

# University Policy on Relationship Violence & Sexual Misconduct

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## **I. Introduction**

Michigan State University is committed to maintaining a learning and working environment for all students, faculty, and staff that is fair, humane, and responsible - an environment that supports career and educational advancement on the basis of job and academic performance. Relationship violence, stalking, and sexual misconduct subvert the mission of the University and offend the integrity of the University community. Relationship violence, stalking, and sexual misconduct are not tolerated at Michigan State University.

The University will respond to complaints, reports, or information about incidents of relationship violence, stalking, and sexual misconduct to stop the prohibited conduct, eliminate any hostile environment, take steps to prevent the recurrence of the prohibited conduct, and address any effects on campus or in any University programs and activities regardless of location.

The purpose of the Relationship Violence and Sexual Misconduct (RVSM) Policy is to define relationship violence, stalking, and sexual misconduct, describe the process for reporting violations of the policy, outline the process used to investigate and adjudicate alleged violations of policy, and identify resources available to members of the University community who are involved in an incident of relationship violence, stalking, or sexual misconduct. The RVSM Policy will be reviewed annually at a minimum, but may be updated more frequently as needed.

## **II. Applicability and Prohibition**

This policy applies to all members of the University community- faculty, staff, and students- regardless of gender<sup>1</sup>, sexual orientation, or gender identity. Further, the policy applies to all members of the University community regardless of national origin or any other characteristic protected under the University's Anti-Discrimination Policy. Members of the University community shall not engage in relationship violence, stalking, or sexual misconduct against employees, students, or third parties.<sup>2</sup> Persons who do so are subject to disciplinary action, up to and including discharge for employees and dismissal for students. The University also prohibits relationship violence, stalking, and sexual misconduct by third parties towards members of the University community when the third party has been brought into contact with the member of the University community through a University program or activity. Although individuals who are not students or employees of the University are not subject to discipline under the University's internal processes, the University will take prompt, corrective action to eliminate relationship violence, stalking, and sexual misconduct and prevent its recurrence in those circumstances.

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<sup>1</sup> Therefore, the sex of the claimant and respondent is irrelevant under the Policy.

<sup>2</sup> A third party is an individual who is not a member of the University community (faculty, staff, or student). Examples of third parties include visitors, guests, contractors, alumni, or students from other institutions.

<sup>3</sup>The University prohibits retaliation, including retaliatory harassment, against individuals who report relationship violence, stalking, or sexual misconduct or who participate in the University's investigation and handling of such reports.

This policy applies to all forms of relationship violence, stalking, and sexual misconduct committed by or against a member of the University community when:

- The conduct occurs on campus;
- The conduct occurs off-campus in the context of University employment, education, or research programs or activities, including but not limited to MSU-sponsored study abroad, internships, graduate/professional programs, intercollegiate athletics, or other affiliated programs; and/or
- The conduct occurs off-campus outside the context of a University program or activity but has continuing adverse effects on campus or in any University program or activity.

MSU does not have jurisdiction to investigate reported incidents involving members of the University community that occurred prior to the individual being enrolled or employed by MSU when the incident did not occur on campus or in connection with a university program, activity, or employment. MSU will provide resources and assistance to support the academic or employment success of any individual reporting relationship violence, stalking, or sexual misconduct regardless of MSU's jurisdiction to investigate.

### **III. Gender Discrimination**

Title IX of the Educational Amendments of 1972 prohibits gender discrimination at institutions of higher education. The University prohibits gender discrimination<sup>4</sup> in any of its programs or activities. Sexual harassment, including sexual assault and other kinds of sexual violence, is a form of gender discrimination. This policy and its related procedures apply to complaints alleging all forms of gender discrimination (including sexual harassment, sexual assault, and sexual violence) against employees, students, and third parties. For the purposes of this policy, references to sexual misconduct include all forms of sex discrimination, including sexual and gender-based harassment, assault, and violence.

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<sup>3</sup> Examples of corrective action may include but are not limited to discontinuing affiliation with an individual/organization, issuing a criminal trespass restrictions for certain campus locations, and/or targeted or broad-based educational programming or training.

<sup>4</sup> For more detail on MSU's policy prohibiting gender discrimination, please review MSU's Anti-Discrimination Policy, which can be accessed at [www.oie.msu.edu](http://www.oie.msu.edu).

#### **IV. Title IX Coordinator**

The University's Title IX Coordinator oversees the University's gender equity work to ensure compliance with Title IX, including its grievance procedure, education/prevention efforts, and training. The Title IX Coordinator reviews information about relationship violence, stalking, and sexual misconduct complaints to identify and address any patterns or systemic problems that arise during the review of such complaints. The Title IX Coordinator is available to meet with any member of the University community or campus organization that would like to discuss the University's Title IX compliance or work involving matters of sex discrimination, including sexual and gender-based harassment, assault, or violence.

##### Contact Information:

Robert Kent  
Office for Civil Rights and Title IX Education and Compliance  
408 W. Circle Dr. Suite 105, Olds Hall  
East Lansing MI 48824  
(517) 353-3922  
[ois@msu.edu](mailto:ois@msu.edu)

#### **V. Office of Institutional Equity (OIE)**

The Office of Institutional Equity (OIE) is responsible for the University's compliance with federal and state laws and University policies and procedures regarding discrimination, harassment, relationship violence, stalking, and sexual misconduct. OIE is responsible for investigating all allegations of prohibited discrimination and harassment, including relationship violence, stalking, and sexual misconduct, and provides training to recognize and prevent such incidents. OIE also collaborates with other campus offices to encourage best practices to promote a culture of inclusion. The Director of OIE is designated as the Deputy Title IX Coordinator for Investigations. The Deputy Title IX Coordinator for Investigations is available to advise any individual, including the claimant, respondent, or a third party, about University and community resources and reporting options and is available to provide assistance to any University employee regarding how to respond appropriately to a report of relationship violence, sexual misconduct, or stalking.

##### Contact Information:

Office of Institutional Equity  
408 W. Circle Dr, Suite 4, Olds Hall  
East Lansing MI 48824  
(517) 353-3922  
[ois@msu.edu](mailto:ois@msu.edu)

## VI. Roles

Individuals play a number of important roles within the University's RVSM investigation and adjudication process. The following are descriptions of each of those roles within the process.

**Claimant:** A person who may have been subjected to prohibited conduct regardless of whether that person makes a report or seeks action under this policy. This term does not imply pre-judgment concerning whether the person was subjected to prohibited conduct. In cases where there are no identified claimants or claimants willing to participate in the investigation process, the University may be named as the claimant if the Deputy Title IX Coordinator for Investigations determines that an investigation is appropriate. Claimants are provided with access to free and confidential campus and community resources. Claimants have the right to request anonymity in the process. Claimants may also request that OIE not initiate an investigation. Occasionally, in order to provide a safe environment for members of the campus community, the University may not be able to honor that request, but, in such circumstances, the claimant will be notified before an investigation is commenced and will not be required to participate in the investigation. Claimants have the option to report the matter to law enforcement (criminal investigation), to the University, to both, or to neither as the claimant may choose. Claimants may request interim and protective measures during the investigation and adjudication processes in order to maintain continued access to employment and educational programs. A support person or advisor, of the claimant's choosing, may be utilized to accompany a claimant to meetings with OIE and to provide support and advice during the sanction and appeal processes. Claimants have the opportunity to provide evidence, witnesses, and other relevant information to OIE as part of the investigation process. Because the process is an investigatory hearing, claimants may also submit questions for the other party through OIE. Claimants have the opportunity to review the preliminary investigative report and provide feedback. Claimants have the right to appeal the outcome of the OIE decision and appeal or grieve the sanction.

**Respondent:** A person, registered student organization, or entity (e.g., department, college, or office) that has been accused of committing prohibited conduct. This term does not imply pre-judgment concerning whether the person, registered student organization, or entity committed the prohibited conduct. Respondents are provided with access to free and confidential campus and community resources. A support person or advisor, of the respondent's choosing, may be utilized to accompany a respondent to meetings with OIE and to provide support and advice during the sanction and appeal processes. Respondents have the opportunity to provide evidence, witnesses, and other relevant information to OIE as part of the investigation process. Because the process is an investigatory hearing, respondents may also submit questions for the other party through OIE. Respondents have

the opportunity to review the preliminary investigative report and provide feedback. Like claimants, respondents have the right to appeal the outcome of the OIE decision and appeal or grieve the sanction. Where OIE issues interim measures to provide continued access to employment or education programs for a claimant, respondents are required to adhere to the interim measures and may be referred to Student Conduct and Conflict Resolution if the interim measures are not followed.

**Witnesses:** A person believed to have information regarding an investigation, including but not limited to someone present when the incident occurred, someone the claimant or respondent communicated with about the incident, and/or someone who may have information relevant to the investigation. Witness participation in the OIE investigatory process is voluntary. While MSU encourages witnesses to cooperate with the investigative process, MSU cannot compel or require witnesses to participate. Participating witnesses meet or speak with an OIE investigator to provide relevant information and evidence. Where OIE identifies multiple witnesses with the same information, OIE may determine that it is not necessary to interview all witnesses identified by the parties if information was sufficiently corroborated by others or if a witness does not have information relevant to the investigation (e.g., character witness). Both the claimant and the respondent may suggest witnesses; however, OIE may identify additional witnesses throughout the course of the investigation. The number of witnesses presented by a party is not determinative of the outcome. MSU's RVSM Policy prohibits retaliation against individuals participating in the investigation process, including witnesses.

**Investigator:** A professionally trained staff member in the Office of Institutional Equity, or a professionally trained outside expert who conducts the investigation under the supervision of the Title IX Coordinator and/or Director of OIE, who conducts an impartial, fair, and unbiased investigation into allegations of violations of the University's RVSM Policy. The investigator provides both parties with the opportunity to provide information, evidence, and names of potential witnesses. The investigator conducts the investigation process as an investigative hearing where the claimant and respondent are provided the opportunity to submit questions through the investigator to be asked of the other parties. The investigator prepares a preliminary investigation report and provides both parties with the opportunity to review the report and submit feedback. The investigator reviews all of the information and applies the preponderance of the evidence standard to determine whether the conduct at issue occurred and, if so, whether the conduct constitutes a violation of the RVSM Policy. Determinations are made based on the totality of the information. In cases where there is insufficient information for the investigator to determine if the Policy was violated, the investigator will conclude there was no violation of the Policy.

**Reporter:** A person who communicates a concern of prohibited conduct to the University. A reporter need not be a claimant.



