

Western Michigan University
Non-Discrimination
Process and Procedures

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1. Introduction

Western Michigan University strives to cultivate a healthy and diverse community that recognizes the value of each individual and helps foster safety, civility and respect for all people. The University encourages all members of our community to participate in the process of creating a safe, welcoming and respectful environment on campus. We affirm the commitment of the University and our community to the values of transparency and timely communication, and accountable and responsible behavior within an ethical, compassionate, diverse and respectful environment.

Members of the Western Michigan University community, including students, employees, faculty, staff, administrators, Board members, consultants, vendors, others engaged to do business with the University, guests and visitors have the right to be free from prohibited protected class discrimination and harassment, as well as retaliation for engaging in protected activities. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Western Michigan University's policies have been developed to reaffirm these principles, to provide resources for those individuals whose rights may have been violated, and to provide accountability for conduct that violates this Policy. This Policy prohibits a broad continuum of behaviors, many of which constitute a form of prohibited or protected class discrimination and harassment prohibited by state and federal law.

2. General Statement of Policy Requirements and Notice of Non-Discrimination

University Non-Discrimination Policy

Western Michigan University prohibits discrimination or harassment which violates the law or which constitutes inappropriate or unprofessional limitation of employment opportunity, University facility access, or participation in University activities, on the basis of race, color, religion, national origin, sex, sexual orientation or gender identity, genetic information, age, disability, protected veteran status, height, weight, or marital status.

Unlawful protected class discrimination is prohibited by a number of federal and state regulations, including but not limited to:

Federal Regulations

Title VII of the Civil Rights Act of 1964

Title IX of the Education Amendments of 1972

Americans with Disabilities Act, Amendments Act of 2008

Section 504 of the Rehabilitation Act of 1973

Lilly Ledbetter Fair Pay Act of 2009

Federal Regulations (Cont.)

Executive Order 11246

Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (the Clery Act)

Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA)

State Regulations

Elliott-Larsen Civil Rights Act of 1976

The University prohibits protected class discrimination and harassment by any member of the University community. All Western Michigan University community members are strongly encouraged to [report information](#) regarding any incident of such behaviors directly to Institutional Equity, the office that oversees the University Non-Discrimination Policy and the University's compliance with related federal and state civil rights laws.

The University has an obligation to make reasonable efforts to assess and address instances of prohibited discrimination or harassment when it knows or should have known about such instances, regardless of whether there is a specific complaint. When an allegation of prohibited conduct is brought to the attention of Institutional Equity, the University will take prompt action in response to the report. Such steps may include imposing reasonably available interim measures designed to protect the parties involved. Individuals who are found responsible for violating this Policy may face sanctions up to and including expulsion from the University (if a student) and/or termination of employment (if an employee).

The University prohibits retaliation against any person or group who makes a good faith complaint, cooperates with an investigation, or participates in a grievance or related processes. Retaliation should be reported promptly to Institutional Equity for investigation, which may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying prohibited conduct.

Where conduct involves the potential violation of both this Policy and the [University Sexual or Gender-Based Harassment and Violence, Stalking, and Intimate Partner Violence Policy](#) (hereafter, the Sexual Misconduct Policy), the provisions of the Sexual Misconduct Policy will apply and a single investigation will be conducted that encompasses all relevant allegations. Conduct may also be a violation of provisions of other University policies, rules, and collective bargaining agreement requirements.

3. Scope of Policy

a. Individuals Covered by this Policy

The Policy applies to all WMU students, faculty, staff, applicants, administrators, Board members, consultants, vendors, others engaged to do business with the University, guests and visitors (collectively or individually "covered individuals"). The Policy also applies to other third parties under circumstances within the University's control. This Policy refers to

the person claiming subjection to the prohibited behavior as the Complainant, and the person accused of the prohibited behavior is referred to as the Respondent

Any person, including a visitor, may initiate a complaint against a covered individual. The University may also initiate a complaint on its own initiative.

The term “student” or “students” includes all persons taking one or more courses at the University, both full-time and part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw from WMU after a charge for an alleged violation of the WMU Student Code or any University policy has been determined, *or* who are not officially enrolled for a particular term, are considered “students.” “Students” also include those persons who are not officially enrolled for a particular term but who have a continuing relationship with the University as a student. This Policy, like the Student Code, applies to all covered individuals at all campuses/study centers affiliated with the University. This Policy does not apply to the Western Michigan University Homer Stryker M.D. School of Medicine or the Western Michigan University Thomas M. Cooley School of Law, as those are separate and distinct entities.

