more about...

## Objectives



**The difference between Title IX and Sexual Misconduct**

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**The basic grievance procedures**

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# Title IX and Sexual Misconduct

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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

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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

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- **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](http://wmich.edu/sexualmisconduct)



# 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 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.



# Roles of the Advisor

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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 2<sup>nd</sup> role





# Cross-Examination

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**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

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## 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.





# Overview of the Hearing Process

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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

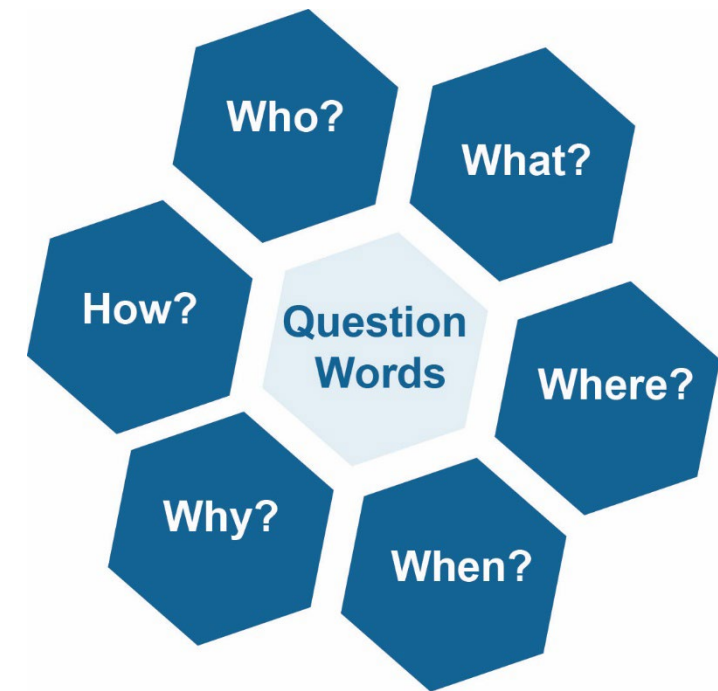
Advisor for Complainant asks Respondent questions, if any

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





# Irrelevant Questions

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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.**



# After the hearing

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- Each party will receive the outcome – finding and sanction, if applicable – within 30 days of the hearing.
- The advisor may review the outcome with their advisee and consult on appeal
- 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



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# Questions?

Contact  
information

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# Sexual Harassment

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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

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...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

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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

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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

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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

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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

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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

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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

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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

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- 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

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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

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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.