**Mandatory Reporter:** A University employee identified in Section XIII.E.4. with specific requirements for reporting information about relationship violence, stalking, and sexual misconduct to the University.

**Sanction Panel:** The Sanction Panel's role is to determine appropriate discipline to be imposed on students when OIE has made a finding that a student violated the RVSM Policy. The Sanction Panel bases disciplinary sanctions on a consideration of all circumstances in a particular case, including the victim impact statement and the respondent mitigating factor statement, and considers a range of factors as outlined in the Guidelines for Issuing Disciplinary Sanctions: Student Conduct Sanction for ADP/RVSMP Violations document. The panel convenes weekly at a regularly scheduled time to review pending matters and determine appropriate sanctions. Each Sanction Panel is comprised of one student, one faculty member, and one staff member. Sanction panels members are nominated to serve, approved by the Provost, and receive annual training.

**Human Resources/Academic Human Resources:** Central Human Resources administration responsible for advising unit administrators regarding the imposition of appropriate disciplinary action when OIE has determined that an employee violated the RVSM Policy. Unit administrators confer with Human Resources/Academic Human Resources prior to imposing disciplinary action.

**Appeal Officers:**

- **Equity Review Officer:** The Equity Review Officer (“ERO”) is a neutral individual appointed by the Provost to adjudicate appeals under the ADP/RVSMP Student Conduct Sanction and Appeal Procedures and the ADP/RVSMP Employee Appeal Procedures. The ERO reviews appeals and makes a determination in the following circumstances: (1) appeal of OIE decision in cases involving employee respondents; (2) appeal of OIE decision in cases involving student respondents where no violation was found; (3) appeal of student conduct sanction in cases involving student respondents where a violation was found and the sanction issued was below a suspension. Students and employees may appeal the OIE decision on the basis that the decision is (1) arbitrary and capricious and/or (2) resulted from procedural error. Students may appeal the sanction panel decision on the basis that the sanction is clearly inappropriate or is not commensurate with the seriousness of the offense. The ERO may confer with the Title IX Coordinator and other University administrators as necessary. Review by the ERO helps ensure a consistent, fair process. When reviewing OIE decisions, ERO may uphold the decision, overturn the decision, or remand the case back to OIE for further clarification or investigation. More information about the appeal process can be found in the Relationship Violence & Sexual Misconduct Policy, ADP/RVSMP Employee Appeal Procedures, and ADP/RVSMP Student Conduct Sanction and Appeal Procedures.

- Vice President for Student Affairs and Services:** The Vice President for Student Affairs and Services (VPSAS) is responsible for reviewing student appeals of the OIE decision and the Sanction Panel’s sanction decision in cases involving a sanction of suspension or dismissal. Students may appeal the OIE decision on the basis that the decision is (1) arbitrary and capricious and/or (2) resulted from procedural error. Students may appeal the sanction panel decision on the basis that the sanction is clearly inappropriate or is not commensurate with the seriousness of the offense. VPSAS may confer with the Title IX Coordinator and other University administrators as necessary. Review by VPSAS helps ensure a consistent, fair process. When reviewing OIE decisions, VPSAS may uphold the decision, overturn the decision, or remand the case back to OIE for further clarification or investigation. VPSAS also reviews appeals of student disciplinary sanctions where the sanction is suspension or dismissal to determine if the sanction issued is commensurate with the seriousness of the offense. More information about the appeal process can be found in the ADP/RVSMP Sanction and Appeal Procedures, Guidelines for Issuing Disciplinary Sanctions: Student Conduct Sanctions for ADP/RVSMP Violations, and Guidelines for Issuing Disciplinary Sanctions: Faculty and Academic Staff ADP/RVSMP Violations.

**Student Conduct and Conflict Resolution:** Student Conduct and Conflict Resolution (SCCR) is the unit responsible for administering the student conduct sanction and appeal process. Where OIE has determined that a student violated the RVSM Policy, OIE refers the matter to SCCR for adjudication within the student conduct sanction and appeal process. SCCR notifies both the claimant and respondent of the steps in the process and their right to submit a victim impact statement or respondent mitigating factors statement. SCCR notifies the claimant and respondent of the sanction decision rendered by the Sanction Panel and provides the parties with information regarding their appeal rights. SCCR facilitates the appeal process including notifications about appeals filed and the opportunity to submit an appeal response by the party who is not appealing. SCCR refers appeals to the appropriate appeal officer for review and determination. For more information on the role of SCCR, review the ADP/RVSMP Student Conduct Sanction and Appeal Procedures and the ADP/RVSMP Student Conduct Sanction and Appeal Flow Chart.

## **VII. Relationship Violence and Sexual Misconduct**

“Relationship violence” and “sexual misconduct” are broad terms that encompass sexual harassment, sexual violence, domestic violence, dating violence, and stalking. Definitions for each of these terms are provided below.

## **VIII. Relationship Violence**

“Relationship violence” is a broad term that encompasses domestic violence, dating violence, and stalking. Definitions for these terms are provided below.

Relationship violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse. While relationship violence can include non-physical tactics, including ongoing emotional, psychological, fiscal abuse, and control, this Policy addresses only physical acts of relationship violence. Individuals experiencing non-physical/sexual abuse should seek help from campus resources, regardless of where the abuse occurred, and may wish to review the General Student Regulations to determine if incident is within the purview of that Policy.

When analyzing allegations of relationship violence, the following factors are considered:

- The existence of any power differential between the parties, such as a position of authority or influence;
- The existence of fear by either party of the other party resulting from specific actions taken by the other party intended to induce fear; and
- Context of behavior (e.g., a history of coercive controlling tactics by one party over the other; intended and actual outcome of their behavior on the other; one party acting in self-defense or in response to recent violations, abuse, threats or coercive tactics; and/or out of fear of imminent harm or danger).

This policy recognizes that individuals have the right to defend themselves or another person under certain circumstances. If an individual indicates they acted in self-defense, OIE will use all of the available, relevant evidence to evaluate the context, including the perceptions and explanations of both parties. OIE will consider which party was the predominant aggressor.

The predominant aggressor is the individual, in a relationship violence incident, who uses violence to exert power and/or control over the other individual. The predominant aggressor may not necessarily be the party to initiate the violence, particularly in cases where a victim has used violence in self-defense, to obtain withheld property, in an attempt to flee, or interrupt an act of violence.

The following factors may be considered in determining the predominant aggressor:

- Offensive and defensive injuries, if any, and any other probative physical evidence;
- Use of threats of harm against the other party, another family member, household member, and/or their property;
- Possession or use of a weapon or another means of injuring the other party;
- A prior history of violence in the relationship;
- The reasonableness of the defensive behavior;

- Witness statements; and/or
- Any other factor determined to be relevant given the specific factual allegations presented.

### **A. Domestic Violence**

Domestic violence<sup>5</sup> is defined as an act of violence committed by any of the following individuals:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A resident or former resident of the victim's household<sup>6</sup>

### **B. Dating Violence**

Dating violence<sup>7</sup> is defined as an act of violence committed by a person who is or has been in a social relationship of a romantic, sexual, or intimate nature with the victim that does not fall within the definition of "domestic violence." For the purposes of this definition:

- Whether the relationship is of a romantic, sexual, or intimate nature is determined by a variety of factors, including the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- A relationship of a romantic or intimate nature is characterized by ongoing or past physical and/or emotional intimacy between the parties.

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<sup>5</sup> Domestic violence is a crime under Michigan law. Specific information about the criminal offense can be found in the Michigan penal code at MCLA § 750.81 and MCLA § 750.81a and in Appendix D.

<sup>6</sup> For the purposes of this Policy, individuals are not covered within the scope of this definition solely by virtue of their status as a roommate or former roommate in University housing or as a co-tenant or former co-tenant in off-campus housing shared with other students. Such individuals may, however, face student conduct proceedings or criminal consequences for engaging in such conduct.

<sup>7</sup> Dating violence is a form of domestic violence under Michigan law. Specific information about the criminal offense can be found in the Michigan penal code at MCLA § 750.81 and MCLA § 750.81a and in Appendix D.

## **IX. Stalking**

“Stalking” is defined as engaging in a course of conduct that is directed at a specific person or persons that would cause a reasonable person to feel fear for themselves or for the safety of others, or to suffer substantial emotional distress.

- A “course of conduct” means two or more acts directed at a specific person or persons. In the context of stalking, this can include, but is not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.
- The term “reasonable person” is a legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, texts, cell phones, or other similar devices or forms of contact are used. This policy prohibits all stalking, not just stalking that occurs within the context of a relationship.

## **X. Sexual Misconduct**

“Sexual misconduct” is a broad term that encompasses sexual harassment, sexual violence, and sexual exploitation.

### **A. Sexual Harassment**

Sexual harassment is a form of unlawful gender (sex) discrimination. “Sexual harassment” is defined as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome behavior of a sexual nature. Sexual harassment violates University policy when:<sup>8</sup>

1. Submission to such behavior is made, explicitly or implicitly, a term or condition of an individual's employment or status in a course, program, or activity; or

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<sup>8</sup> Discrimination or harassment based on gender that does not involve unwanted sexual attention is prohibited gender discrimination under the University’s Anti-Discrimination Policy and is investigated by the Office of Institutional Equity using the same process described in this policy. Gender-based harassment includes harassment based on sex or gender, gender identity, or gender expression, which may include acts of intimidation or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature.

2. Submission to or rejection of such behavior is used as a basis for a decision affecting an individual's employment or participation in a course, program, or activity; or
3. Such behavior is so severe, persistent, or pervasive that a reasonable person would find that it:
  - a. Alters the terms or conditions of a person's employment or educational experience, or
  - b. Unreasonably interferes with an individual's work or performance in a course, program, or activity, thus creating a hostile or abusive working or educational environment.

A person's subjective belief alone that behavior is offensive does not necessarily mean the conduct rises to the level of a policy violation. The behavior must also be objectively offensive to meet the definition of prohibited sexual harassment.

The term “reasonable person” is a legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.

In determining whether behavior is sexual harassment, the totality of the circumstances, including the nature of the behavior and the context in which it occurred, must be considered. Sexually harassing conduct often involves a pattern of offensive behavior. A single incident may also constitute sexual harassment, depending on the severity of the conduct and on factors such as the degree to which the conduct affected the student’s education or the employee’s work environment; the type of conduct; and the relationship between the alleged harasser and the student or employee. The conduct does not have to be directed at a specific person or persons to constitute harassment.

