Policies

Sexual and Gender-Based Misconduct Policy

Policy number	11-05
Responsible office	Office of Institutional Equity (IE)
Enforcement official	Enforcement official Title IX Coordinator
Classification	Board of Trustees Policy
Category	Federal and State Civil Protections

STATEMENT OF POLICY

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

for those who have been victims of such behaviors or who have been accused of such behaviors.

SUMMARY OF CONTENTS/MAJOR CHANGES

This Policy has been updated to conform to the Board-approved Policy format; consolidate information; remove and relocate procedures that were contained in the Policy; and incorporate the 2020 Title IX Final Rule from the Department of Education (ED) Office of Civil Rights (OCR). This Policy subsumes and rescinds the May 17, 1985 Sexual Harassment and Sexism Policy, the July 31, 1992, Human Immunodeficiency Virus Policy, and the June 21, 1985, Human Rights Policy.

1. Purpose of Policy

Western Michigan University (WMU or University) strives to cultivate a healthy and diverse community that recognizes the value of each individual and helps foster safety, civility and respect for all people.

Members of the WMU Community have the right to be free from sexual and gender-based discrimination, harassment, violence, and all other forms of prohibited conduct described in this Policy. All members of the Community are expected to conduct themselves in a manner that does not unduly deprive, limit or deny education or employment access, benefits or opportunities. This Policy has been developed to reaffirm these principles and to provide accountability for conduct that violates this Policy.

2. Stakeholders Most Impacted by the Policy

The WMU Community

3. Definitions

3.1. Campus Security Authority (CSA): University official who has an obligation under the Clery Act to report certain crimes to WMU Public Safety.

3.2. Clery Act: “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act”; a federal statute requiring colleges and universities participating in federal financial aid programs to maintain and disclose campus crime statistics and security information. Defines Campus Security Authorities and the grievance process requirements for sexual assault, intimate partner violence and stalking.

3.3. Complainant(s): the person alleged to have been subjected to the Covered Behavior.

3.4. Confidential: a category of information that, when disclosed to someone on a specific list of individuals (see § 7, below), may only be shared if there is an imminent threat of harm to self or others.

3.5. Contact: any direct or indirect verbal, written, electronic, or third-party messages, any physical touch or non-verbal gesture.

3.6. Coordinated Response Team: assists the University in assessing safety risks and consists of representatives from Student Affairs, Academic Labor Relations, Human Resources, Public Safety, IE and other offices as needed.

3.7. Covered Behavior or **Sexual Misconduct**: the following prohibited activities, as defined herein: sexual or gender-based harassment; harm to others; intimate partner violence; non-consensual sexual contact; non-consensual sexual intercourse; sexual exploitation; stalking; retaliation and other covered behaviors and actions where such behavior is based on an individual's sex, gender, or gender identity.

3.8. Designated Official: an official with authority to institute corrective measures at the University and designated by this Policy to promptly Report disclosures or observations of sexual misconduct to the Title IX Coordinator**.** Designated Officials include members of the Board of Trustees, the President, members of the President's Cabinet, Deans, Supervisors, Academic Advisors, Residence Life staff with on-call responsibilities, and administrators and staff in Intercollegiate Athletics, Human Resources, Office of Student Conduct, Public Safety and Institutional Equity.

3.9. Elliot-Larsen Civil Rights Act: Michigan law that prohibits discrimination on the basis of "religion, race, color, national origin, age, sex, height, weight, familial status, or marital status" in employment, housing, education, and access to public accommodations.

3.10. Formal Complaint: a written statement filed by a Complainant or signed by the Title IX Coordinator alleging Covered Behavior against a Respondent, requesting an informal resolution or an investigation of the alleged behavior.

3.11. Grievance Process: process that the University uses to assess a Report and resolve a Formal Complaint.

3.12. Intimate Partner: person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the initiating individual.

3.13. Intimate Parts: include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

3.14. Mandated Reporter: individual designated by the Michigan Child Protection Law as those who must report suspected child abuse or neglect.

