

**Western Michigan University**  
**Sexual and Gender-Based Harassment and Violence,**  
**Intimate Partner Violence, and Stalking**  
**Policy and Procedures**

Resources for Assistance Following Incidents of Sexual or Gender-based  
Harassment and Violence available at [wmich.edu/sexualmisconduct/resources](http://wmich.edu/sexualmisconduct/resources)

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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 sexual and gender-based discrimination, harassment, and violence and all other forms of prohibited conduct described in this Policy, including stalking, and intimate partner violence. 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 sexual or gender-based discrimination, harassment, or violence and are prohibited by federal law.

## 2. General Statement of Policy Requirements and Notice of Non-Discrimination under Title IX

Unlawful sex or gender-based discrimination, including sexual harassment, sexual violence and other forms of sexual misconduct, is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides:

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*"No person in the United States shall, on the basis of sex, 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."*

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Title IX applies to all of the University's program and activities, and requires the University to not discriminate in such a manner. Title IX also prohibits retaliation against any individual who files a good faith complaint or participates in an investigation under Title IX. Sexual or gender-based harassment is also prohibited under [Title VII](#) of the Civil Rights Act of 1964, and other applicable statutes, including the Michigan Elliott Larsen Civil Rights Act.

The University prohibits sexual or gender-based, harassment and violence, intimate partner violence, and stalking 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 the Title IX Coordinator. In addition, many Western Michigan University employees, referred to as [Responsible Employee](#), are required to share information with the Title IX Coordinator, the administrator who oversees this Policy and the University's compliance with Title IX and related federal and state laws.

The University has an obligation to make reasonable efforts to assess and address instances of sexual or gender-based harassment and violence, intimate partner violence and stalking 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 the Title IX Coordinator, a designated Responsible Employee, or any University resource or support unit under this Policy that is not designated as confidential, 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 the Title IX Coordinator for investigation, which may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying prohibited conduct.

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, age, protected disability, veteran status, height, weight, or marital status.

In addition, the University's response to sexual assault, intimate partner violence and stalking are governed by the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (the Clery Act) and Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).

This Policy also prohibits sexual discrimination, harassment, violence, and stalking committed by or against WMU community members of any gender, gender identity, gender expression, or sexual orientation.

Other forms of prohibited discrimination and/or harassment, including race, color, religion, national origin, age, protected disability, veterans status, height, weight, and marital status, are governed by the University's Non-Discrimination Policy which is located at [wmich.edu/policies/non-discrimination-policy](http://wmich.edu/policies/non-discrimination-policy).

Where conduct involves the potential violation of both this Policy and the Non-Discrimination Policy, the provisions of this 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, 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. To be consistent with U.S. Department of Education language, 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. All Complaints, regardless of the role of the Respondent, should be referred to the University’s Title IX Coordinator, who can assist in supporting the Complainant, identifying University and external reporting options and implementing reasonably available interim measures.

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 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. Title IX Coordinator

WMU has designated Felicia Crawford, Director Title IX Compliance in Institutional Equity to serve as the University's Title IX Coordinator. The Title IX Coordinator will be informed of all reports of sexual or gender-based harassment and violence, stalking, and intimate partner violence, and will oversee the University's centralized review, investigation, and resolution of those reports to ensure the University's compliance with Title IX and the effective implementation of this Policy.\* The Office of Institutional Equity's website can be found at [wmich.edu/equity](http://wmich.edu/equity).

\*Note: When this Policy refers to reporting to the Title IX Coordinator, those reports may also be made to those persons specifically designated by the University to receive such reports as the Title IX Coordinator's designee.

The Title IX Coordinator is:

- Responsible for overseeing investigations of sexual and gender-based harassment and violence, intimate partner violence or stalking involving all community members (student, faculty, staff, administrators, visitors and third parties)
- Responsible for monitoring and overseeing the University's compliance with Title IX and relevant VAWA provisions
- Knowledgeable and trained in University policies and procedures and relevant state and federal laws
- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the University, both informally and formally, and in the community
- Responsible for overseeing and providing reasonably available interim measures that protect a Complainant and assure equal access to University programs and activities, including educational and employment opportunities
- Responsible for administering and communicating the grievance procedures

- Available to provide assistance to any University employee regarding how to respond appropriately to a report of sexual or gender-based harassment or violence, intimate partner violence or stalking
- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this Policy
- Responsible for coordinating and oversight of outreach education or training to increase awareness and prevention of sexual and gender-based harassment and violence, intimate partner violence and stalking throughout the campus community