### **B. Examples of Sexual Harassment**

Many kinds of behavior may fit within the preceding definition of sexual harassment. Speech and expressive conduct can also be sexual harassment. The following is a non-exhaustive list of examples of behavior that might fall within the preceding definition of sexual harassment:<sup>9</sup>

- Sexual violence, including sexual assault, rape, and sexual exploitation;

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<sup>9</sup> These behaviors must meet the definition of sexual harassment contained in Section VIII.A of the policy in order to constitute prohibited sexual harassment.

- Threats or insinuations that lead the recipient reasonably to believe that granting or denying sexual favors will affect her or his reputation, education, employment, advancement, or standing within the University;
- Sexual advances, sexual propositions, or sexual demands that are not welcome to the recipient;
- Persistent romantic pursuit such as repeated requests for dates or romantic encounters that are not welcome to the recipient;
- Unwelcome sexually explicit material sent to a recipient in any manner, including but not limited to electronic communication methods;
- Stalking, cyberstalking, recording or transmitting sexual or nude images and/or audio without an individual's permission, and voyeurism
- Unwelcome and persistent sexually explicit statements or stories that are not legitimately related to employment duties, course content, research, or other University programs or activities
- Repeatedly using unwelcome sexually degrading words or sounds to a person or to describe a person
- Unwanted and unnecessary touching, patting, hugging, or other physical contact
- Recurring unwelcome comments or questions about an individual's sexual prowess, sexual deficiencies, sexual behavior, or genitalia

Behavior of a sexual nature that is not sexual harassment may nonetheless be unprofessional in the workplace, disruptive in the classroom, or violate other University policies and, like other behavior that is unprofessional, disruptive, or violates policy, could warrant discipline.

### **C. Sexual Violence**

Sexual violence is defined as a physical sexual act perpetrated without consent. A number of different acts can fall within the definition of sexual violence, including rape, sexual assault, and sexual contact.

- “Sexual Assault” is defined as sexually penetrating, attempting to sexually penetrate, or having sexual contact with another individual by force or threat of force; without consent; or where the victim is incapacitated.
- “Rape” is a form of sexual assault that includes:

- Non-consensual penetration, no matter how slight, of the victim's genital opening, anus, or mouth with any body part or object; or
- Non-consensual use of the sex organ of the victim to penetrate, no matter how slight, the genital opening, anus, or mouth, of another person.
- "Sexual contact" includes intentional contact of a sexual nature with the body parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. This can include contact of a sexual nature with intimate body parts such as the breasts, genitals, buttocks, groin, or mouth; however, sexual contact can occur with any part of the body that is touched in a sexual manner.

#### **D. Sexual Exploitation**

Sexual exploitation occurs when an individual takes or attempts to take 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:

- In situations where an individual has a legitimate expectation of privacy, surreptitiously observing or attempting to observe another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, or in which the person observed or induced to perform such act has not attained 18 years of age;
- In situations where an individual has a legitimate expectation of privacy, the non-consensual recording, attempted recording, 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, or in which the person recorded, viewed, or induced to perform such act has not attained 18 years of age;
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances, or in which the person induced to perform such act has not attained 18 years of age;
- Knowingly exposing another individual to a sexually transmitted infection or virus without their knowledge;
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity;
- Arranging for others to have non-consensual sexual contact with a person; and
- The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where such an act is induced by force, fraud, or



coercion, or in which the person induced to perform such act has not attained 18 years of age.

### **E. Consent**

Consent means the voluntary, willful, and unambiguous agreement to engage in a specific sexual activity during a sexual encounter. Consent cannot be given by someone who is:

- Sleeping;
- Unconscious, unaware, or otherwise mentally or physically helpless because of drugs, alcohol, or other contributing factor (“incapacitated”);
- Unable to understand the nature of the sexual activity due to a mental disease or condition (“mentally incapable”); or
- Under duress, threat, deception, coercion, misuse of professional authority/status, or force.

Consent must be clear and communicated by mutually understandable words or actions. Silence, passivity, the absence of resistance, or the absence of a verbal “no” or “stop” do not imply consent, and relying solely on non-verbal communications may result in a violation of this policy. **It is important not to make assumptions.** If confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and verbally clarifies the other’s willingness to continue. Prior consent does not imply current consent or future consent; even in the context of a prior or current relationship, consent must be sought and freely given for each instance of sexual contact.

Consent to any one form of sexual activity does not automatically imply consent to other forms of sexual activity. Consent can be withdrawn at any time during a sexual encounter, at which point any further sexual activity becomes non-consensual. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

### **F. Incapacitation**

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally 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 can only be found when the respondent knew or should have known that the claimant was incapacitated when viewed from the position of a sober, reasonable person.

Incapacitation is distinguished from an alcohol-induced “blackout,” which is a different phenomenon, and not necessarily indicative of incapacitation. An alcohol-induced blackout is defined as amnesia for the events of any part of a drinking episode without loss of consciousness. It is characterized by memory impairment during intoxication in the relative absence of other skill deficits. It is not to be confused with “passing out.” An alcohol-induced blackout alone is not determinative of incapacitation. Given that individuals are conscious and can appear unimpaired during an alcohol-induced blackout, an incapacitation analysis also requires evaluation of other observed signs of impairment.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. 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 circumstances of the act.

No single factor alone is determinative of incapacitation. There are some common signs that someone is incapacitated or may be approaching incapacitation, which may include:

- Slurred speech
- Bloodshot eyes
- Smell of alcohol on breath
- Clumsiness
- Inability to focus
- Confusion
- Shaky balance
- Stumbling or falling down
- Vomiting
- Poor judgment
- Difficulty concentrating
- Combativeness or emotional volatility
- Outrageous or unusual behavior
- Unconsciousness

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 person'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 misconduct and does not diminish one's responsibility to obtain consent.

### **G. First Amendment Protections**

This Policy shall not be interpreted to abridge First Amendment rights or to infringe academic freedom, as defined in the Faculty Handbook, the Faculty Rights and Responsibilities policy, the Outside Speakers Sponsored by Registered Student Organizations policy, and the document entitled Student Rights and Responsibilities at Michigan State University. The protections of the First Amendment must be carefully considered in all complaints involving speech or expressive conduct. The fact that speech or a particular expression is offensive is not, standing alone, a legally sufficient basis to establish a violation of this policy. In order to violate this Policy, speech or expressive conduct must constitute sexual harassment, as defined in Section X.A above. Speech or expressive conduct that constitutes sexual harassment is neither legally protected expression nor the proper exercise of academic freedom.

### **XI. Victim Assistance**

The University and surrounding communities have a wide range of resources to provide medical, emotional, legal, victim advocacy, and other support to victims of relationship violence, stalking, or sexual misconduct. A comprehensive list of campus and community resources and contact information related to sexual assault and other sexual and relationship violence is available online at [www.titleix.msu.edu](http://www.titleix.msu.edu), [www.endrape.msu.edu](http://www.endrape.msu.edu), and [www.oie.msu.edu](http://www.oie.msu.edu). Comprehensive information about relationship violence and stalking can be found at <http://safeplace.msu.edu>. Services offered through the MSU Sexual Assault Program and MSU Safe Place are free and confidential.

The University also implements interim measures it deems necessary during an investigation. Interim measures are those services, accommodations, and other assistance the University puts in place after receiving notice of alleged relationship violence, stalking, or sexual misconduct but before any final outcomes (investigatory, disciplinary, or remedial) have been determined. Additional information about interim measures, including contact information to request interim measures, is included below in Section XIII.L.7.

### **XII. Privacy and Confidentiality**

Privacy and confidentiality have distinct meanings under this policy.

## **A. Privacy**

Privacy generally means that information related to a report of prohibited conduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, and resolution of the report, and related issues. All University employees who are involved in the University’s Title IX response receive specific training and guidance about safeguarding private information in accordance with applicable laws.

The privacy of student education records will be protected in accordance with the University’s policy for compliance with the Family Educational Rights and Privacy Act (FERPA) and state law protections. The privacy of an individual’s medical and related records generally are protected in the United States by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. Access to personnel records is restricted in accordance with University policy and state law.

## **B. Confidentiality**

Confidentiality means that information shared by an individual with designated campus or community professionals which cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain confidential relationships include health care providers and mental health professionals in the capacity of their professional relationships with their patients or clients, sexual assault victim advocates, relationship violence victim advocates, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Michigan state law. These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

## **XIII. Violations: Complaint Procedures**

The University has an obligation to promptly take steps to investigate or otherwise determine what occurred and then to address instances of relationship violence, stalking, and sexual misconduct when it knows or should have known about such instances, regardless of claimant cooperation and involvement. Therefore, the University encourages persons who believe that they have experienced relationship violence, stalking, or sexual misconduct to contact the University. Individuals are also encouraged to contact the MSU Sexual Assault Program, MSU Safe Place, or MSU Employee Assistance Program for confidential support.

## **A. Reporting Relationship Violence, Stalking, or Sexual Misconduct**

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 a report to the Office of Institutional Equity (OIE)<sup>10</sup>;
- Contact the MSU Police for assistance in filing a criminal complaint and preserving physical evidence<sup>11</sup>; and/or
- Contact local law enforcement to file a criminal complaint.
- Individuals who do not wish to pursue a University or law enforcement investigation may contact confidential campus resources.

Claimants have the option to report the matter to law enforcement, to the University (OIE), to both, or to neither, as the individual may choose. Claimants 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 talking to one of these offices, claimants do not need to know whether they wish to request any particular course of action. Claimants do not need to know 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, claimants are encouraged to seek support and information from a confidential resource.

The University can most effectively investigate and respond to alleged relationship violence, stalking, or sexual misconduct if the complaint is made as promptly as possible after the alleged violence, stalking, or misconduct occurs. However, the University does not limit the time frame for reporting. If the respondent is not a member of the MSU community at the time of the report, the University will still seek to meet its legal obligations by providing reasonably available support for a claimant, but its ability to investigate and/or take action may be limited. However, the University will assist a claimant in identifying external resources upon request.

### **1. Reporting to Confidential Campus Resources**

The University understands that a person may be undecided about reporting relationship violence, stalking, or sexual misconduct. In these cases, they may find a conversation with the

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<sup>10</sup> Policy references to OIE include the Deputy Title IX Coordinator for Investigations and all OIE Investigators.

<sup>11</sup> The MSU Police and OIE processes are outlined in Appendix G and H.

MSU Sexual Assault Program, MSU Safe Place, MSU Employee Assistance Program, or the University Ombudsperson helpful. These offices can provide a confidential space where University community members may explore their options and the possible consequences of their choices. Whether they opt to report or not, members of the University community are encouraged to seek support from confidential counselors and/or advocates if they are dealing with these concerns. See Section XIII.C below.

