

Michigan State University
Anti-Discrimination Policy/Relationship Violence & Sexual Misconduct Policy
Student Conduct Sanction and Appeal 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 (RVSMP) are investigated by, or under the oversight of, the Office of Institutional Equity (OIE). These procedures provide a process to (1) impose sanctions when investigations result in a finding of a policy violation, (2) challenge investigation findings issued by OIE, and (3) challenge sanctions imposed.

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 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.

These procedures will be reviewed and updated as needed, typically annually at a minimum. The Office of Student Conduct and Conflict Resolution (SCCR) will apply the ADP/RVSMP Student Conduct Sanction and Appeal Procedures in effect at the time of the referral to SCCR.

I. ADP/RVSMP SANCTION PANEL

The ADP/RVSMP Sanction Panel determines the appropriate sanction when an investigation results in a finding of a policy violation. The SCCR will establish two panels comprised each of one student, one faculty member, and one staff member, which will meet weekly on alternating weeks to review pending matters and determine appropriate sanctions. The panels are established from a pool of 4 undergraduate students, 2 graduate student, 4 faculty members, and 4 staff members. Individuals who are not seated on the weekly panels will serve as alternates serving as needed.

A. Panel Selection and Appointment

Prior to the end of each semester, the SCCR will identify any upcoming vacancies (e.g. graduation) and solicit nominations for the panel. As vacancies occur nominations to serve are solicited from the following constituencies: Associated Students of Michigan State University (undergraduate students), Council of Graduate Students (graduate student), Human Resources (staff members), and Academic Governance (faculty).

Nominees must be confirmed by the Office of the Provost and continuing panel members must be reappointed by the Office of the Provost annually. Individuals shall not serve concurrently on any other student conduct review boards. Consistent with University policy and applicable law, every reasonable effort will be made to assure diversity. The current list of sanction panel members is available at:

<http://studentlife.msu.edu/sccr/hearing-boards/hearing-board-rosters>.

B. Panel Training

Nominees are required to complete training before their appointment is submitted to the Office of the Provost for approval. Continuing panel members are required to complete training on an annual basis. Training shall include but is not limited to: Current policies and grievance procedures; the role and duties of OIE and the Title IX Coordinator; how to report, recognize and appropriately address incidents and complaints under Title IX; how to identify sex discrimination, sexual and gender-based harassment, assault and violence; the University's responsibilities under Title IX; guidelines for issuing sanctions; confidentiality requirements; and information on the relevant resources available to claimants and respondents.

C. Conflicts of Interest

Panel members shall make every effort to avoid any conflict of interest. Both the claimant and the respondent may challenge any Panel member for *cause*¹. A challenge to any member must be submitted in the same manner as a sanction recommendation, which is outlined in a notice from the SCCR prior to the Panel's review.

II. SANCTION DETERMINATION PROCESS

- A. The OIE provides copies of all investigation reports that result in a finding of a policy violation to the Student Conduct and Conflict Resolution Office ("SCCR") upon completion. Upon receipt of the report, the SCCR will notify both the claimant and respondent of their right to submit a written victim impact or respondent mitigation statement about the appropriate sanction to be imposed.
1. The purpose of this statement is to provide both the claimant and respondent with an opportunity to be heard about the appropriateness of the sanction, including any aggravating or mitigating factors that the claimant or respondent believes are relevant to the sanction decision.
 2. This statement must be submitted within 7 calendar days of the notice.
 3. Submission of such a statement is completely voluntary, but strongly encouraged.

¹ Cause exists when the challenged member's knowledge of the case, or personal or professional relationships with the claimant, respondent, or a witness, renders the challenged member incapable of hearing the case fairly and impartially.

- B. In determining the appropriate sanction, the ADP/RVSMP Sanction Panel will review the OIE report, any written statements from the parties, and information from the SCCR regarding the respondent's student conduct record. The panel may also confer with the Title IX Coordinator regarding sanctions imposed in other cases involving similar conduct.
- C. The ADP/RVSMP Sanction Panel will consider the sanctioning factors listed in Section IV below and may choose from the list of sanctions listed in Section V below. Additionally, the ADP/RVSMP Sanction Panel will consider the factors outlined in MSU's Guidelines for Issuing Disciplinary Sanctions: Student Conduct Sanctions for ADP/RVSMP Violations. .
- D. The ADP/RVSMP Sanction Panel will issue a written decision regarding the appropriate sanction within 7 calendar days after meeting. The written decision will be communicated to both the claimant and respondent simultaneously by the SCCR and will include notice of the appeal process. A copy of the written decision will also be provided to the Title IX Coordinator and OIE.
- E. If no appeal is filed, the sanction will be implemented by the appropriate administrator within 7 calendar days of the expiration of the appeal period.

III. APPEALS

- A. Both the claimant and respondent may appeal the OIE decision or the sanction issued by the Sanction Panel. In cases where OIE is acting as the claimant on behalf of the University, OIE may appeal the panel's sanction decision. In such cases, OIE will provide the claimant with the opportunity to give input on the decision to appeal and the substance of the appeal.
- B. An appeal must allege one or more of the following:
 - 1. The OIE finding was arbitrary and capricious. A finding is arbitrary and capricious when the application of the policy has no reasonable basis in fact.
 - 2. The OIE finding resulted from procedural error. A finding resulted from procedural error where the procedural error (including bias or impartiality) materially affected the outcome.
 - 3. The sanction is clearly inappropriate or is not commensurate with the seriousness of the offense.
- C. Appeals must specify the basis for the appeal in sufficient detail to justify further proceedings. All appeals must be filed within 10 calendar days of the corresponding written notice of sanction or investigation outcome. In cases where there is no violation of the ADP or RVSMP and the case is not referred to SCCR, notice of the investigation

outcome and appeal procedures will be provided by the Office of Institutional Equity and the appeal process will be administered by the Equity Review Officer.

