

APPENDIX H

Michigan State University Anti-Discrimination Policy/Relationship Violence & Sexual Misconduct Policy Student Conduct Review Panel Procedures

Background

The University prohibits acts of harassment and sexual misconduct through its Anti-Discrimination Policy, Relationship Violence & Sexual Misconduct Policy, and General Student Regulations.

All complaints of alleged harassment in violation of the Anti-Discrimination Policy (“ADP”) or alleged relationship violence or sexual misconduct in violation of the Relationship Violence & Sexual Misconduct Policy are investigated by, or under the oversight of, the Office of Institutional Equity (OIE). These procedures provide a process to challenge investigation findings issued by OIE and to impose sanctions when investigations result in a finding of a policy violation.

Complaints that have been investigated and subsequently referred to the student conduct process call for a unique set of procedural considerations. Federal law compels the University to conduct a prompt, thorough, and impartial investigation of complaints of relationship violence and sexual misconduct. If that investigation results in a finding that University policy has been violated, the University must take prompt, remedial action to remedy the harassment, relationship violence, or sexual misconduct. Referral to the student conduct process to determine the appropriate sanction is an important part of the University’s obligation to take prompt, remedial action.

I. ADP/RVSMP REVIEW PANEL

The ADP/RVSMP Review Panel reviews and adjudicates challenges to investigation findings made by OIE in cases involving alleged violations of the ADP and RVSMP. The ADP/RVSMP Review Panel may also determine the appropriate sanction when an investigation results in a finding of a policy violation.

A. Composition

The ADP/RVSMP Review Panel shall be comprised of one student, one faculty member, and one staff member drawn from a roster of trained undergraduate students, graduate students, faculty, and staff.¹ Individuals are appointed by the Office of the Provost annually and shall not serve concurrently on any other student conduct review boards. Consistent with

¹ When constituting a review panel, there shall be a strong preference to include an undergraduate student for cases involving an undergraduate claimant and respondent and a graduate student for cases involving a graduate claimant and respondent.

University policy and applicable law, every reasonable effort will be made to assure diversity.

B. Review Panel Jurisdiction

The ADP/RVSMP Review Panel shall convene to (1) review challenges to the findings of OIE, and (2) determine the appropriate sanction to be imposed when a violation of University policy has been found.

II. CHALLENGES TO OIE FINDINGS

- A. The OIE provides copies of all investigation reports to the parties and the Student Conduct and Conflict Resolution Office (“SCCRO”) upon completion. Upon receipt of the report, the SCCRO will take the following actions:
1. Notify both the claimant and respondent of their right to file a written challenge to the OIE finding within 10 class days of the notice.²
 2. Invite both the claimant and the respondent to submit a written statement within 10 class days of the notice regarding the appropriate sanction if a violation of policy has been found.
 3. Offer the claimant, respondent, and OIE investigator an opportunity to meet with a SCCRO administrator within the ten day period referenced above to answer questions about the challenge and/or hearing process.
- B. If no challenge is filed within the deadline, the SCCRO administrator or ADP/RVSMP Review Panel will proceed to determine the appropriate sanction (see Section IV. Imposition of Sanctions below) for those investigations where a policy violation has been found.
- C. If a challenge is filed within the deadline, the ADP/RVSMP Review Panel will review the challenge pursuant to the following guidelines:
1. Challenges are filed on-line, and must specify the basis for challenge in sufficient detail to justify further proceedings. The written challenge must allege that the OIE finding was arbitrary and capricious or resulted from procedural error. A finding is arbitrary and capricious when the application of the policy has no reasonable basis in fact. A finding resulted from procedural error where the procedural error (including bias or impartiality) materially affected the outcome.
 2. The party alleging that the finding was arbitrary and capricious or resulted from procedural error bears the burden of proof.

² The claimant is the individual who filed the complaint with OIE. The respondent is the individual against whom the complaint was filed.

3. The parties shall be informed of the names of the members on the ADP/RVSMP Review Panel roster. The parties shall have five class days from receiving the notice to challenge any panel member for cause. The standard the SCCRO shall follow in ruling on challenges for cause is whether, in light of the challenged person's knowledge of the case or personal or professional relationships with the claimant, respondent, witnesses, or OIE investigator, the challenged person would be able to hear the case fairly and impartially.
4. New evidence will not be considered in a challenge unless the information was previously unavailable to the party submitting it and the party acted with due diligence to obtain such evidence.
5. The review panel will review the challenge and forward a copy of the challenge to OIE and the other party to invite a written response. After considering the challenge and the written response, the review body may:
 - a. Decide that it does not have jurisdiction³ to hear the challenge and dismiss the challenge;
 - b. Direct the OIE to re-open the investigation to clarify its findings or remedy procedural errors;
 - c. Uphold the OIE investigation finding; or
 - d. Decide that sufficient reasons exist to conduct a hearing regarding the challenge.