## **2. Reporting to a Sexual Assault Forensic Examiner program**

The University also encourages individuals who have been sexually assaulted to undergo a health assessment offered by the Sexual Assault Forensic Examiner (SAFE) program at Sparrow Hospital or a comparable program as soon as possible. A sexual assault forensic examiner is a registered nurse specially trained to provide care to patients who have experienced sexual assault. The SAFE conducts medical forensic examinations and can serve as an expert witness in a court of law. Individuals who decide to have a SAFE exam can choose whether or not to make a police report.

The Sparrow Hospital SAFE program will not bill insurance (including students covered by their parents' insurance) without written permission. If permission to bill an insurance company is not given, the exam is billed to the State of Michigan SAFE Program and is free of charge. The State of Michigan SAFE program is also confidential. The MSU Sexual Assault Program has advocates available to provide support and resources for patients at Sparrow Hospital SAFE. If you go to Sparrow Hospital for a SAFE exam, the advocacy team will be paged and dispatched to the hospital to meet you.

## **3. Reporting to OIE and the MSU Police Department**

OIE informs the MSU Police Department of all reports it receives regarding sexual assaults, sexual exploitation, relationship violence, and stalking. This does not obligate the claimant to talk to the police; and the choice about whether to participate in a law enforcement investigation remains with the claimant.

The MSU Police Department notifies the OIE of all reported incidents of relationship violence, stalking, sexual harassment, and sexual misconduct. The MSU Police Department shares information about ongoing investigations with OIE to the extent that sharing such information will not interfere with law enforcement proceedings.

### **B. Contact Information: Filing Reports**

Office of Institutional Equity:  
408 W. Circle Dr, Suite 4, Olds Hall  
East Lansing, MI 48824

(517) 353-3922

[ois@msu.edu](mailto:ois@msu.edu)

MSU Police Department:

1120 Red Cedar Road

East Lansing, MI 48824

(517) 355-2221

Emergencies: 911

### **C. Contact Information: Confidential and Private Resources**

MSU Counseling and Psychiatric Services (CAPS)

3<sup>rd</sup> Floor Olin Health Center Building

463 E. Circle Drive

East Lansing, MI 48824

(517) 355-8270

Emergencies: 911

Web: <http://caps.msu.edu/>

MSU Sexual Assault Program

207 Student Services Building

556 East Circle Drive

East Lansing, MI 48824

(517) 355-3551 (office)

(517) 372-6666 (24 hour crisis line)

Web: [www.endrape.msu.edu](http://www.endrape.msu.edu)

MSU Safe Place

(517) 355-1100

Email: [noabuse@msu.edu](mailto:noabuse@msu.edu)

Web: <http://safeplace.msu.edu>

University Ombudsperson

354 Farm Lane, Room 129, North Kedzie Hall

East Lansing, MI 48824

(517) 353-8830

Email: [ombud@msu.edu](mailto:ombud@msu.edu)

Web: <https://www.msu.edu/unit/ombud/index.html>

MSU Employee Assistance Program  
110 Linton Hall  
479 West Circle Drive  
East Lansing, MI 48824  
(517) 355-4506  
Email: [eap@hc.msu.edu](mailto:eap@hc.msu.edu)  
Web: <http://eap.msu.edu>

#### **D. Other Important Campus Resources**

Comprehensive guides to campus and community resources are available online at: <http://titleix.msu.edu/find-resources/index.html>. The guides include information about resources for reporting, confidential and private resources, interim measures, health care and mental health resources, legal resources, orders of protection, visa and immigration information, financial assistance, and other campus and community resources.

Students considering taking a leave of absence from the University because of the circumstances surrounding a case of sexual misconduct or relationship violence should be aware that taking a leave may have financial aid implications. The Title IX Coordinator can assist students with contacting the Financial Aid Office to understand any financial aid-related issues that may arise.

**Office of Financial Aid**  
(517) 353-5940  
Student Services Bldg, Room 252  
[www.finaid.msu.edu](http://www.finaid.msu.edu)

For visa and immigration assistance, individuals are encouraged to access the following resources:

- **Immigration Advocates Network** – <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=MI>
- **U.S. Citizenship and Immigration Services** – <https://www.uscis.gov/about-us/find-uscis-office/field-offices/michigan-detroit-field-office>
- **Office of International Students and Scholars**

(517) 353-5940  
International Center, Room 105  
[www.oiss.isp.msu.edu](http://www.oiss.isp.msu.edu)



## **E. Explanation of Rights and Options**

In response to reports of relationship violence or sexual misconduct, the Office of Institutional Equity provide a written explanation to the claimant and respondent summarizing their respective rights and options. This written explanation will include information about reporting procedures, investigation procedures, law enforcement, legal options, confidentiality protections, campus resources, interim measures, and campus disciplinary procedures.

## **F. Employee Reporting Obligations, Confidentiality, and Safety Concerns**

The University strongly encourages individuals affected by relationship violence, stalking, and sexual misconduct to talk to someone about what happened and obtain support services. The University also needs to respond appropriately to reports of relationship violence or sexual misconduct in order to provide a safe and effective learning environment.

Most University employees are obligated to bring reports of relationship violence, stalking, and sexual misconduct to the attention of the Office of Institutional Equity and the MSU Police Department, but some can maintain confidentiality of such reports if the victim so requests.<sup>12</sup> See Sections E.1-3 below. Students and employees should be aware of the reporting options available to them so that they can make informed choices about the consequences of disclosing details of an incident of relationship violence, stalking, or sexual misconduct.<sup>13</sup>

Individuals who choose to discuss an incident of relationship violence, stalking, or sexual misconduct only in a privileged/confidential or private setting should understand that the University will not be able to conduct an investigation into the particular incident, or pursue disciplinary action against the alleged perpetrator, unless the incident is reported to the Office of Institutional Equity directly by the victim, law enforcement, someone who is obligated to make a report, or by a confidential party who has been given written permission by the victim to make a report. Counselors and advocates who are able to maintain confidentiality of reports will still assist their clients in receiving support services, regardless of whether a report is made. At the individual's option, this will include coordinating with the Office of Institutional Equity to provide any necessary interim measures.

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<sup>12</sup> Students who are not also employees do not have reporting obligations under this Policy. Nevertheless, students who have witnessed relationship violence, stalking, or sexual misconduct are encouraged to promptly report such information to the Office of Institutional Equity and the MSU Police Department.

<sup>13</sup> The disclosure options described in this Policy involve disclosures made by adults and conduct involving adults. Disclosures involving minors are governed by the reporting obligations outlined in the *Reporting Protocols: Child Abuse, Sexual Assault, and Child Pornography*. To view the protocols visit: [https://www.hr.msu.edu/policies-procedures/university-wide/reporting\\_protocols.html](https://www.hr.msu.edu/policies-procedures/university-wide/reporting_protocols.html). Disclosures involving imminent harm to self or others may also override confidentiality and require reporting to appropriate authorities.

A claimant who requests confidentiality may later decide to file a complaint with the Office of Institutional Equity or the MSU Police Department and have the incident fully investigated. When they arise, safety risks associated with OIE or MSU Police Department contacting or interviewing the respondent will be taken into consideration especially in cases where the victim is fearful and does not want the perpetrator contacted, or when the threats and abuse may escalate and put the victim in increased danger due to the investigation process.

### **1. Confidential Communications**

Professional, licensed counselors who provide mental-health counseling to members of the community are legally not permitted (with few exceptions, as discussed in Sec. XII(B)) to report any information to the Office of Institutional Equity or Michigan State University Police Department without their client's permission. Licensed counselors are available in the following offices:

- MSU Counseling and Psychiatric Services (CAPS)
- MSU Couple and Family Therapy Clinic
- MSU Employee Assistance Program
- MSU Psychological Clinic
- MSU Safe Place
- MSU Sexual Assault Program

Disclosure to one of the offices listed above does not constitute a report or notice to the University.

### **2. Private Communications**

Individuals who work or volunteer in the following campus offices, including peer educators, can talk to a student or employee about an incident of relationship violence, stalking, or sexual misconduct without triggering the need to report personally identifiable information about the incident to the Office of Institutional Equity.

- MSU Counseling and Psychiatric Services (CAPS)
- MSU Employee Assistance Program
- MSU Safe Place
- MSU Sexual Assault & Relationship Violence (SARV) Prevention Program
- MSU Sexual Assault Crisis Intervention (SACI) Team
- MSU Sexual Assault Program & 24-hour Sexual Assault Crisis Line
- Olin Health Center
- University Ombudsperson

Disclosure to one of the offices listed above does not constitute a report or notice to the University. The privacy protections provided to these offices are based in policy and not law. Therefore, individuals should recognize that, while the University considers conversations with these offices to be private, disclosure of some information may be required pursuant to a search warrant, subpoena, or statute, and may not be legally confidential.

### **3. Non-personally Identifiable Information**

The offices identified as confidential and private resources will periodically report non-personally identifiable information about relationship violence, stalking, and sexual misconduct reports that the offices have received to the Title IX Coordinator to keep the Title IX Coordinator informed of the general extent and nature of relationship violence, stalking, and sexual misconduct on and off campus. This will help the Title IX Coordinator track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Individuals in these offices will not share personally identifiable information with the Title IX Coordinator without the student or employee's consent.

### **4. Reports to Mandatory Reporters**

All University employees, other than those appointed in the offices listed above and certain medical professionals providing patient care<sup>14</sup>, are expected to promptly report relationship violence, stalking, and sexual misconduct that they observe or learn about <sup>15</sup>and that involves a member of the University community (faculty, staff, or student) or which occurred at a University-sponsored event or on University property. The employee must report all relevant details they have about the alleged relationship violence, stalking, or sexual misconduct, including the name of the victim, the name of the accused, names of any witnesses, and any other relevant facts, including the date, time, and specific location of the incident.

In cases where an employee is a witness to an unfolding or ongoing incident of relationship violence, sexual violence, sexual exploitation, or stalking, the employee must call the MSU Police Department immediately and is encouraged to intervene to the extent it is safe to do so. Employees must still report promptly to OIE. In cases where an employee is witness to an unfolding or ongoing incident of sexual harassment, the employee should intervene or notify a supervisor who can intervene to stop the behavior.

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<sup>14</sup> Medical professionals in Olin Health Center and other patient care locations should refer to the Frequently Asked Questions appendix for more information about the application of mandatory reporting obligations in the patient care context.

<sup>15</sup> This includes reports that employees learn about in their professional capacity directly, through third parties, or through other disclosures.