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

**Title IX Coordinator**

Felicia T. Crawford  
 Director, Title IX Compliance  
 Office of 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

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

**5. Prohibited Conduct and Definitions**

The University prohibits all forms of sexual and gender-based harassment and violence, intimate partner violence, and stalking prohibited by Title IX and VAWA. The University will treat attempts to commit any prohibited conduct as if those attempts had been completed. Within these broad categories, the University prohibits the following forms of conduct:

## a. Sexual and Gender-Based Harassment

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

- i. 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; or
- ii. Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
- iii. 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 objective standard.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other context.
- May be a one-time event or may be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Sexual Assault, Stalking, Non-Consensual Sexual Contact, Sexual Exploitation, and Intimate Partner Violence, as defined in this Policy
- Physical conduct:
  - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
- Verbal conduct:
  - Making or using derogatory comments, epithets, slurs or humor
  - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
  - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
  - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum
  - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate
- Written conduct:
  - letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
  - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
  - Offering employment benefits in exchange for sexual favors
  - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
  - Making or threatening reprisals after a negative response to sexual advances

## **b. Sexual Assault**

**Sexual Assault:** Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated.

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.

### c. Non-Consensual Sexual Contact

**Non-Consensual Sexual Contact:** Having sexual contact with another individual:

- By force or threat of force;
- Without consent; or
- Where 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.

### d. Sexual Exploitation

**Sexual Exploitation:** Occurs when an individual takes 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. Examples of Sexual Exploitation include, but are not limited to:

- 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, or distribution of 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;
- sexually-based bullying; and
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

### e. Harm to Others

**Harm to Others:** Words or types of conduct that threaten or endanger the health or safety of any person including physical abuse, verbal abuse, threats, intimidation and/or harassment. This behavior is typically treated as a violation of the WMU Student Code (see [wmich.edu/conduct/code](http://wmich.edu/conduct/code)). However, acts which constitute harm to others that are a form of sexual or gender-based harassment and violence, intimate partner violence, or stalking will be resolved under this Policy.

### f. Stalking

**Stalking:** A course of physical or verbal conduct directed at another individual 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, a particular form of 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 as the manner of contact.

### **g. Intimate Partner Violence**

**Intimate Partner Violence:** Often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner.

Sexual harassment, sexual assault, sexual exploitation, harm to others, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

### **h. Retaliation**

**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.

## **6. Related Definitions: Consent, Force, Coercion, Incapacitation**

### **a. Consent**

**Consent:** Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. Participants must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

The following are essential elements of effective consent:

*Informed and reciprocal:* All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

*Freely and actively given:* Consent cannot be obtained through the use of force, coercion, threats, or intimidation, or by taking advantage of the incapacitation of another individual.

*Mutually understandable:* Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

*Not indefinite:* Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

*Not unlimited:* Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

## **b. Force**

**Force:** Force is the use or threat of physical violence or intimidation to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

## **c. Coercion**

**Coercion:** Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against the individual’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

## **d. Incapacitation**

**Incapacitation:** Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or other drugs. Consumption of alcohol or other drugs, impairment, inebriation or intoxication are insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person.

In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual and gender based harassment and violence, intimate partner violence, or stalking and does not diminish one's responsibility to obtain consent.

## **7. Relationships in Violation of Policy**

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors, or other non-student University employees. Similarly, University employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

Faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students or subordinates should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is differential in power or authority produce risks for every member of

our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the University.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to their direct supervisor. Failure to fully or timely comply with these requirements is a violation of this Policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the University.

The University does not intend to interfere with private choices regarding personal relationships when these relationships do not violate the goals and policies of the University.

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.

## **8. 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 Title IX Coordinator 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, including the risk of additional violence;
- v. whether there have been other reports of misconduct by the Respondent;
- vi. whether the Respondent threatened further sexual violence or other violence against the Complainant or others;
- vii. whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group such that there is an increased risk of future acts of sexual violence under similar circumstances;
- 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 Title IX Coordinator will inform the Complainant 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. Confidential Resources and Reporting Options/Responsible Employees**

The University provides two general categories of assistance and support. They are designated in this Policy as Confidential Resources and Reporting Options/Responsible Employees. As detailed below, Confidential Resources are licensed or specially trained professionals who, by law, cannot share information without the consent of the individual seeking assistance. Reporting Options/Responsible Employees, on the other hand, encompass a wider range of University administrators and departments that will maintain an individual's privacy, but who are also required to share information with the Title IX Coordinator or other administrators within a small circle of those involved in responding to a report under this Policy. Privacy has a different meaning from Confidentiality and is explained below.