3.15. No Contact Order: an Order issued by a University official that requires that an individual have no contact with a particular person or persons.

3.16. Party: either the Complainant(s) or Respondent(s) in an investigation or action relating to a complaint of Covered Behavior.

3.17. Private: a category of information related to a report of Covered Behavior that may be shared with a small circle of individuals who have a need to know.

3.18. Report: information about an allegation of sexual misconduct shared with Institutional Equity, Public Safety or a Designated Official.

3.19. Respondent: the person(s) accused of the Covered Behavior.

3.20. Sexual Contact: intentional contact with the Intimate Parts of another, causing another to touch one's Intimate Parts, or disrobing or exposure of another's Intimate Parts without permission.

3.21. Sexual Intercourse: vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object; oral penetration involving mouth to genital contact.

3.22. Student(s): any person taking one or more courses at the University, pursuing undergraduate, graduate, or professional studies; any person who withdraws from WMU after a charge of an alleged violation of the WMU Student Code or any University policy; or someone who is not officially enrolled for a particular term, but who has a continuing relationship with the University as a student (e.g., someone who was enrolled for Spring and plans to enroll for Fall, but who is not enrolled for Summer).

3.23. Title IX: federal law that protects individuals from discrimination based on sex in education programs or activities that receive federal financial assistance.

3.24. Title IX Coordinator: person designated by WMU to receive all Reports of Covered Behavior, oversee the University's centralized review and resolution of those Reports in compliance with the law and this Policy, and who advises the WMU Community about the Grievance Procedures and courses of action in the broader community. The Title IX Coordinator may designate someone (Designee) to assist with carrying out these responsibilities.

3.25. WMU Community or Covered Individuals: all WMU students, faculty, staff, administrators, Board members, consultants, vendors, others engaged to do business with the University, guests and visitors.

4. Policy

4.1. Under Title IX of the Education Amendments Act, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." Title IX applies to all of the University's programs and activities and requires that the University not discriminate on such bases. Title IX prohibits retaliation against any individual who files a good faith complaint or participates in an investigation under Title IX. This Policy meets and, in some areas, exceeds the scope of Title IX and its implementing regulations.

4.2. In addition, the University's response to sexual assault, intimate partner violence and stalking are governed by the Clery Act and Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).

4.3. The University prohibits all forms of sexual and gender-based harassment and violence, intimate partner violence, and stalking prohibited by Title IX, VAWA, Title VII of the Civil Rights Act of 1964, and other applicable statutes, including the Elliott Larsen Civil Rights Act. This Policy prohibits a broad continuum of behaviors, some of which are not prohibited under Title IX or other law. Their inclusion in this Policy reflects the University's standards and expectations for a respectful working and learning environment.

4.4. The University will investigate and attempt to resolve all complaints of Covered Behavior in a prompt, fair and impartial manner. The University will treat all individuals involved with dignity and respect. All processes are driven by objective fact-finding and approached from a neutral standpoint.

5. Scope

This Policy applies to any WMU Community member engaging in Covered Behavior and any WMU Community member being subjected to Covered Behavior.

6. Location

6.1. The Policy applies to Covered Behavior that takes place:

6.1.1. on campus;

6.1.2. in the context of a WMU education program or activity, regardless of location including, but not limited to, service-learning activities, study abroad placements, student internship programs, the workplace and work-related events;

6.1.3. at a location where either the Complainant or the Respondent involved in a particular claim is a member of the WMU Community;

6.1.4. outside the context of a WMU education program or activity when the Covered Behavior has continuing adverse effects on campus or in an off-campus education program or activity.

6.2. Online and/or social media conduct may also violate this Policy if it meets the definition of Covered Behavior. Online postings are in the public sphere and are not private. These postings may subject an individual to allegations of Covered Behavior or misconduct. The University does not regularly search for this information, but it may take action if and when such information is brought to its attention. See Employee Computer Use Policy; Acceptable Use Policy. The University will view any Report of online Covered Behavior with the Respondent's Free Speech rights in mind.