This Policy may be applied to conduct that takes place from the time a person accepts enrollment as a student and continues so long as the individual has a continuing relationship with the University as a student, including periods during semester breaks and between semesters. Hosts may be held accountable for the misconduct of their guests.

The University may pursue enforcement of this Policy separate and apart from any criminal proceedings. The University reserves the right to take action or pursue a complaint even if criminal charges are pending, reduced or dismissed

b. Locations Covered by this Policy

In particular, the Policy applies to prohibited conduct that takes place:

- on campus;
- in the context of employment or an education program or activity of the University, regardless of location (including but not limited to service learning activities, study abroad and internship programs);
- where either the Complainant or the Respondent involved is a member of the WMU community;
- off-campus when the conduct has continuing adverse effects on campus or in an off-campus education program or activity.

On-line and/or social media conduct may also violate this Policy if it meets the definition of any form of prohibited conduct. Blogs, web page entries on sites such as Instagram, Facebook, and Twitter and other similar online postings are in the public sphere and are not private. These postings can subject an individual to allegations of conduct violations. The University does not regularly search for this information but may take action if and when such information is brought to the attention of University officials.

4. Prohibited Conduct and Definitions

The University prohibits all forms of protected class discrimination and harassment, as well as retaliation for engaging in a protected activity.

a. Discrimination

Denial of opportunity, or unfair treatment in employment, academic programs or activities, or facility access, on the basis of any protected class characteristics identified in this Policy.

b. Harassment

Prohibited harassment is a form of discrimination and is defined as conduct (physical, verbal, graphic, written, or electronic) that is (1) unwelcome; (2) discriminatory on the basis of any protected class characteristic outlined in this Policy; (3) directed at an individual or group in one of the protected classes outlined in this Policy; and (4) meets one of the following conditions:

- Submission to or toleration of such conduct is explicitly or implicitly a term or condition of employment, evaluation or participation in University programs or activities; or
- Submission to or rejection of such conduct is the basis for employment or academic decisions; or
- Such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment that is severe, persistent, or pervasive.

(For specific examples related to sexual or gender based harassment, please refer to the University's [Sexual Misconduct Policy](#).)

c. 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 an allegation of prohibited conduct. Retaliation can be committed by any individual or group of individuals, including, but not limited to a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report good faith concerns about consensual relationships is prohibited and constitutes a violation of this Policy.

d. Hate Crimes

Also known as a bias-motivated *crime* or bias *crime*, a hate crime is usually violent and is motivated by prejudice or intolerance toward an individual's national origin, ethnicity, color, religion, gender, gender identity, sexual orientation, or disability.

5. Resources and Reporting Options

Complainants have the right, and can expect, to have complaints taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through the procedures within this Policy. Respondents have the right, and can expect, to be provided notice of the allegations and an opportunity to respond to the allegations before action is taken against a Respondent. Information will be only shared as necessary with investigators, witnesses, the Respondent, and appropriate University officials. Employees with access to this information are charged with preserving a Complainant's and Respondent's rights and privacy to the extent reasonable in the context of conducting an adequate, reliable, and impartial investigation.

a. Complainant Agency and Autonomy not to Proceed

Where a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent, that no investigation occur or that no formal action be taken, the University will balance this request with its obligations to provide a safe and non-discriminatory environment for all University community members, including the Complainant or person who reported the incident, and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent.

WMU's Office of Institutional Equity will consider the following in evaluating requests for confidentiality, that no investigation occur, or that no formal action be taken:

- i. the nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon;
- ii. the Complainant's wish to pursue disciplinary action;
- iii. the respective ages and roles of the Complainant and Respondent;
- iv. the risk posed to any individual or to the campus community by not proceeding
- v. whether there have been other reports of misconduct by the Respondent;
- vi. whether the Respondent made threats against the Complainant or others;
- vii. whether the report reveals a pattern of discrimination or harassment
- viii. whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);
- ix. considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- x. the University's obligation to provide a safe and non-discriminatory environment.