III. CHALLENGE REVIEW HEARING PROCEDURES

If the Review Panel determines that sufficient reasons exist to conduct a hearing regarding the challenge, the following procedures will apply:

- A. At least five class days prior to a hearing, both parties and the OIE investigator shall receive written notification of the date, time, and location of the hearing.
- B. At the time of the hearing notification, both parties and the OIE investigator will be provided with copies of all written materials submitted regarding the challenge.
- C. The parties and OIE investigator shall have two class days from receiving the hearing notice to provide the SCCRO with the names of his/her witnesses or advisors. The parties and OIE investigator will receive a second notice containing this information not

³ There is no jurisdiction when the challenge fails to allege that the OIE finding was arbitrary and capricious or resulted from procedural error.

less than one class day prior to the hearing.

- D. Either the claimant or respondent may request, for good cause⁴, that the hearing be postponed. The hearing body may grant or deny such a request.
- E. Hearings shall be closed unless both parties agree to an open hearing. The review panel may close an open hearing at any time to maintain order or protect the confidentiality of information. An open hearing is open to any member of the University community.⁵
- F. The claimant has the right not to appear in the hearing room or otherwise confront the respondent during the hearing process.
- G. The party filing the challenge to the OIE finding is expected to participate in the hearing process. The party responding to the challenge is encouraged to participate in the hearing process. The OIE investigator (or other OIE representative if the investigator is unavailable) is expected to participate in the hearing process to provide information about the investigation process and findings.
- H. Participation may be through means other than in-person attendance at the hearing, including presenting the case in writing or through other communication methods such as phone, webcam, video conference, etc. If the party filing the challenge to the OIE finding fails to participate (either in person or through other means), the review panel may proceed with the hearing in the absence of the party, postpone the hearing, or dismiss the challenge.
- I. The parties may call witnesses on their behalf. 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. Witnesses must be members of the University community, unless the review panel body determines that the witness has direct knowledge of the facts pertaining to the matter at issue. Witnesses may be present in the hearing only when testifying. Witnesses may submit written statements in lieu of testifying only with the express permission of the review panel. The review panel may limit the number of witnesses. Witnesses may not serve as an advisor to either party.
- J. Both parties are entitled to bring an advisor of their choice to the review. The advisor may be an attorney, parent, counselor, advocate, or any other individual of the student's choice other than a participating witness. The advisor may be present throughout the meeting but may not speak for the student and shall have no voice during the review. However, each party's advisor may be granted special permission to participate in the opening or closing statement.

⁴ "Good cause" is defined as circumstances outside of a party's control, such as illness, death in the family, or class conflict.

⁵ Members of the University community include current students, faculty, and staff.

- K. The parties will not be permitted to personally question or cross-examine each other during a review. However, both parties may submit proposed questions to the review panel. The review panel will determine whether the questions are appropriate and relevant to the case. If so, the review panel will ask those questions.
- L. Both parties are permitted to question the OIE investigator about the investigation process and/or the OIE investigation finding.
- M. The review panel may ask clarifying questions of either party or the OIE investigator during a review.
- N. Both parties will be simultaneously informed in writing of the review body's decision. The report shall include the rationale for the decision, any sanction (if applicable), and notification of any right to appeal. A copy of the decision will also be provided to the OIE.

IV. IMPOSITION OF SANCTIONS

In matters where the OIE investigation results in a finding of a policy violation and after all challenges to the finding have been resolved, the SCCRO administrator or ADP/RVSMP Review Panel will determine the appropriate sanction.

- A. Upon receipt of the OIE investigation findings, the SCCRO will notify both parties of their right to file a written statement within ten class days of the notice regarding the appropriate sanction.
- B. If no challenge is filed, the SCCRO administrator will determine the appropriate sanction unless the Respondent requested that the sanction be determined by the ADP/RVSMP Review Panel. The Respondent will be notified of the right to make this request at the time written statements regarding the appropriate sanction are solicited.
- C. The administrator/review panel will review the available record, including any written statements from the parties, and determine the appropriate sanction. The administrator/panel may choose from the list of sanctions listed in Section V below.

V. APPEALS

- A. Either party or the OIE investigator may appeal a decision to overturn the OIE findings to the Vice President for Student Affairs and Services on the basis that the Review Panel did not apply the appropriate standard in rendering its decision. Appeals must be filed within five class days of the review panel's decision.
- B. Either party may appeal a sanction of suspension or dismissal to the Vice President for Student Affairs and Services on the basis that the applicable procedures were not followed, there was a conflict of interest involving a member of the review panel, or the

record does not support the sanction imposed. Appeals must be filed within five class days of the review panel's decision.