### c. Privacy and Confidentiality

WMU is committed to protecting the privacy of all individuals involved in a report of sexual and gender-based harassment and violence, intimate partner violence, and stalking. All WMU employees who are involved in WMU's Title IX response, including the Title IX Coordinator, investigators, and sanction panel members, receive specific instruction about respecting and safeguarding private information. 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. List of Confidential Resources

- Counselors at Counseling Services in Sindecuse Health Center [wmich.edu/healthcenter/counseling](http://wmich.edu/healthcenter/counseling) (269) 387-1850 or the Center for Counseling and Psychological Services in Sangren Hall, (269) 387-5105, and Grand Rapids Clinic (616) 771-4171.
- Medical/clinical staff at Sindecuse Health Center [wmich.edu/healthcenter/clinic](http://wmich.edu/healthcenter/clinic) (269) 387-3287.
- Off campus community resources, including rape crisis counselors and domestic violence resources (such as the YWCA [ywcakalamazoo.org](http://ywcakalamazoo.org) (269) 385-3587), local state assistance agencies and ordained clergy/pastoral counselors.
- Employee Assistance Program [wmich.edu/hr/resources/eap](http://wmich.edu/hr/resources/eap) (269) 372-4500; 1-800-523-0591.

## **e. 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. 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 the Title IX Coordinator's Office;
- 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.

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 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. Before or during this decision-making process, Complainants and other reporting persons are encouraged to seek support and information from a Confidential Resource.

The University has a strong interest in supporting individuals impacted by sexual and gender-based harassment and violence, intimate partner violence, and stalking and utilizes a trauma-informed approach. Reasonably available interim measures may be imposed that take into account the known facts and circumstances, the existence of a potentially hostile environment, and the interests of both the Complainant and Respondent.

## **f. Responsible Employees**

Many University employees have reporting obligations under Title IX. Those employees are designated as Responsible Employees. Under Title IX, the University is required to take immediate and corrective action if a Responsible Employee knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment or violence prohibited under Title IX.

A Responsible Employee includes any employee who:

- Has the authority to take action to redress sexual or gender-based harassment or violence;
- Has the duty to report to appropriate school officials sexual or gender-based harassment or violence or any other misconduct covered by this Policy;
- An individual could reasonably believe has the authority or responsibility to take action.

The University requires that all Responsible Employees immediately report allegations of violation of this Policy to the Title IX Coordinator or designee. This connects a Complainant to information and resources and enables the University to take appropriate action to eliminate,

prevent and address any hostile environment that may exist. The following officials have been designated as Responsible Employees for complaint reporting purposes:

- Institutional Equity Staff
- Public Safety Officers and Employees
- President, Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents, and Directors
- Administrative Unit heads
- Housing and Residence Life Staff, including Resident Assistants
- Student Affairs Staff
- Human Resources Staff
- Deans, Associate Deans, and Assistant Deans
- Academic Department and School Chairs and Directors, and other Academic Unit heads
- Athletic coaches, assistant coaches, trainers, directors, assistant directors, advisors, associate directors, and managers
- Academic advisors
- Faculty members, part time instructors, adjunct instructors, teaching assistants, research assistants, graduate assistants, and graduate service assistants.
- Office of Diversity and Inclusion/Multi-Cultural Affairs Staff with any Supervisory Responsibilities
- Other Administrators with Supervisory Responsibilities
- Individuals designated as Campus Security Authorities

Responsible Employees will safeguard an individual's privacy and only share information with a small circle of individuals who are directly involved in the resolution of a report under this Policy. Responsible Employees are nonetheless required by the University to immediately share all known details of the incident (date, time location), the names of the parties involved, and a brief description of the incident with the Title IX Coordinator or designee in person, by telephone or email, or through the online reporting system.