7. Covered Behavior and Related Key Definitions

7.1. The University will treat attempts to commit any Covered Behavior as if those attempts had been completed.

7.2. Sexual Harassment: any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal, electronic or physical conduct of a sexual nature when:

7.2.1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity (e.g., quid pro quo);

7.2.2. Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual (e.g., quid pro quo); or

7.2.3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and an objective standard.

7.2.4. A single isolated incident of Sexual Harassment may jeopardize equal access to a program or activity if it is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to be found responsible for a Policy violation, particularly if the Behavior is physical. Examples of conduct that may constitute Sexual Harassment are listed in the Procedures.

7.3. Gender-Based Harassment: acts of verbal, nonverbal, or physical aggression or contact, intimidation, threats, abuse or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature; sexual harassment based on gender, gender identity, gender expression, or sexual orientation.

7.4. Non-Consensual Sexual Intercourse: having or attempting to have Sexual Intercourse with another individual by force or threat of force, without Consent or when that individual is Incapacitated; sexual assault.

7.5. Non-Consensual Sexual Contact: Sexual Contact with another individual by force or threat of force, without Consent or when that individual is Incapacitated.

7.6. Sexual Exploitation: taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit or for the benefit or advantage of anyone other than the one being exploited. Examples include, but are not limited to:

7.6.1. surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and Consent of all parties involved;

7.6.2. non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distributing such without the knowledge and Consent of all parties involved;

7.6.3. exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;

7.6.4. knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge;

7.6.5. sex-based bullying;

7.6.6. Sexual Intercourse with a person who, as defined by Michigan Law, is a relative or under the age of consent (age 16);

7.6.7. inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

7.7. Harm to Others: behaviors that threaten or endanger the health or safety of any person, which include physical abuse, verbal abuse, threats, intimidation and/or harassment. Non-sexual or non-gender-based Harm to Others will be treated as a violation of the WMU Student Code, Anti-bullying Policy, relevant employee policies, or bargaining agreements and will be referred accordingly.

7.8. Stalking: a course of physical or verbal conduct directed at another individual on the basis of sex or gender identity, in a manner that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking may include cyber-stalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of Contact are used.

7.9. Intimate Partner Violence: often referred to as dating violence, domestic violence or relationship violence; one act or ongoing behavior that includes but is not limited to:

7.9.1. Any actual or threatened act of physical, sexual, emotional violence or economic abuse against an intimate partner (person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the initiating individual);

7.9.2. Threats, assault, property damage, violence or threat of violence to oneself, an intimate partner, or to the family members or friends of that partner; or

7.9.3. Sexual Harassment, Non-Consensual Sexual Intercourse, Sexual Exploitation, Harm to Others, Stalking, or Retaliation of an intimate partner.

7.10. Retaliation: acts, words, or attempts to take adverse action against the Complainant, Respondent, or any individual or group of individuals because of their good faith Complaint or participation in an investigation and/or resolution of a Complaint. Retaliation may be committed by any individual or group of individuals.

7.10.1. Retaliation may take many forms, including threats, intimidation, pressuring, continued abuse, violence, other forms of harm to others.

7.10.2. Retaliation may also occur by moving someone to a less desirable workspace, altering work hours, removing or limiting privileges. All forms of Retaliation are prohibited under this Policy as well as under state and federal law.

7.10.3. Individuals may not retaliate against persons who report good faith concerns about a consensual relationship.

7.11. When the University evaluates responsibility for alleged Covered Behavior, it considers the existence or non-existence of the following:

7.11.1. **Coercion**: the improper use of pressure to compel another individual to initiate or continue sexual activity against the individual's will. Coercion may include intimidation, manipulation, threats and blackmail. Words or conduct may constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether to engage in sexual activity. Examples include: threatening to "out" someone based on sexual orientation, gender identity or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity.