STATUS OF PERSON VICTIMIZED	STATUS OF MANDATORY REPORTER	WHERE TO FILE REPORT
<b>REPORTING: SEXUAL MISCONDUCT AND RELATIONSHIP VIOLENCE (INCLUDING: SEXUAL VIOLENCE, SEXUAL EXPLOITATION, AND STALKING)</b>		
<ul style="list-style-type: none"> <li>• <b>Student</b><sup>16</sup></li> <li>• <b>Employee</b></li> <li>• <b>Third Party</b></li> <li>•</li> </ul>	Undergraduate Student Employees	Undergraduate Student’s Supervisor. Supervisor will report to Office of Institutional Equity <b>AND</b> MSU Police.
	All Other Employees	Office of Institutional Equity (OIE) <b>AND</b> MSU Police
<b>REPORTING: SEXUAL HARASSMENT</b>		
<ul style="list-style-type: none"> <li>• <b>Student</b></li> <li>• <b>Employee</b></li> <li>• <b>Third Party</b></li> </ul>	Undergraduate Student Employees	Undergraduate Student’s Supervisor. Supervisor will report to Office of Institutional Equity.
	All Employees	All employees must report to OIE.

NOTE: Undergraduate student employees should make reports to their supervisor, who will contact OIE and the MSU Police Department. REHS live-in staff must follow the REHS mandatory reporting protocols.

Employees are only required to report relationship violence, stalking, or sexual misconduct of which they become aware in their capacity as a University employee, not in their personal capacity.

Once a report is made to OIE, the University will take immediate steps to initiate the investigatory process to determine what happened and to resolve the matter promptly and equitably. Questions about whether a disclosure must be reported can be referred to the Office of the General Counsel, OIE, the MSU Police Department, or the University Ombudsperson.

### **5. Failure to Report**

Employees who fail to adhere to their reporting obligations under this Policy are subject to disciplinary action, up to and including termination. Discipline for violations of this Policy, including failure to report, will be handled in accordance with applicable employee disciplinary policies and procedures.

### **6. Requests for Confidentiality or Anonymity**

Victims of relationship violence, stalking, or sexual misconduct may request confidentiality or anonymity, including that their name not be shared with the respondent, that the respondent not be notified of the report, or that no investigation occur. If the victim wants to tell the mandatory reporter what happened, but also wants to maintain confidentiality or anonymity, the employee should tell the victim that the University will consider the request but cannot guarantee

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<sup>16</sup> Reports involving student employees are considered student reports.

confidentiality or anonymity. The employee should advise the victim that the details of the incident will be disclosed only to those officials with a legitimate institutional interest in knowing the information. In reporting the details of the incident to OIE, the employee will inform OIE of the victim's request for confidentiality or anonymity, but must still provide that person's name and/or identity, if known.

The Deputy Title IX Coordinator for Investigations will weigh the victim's request for confidentiality or anonymity against the University's obligation to provide a safe, non-discriminatory environment for all students and employees, including the victim. The Deputy Title IX Coordinator for Investigations will consider a range of factors in weighing the request, including:

- The increased risk that the alleged perpetrator will commit additional acts of relationship violence, stalking, or sexual misconduct, such as:
  - Whether there have been other relationship violence, stalking, or sexual misconduct complaints about the same alleged perpetrator;
  - Whether the alleged perpetrator has a history of arrests or records indicating a history of violence;
  - Whether the alleged perpetrator threatened further relationship violence, stalking, or sexual misconduct against the victim or others;
  - Whether the relationship violence, stalking, or sexual misconduct was committed by multiple perpetrators; and/or
  - Whether there have been threats to kill or harm the victim.
- Whether the relationship violence, stalking, or sexual misconduct was perpetrated with a weapon
- Whether the victim is a minor
- Whether the University possesses other means to obtain relevant evidence of the relationship violence, stalking, or sexual misconduct (e.g., security cameras or personnel, physical evidence)
- Whether the victim's report reveals a pattern of relationship violence, stalking, or sexual misconduct

If the University honors the request for confidentiality, the Deputy Title IX Coordinator for Investigations will explain to the victim that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator may be limited. The Deputy Title IX Coordinator for Investigations will also explain that the University prohibits

retaliation against an individual for filing a complaint and that the University will take steps to prevent retaliation and take strong responsive action if any retaliation occurs. If the claimant continues to ask that their name not be revealed, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not prevent the University from responding effectively to the harassment and preventing harassment of others.

Regardless of whether the request for confidentiality is honored, the University will take steps to limit the effects of the alleged relationship violence, stalking, or sexual misconduct and prevent its recurrence when possible. Such steps might include providing increased security or supervision at locations or activities where a pattern of relationship violence, stalking, or sexual misconduct exists; providing education and training materials for students, student groups, or employees; reviewing applicable relationship violence, stalking, and sexual misconduct or disciplinary policies; and conducting climate surveys regarding relationship violence, stalking, and sexual misconduct.

At times, in order to provide a safe, non-discriminatory environment for members of the campus community, the University may not be able to honor a victim's request for confidentiality. In such circumstances, the Deputy Title IX Coordinator for Investigations will inform the victim prior to starting an investigation and will share information only with people involved in the University's investigation.<sup>17</sup> The victim is not required to participate in the investigation. Should the victim choose not to participate in an investigation, the Deputy Title IX Coordinator for Investigations will explain that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator may be limited.

### **G. Reports from Witnesses & Bystander Intervention**

Students or third parties who witness acts of relationship violence, stalking, or sexual misconduct perpetrated by a member of the University community (faculty, staff, or student) or occurring at a University-sponsored event or on University property are strongly encouraged to report the misconduct to OIE and the MSU Police Department.

Employees (including student employees) and University volunteers who witness acts of relationship violence, stalking, or sexual misconduct perpetrated by a member of the University community (faculty, staff, or student) or occurring at a University-sponsored event or on University property must follow the employee reporting chart contained in Section XIII.E.4.

The University encourages all witnesses of relationship violence, stalking, or sexual misconduct to engage in bystander intervention when safe to do so. Protocols for intervention and reporting

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<sup>17</sup> The victim may decide whether other individuals, such as parents, instructors, or colleagues, will be informed of the investigation unless special circumstances (such as the sexual assault of a minor) exist.

for employees who witness incidents of relationship violence, stalking, or sexual misconduct are outlined in Section XIII.E.4.

### **H. Public Awareness Events**

Public awareness or activism events and other public forums at which students or employees disclose experiences with relationship violence, stalking, or sexual misconduct are not considered notice to the University for the purposes of this Policy unless the victim also initiates a complaint under this Policy (e.g., Take Back the Night, town hall meetings, focus groups, open forums, protests).

### **I. Third Party and Anonymous Complaints**

The Office of Institutional Equity processes all complaints of relationship violence, stalking, and sexual misconduct it receives, regardless of who files the complaint. Third party and anonymous complaints will not be rejected. However, without the participation or identity of the victim or third party, the University may have insufficient information to conduct a formal investigation.

Individuals who wish to file an anonymous complaint may do so through the normal channels identified in this policy or through the OIE online Public Incident Reporting Form. The Public Incident Reporting Form<sup>18</sup> and information about reporting options are available online at [www.oie.msu.edu](http://www.oie.msu.edu).

### **J. Amnesty for Drug or Alcohol Possession and Consumption Violations**

The University encourages students to report all incidents of relationship violence, stalking, or sexual misconduct. Therefore, students who report relationship violence, stalking, or sexual misconduct will not be disciplined by the University for a violation of the University's drug and alcohol possession or consumption policies that may have occurred in connection with the reported incident. Students are also protected by a Michigan law that provides amnesty for alcohol-related crimes if an underage individual, after consuming alcohol, presents (or accompanies an underage person presenting) at a health facility or agency for treatment or observation as a result of sexual assault.<sup>19</sup>

### **K. Relationship Violence, Stalking, or Sexual Misconduct by Third Parties**

The University prohibits relationship violence, stalking, and sexual misconduct by third parties towards members of the University community when the third party has been brought into contact with the member of the University community through a University-sponsored program

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<sup>18</sup> Complaints submitted through the University's Misconduct Hotline will be referred to OIE.

<sup>19</sup> MCL § 436.1703(10)

or activity.<sup>20</sup> Although individuals who are not students or employees of the University are not subject to discipline under the University's internal processes, the University will take prompt, corrective action to eliminate relationship violence, stalking, and sexual misconduct and prevent its recurrence in those circumstances.

If a University student believes they have experienced relationship violence, stalking, or sexual misconduct in a University-sponsored program or activity by an individual who is not a University employee or student, the student should report the conduct to OIE or the unit administrator (e.g., supervisor, department chair, or dean) responsible for that program or activity. The unit administrator will report the alleged relationship violence, stalking, or sexual misconduct to OIE and to the MSU Police Department.

If a University employee (including a student employee) believes that they have been subjected to relationship violence, stalking, or sexual misconduct within the scope of his or her employment activities by an individual who is not a University employee or student, the University employee should report the conduct to their supervisor or to OIE. The supervisor must report the alleged relationship violence, stalking, or sexual misconduct to OIE and to the MSU Police.

Individuals experiencing third party relationship violence, stalking, or sexual misconduct are encouraged to contact the MSU Sexual Assault Program or MSU Safe Place. Both programs offer a variety of services, including counseling, safety planning, and information about legal options and protections through the criminal and civil courts.

#### **L. Outside Options for Resolution of Complaints**

Students who believe they are a victim of sex-based discrimination in an educational program at MSU may file a complaint under Title IX with the regional enforcement office of the Office for Civil Rights, U.S. Department of Education, at the following address:

Office for Civil Rights  
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](mailto:OCR.Cleveland@ed.gov)

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<sup>20</sup> As outlined in Section II of the policy, the policy also prohibits sexual misconduct and relationship violence against third parties by members of the University community.



Faculty and staff may file complaints under Title IX with the Office for Civil Rights, U.S. Department of Education, in certain circumstances; under Title VII with the Equal Employment Opportunity Commission; or under the Elliott-Larsen Civil Rights Act with the Michigan Department of Civil Rights.