## **9. Reporting: Additional Considerations**

### **a. Timeliness and Location of Incident**

All individuals are encouraged to report sexual and gender-based harassment and violence, intimate partner violence, and stalking as soon as possible in order to maximize the University's ability to respond promptly and effectively. The University does not, however, limit the time frame for reporting. If the Respondent is not a member of the WMU community at the time of the report, the University will still seek to meet its Title IX obligations by providing reasonably available support for a Complainant, but its ability to investigate and/or take action may be limited. The University will, however, assist a Complainant in identifying external reporting options.

An incident does not have to occur on campus to be reported to the University. See Scope section.

## **b. Anonymous Reporting**

Any individual may make an anonymous report concerning an act of sexual and gender-based harassment and violence, intimate partner violence, and stalking. 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 online at [wmich.edu/sexualmisconduct/report](http://wmich.edu/sexualmisconduct/report) or by telephone at (269) 387-6316.

The Title IX Coordinator 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.

## **c. Amnesty for Alcohol or Other Drug Use**

To encourage reporting, individuals who in good faith report conduct prohibited by this Policy, either as a Complainant or a witness, will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **d. Coordination with Law Enforcement**

The University encourages Complainants and Respondents to pursue their rights under Michigan law regarding claims of prohibited conduct that may also violate state law. The University will offer assistance to involved parties by directing them to law enforcement agencies regarding criminal reports and cooperating with law enforcement agencies. A Complainant has the right to notify, or decline to notify, law enforcement. This constitutes a recognized exception to the University Duty to Report policy, which generally requires that University employees report all potential criminal acts (see [wmich.edu/policies/criminal](http://wmich.edu/policies/criminal)). In the context of sexual assault, intimate partner violence and stalking, federal law mandates that it is an adult Complainant's option to notify or decline to notify law enforcement.

The University's Policy, definitions and burden of proof may differ from Michigan criminal law. The parties involved may seek recourse under this Policy and/or pursue their rights under Michigan law. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this Policy has occurred. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, the University may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the

implementation of interim measures to assure safety and well-being. The University will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation.

#### **e. Reports Involving Minors or Suspected Child Abuse**

Under Michigan law, certain school administrators, school counselors, and school teachers are required to file a report of suspected child abuse when they have reasonable cause to suspect abuse or neglect. Please see the University's Minors on Campus website for applicable policies on this topic and more details at [wmich.edu/legal/minors-on-campus](http://wmich.edu/legal/minors-on-campus).

All University employees, whether designated as a mandatory reporter (see Mandated Reporters' Resource Guide [michigan.gov/documents/dhs/Pub-112\\_179456\\_7.pdf](http://michigan.gov/documents/dhs/Pub-112_179456_7.pdf)) under Michigan state law or not, are required to comply with the Policy on Western Michigan University Programs and Activities Involving Minors (see [wmich.edu/policies/minors](http://wmich.edu/policies/minors)).

University employees are also required to immediately report any good faith suspected criminal acts against minors to the Western Michigan University Department of Public Safety. The source of the suspected crime does not need to be known in order to file a good faith report.

The University must act quickly regarding all reasonable suspicions of conduct that would constitute a violation of this Policy and other policies involving minors. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse or other criminal acts. This is the role of DHS and law enforcement authorities. In addition to notifying the Western Michigan University Department of Public Safety, or DHS, if a child is in immediate danger, an individual should call 911.

Individuals designated as mandatory reporters by Michigan state law are also required to report to the Michigan Department of Human Services (DHS).

The Department of Human Services may be reached at 1(855) 444-3911. DHS-3200 Form can be accessed at: [www.michigan.gov/documents/FIA3200\\_11924\\_7.pdf](http://www.michigan.gov/documents/FIA3200_11924_7.pdf) or [www.michigan.gov/dhs](http://www.michigan.gov/dhs).

## **10. 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. The Title IX Coordinator/investigator, 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](http://wmich.edu/conduct/code)).

## **11. Resolution Options and Procedures**

Any individual who reports sexual or gender-based harassment or violence, intimate partner violence or stalking 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, the Title IX Coordinator or designee will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual and gender-based harassment and violence, intimate partner violence and stalking. 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, the Title IX Coordinator 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. Title IX Assessment**

When a report is made, the Title IX Coordinator or designee in the Office of Institutional Equity will conduct an initial Title IX 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 8A (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 medical treatment to address physical and mental health concerns and to preserve evidence
- 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 student, not to speak on behalf of or for the student 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 Title IX Assessment, the Title IX Coordinator or designee 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 Title IX 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. Mediation, requested by the parties, may not be used in cases involving sexual assault. 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 the Office 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 sexual and gender-based harassment or violence.