7.11.2. **Consent**: affirmative, conscious decision by a participant to engage in sexual activity. Consent must be freely and voluntarily given with knowledge of the nature of the act or transaction involved. The University will consider the following when evaluating whether the Complainant has given Consent:

7.11.2.1. Level of mutual understanding of the nature and scope of the act to which the individual Consented and a willingness to do the same thing, at the same time, in the same way;

7.11.2.2. Whether Consent was obtained through the use of force, coercion, threats, or intimidation, or by taking advantage of the Incapacitation of another individual;

7.11.2.3. Whether communication regarding Consent used mutually understandable words and/or actions that indicated an unambiguous willingness to engage in sexual activity. If there is no evidence of clear communication or outward demonstration, the University will find that Consent was not given;

7.11.2.4. Whether Complainant withdrew Consent; and/or

7.11.2.5. Whether, once withdrawn, the sexual activity ceased immediately and/or all parties received mutually expressed or clearly stated Consent before continuing further sexual activity.

7.11.2.6. The University will not consider Consent to one form of sexual contact as Consent to all forms of sexual contact; nor will it consider Consent to sexual activity with one person as Consent to activity with any other person. Each participant in a sexual encounter must Consent to each form of sexual contact with each participant.

7.11.2.7. Even in the context of a current or previous intimate relationship, the University will evaluate whether each party Consented to each instance of sexual contact each time.

7.11.2.8. Complainant need not resist the sexual advance or request to demonstrate lack of Consent; however, the University will view Complainant's resistance as a clear demonstration of non-Consent.

7.12. Force: the use or threat of physical violence, restraint or intimidation to overcome an individual's choice whether to participate in Sexual Activity.

7.13. Incapacitation: a state in which an individual cannot make the informed and rational decision to engage in Sexual Activity because the individual lacks conscious knowledge of the nature of the act (e.g., cannot understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless.

7.13.1. An Incapacitated person is unable to give Consent. An individual is Incapacitated when asleep, unconscious, or otherwise unaware that sexual activity is occurring. This includes an individual who cannot give consent because of their age or their temporary or permanent physical or mental health condition. Incapacitation may result from the use of alcohol and/or other drugs.

7.13.2. Because the impact of alcohol and drugs varies from person to person, the University will not find an individual Incapacitated solely based on that person's consumption of alcohol or other drugs, impairment, inebriation or intoxication. Instead, it will conduct a case-by-case evaluation to assess how the consumption of alcohol and/or drugs impacts an individual's decision-making ability, awareness of consequences, ability to make informed judgments, or capacity to appreciate the nature and the quality of the behavior.

7.13.3. In any particular claim, the University will evaluate whether Respondent knew or should have known, when viewed from the position of a sober, reasonable person, that Complainant was Incapacitated .

7.13.4. The University will not accept being intoxicated or impaired by drugs or alcohol as an excuse for Covered Behavior; nor will it consider intoxication or such impairment to diminish a Respondent's responsibility to obtain Consent.

8. Privacy and Confidentiality

8.1. WMU is committed to protecting the Privacy of all individuals involved in a Report of Covered Behavior. All WMU employees who are involved in a Report, including the Title IX Coordinator, investigators, hearing officers, committee members, and discipline authority shall receive specific instruction and training about respecting and safeguarding Private information. Throughout the Grievance Process, every effort will be made to protect the Privacy interests of all individuals involved in a manner consistent with the need for a thorough review. Privacy and Confidentiality have distinct meanings under this Policy.

8.2. Pursuant to Michigan statute, the Title IX Coordinator is required to share aggregated, non-personally identifiable information regarding the scope and frequency of Covered Behaviors with the Board of Trustees.

8.3. Pursuant to the Clery Act, Campus Security Authorities (CSA's) must report information regarding campus crimes to WMU Public Safety for record-keeping purposes. This information may be de-identified to protect privacy.

8.4. To comply with the requirements of federal granting agencies, upon receipt of a Report, the Title IX Coordinator must provide the Office of Research and Innovation (ORI) with an employee Respondent's name, department, and college so ORI may review whether the Respondent is eligible to serve as a Principal Investigator (PI) or co-PI (see wmich.edu/policies/principal-investigators-eligibility). IE will inform the Respondent of this disclosure to ORI as required by its reporting procedures.