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

Michigan Department of Civil Rights  
3054 West Grand Boulevard, Suite 3-600  
Detroit, MI 48202  
Phone: (313) 456-3700  
Fax: (313) 456-3701  
Toll-Free: (800) 482-3604  
TTY: (877) 878-8464  
Email: [MDCRServiceCenter@michigan.gov](mailto:MDCRServiceCenter@michigan.gov)

### **M. Processing Complaints and Reports**

All reports of alleged relationship violence, stalking, and sexual misconduct are reviewed by the Office of Institutional Equity (OIE) under the direction of the Deputy Title IX Coordinator for Investigations. Complaints filed against students or employees in graduate or professional programs will be investigated by OIE, not the individual colleges. Complaints filed against students or employees of the MSU College of Law will be referred to the Title IX Coordinator of the MSU College of Law. The University will respond to all complaints and reports of relationship violence, stalking, or sexual misconduct it receives, regardless of where the conduct which is the basis for the complaint allegedly occurred.<sup>21</sup> The Deputy Title IX Coordinator for Investigations may also determine that an investigation is warranted without a complaint if the

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<sup>21</sup> The University generally does not investigate allegations of harassment or discrimination that fall outside the jurisdictional limits of the Anti-Discrimination Policy and General Student Regulations. Nevertheless, the University will respond to all complaints of relationship violence and sexual misconduct in accordance with this Policy, regardless of where the conduct that is the basis for the complaint allegedly occurred, in order to evaluate whether there is a hostile environment on campus that would be contrary to the University's legal obligations.

University has sufficient notice that relationship violence, stalking, or sexual misconduct may have occurred.

Even if OIE determines that a formal investigation is not warranted, the University will take prompt, responsive action to support a claimant and will take steps to eliminate, prevent, or address a hostile environment if it determines that one exists.

OIE maintains detailed records of each informal and formal complaint, including individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, and reason(s) for decisions reached. Complaints and information gathered during the investigation process will be kept private to the extent permitted by law.

## **1. Investigation Overview**

The University has an obligation to conduct a prompt, adequate, reliable, and impartial investigation to determine what occurred and then to take appropriate steps to resolve the situation when it learns of an incident of sexual misconduct, stalking, or relationship violence, regardless of whether the alleged victim is the individual who reports the relationship violence, stalking, or sexual misconduct. The University also has an obligation to assess whether it will investigate the matter regardless of whether the alleged victim chooses to cooperate or proceed with a formal complaint. In fulfilling these obligations, the University will respond to complaints, reports, or information about incidents of sexual misconduct, stalking, and relationship violence to stop the prohibited conduct, eliminate any hostile environment, take steps to prevent the recurrence of the prohibited conduct, and address any effects on campus or at University programs and activities off-campus.

### **a) Investigating Details**

Trained professionals conduct investigations under the oversight of the Deputy Title IX Coordinator for Investigations. Investigations begin with a determination of whether the University has jurisdiction over the matter. If jurisdiction is established, both the claimant and respondent will be notified of the initiation of the investigation; the potential policy violation(s) at issue; the right to participate in the investigation; the timeframe for responding; and that the investigation may proceed without the participation of either party. Investigations include interviews of the claimant, respondent, and any relevant witnesses. As more fully explained below, both the claimant and respondent may have an advisor of their choice present at any meeting during the investigation process. Both the claimant and respondent have the right to provide evidence, witnesses, and other relevant information during the investigation, sanction, and appeal process.

## **b) Gathering & Reviewing Evidence**

Both the claimant and respondent will have an opportunity to identify potential witnesses and provide any evidence of other information relevant to the investigation. A review of evidence, such as electronic and written material, will be conducted if any such evidence exists. OIE will determine the relevance of any proffered information. In general, OIE 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 or chastity. While the parties to the investigation are primarily responsible for providing information and evidence, OIE, to the extent possible, will gather evidence relevant to the investigation that may be available within the University context (e.g., University security access records, employee or student information, etc.) or by contacting outside agencies (e.g., medical treatment providers, law enforcement, etc.). OIE shall not utilize medical experts that have an actual or apparent conflict of interest in the investigation as it relates to evaluating conduct.<sup>22</sup> There is no requirement that a claimant or respondent share privileged or confidential medical and counseling records with OIE. However, where a party chooses to share medical or counseling records as part of the investigation, the records will be included in the investigation file and may be available to the other party pursuant to a subpoena, court order, or other legal mandate.

## **c) Investigation Hearings/Meetings**

During the investigation process, both parties will be provided timely notice of any meeting at which their presence is requested or required.<sup>23</sup> Such meetings provide both parties with an opportunity to be heard and present their account of the events in-person. The claimant has the right not to appear in the same room or otherwise confront the respondent during the investigation and adjudication process, including appeals. The parties are not permitted to personally cross-examine each other during the investigation or adjudication process; however, either party may submit questions in writing to OIE to be asked of the other party. Questions may be submitted at any time during the investigation process up to the deadline for the review of the preliminary investigation report. The opportunity to ask questions may not be used to harass or intimidate the other party. Submitted questions will be reviewed by the Deputy Title IX Coordinator for Investigations to determine if they are relevant to the investigation.

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<sup>22</sup> Medical experts involved in the assessment, care, or treatment of either party will not be considered to have an actual or apparent conflict of interest. The University Title IX Coordinator will determine whether a conflict exists.

<sup>23</sup> Notices provided to students and employees under this Policy will be sent to the individual's official msu.edu email account.

#### **d) Investigation Outcomes**

Both parties will be provided with regular updates regarding the status of the investigation process. At the conclusion of the fact-finding portion of the investigation, both parties will be provided with an opportunity to review the preliminary investigation report and provide feedback to the information gathered, as well as ask any questions, before a final report is issued. The University utilizes a preponderance of the evidence standard during the investigation process, as well as in all related proceedings, including disciplinary hearings. A respondent is presumed not to have violated the Policy unless a preponderance of the evidence establishes a policy violation. A respondent's decision not to provide a statement or be interviewed will not be given an adverse inference by OIE.

Both the claimant and the respondent will be notified concurrently, in writing, of the final outcome of the investigation, the rationale for the outcome, and the process to challenge the investigation findings. Identical final reports shall be issued to claimants, respondents, and administration. Divergent reports are prohibited.

If an investigation results in a determination that relationship violence, stalking, or sexual misconduct has occurred, the University will take prompt and effective steps to end the sexual misconduct, relationship violence, or stalking; eliminate the hostile environment and prevent its recurrence; support the victims; and remedy the discriminatory effects on the victim and others. For students, this means that the matter will be referred to the Student Conduct and Conflict Resolution Office so that the Sanction Panel can determine the appropriate sanction. For employees, this means that the matter will be referred to Human Resources/Academic Human Resources to determine the appropriate personnel action. The Title IX Coordinator, in cooperation with the relevant University officials, will also confirm that appropriate non-disciplinary remedies have been provided to the claimant. The Title IX Coordinator will also provide broad-based or targeted remedies for the community as appropriate, such as additional training, climate assessments, revisions to policy or practices or any other action tailored to the facts and circumstances which may eliminate, prevent, or address the effects of a hostile environment. The Title IX Coordinator will monitor the matter to increase the likelihood that that the relationship violence, stalking, or sexual misconduct does not recur.

If an investigation results in a determination that sexual harassment occurred but that there is insufficient evidence to find that a particular student or employee violated University policy, the University will still take other necessary steps to stop the harassment, prevent its recurrence, eliminate any hostile environment, and remedy the effect of the harassment on the claimant and others as appropriate.

A detailed summary of the OIE complaint procedures are available online at [www.oie.msu.edu](http://www.oie.msu.edu).

#### **2. Sexual History of the Parties**

The claimant or respondent's character or reputation with respect to other sexual activity is never relevant and will not be considered as evidence. However, prior sexual history may be considered under the following limited circumstances:

- Where there was a prior or ongoing relationship between the claimant and respondent, and the respondent asserts that consent was sought and 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 the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- To analyze allegations of a pattern or practice of past conduct which is similar in nature by the respondent.

In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed relevant by OIE.

Where OIE intends to consider evidence of prior sexual history as part of the investigation, such evidence will be included in the preliminary investigative report, and the parties will have an opportunity to challenge its relevance and whether it should be considered in the investigator's analysis. Relevant evidence of prior sexual history must be based on direct information, not rumor, hearsay, speculation, or conjecture.

### **3. Law Enforcement Investigations**

Claimants may pursue a complaint with the University and police simultaneously. The MSU Police Department and OIE independently investigate complaints of relationship violence, stalking, and sexual misconduct. The MSU Police Department investigates to determine whether there has been a violation of criminal laws. OIE investigates to determine whether there has been a violation of University policy. The investigations can proceed concurrently, and the outcome of one investigation does not determine the outcome of the other investigation.

Occasionally, OIE may need to briefly suspend the fact-finding aspect of its investigation at the request of law enforcement while police are in the process of gathering evidence. OIE will maintain regular contact with law enforcement to determine when it may begin its investigation. Even if an OIE investigation is briefly suspended, the University will nevertheless communicate with the claimant regarding their rights, procedural options, and the implementation of appropriate interim measures to assist and protect the safety of the claimant and the campus community and to prevent retaliation. OIE will promptly resume its investigation as soon as law enforcement provides notice to OIE that it has completed its evidence gathering process, or sooner, if the University determines that the law enforcement evidence gathering process will be

lengthy or delayed. Federal law does not permit the University to delay its investigation until the ultimate outcome of the criminal investigation.

The MSU Police Department reports all incidents to OIE and provides all victims of relationship violence and sexual misconduct with information about the OIE investigation process, as well as information about available campus and community resources.

#### **4. Preservation of Evidence**

Individuals involved in an allegation of relationship violence, stalking, or sexual misconduct should preserve evidence to the extent possible, as it may assist OIE or law enforcement in determining whether the alleged violence or misconduct occurred or might be relevant to a court's determination regarding the issuance of a Personal Protection Order. Specific suggestions for preservation of evidence in cases of sexual assault can be found online at <http://www.endrape.msu.edu/> or (517) 355-3551. In cases involving relationship violence or stalking, victims may contact MSU Safe Place at (517) 355-1100 or [noabuse@msu.edu](mailto:noabuse@msu.edu) to speak with an advocate. The University encourages individuals to go to the police or another resource in order to assist in the preservation of evidence.

#### **5. Investigation Timelines**

The University will use its best efforts to complete its investigations of relationship violence, stalking, or sexual misconduct within 60 calendar days, although this timeframe may be extended for good cause. The University will make its best efforts to complete the major steps of the investigation process within the following timeframes, although these timeframes may be modified or extended for good cause:

INVESTIGATION STEP	TIMEFRAME
Contact claimant	Within 5 calendar days after receipt of report
Contact respondent	Within 5 calendar days after meeting with claimant <sup>24</sup>
Provide preliminary report to parties	Within 25 calendar days after completing all relevant interviews and gathering all relevant evidence
Issue final report	Within 25 calendar days after receiving feedback from parties or completion of any additional investigation

Good cause for the extension of an investigation timeline 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 law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate investigatory reasons.