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.

In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence during an investigation. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges that consent was given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not

relevant and will only be permitted under very limited circumstances, for example, to explain an injury or physical finding.

Any party seeking to introduce information about prior sexual history of the Complainant or prior misconduct by the Respondent should bring this information to the attention of the investigator at the earliest opportunity. The University, through the investigator, may choose to consider this information, with appropriate notice to the parties. With respect to pattern evidence or prior sexual history of either party, the investigator, in consultation with the Title IX Coordinator, will assess the relevance, form, and reliability of the information (hearsay will not be permitted) and determine if it is appropriate for consideration in the determination of responsibility. Evidence regarding a pattern of behavior of the Respondent or the sexual history of either party will be allowed only if it is directly relevant to a disputed fact.

The investigator and Title IX Coordinator 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.

#### **g. Optional Hearing Process for Students<sup>1</sup>**

Once the investigative report is received, students have the right<sup>2</sup> to request a hearing, where they may ask questions of any other party and/or any witnesses. As stated in section 11(a), each party 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. The advisor is a silent and non-participating presence who is there solely to observe and provide support. The hearing may be held using videoconferencing, so the parties do not need to be in the same room. A hearing officer will decide whether the Policy was violated based on the investigative report and the information obtained in the hearing. The hearing officer will use the preponderance of the

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<sup>1</sup> This subsection and related edits to other subsections is made pursuant to Section 10 of WMU's Policy Development and Approval Policy, which provides for interim policy changes without review by the full University Policy Committee in circumstances where a University Policy must be established in a timeframe that is too short to conform to the Policy Development and Approval.

<sup>2</sup> On September 7, 2018, the Sixth Circuit held that in *Doe v. Baum*, the University of Michigan's lack of cross-examination in a Title IX investigation amounted to a failure to provide due process. On October 11, 2018, the Sixth Circuit denied the University of Michigan's petitions for rehearing.

evidence standard. The Office of Institutional Equity will provide procedures and guidelines to assist the parties through the hearing process.

#### **h. Outcome**

When the students involved do not elect a hearing, or when the case involves non-students, 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 the Title IX Coordinator, General Counsel or other appropriate administrator.

The Title IX Investigator or hearing officer 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.

#### **i. Imposition of Sanction**

The University will use its best efforts to complete its investigation and impose sanctions within 60 calendar days of the commencement of an investigation, although this time frame may be extended for good cause. Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate reasons. In the event a time frame is extended, both the Complainant and Respondent will be notified of any delay, the reason for the delay, and an anticipated time frame.

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 Title IX 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 and violence 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;
- 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 the Title IX Coordinator, 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 the Office of 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.

#### **j. 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.

There is no appeal. However, the specific procedures set forth in the collective bargaining agreements may allow for further review. 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.

#### **k. 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 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 following sanctions may be imposed upon any student found to be responsible for violation of this Policy. 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. Sanctions are listed in order of severity from least severe to most severe.

**Warning:** verbal or written notice that specific inappropriate conduct is unacceptable

**Reprimand:** an official written censure containing three components: A reprimand for inappropriate behavior, notice that the conduct associated with the violation must stop immediately and permanently, and notice that additional violations shall result in more severe sanctions

**Behavior Contract:** a written contract between the student and the University wherein the student agrees to correct inappropriate behaviors.

**Discretionary Sanctions:** Service to the University, service to the community, attendance at educational seminars, classes, or workshops, written assignments, or other activities deemed appropriate by the conduct body. The student is required to submit written proof of participation in and/or completion of the sanction to the conduct body. (Some seminars, classes, and workshops may require a registration fee.)

**Loss of Privileges:** Denial of specified privileges for a designated period of time. Examples of privileges that can be denied include: academic program dismissal, campus registration of an automobile, parking in a specific area or during specific time periods, access to a building or portion of a building, access to a program, on-campus living, holding of an office in a Registered Student Organization, participation in extra-curricular activities, access to a particular living group and any other privilege that the conduct body deems appropriate to deny.

**Probation:** Probation requires that a student's conduct be reviewed for a specified period of time. Conditions of the probationary period will be specified to the student by the OSC Director/designee and may be applied during the probationary period. All conditions must be satisfied and verified prior to the completion of the probationary period. If a student is found responsible for violation of any institutional policy(s) during the probationary period, more severe sanctions could be applied.