- C. Either party may appeal a decision of a sanction less than suspension or dismissal to the designee of the Vice President for Student Affairs and Services on the basis that the applicable procedures were not followed, there was a conflict of interest involving a member of the panel, or the record does not support the sanction imposed. Appeals must be filed within five class days of the review panel's decision.
- D. Written appeals will be shared with the other party and the OIE investigator, who shall have 5 class days to submit a written response. No further responses or materials may be submitted.
- E. New evidence will not be considered unless the information was previously unavailable to the party submitting it and the party acted with due diligence to obtain such evidence.
- F. Both parties will be simultaneously informed in writing of the decision on appeal. Appeal decisions are final.

VI. SANCTIONS FOR PERSONAL MISCONDUCT

Disciplinary sanctions imposed should be based on a consideration of all circumstances in a particular case, including a student's prior record of misconduct, if any. Such sanctions may include any one or more of the following:

- A. Warning: An official written statement expressing disapproval of the behavior and notifying the student it must not occur again.
- B. Probation: An official written statement establishing a period of time for observing and evaluating a student's conduct and indicating that any additional violations may result in more severe disciplinary action. This period may be accompanied by stipulations, including but not limited to restitution, participation in an educational program, or loss of specified University privileges.
- C. Restitution: A requirement that a student pay for property damages or losses resulting from acts committed by the student, with the date by which the restitution must be completed.
- D. Change of residence: The student shall be required to move from his or her current on-campus residence, either to an off-campus location or to another location within the University housing system.
- E. Other: The student may be required to complete an educational program or activity or comply with the reasonable conditions of a behavioral contract.
- F. Disenrollment from a course: If the complaint is based on disruptive behavior in a

specific class, the hearing body may recommend to the Provost that the student be disenrolled from that course.

- G. Suspension: A suspension is temporary removal from the University for a particular period of time, at the conclusion of which the student is eligible to apply for readmission. A suspension may also be a conditional suspension, in which case the student must demonstrate that he/she has fulfilled stated conditions prior to applying for readmission. Only the Vice President may impose the sanction of suspension from the University.
- H. Dismissal: A dismissal is a permanent removal from the University. Only the Vice President or Provost may impose the sanction of dismissal from the University.

VII. OTHER STUDENT CONDUCT PROCEEDINGS

The OIE investigation and the review procedures outlined in this document are the sole processes available at the University to investigate, adjudicate, and review allegations of the Anti-Discrimination Policy (“ADP”) or Relationship Violence & Sexual Misconduct Policy involving students. While the OIE investigation findings may be used for employment or academic disciplinary purposes when consistent with the *Michigan State University Student Rights and Responsibilities* (“SRR”) document, the underlying conduct may not form the basis for other student conduct proceedings.

VIII. TIMEFRAMES

The following timeframes apply to the review procedures outlined in this document.

- A. If no challenge to the OIE decision is filed and the decision included a finding of a policy violation, the SCCRO or the ADP/RVSMP Review Board will determine the appropriate sanction within 10 class days.
- B. If a challenge to the OIE decision is filed, the ADP/RVSMP Review Panel will convene to conduct its initial review of a challenge within 15 class days after the challenge has been filed. This timeframe may be extended during periods when classes are not held (i.e., Spring Break, final examination week, etc.).
- C. If the ADP/RVSMP Review Panel concludes that a challenge hearing is necessary, such hearing will be scheduled within 15 class days from the date of its initial decision. This timeframe may be extended during periods when classes are not held (i.e., Spring Break, final examination week, etc.).
- D. The ADP/RVSMP Review Panel will render a decision and a sanction (if applicable) within 10 class days after the challenge review and/or hearing (if applicable).
- E. The Vice President for Student Affairs or designated administrator will issue a decision in writing within 10 class days after receiving a written appeal. This timeframe may be

extended for good cause, provided that the parties are provided with notice of the extension and the expected date of the decision.

- F. Interim measures imposed pending the outcome of the investigation process shall remain in place until a final determination is made under these procedures.

If the timeframes are not met, an individual may file a complaint regarding the lack of timeliness with the Title IX Coordinator. The Title IX Coordinator will review the complaint and determine whether any remedial action is appropriate and what additional measures are necessary to assure compliance with the timeframes.

IX. TRAINING

Review administrators and members of the ADP/RVSMP Review Panel will be required to complete training regarding the University's Anti-Discrimination Policy and Relationship Violence & Sexual Misconduct Policy prior to conducting or participating in a review.

X. CONFIDENTIALITY

Records of the ADP/RVSMP Reviews are considered confidential. In accordance with state and federal law, the University identifies the names of respondents and student disciplinary sanctions in sexual violence cases upon receipt of public information requests. The University redacts all information that might disclose the identity of a victim of sexual misconduct or prohibited harassment.

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