The University will maintain regular communication with the claimant and respondent about the progress of the investigation and its resolution. In the event the 60 day time frame is extended, both the claimant and the respondent will be notified of the delay and the reasons for the delay.

**6. Student Conduct Process Timelines**

The Anti-Discrimination Policy/Relationship Violence & Sexual Misconduct Policy Student Conduct Sanction and Appeal Procedures (Appendix I) set forth timelines for appeal of the OIE decision and imposition of sanctions where a violation of policy is found. The ADP/RVSMP Student Conduct Sanction and Appeal Process Flow Chart (Appendix J) provides detailed information on the timeframes and steps in the process. Timeframes for the major steps of that process include:

- Where no violation is found, the claimant and respondent have 10 calendar days from the date of the OIE decision to file an appeal of the OIE decision.
- Where a violation is found, the ADP/RVSMP Sanction Panel will issue a written decision regarding the appropriate sanction within 7 calendar days after meeting. The claimant

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<sup>24</sup> If law enforcement requests that the University delay contacting a respondent until after the law enforcement agency makes first contact with the individual, this timeframe may be extended.

and respondent have 10 calendar days from the date of the sanction decision to file an appeal of either the OIE decision or the sanction imposed, or both.

- If an appeal of the OIE decision and/or sanction is filed, the party that is not appealing and OIE will have 10 calendar days to respond to the appeal in writing.
- The Vice President for Student Affairs or Equity Review Officer will review the appeal and issue a written decision within 14 calendar days of receiving the appeal documents.

These timeframes may be extended during periods when classes are not held (i.e., Spring Break, final examination week, etc.) or for good cause, provided that the parties are provided with notice of the extension.

## **7. Interim Measures**

The University may take interim measures it deems appropriate and necessary during an investigation. Interim measures are those services, accommodations, and other forms of assistance implemented through OIE after it receives notice of an incident of alleged relationship violence, stalking, or sexual misconduct but before any final outcomes (investigatory, disciplinary, or remedial) have been determined. The University will notify both the claimant and respondent, in writing, that interim measures are available during the University's investigation, sanction, and appeal process. OIE will facilitate reasonably available interim measures, which may be both remedial (designed to address safety and well-being and continued access to educational opportunities) or protective (involving interim action against a student or employee).

Interim measures are available regardless of the manner of resolution under this policy and regardless of whether or not the incident is reported to law enforcement. OIE will coordinate interim measures associated with an OIE investigation. OIE will also facilitate appropriate interim measures when the University has temporarily deferred its investigation at the request of law enforcement. In circumstances where a claimant has chosen not to proceed with an OIE investigation and reports only to confidential sources, the MSU Sexual Assault Program and MSU Safe Place will work through OIE to coordinate interim measures. Interim measures will not disproportionately negatively impact either party.

Interim measures will be consistent with University policies and may include the following where appropriate:

- Academic assistance such as:
  - Discrete professor notification regarding absences
  - Schedule changes
  - Course load reductions
  - Withdrawals without penalty



- Course Retakes
  - Coordinating extensions
  - Referrals for academic support services
- Alternative housing placement
- Protective measures
  - University no-contact directive
  - Removal of directory information
  - Removal of parties from campus
- Alternative work schedules/locations
- Voluntary leave of absence
- Transportation information
- Referrals to on- and off-campus services
  - Counseling
  - Medical services
  - Financial Assistance
  - Immigration Assistance

As a protective measure, the University may issue a “no-contact directive” between the claimant and respondent or limit an individual’s or organization’s access to certain University facilities or activities pending resolution of the matter. The University might also impose an interim disciplinary suspension, suspension from employment, or other remedies which can be tailored to the involved parties to achieve the goals of this policy.

If a claimant has obtained an order of protection, civil no-contact order, restraining order, or similar order from a criminal, civil, or tribal court against the respondent, the claimant may provide such information to the Title IX Coordinator. If provided, the Title IX Coordinator, in conjunction with MSU Police and other University officials, as needed, will take all reasonable and legal action to implement the order.

When reviewing requests for interim measures, OIE will consider a number of factors, which may include:

- The specific need expressed by the party;
- The severity or pervasiveness of the allegations;
- The status of the claimant and respondent, including if the respondent is in a position of authority or influence;
- Any continuing effects on a party;
- If a party is under the age of 18;

- Reported use of force, violence, or use/display of weapons;
- Likelihood the parties will encounter each other in different settings (e.g., class, residence halls, cafeteria, extracurricular activities, employment, transportation, etc.);
- The existence of other judicial measures (e.g., civil protection orders); and/or
- Any other appropriate factors based on the circumstances presented.

The provision of interim measures under this Policy does not limit or diminish the authority of other units on campus from taking responsive action where policies and procedures under their authority have been violated.

The University will maintain as confidential any interim measures provided under this policy to the extent it is legally able to do so and to the extent confidentiality will not impair the ability to provide the interim measure. The University will promptly address any violation of the interim measures. These interim measures may be kept in place until the end of any review or appeal process or may be extended permanently as appropriate.

The Title IX Coordinator will take steps to ensure that the appropriate interim measures are provided. . The Title IX Coordinator will maintain oversight of support services and interim interventions. The Title IX Coordinator has the discretion to ensure the appropriateness of any interim measure based on all available information, and is available to meet with a claimant or respondent to address any concerns about the provision of interim measures.

Violations of interim measures, such as university no-contact directives and access restrictions, should be reported to the Office of Institutional Equity. Violations will be addressed through the Student Conduct and Conflict Resolution Office for students and Human Resources or Academic Human Resources for employees. Students may face disciplinary action up to and including expulsion and employees may face disciplinary action up to and including dismissal.

**Contact Information for Interim Measures:**

Office of Institutional Equity  
 408 W. Circle Dr, Suite 4, Olds Hall  
 East Lansing MI 48824  
 (517) 353-3922  
[oiie@msu.edu](mailto:oiie@msu.edu)

**8. Advisors or Support Persons**

Throughout the process, claimants and respondents may have an advisor or support person of their choice present at any meeting related to the investigation or the student conduct process.

An advisor of choice may include an attorney. Any person who serves as an advisor or support person should plan to make themselves available for meetings throughout the process. The advisor or support person is a silent and non-participating presence who is there solely to observe and provide support during the investigative process. An advisor or support person who is verbally abusive, disruptive to the process, or persists in trying to substantively participate in the process after warnings to cease and desist may be asked to leave and may be precluded from attendance at future meetings. The University has the right at all times to determine what constitutes appropriate behavior on the part of an advisor or support person. The advisor or support person is encouraged to join the claimant or respondent's initial meeting with a University administrator for an orientation to the University's policies and procedures, privacy protections, and expected participation/decorum. The advisor or support person may not be a witness or otherwise have any conflicting role in the process.

## **9. Complaints Against Students and Employees**

Complaints alleging relationship violence, stalking, or sexual misconduct are investigated by the Office of Institutional Equity (OIE) under the direction of the Deputy Title IX Coordinator for Investigations. All investigation findings resulting in a violation are sent to the parties and either the Student Conduct and Conflict Resolution Office (SCCRO) for reports involving student respondents or Human Resources/Academic Human Resources for reports involving employee respondents. Upon request by a member of the Board of Trustees, OIE will provide a copy of the final investigative report involving a complaint against an employee to a member of the MSU Board of Trustees. The requested report will protect the claimant's anonymity, and the report will not contain specific identifying information of the claimant.

Investigation findings involving a respondent who is both a student and employee will be sent to the SCCRO and the appropriate human resources office. These offices review the OIE report and facilitate the determination and implementation of sanctions.

	Complaints Against a Student	Complaints Against an Employee
<b>Issuance of OIE final report</b>	Student Conduct and Conflict Resolution Office (SCCRO)	Human Resources or Academic Human Resources
<b>Sanction Determination and Implementation</b>	Student Conduct and Conflict Resolution Office (SCCRO)	Human Resources or Academic Human Resources
<b>Appeals</b>	<ul style="list-style-type: none"> <li>• Appeals involving a suspension or dismissal will be determined by the Vice President for Student Affairs and Services</li> <li>• All other appeals will be determined by the Equity Review Officer</li> </ul>	<ul style="list-style-type: none"> <li>• For faculty and academic staff, appeals of the OIE decision are governed by the Employee Appeal Procedures</li> <li>• For support staff, appeals of sanctions are governed by the applicable collective bargaining agreement.</li> <li>• Faculty and academic staff appeals of sanctions are governed by the Faculty Grievance Policy for faculty and academic staff, or the non-union support staff grievance policy.</li> </ul>
<b>More information</b>	<ul style="list-style-type: none"> <li>• <b>Appendix I:</b> ADP/RVSMP Student Conduct Sanction and Appeal Procedures</li> <li>• <b>Appendix J:</b> Student Conduct Sanction and Appeal Process Flow Chart</li> <li>• <b>Appendix K:</b> Guidelines for Issuing Disciplinary Sanctions: Student Conduct Sanctions for ADP / RVSMP Violations</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Appendix M:</b> Anti-Discrimination Policy/Relationship Violence &amp; Sexual Misconduct Policy Employee Appeal Procedures</li> <li>• <b>Appendix N:</b> Guidelines for Issuing Disciplinary Sanctions: Faculty and Academic Staff ADP / RVSMP Violations</li> </ul>

## 10. Additional Standards of Review for Complaints Against Employees<sup>25</sup>

The University President and a member of the Board of Trustees shall be notified in writing by the Title IX Coordinator if more than one allegation has been made against an employee that resulted in a finding of no misconduct. The Title IX Coordinator will take all appropriate steps

<sup>25</sup> Required under Michigan, P.A. 265 of 2018, 265b, of the fiscal year 2019 education omnibus act.

to ensure the matter is being investigated thoroughly, including hiring an outside investigator for future cases involving that employee.

On an annual basis, the University President and a member of the Board of Trustees will review all reports of allegations against an employee of the University. Reports will be provided in a manner that protects the claimant's anonymity, and the report will not contain specific identifying information of the claimant.

## **11. Sanctions and Remedies**

In cases where the OIE investigation has found that sexual misconduct, stalking, or relationship violence occurred, the University will determine the appropriate, enforceable sanction. The sanction will be reasonably calculated to stop the harassment and prevent its recurrence. The University will not negotiate with a student or employee for a lesser sanction if that sanction will not end the sexual misconduct, stalking, or relationship violence, eliminate the hostile environment, and remedy the discriminatory effects on the victim and others. In addition to disciplinary sanctions for the respondent, the University may also provide remedies to claimants and others who have experienced sexual misconduct, stalking, or relationship violence, including counseling, academic accommodations, academic support, or employment accommodations. Other potential remedies may include targeted or broad-based educational programming or training.