**Suspension:** Separation of the student from the University or a University program for a period of time, after which the student is eligible to return. During this time, the student under suspension shall forfeit all rights of her/his student status for the duration of her/his suspension and may have her/his privileges of access to University premises revoked. Conditions for readmission and/or continued enrollment after re-admittance may be specified. All conditions for readmission

must be satisfied, completed and certified to the OSC/or designee prior to re-admittance. Also, a written plan for adherence to conditions of continued enrollment after re-admittance from a suspension shall be provided to the OSC/or designee for review and approval.

**Expulsion:** Permanent separation of the student from the University. An expelled student shall have no access to University premises and shall forfeit all rights of her/his student status immediately and permanently upon expulsion

**Revocation of Degree:** A degree awarded from WMU may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining the degree, or for other serious violations committed by a student prior to graduation. Being a degree holding alumnus is sufficient association with the University and basis for application of this sanction.

**Withholding Degree:** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Policy, including the completion of all sanctions imposed, if any.

## 1. Appeals Process Involving Students as Respondents

At the discretion of the Title IX Coordinator and Director of the OSC, 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 the Office of 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.

## **12. Prevention, Education and Training**

The University is committed to the prevention of sexual and gender-based harassment and violence, intimate partner violence, and stalking through education and awareness programs. The University is also committed to the protection of minors and the prevention of child abuse. Throughout the year, the University offers educational programs to promote awareness of sexual and gender-based harassment and violence, intimate partner violence and stalking. Prevention programs include an overview of the University's policies and procedures, relevant definitions, including prohibited conduct, discussion of the impact of alcohol and drug use, effective consent, safe and positive options for bystander intervention, and information about risk reduction. Incoming first year students and new employees will receive primary prevention and awareness programming as part of their orientation. The University's Title IX Coordinator oversees the education and prevention calendar and tailors programming to campus needs and climate. All educational programs include a review of resources and reporting options available for students, faculty and staff.

The [Office of Health Promotion and Education](#) coordinates the following education opportunities regarding sexual and gender-based harassment and violence, intimate partner violence and stalking. The focus is on primary prevention, bystander intervention, and reporting/referral support.

- Theatre for Community Health offers applied theater performances and flash mob dances on topics including, but not limited to, relationships, alcohol and other drugs, dehumanization/violence prevention, consent, and bystander intervention.
- The Sexual Health Peer Education program offers presentations and awareness events on topics including, but not limited to, relationships, consent, and healthy communication.
- The FIRE (Fighting Ignorance and Rape through Education) peer education program offers presentations and awareness events on topics including relationships, consent, violence (including dating and domestic), stalking, sexual assault, sexual harassment, dehumanization, and bias incidents.
- The FIRE Place is a support and resource center offering education, healing arts, resources, referrals, and reporting assistance for survivors and friends of survivors of sexual assault, sexual harassment, intimate partner violence, and any other form of bias incident.
- The Western HEROES program offers trainings on bystander intervention skills as they apply to the health and safety of the campus community on topics including, but not

limited to, dehumanization, violence (dating, domestic, hazing), sexual harassment, relationships, alcohol and other drugs, and mental health.

- Gentlemen United, a co-curricular prevention leadership program, is designed to empower men to step up and make WMU a safe and fun place for everyone. Supported by grant funding from Michigan First Lady Sue Snyder's Campus Sexual Assault Grant Program and WMU's Division of Student Affairs, this program challenges students to complete leadership training while having meaningful conversations about how to have great relationships, understanding consent, and encouraging healthy social habits.

As part of the University's commitment to provide an educational and work environment free from sexual and gender-based harassment and violence, intimate partner violence and stalking, this Policy will be disseminated widely to the University community through email communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

### **13. Review of Policy**

This Policy will be reviewed on a periodic basis to incorporate evolving law and guidance, evaluate the supports and resources available to the parties, and assess the effectiveness of the investigation and resolution process.

### **14. Effective Date and Policy Effect**

This Policy shall apply to all complaints made on or after January 13, 2015, regardless of when the conduct was alleged to have occurred. This Policy supersedes any policies and procedures to the contrary. This Policy was reviewed and updated in September 2016 by the Title IX Committee. References to the rescinded 2011 and 2016 Dear Colleague Letters were removed April 2018. The optional hearing process for students was added January 7, 2019.