The University will take reasonable steps to investigate and respond to the complaint consistent with the Complainant's request to maintain anonymity or to not pursue an investigation, but its ability to do so may be limited based on the nature of the request by the

Complainant. Where the University determines that action should be taken that is inconsistent with the request of the Complainant, the Complainant will be informed about the chosen course of action, which may include the University initiating disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve disciplinary action against a Respondent or disclosing the identity of the Complainant.

b. Reporting Options:

All individuals are encouraged to promptly report conduct that may violate this Policy to the University. In addition, all individuals are encouraged to report conduct that may also violate criminal law to both the University and to local law enforcement or a civil rights agency. These processes are not mutually exclusive. Any University student, employee or third party who seeks to make a complaint or report may:

- Make an internal complaint/report to Institutional Equity;
- Contact the Department of Public Safety for assistance in filing a criminal complaint and preserving physical evidence; and/or
- Contact local law enforcement to file a criminal complaint;
- Contact a civil rights office to file an agency complaint.

Complainants may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue an internal complaint and a criminal or agency complaint). When initiating any of the above, Complainants need not know whether they wish to request any particular course of action, nor how to label what happened. Choosing to make a complaint, and deciding how to proceed after making the complaint, can be a process that unfolds over time.

Inquiries or complaints concerning the application of Title IX or Title VII may be referred to the University's Institutional Equity office, the Title IX Coordinator and/or the appropriate external agency:

Institutional Equity
1903 West Michigan Avenue
Kalamazoo, MI 49008-5405 USA
Location: 1220 Trimpe
(269) 387-6316
[Online Reporting Form](#)

Title IX Coordinator (for Sexual and Gender Based Discrimination/Harassment)

Felicia T. Crawford
Director, Title IX Compliance
Institutional Equity
1903 West Michigan Avenue
Kalamazoo, MI 49008-5405 USA
Location: 1220 Trimpe Building
Telephone: (269) 387-6316
Email: felicia.crawford@wmich.edu

Office for Civil Rights (Regional Office)
U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115-1812
Telephone: (216) 522-4970
FAX: (216) 522-2573; TDD: (800) 877-8339
Email: OCR.Cleveland@ed.gov

Michigan Department of Civil Rights
State Office Building, 4th Floor
350 Ottawa, N.W.
Grand Rapids, MI 49503
Phone: 616-356-0380
Fax: 616-356-0399
TTY: 616-356-0391

Equal Employment Opportunity Commission – Detroit
Office Patrick V. McNamara Building
477 Michigan Avenue
Room 865
Detroit, MI 48226
Phone: 1-800-669-4000
Fax: 313-226-4610
TTY: 1-800-669-6820

c. **Privacy and Confidentiality**

WMU is committed to protecting the privacy of all individuals involved in a report of protected class harassment or discrimination. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

Privacy and confidentiality have distinct meanings under this Policy.

Privacy: Privacy generally means that information related to a report of misconduct will only be shared with a small circle of individuals. The use of this information is limited to those University employees who are directly involved in the resolution of a report under this Policy. While not bound by legally-privileged confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals *cannot* be revealed to any other individual without express permission of the individual. Those designated campus and community professionals that may hold legally-privileged conversations recognized by law include medical providers, mental health providers, ordained clergy/pastoral counselors and rape crisis counselors. These individuals are Confidential Resources and prohibited from breaking confidentiality without express permission of the individual seeking services, unless there is an imminent threat of harm to self or others.

Confidential Resources may submit anonymous report information to WMU Public Safety for Clery Act purposes, but will not share identifying information without the permission of the Complainant. When a report involves suspected abuse of a minor under the age of 18, these Confidential Resources are required by state law to notify child protective services and/or local law enforcement.

d. Anonymous Reporting

Any individual may make an anonymous report concerning an act of prohibited discrimination or harassment. Individuals may report the incident without disclosing their name, identifying the parties involved or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the University's ability to respond to an anonymous report may be limited. An anonymous report may be made on the [Online Reporting Form](#) or by telephone at (269) 387-6316.

Institutional Equity will receive the anonymous report and determine any appropriate steps in light of the available information. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may impact the University's ability to respond or take further action. Where there is sufficient information, the University will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

6. Interim Measures

Upon receipt of a report, the University will impose reasonably available interim measures designed to protect the parties involved. The provision of interim measures may be imposed at any time regardless of whether disciplinary action is sought by the Complainant or the University. Interim measures will be kept private to the extent that maintaining that privacy does not impair the ability of the University to provide the interim measures.

Interim Measures are initiated based on information gathered during a report and are not intended to be permanent resolutions; hence, they may be amended or withdrawn as additional information is gathered. Institutional Equity, in consultation with other administrators, will maintain consistent contact with the parties so that all safety, emotional, and physical well-being concerns can be reasonably addressed.

Specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. WMU will consider the following factors in determining what interim measure to take, including, for example, the specific needs expressed by the Complainant; the age of the parties involved; the severity or pervasiveness of the allegations; any continuing effects on the Complainant; whether the Complainant and Respondent share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the Complainant (*e.g.*, civil protection orders). Interim measures will be imposed in a way that minimizes the burden on the Complainant to the extent possible while still balancing the rights of the Respondent.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The University will take immediate and responsive action to enforce a previously implemented measure.

Interim measures will be implemented at the discretion of the University. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- Changing residence hall;
- Imposition of a “No Contact” order;
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty);
- Change in work schedule or job assignment;
- Providing academic support services, such as tutoring;
- Interim suspension or University-imposed leave;
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this Policy.

No Contact Order: A campus no-contact order is issued by a University official and requires that an individual have no contact with a particular person or persons. Contact is considered any verbal, written, electronic, non-verbal gesture, third party messages, indirect loud talking in the vicinity of the person and could include indirect actions that appear to the University to be intimidating. The University may add to the terms of no contact within the context of the reported incident that preceded the order or concerns that have arisen during the investigation or conduct process. The determination to impose a no-contact order will be made on a case-by-case basis and will take into account the request of the Complainant.

Interim Suspension or Separation: Where the report of prohibited conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal University functions, WMU may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other University activities or privileges for which the individual might otherwise be eligible, as the University determines appropriate. When interim suspension or leave is imposed, the University will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The full provisions for Interim Suspension for students are contained in the WMU Student Code (see wmich.edu/conduct/code).

7. Resolution Options and Procedures

Any individual who reports prohibited discrimination or harassment can be assured that all reports will be investigated and resolved in a fair and impartial manner. All individuals involved can expect to be treated with dignity and respect. In every report under this Policy, the University will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

a. Overview of Options

Upon receipt of a report, Institutional Equity will conduct an initial assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of prohibited discrimination or harassment. As described in greater detail below, the assessment will consider the nature of the report, the safety of the individual and of the campus community, the Complainant's expressed preference for resolution, and the necessity for any interim measures, remedies or accommodations to protect the safety of the Complainant or the community, and the appropriate considerations for the Respondent.

At the conclusion of the assessment, Institutional Equity will determine the appropriate course of action described below. The specific procedures in determining responsibility following an investigation will be determined by the role of the Respondent (e.g., student, represented employee, unrepresented employee, faculty member). Each of the procedures is guided by the same considerations of fairness and equity, and both a Complainant and Respondent shall have the same opportunities and rights within those procedures. In determining whether this Policy has been violated, the University will apply the preponderance of the evidence standard (more likely than not).

Resources are available for both students and employees, whether as Complainants, Respondents or third parties, to provide support and guidance throughout the investigation and resolution of the complaint.

Throughout the process, a Complainant or Respondent may have an advisor of their choice present at any meeting related to the investigation or disciplinary proceeding. An advisor of choice may include an attorney. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process. The advisor is a silent and non-participating presence who is there solely to observe and provide support during the investigative process. The University has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. The advisor will be required to review the University's policies and procedures, privacy protections and expected participation/decorum. The advisor may not be a fact witness or otherwise have any conflicting role in the process.

b. Assessment:

When a report is made, Institutional Equity will conduct an initial assessment. In the course of this assessment, the University will consider the interest of the Complainant and the Complainant's expressed preference for manner of resolution. As outlined in Section 5A (Complainant Agency and Autonomy Not to Proceed), where possible and as warranted by an assessment of the facts and circumstances, the University will seek action consistent with the Complainant's request.

As part of the initial assessment of the facts, the University will:

- Assess the nature and circumstances of the report;
- Address immediate physical safety and emotional well-being;
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist the Complainant with notifying law enforcement;

- Notify the Complainant of the availability of treatment to address physical, mental or emotional health concerns and to preserve evidence, if necessary;
- Notify the Complainant of the importance of preservation of evidence;
- Assess the reported conduct for any necessary actions under Clery, including inclusion in the daily crime log, annual security report, or issuance of a timely warning;
- Provide the Complainant and Respondent, if notified, with information about: on and off-campus resources, the range of interim accommodations and remedies, and an explanation of the procedural options;
- Inform the Complainant and Respondent each may have an advisor of their choosing, which may include an attorney (at their own expense), colleague, or other person they identify, unless the advisor is a witness in the investigation; as noted above, the role of the advisor is to support the Complainant or Respondent, not to speak on their behalf during any part of the process;
- Assess for pattern evidence or other similar conduct by Respondent;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Explain the University's Policy prohibiting retaliation.