- D. The party filing the appeal bears the burden of proof. To successfully argue that a finding was arbitrary and capricious, a party should explain in detail how the facts presented to OIE should have led to a different conclusion. To successfully argue that OIE's decision resulted from procedural error, a party should explain how OIE failed to follow a policy or procedure and why the error altered the outcome.
- E. Each party will be provided an opportunity to respond in writing to an appeal filed by the other party. The OIE will also be provided an opportunity to respond in writing to any appeal of its decision. Written responses to an appeal must be filed within 10 calendar days of the written notice of appeal. Copies of written responses will be shared with the other party/OIE; additional rebuttal statements will not be accepted.
- F. Appeals involving a suspension or dismissal will be determined by the Vice President for Student Affairs and Services. All other appeals will be determined by an Equity Review Officer. An Equity Review Officer is a neutral individual designated by the Provost to adjudicate appeals under this process.
- G. The Vice President / Equity Review Officer may confer with the Title IX Coordinator and other University administrators as necessary and will be advised by the Office of the General Counsel.
- H. New evidence will not be considered in an appeal unless the information was previously unavailable to the party submitting it and the party acted with due diligence to obtain such evidence.
- I. The Vice President / Equity Review Officer will review the appeal, any written responses to the appeal, the OIE investigation report, the sanction panel decision, and any victim impact/respondent mitigation statements filed regarding the sanction. The Vice President / Equity Review Officer may request other relevant documents necessary to his/her review of the appeal through the OIE Director. This includes requests for clarification or additional explanation from OIE regarding its report of findings. If clarification or additional explanation is provided by OIE as part of the appeal review, it will be shared with the parties, who will be given an opportunity to provide further comment to the Vice President/Equity Review Officer before the appeal decision is made.
- J. Both the Claimant and Respondent may request to meet with the Vice President/Equity Review Officer. The Vice President / Equity Review Officer may choose to meet with a party if the Vice President / Equity Review Officer deems it necessary for his/her review of the appeal. If the opportunity to meet is provided to one party, it will be provided automatically to the other party. Providing such an opportunity shall not unreasonably delay the appeal process.
- K. The Vice President / Equity Review Officer will issue a written decision within 14 calendar days of receiving the appeal documents.

- L. In appeals regarding the OIE investigation finding, the Vice President / Equity Review Officer may:
1. Uphold the OIE investigation finding;
 2. Determine that significant procedural errors occurred during the OIE investigation and remand the matter to OIE with instructions to re-open the investigation to clarify its findings or remedy procedural errors;
 3. Determine that substantive and relevant new evidence has been presented that warrants additional investigation or review by OIE; or
 4. Reverse or modify ²the OIE investigation finding based on a determination that the OIE decision was arbitrary and capricious or resulted from procedural error.
- M. In appeals of the sanction, the Vice President / Equity Review Officer may uphold the sanction or alter the sanction if it is determined that the sanction is clearly inappropriate or disproportionate to the seriousness of the offense.
- N. The decision of the Vice President / Equity Review Officer is final and not subject to additional appeal.

IV. SANCTIONING FACTORS

Disciplinary sanctions imposed should be based on a consideration of all circumstances in a particular case. When determining an appropriate sanction, the Sanction Panel will consider a range of factors, outlined in the Guidelines for Issuing Disciplinary Sanctions: Student Conduct Sanctions for ADP/RVSMP violations.

V. SANCTIONS FOR PERSONAL MISCONDUCT

Sanctions imposed may include any one or more of the following:

- A. **Warning:** An official written statement expressing disapproval of the behavior and notifying the student that 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.

² Modification may occur in cases that include multiple allegations where alteration of some, but not all of the outcomes is appropriate.

- 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 may be reassigned to a different housing location within the University housing system or removed from University housing on a temporary or permanent basis.
- E. No Contact Order: Requirement that the student not contact the claimant in any manner, including but not limited to, in-person; phone; e-mail; social media; or having someone else contact the person.
- F. Other: The student may be required to complete an educational program, activity or comply with the reasonable conditions of a behavioral contract.
- 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.
- H. Dismissal: A dismissal is a permanent removal from the University.

VI. 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 ADP or RVSMP 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.

VII. TIMEFRAMES

- A. The timeframes in this document may be extended for good cause³, provided that the parties are provided with notice of the extension and the expected date of the decision. Extensions will generally be made before the deadline has expired and explain why there is good cause for the extension.
- B. Interim measures imposed pending the outcome of the investigation process shall remain in place until a final determination is made under these procedures.

³ Good cause is defined as reasons including, but not limited to circumstances outside of a party’s control, such as illness, death in the family, or a class conflict.”

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.

VIII. ASSISTANCE WITH THE PROCESS

Either party may meet with the University Ombudsperson to obtain information about the sanction or appeal process. Students may also seek information about the sanction or appeal process through ASMSU's Student Rights Advocates at dsrals@asmsu.msu.edu. Assistance for claimants is also available relationship violence and stalking incidents through MSU Safe Place at safeplace.msu.edu and sexual assault incidents through MSU's Sexual Assault Program at endrape.msu.edu/contact.

IX. TRAINING

Administrators, Equity Review Officers, and members of the ADP/RVSMP Sanction Panel involved in the sanction or appeal process are required to complete annual training regarding the ADP and RVSMP.

X. CONFIDENTIALITY

Records of the ADP/RVSMP Sanction Panel, Vice President, and Equity Review Officer are considered confidential to the maximum extent allowed by law. 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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