## **N. Investigations Without a Complaint**

When necessary to meet its commitment to provide an environment free of unlawful relationship violence, stalking, or sexual misconduct, the University may investigate alleged incidents of relationship violence, stalking, or sexual misconduct of which it becomes aware, even if no complaint has been filed, the individual(s) involved is unwilling to pursue a complaint or participate in an investigation, or the individual(s) involved has requested to participate anonymously. If a University employee becomes aware of specific and credible allegations of relationship violence, stalking, or sexual misconduct, whether through a claimant or otherwise, the allegations should be reported promptly to the Office of Institutional Equity. See discussion in Section XIII.E.4 above for additional information.

## **O. Administrative Action**

The term "Administrative Action" encompasses action taken by the University in situations involving:

- Occasions where there is no formal investigation conducted due to the request of the claimant, a claimant's request or anonymity, because the claimant does not consent to

participate in an investigation, because there is insufficient information to proceed with an investigation, or because OIE lacks jurisdiction;

- When a respondent is not affiliated with the University; or
- A finding of no violation of the Relationship Violence and Sexual Misconduct Policy by OIE but the conduct at issue suggests the need for remedial, educational, or preventative action.

Administrative action may include, but is not limited to:

- Implementing protective measures and accommodations as described in the Interim Measures section of this Policy;
- Personnel actions;
- Targeted or broad-based educational programming or training; and/or
- Direct intervention with the respondent.

Depending on the action taken, it may be possible for a claimant to maintain anonymity.

The decision to take administrative action will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. All administrative actions are taken within the context of applicable University policies.

The Deputy Title IX Coordinator for Investigations will maintain records of administrative action taken. Such action will typically be taken within sixty (60) calendar days of the initial report.

#### **P. Privacy of Investigations**

The investigation of relationship violence, stalking, and sexual misconduct complaints will be conducted in a private manner, except insofar as information needs to be disclosed so that the University may effectively investigate the matter or take corrective action. While discretion is important, the parties are not restricted from discussing and sharing information relating to their investigations with others.

#### **Q. Conflicts of Interest**

The University does not allow conflicts of interest, real or reasonably perceived, by those investigating or adjudicating allegations under this policy or its related procedures. A conflict of interest exists when an individual's knowledge of the matter or personal or professional relationships with the claimant, respondent, or witnesses would preclude the individual from being able to investigate or adjudicate the case fairly and impartially. Individuals who wish to

challenge an investigator because of a conflict of interest may do so by filing a challenge with the Deputy Title IX Coordinator for Investigations. If the challenge is to the Deputy Title IX Coordinator for Investigations, the challenge may be filed with the Title IX Coordinator. The procedure to challenge members of the Sanction Panel is outlined in Appendix I.

## **R. Retaliation**

Michigan State University prohibits retaliation (including retaliatory harassment) against individuals who report relationship violence, stalking, or sexual misconduct, or who participate in the University's investigation and handling of such reports, even if the University finds that no violation of the Relationship Violence and Sexual Misconduct Policy occurred. The University will take strong responsive action if retaliation occurs. Complaints of retaliation will be investigated by OIE. During a retaliation investigation, OIE may implement new or additional interim measures to facilitate continued access to educational programs and activities. Where OIE determines that retaliation occurred in violation of the RVSM Policy, the respondent will be subject to disciplinary action up to and including dismissal for students and termination for employees.

Individuals participating in the investigation who believe they are being subjected to retaliation, including retaliatory harassment, should promptly contact the Office of Institutional Equity.

## **S. Participation**

Members of the University community are expected to participate in the University's investigations of alleged relationship violence, stalking, or sexual misconduct. If individuals choose not to participate, the investigation will proceed based on the information available.

## **T. Unit Administrator Responsibilities**

The Office of Institutional Equity is responsible for monitoring the University's compliance with federal and state nondiscrimination laws. However, a discrimination-free environment is the responsibility of every member of the University community. Unit administrators set the tone regarding acceptable conduct and climate within their units. Unit administrators are responsible for ensuring that employees within their units have completed the required online RVSM training and that external entities, such as contractors and third parties the unit works with, are aware of the University's RVSM Policy.

Unit administrators are responsible for providing assistance to the Office of Institutional Equity regarding complaints under this Policy in which the alleged harasser is an employee. Unit administrators who need assistance interpreting this Policy, obtaining education and training with respect to the Policy, or who have questions about relationship violence, stalking, or sexual misconduct prevention, may contact the Assistant Vice President for Human Resources or the

Associate Provost/Associate Vice President for Academic Human Resources, whichever is appropriate; the Director of the Office of Institutional Equity; and/or the Office of the General Counsel.

### **U. False Complaints**

All parties and witnesses are expected to provide truthful information in any proceeding under this Policy. Any member of the University community who knowingly files a false complaint of relationship violence, stalking, or sexual misconduct, or who knowingly provides false information to or intentionally misleads University officials who are investigating or reviewing a complaint, is subject to disciplinary action, up to and including discharge for employees and dismissal for students. Disciplinary action under this section of the Policy is not considered prohibited retaliation. A false complaint is defined as a report to the University of an act or acts of relationship violence, stalking, or sexual misconduct, which the individual reporting knew was not true. When analyzing a reported false complaint, OIE will consider the following:

- the state of mind of the individual accused of making the false report;
- if the individual intentionally made the false report; and
- if there were other circumstances involved.

Other circumstances OIE will consider include an individual's decision to recant, fear of retaliation, mental health concerns, and other relevant factors. OIE will differentiate these other circumstances from false reports.

Additional Information and Resources

### **V. Education**

The University is committed to enforcing this Policy and thereby helping to stop relationship violence, stalking, and sexual misconduct among its students, faculty, and staff. To that end, this Policy will be published on the University's website. Information regarding this Policy will be included in orientation materials for new students, faculty, and staff; made available in the Office of Institutional Equity, as well as on its website; and shared in other appropriate campus locations. In addition, the University will conduct educational sessions to: (1) inform students, faculty, and staff about identifying relationship violence, stalking, and sexual misconduct, the problems they cause, and its impact on the campus community, (2) advise members of the University community about their rights and responsibilities under this Policy, and (3) train personnel in the administration of this Policy. Each unit is responsible for obtaining this training for its staff and informing contractors and volunteers of this Policy.



## **W. Other Relevant University Policies**

Since relationship violence, stalking, and sexual misconduct may be forms of unlawful gender discrimination, a member of the University community who violates this Policy may also violate the University's Anti-Discrimination Policy. Other University policies relevant to behavior of a sexual or violent nature by members of the University community include Conflict of Interest in Educational Responsibilities Resulting from Consensual Amorous or Sexual Relationships, Conflict of Interest in Employment, Article 2.00 of the General Student Regulations, Article 3.00 of the Graduate and Undergraduate Residence Hall Regulations, and Ordinance 22.00.

## **X. Other Helpful Documents**

Other helpful documents that provide additional information about concepts or terminology contained in this Policy or related reporting obligations include:

- Title IX Coordinator Description: [www.titleix.msu.edu](http://www.titleix.msu.edu)
- ADP User's Manual: [www.oie.msu.edu](http://www.oie.msu.edu)
- University Reporting Protocols: Child Abuse, Sexual Assault, and Child Pornography: [https://www.hr.msu.edu/policies-procedures/university-wide/reporting\\_protocols.html](https://www.hr.msu.edu/policies-procedures/university-wide/reporting_protocols.html)
- University Reporting Protocols, FAQ document: <https://www.hr.msu.edu/policies-procedures/university-wide/documents/UniversityReportingProtocolFAQ.pdf>
- Child Maltreatment Resource Guide: <https://www.hr.msu.edu/policies-procedures/university-wide/documents/ChildAbuseResourceGuide.pdf>

## **Y. Online Resources**

The Department of Justice's Office of Violence Against Women maintains a comprehensive website regarding sexual assault, including information about applicable laws, what to do as a victim of sexual assault, confidentiality, and key terms and definitions. The website can be located at [www.changingourcampus.org](http://www.changingourcampus.org).

## **XIV. Annual Crime Reporting & Timely Warnings**

As part of its annual reporting obligations under the Clery Act, the University discloses statistics regarding domestic violence, dating violence, stalking, and sexual assaults that meet the definition of forcible and non-forcible sex offenses under federal law. The statistics include only those Clery crimes that occur on specific geography associated with the University as defined

under the Clery Act. The report, the Annual Security and Fire Safety Report, is published every October and is located on the MSU Police Department website at [www.police.msu.edu](http://www.police.msu.edu). The publication does not include any personally identifying information about a victim.

The MSU Police Department issues “timely warnings” to the campus community when a Clery crime (1) occurs on campus, in a non-campus building or property (as defined by law), or on public property immediately adjacent to campus and (2) poses a serious or continuing threat to students, employees, or visitors. The method of communication to the campus community will depend on the specifics of the crime reported and the immediacy of the danger to those on campus. Timely warnings do not contain any personally identifying information about the victim.

## **XV. Policy History**

The Sexual Harassment Policy was issued by the Office of the President on September 1, 1992 and revised in May 1999, January 2011, and June 2011. The Office of the President issued this expanded Relationship Violence & Sexual Misconduct Policy on January 1, 2015. The Policy was revised on September 8, 2015, August 31, 2016, August 30, 2017, January 8, 2018, April 30, 2018, and August 31, 2018.

## **XVI. Appendices**

Appendix A: Glossary

Appendix B: Frequently Asked Questions Document

Appendix C: MSU Police Department Information Forms

Appendix D: Michigan Criminal Statutes

Appendix E: Flow Chart: MSU Sexual Assault Program Overview

Appendix F: Flow Chart: MSU Safe Place Process Overview

Appendix G: Flow Chart: OIE Formal Complaint Process

Appendix H: Flow Chart: MSUPD Sexual Assault Investigation Process

Appendix I: ADP/RVSMP Student Conduct Sanction and Appeal Procedures

Appendix J: Flow Chart: ADP/RVSMP Student Conduct Sanction and Appeal Process

Appendix K: Guidelines for Issuing Disciplinary Sanctions: Student Conduct Sanctions for ADP/RVSMP Violations

Appendix L: Description of MSU Disciplinary Procedures

Appendix M: ADP/RVSMP Employee Appeal Procedures

Appendix N: Guidelines for Issuing Disciplinary Sanctions: Faculty and Academic Staff  
ADP/RVSMP Violations

Effective Date: 8/31/18