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the University has sufficient information to determine the best course of action.

At the conclusion of the assessment, Institutional Equity will determine the appropriate manner of resolution. The University may: 1) refer a report of behavior outside of this Policy to Student Conduct or other administrative office; or, 2) pursue an informal or voluntary resolution that does not involve disciplinary action against a Respondent; or, 3) initiate an investigation to determine if there has been a Policy violation, and if so, whether sanctions are warranted. The determination as to how to proceed will be communicated to the Complainant in writing, which may include an email. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University seeks action that would impact a Respondent, such as protective measures that restrict the Respondent's movement on campus, the initiation of an investigation or the decision to request the Respondent's involvement in an informal or voluntary resolution.

c. Referral

A report of alleged offensive or inappropriate behavior that doesn't meet the sufficiency standard of this Policy will be referred to Student Conduct for review under the WMU Student Code or to another administrative office, as appropriate. Institutional Equity will not conduct an investigation, but will maintain a file for the case in the event that a future incident requires further review under this Policy.

d. Informal or Voluntary Resolution

An informal or voluntary resolution is designed to eliminate a hostile environment by taking alternative actions that do not involve disciplinary action against a Respondent. Where the assessment concludes that an informal or voluntary resolution may be appropriate, the

University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational, extracurricular, employment and other activities at the University and to eliminate any hostile environment. Participation in an informal or voluntary resolution by a Complainant is voluntary, and a Complainant can request to end an informal or voluntary resolution at any time.

An informal or voluntary resolution is typically used when a Complainant requests anonymity, does not consent to participation in an investigation, or the alleged conduct, even if it does not rise to the level of a Policy violation, suggests the need for remedial, educational or preventive action. Depending on the form of informal or voluntary resolution used, it may be possible for a Complainant to maintain anonymity.

Examples of protective measures and accommodations are outlined in the Interim Measures section. Other potential remedies include targeted or broad-based educational programming or training, supported direct confrontation of the Respondent and/or indirect action as determined by the University.

The University may offer mediation for appropriate cases, but will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of an informal or voluntary resolution. The decision to use an informal or voluntary resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time.

The Office of Institutional Equity will maintain records of all reports and conduct referred for an informal or voluntary resolution.

e. Investigation

The University will designate an investigator(s) of its choosing. The investigator will typically be a member of Institutional Equity, although the investigator may be any appropriately designated employee of the University or an external investigator engaged to assist the University in its fact gathering. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest and must have specific training and experience investigating allegations of prohibited discrimination or harassment.

The investigation will be thorough, impartial and fair, and all individuals will be treated with sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of University policy and can subject a student or employee to disciplinary action. The investigator or designee will provide timely updates, as appropriate or requested, about the timing and status of the investigation.

It is the responsibility of the University, not the parties, to gather relevant evidence, to the extent reasonably possible. The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case. The investigator will coordinate the gathering of information from the Complainant, the Respondent and any other individuals who may have information relevant to the determination. The investigator will also gather

any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator will determine the relevancy of any proffered information, and will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait, including honesty.

Medical and counseling records of a Complainant or Respondent are privileged confidential records that individuals are not required to disclose. However, these records may contain relevant and material information and a party may voluntarily choose to share such records with the investigator. Any records provided by a party become part of the file and are available to review by the opposing party.

In gathering information, the investigators may consider other allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern or another material fact.

The investigators have the discretion to consolidate multiple reports against a Respondent into one investigation and resolution if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.

f. Review of Investigation

At the conclusion of the investigation, the investigator will prepare a written report that summarizes the complaint, details the information gathered, identifies the potential Policy violations and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts. In preparing the report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. Before the report is finalized, the Complainant and Respondent will be given the opportunity to review a draft investigative report that contains all information relied upon in reaching a determination. A Complainant and Respondent may submit any additional comment or evidence to the investigators within five (5) business days of the opportunity to review the relevant portions of the report.

Upon receipt of any additional information by the Complainant or Respondent, or after the five (5) day comment period has lapsed without comment, the investigator will make a determination, by a preponderance of the evidence, whether a Policy violation has occurred. In reaching this determination, the investigator may consult with General Counsel or other appropriate administrator.

The investigator will prepare a final report with the outcome and the rationale for the outcome finding regarding responsibility for alleged misconduct and any violations.

At the conclusion of the investigation, both the Complainant and Respondent will receive simultaneous written notification of the outcome and the rationale for the outcome.

g. Imposition of Sanction

The University will use its best efforts to complete its investigation and impose sanctions in a timely manner.

The procedure used to determine the appropriate sanction will be determined by the role of the Respondent. In all cases, the sanction will be imposed by an individual, referred to as the disciplinary authority, who will consider the imposition of a sanction designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and obligations. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

The disciplinary authority may consider the following factors:

- the nature of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, and any criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning and working;
- protection of the University community; and,
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

In reaching a determination about the appropriate sanction, the disciplinary authority will provide the Complainant, the Respondent and other affected parties, as appropriate, the opportunity to provide a written impact or mitigation statement for consideration. The disciplinary authority will also consult with Institutional Equity, Human Resources, General Counsel or other appropriate administrator.

The disciplinary authority may impose any sanction deemed appropriate after a consideration of all of the relevant information.

The Complainant, the Respondent and Institutional Equity will be notified, in writing, of the sanction and the rationale for the sanction. The Respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be informed of any sanctions that directly relate to the Complainant. The outcome letter will also provide each party with their appeal options. If, under extenuating circumstances, there are any changes to the outcome, both parties will be simultaneously notified at the earliest possible time.

The University may also notify appropriate administrators, including a direct supervisor of a Respondent, as necessary to implement the outcome and/or sanctions.

h. Sanction Process for Faculty and Staff as Respondents

With regard to faculty and staff as Respondents, sanctions will be determined as follows:

- For represented employees, sanctions will be imposed in accordance with the applicable collective bargaining agreement.
- For unrepresented employees, sanctions shall be determined in accordance with Human Resources' policies and procedures, individual contracts, and/or appointment letters.

All rights afforded to the employees as Respondents in a collective bargaining agreement, Human Resources policy or procedure, individual contract or appointment letter will be afforded to the Complainant as well.

The potential sanctions for an employee include training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination.

Respondents may appeal through the specific grievance procedures set forth in the policy and/or collective bargaining agreements. The underlying investigation and the determination of responsibility, however, will provide the foundation for any further review; no new investigation or finding with respect to responsibility will occur.

i. Sanction Process for Student Respondents

Sanctions for student Respondents will be determined by the Director of the Office of Student Conduct (OSC) or designee. The OSC Director/designee shall review the Investigator's Report and will consult with the Executive Director for Institutional Equity, Title IX Coordinator, General Counsel, or other offices as appropriate in determining sanctions. The Complainant and Respondent may submit an impact statement and a mitigation statement, respectively, to the OSC for review by the OSC Director/designee.

Complainants and Respondents will be given equal time to submit these statements for review. The sanction will be imposed by OSC. For a student employee who is acting within the scope of her/his employment at the time of the incident, the outcome may involve additional sanctioning imposed by the supervisor.

The sanctions may be imposed upon any student found to be responsible for violation of this Policy will be determined by the Director, OSC or designee as outlined in the [Student Code of Conduct](#). Sanctions may be used independently or in combination depending on the particular circumstance of the violation. More than one of the sanctions may be imposed for any single violation; previous violations of this Policy and/or any policies listed in the WMU Student Code shall increase the severity of sanctions applied.

j. Appeals process Involving Students as Respondents

At the discretion of the Director of the OSC and Institutional Equity, in some cases, the imposition of sanctions may take effect immediately and will not be stayed pending the resolution of the appeal. In most instances, however, decisions made regarding student sanctions shall not be final until an appeal deadline has passed with no appeal by either

party or at the conclusion of the appeal process.

The Complainant or Respondent may submit written appeal within five (5) University business days of the notice of the sanction outcome. The following are the only accepted bases for an appeal:

- To determine whether there was a procedural error that significantly affected the outcome of the investigation or sanctioning;
- To consider newly discovered evidence, not reasonably available during the investigation, that could substantially impact the outcome;
- To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe.

The appeal will be reviewed by the Vice President for Student Affairs or designee. Any appellate authority must be an impartial decision-maker with appropriate training to hear an appeal under this Policy.

An appeal must be submitted in writing to the OSC within five (5) University business days of the date the outcome is provided to the Complainant and Respondent. The appeal shall consist of a plain, concise and complete written statement outlining the basis for appeal and all relevant information to substantiate the claim.

The receipt of the appeal will be acknowledged in writing 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.

The Vice President for Student Affairs or designee shall forward the appeal decision in writing to the OSC and Institutional Equity. The OSC will contact the Complainant and Respondent with the outcome. The appeal decision of the Vice President for Student Affairs or designee is final.