8.5. Privacy

Private information may only be shared with those University employees who are directly involved in the resolution of a Report under this Policy and who need to know the information in order to resolve the Report. While not bound by legally privileged Confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

8.6. Confidentiality

8.6.1. Unless there is an imminent threat of harm to self or others, Confidential Information that is shared with designated campus or community professionals may not be revealed to any other individual without express permission from the individual disclosing the information or about whom the information pertains. Designated campus and community professionals that may hold legally privileged conversations recognized by law include medical providers, mental health providers, ordained clergy/pastoral counselors, and sexual assault crisis counselors.

8.6.2. Confidential Resources are licensed or specially trained professionals who, by law, may not share information without the consent of the individual seeking assistance, except for very specific circumstances. A list of Confidential Resources is under Section 21, Contact Information.

8.6.3. WMU Confidential Resources must submit anonymous report information regarding campus crimes to WMU Public Safety for Clery Act purposes, but will not share identifying information without the permission of the person disclosing the information or about whom the information pertains. When a Report involves suspected abuse of an individual under the age of 18, Confidential Resources are Mandated Reporters and must notify child protective services and/or local law enforcement. Confidential Resources are not required to report

behaviors to Public Safety that fall outside of those contemplated by the Clery Act (behavior that occurs off campus, sexual and gender-based harassment, sexual exploitation and retaliation).

8.6.4. Medical and counseling records of a Complainant or Respondent are privileged, confidential records that individuals are not required to disclose. However, these records may contain information that is related and material to the Complaint. During the Grievance Process, a Party may voluntarily choose to share such records with the investigator. Any records provided by a Party become part of the file, and any information that relates to the current claim will be made available for review by the other Party and their Advisor, with personal identifiers and non-related information removed as set forth in the Procedures. The Party who provided the records for review is presumed to have consented to such disclosure. The reviewing Party and Advisor agree to keep any such information Confidential unless its disclosure during the hearing or hearing preparation is necessary to make a good faith argument in support of their position.

9. Reporting

9.1. Any individual may file a Report alleging Covered Behavior or discrimination, including someone who is not the subject of the perceived Behavior or discrimination.

9.2. All individuals are encouraged to promptly report conduct that may violate this Policy to the Title IX Coordinator, or designee, in IE. Individuals are also encouraged to report conduct that may violate criminal law to both IE and local law enforcement. These processes are not mutually exclusive. See Section 21, Contact Information, for reporting.

9.3. The Report is presumed to be credible, and Supportive Measures may be immediately requested. The Respondent is presumed not responsible for the reported Covered Behavior unless and until the evidence supports a different determination.

9.4. The University will quickly assess every report of Covered Behavior for risk of harm to the Complainant or to the broader campus community and will take steps necessary to address those risks.

9.5. Amnesty Considerations. Individuals who report potential Covered Behavior in good faith will not be subject to University disciplinary action under the Western Michigan University Student Code of Conduct for their own consumption of alcohol or drugs at or near the time of the incident, provided that any such violations

did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other non-disciplinary, educational remedies regarding alcohol or drug use. The University will not ask about or investigate the citizenship status of any individual who submits a Report.

9.6. Complainant Reporting

9.6.1. When reporting to IE or law enforcement, Complainants do not need to request any particular course of action, nor label what happened. Deciding how to proceed can be a process that unfolds over time. Before or during the decision-making process, Complainants and other reporting persons are encouraged to seek support and information from a Confidential Resource.

9.6.2. Complainants are encouraged to preserve any physical evidence related to the Report.

9.6.3. A Complainant may contact the Title IX Coordinator, the Department of Public Safety or the YWCA for assistance with filing a criminal complaint or a civil protective order and for information on a forensic exam and preserving evidence. See Section 21, Contact Information.

9.6.4. A Complainant has the right to notify, or decline to notify, law enforcement. This constitutes a recognized exception to the University Duty to Report policy, which generally requires that University employees report all potential criminal acts (See wmich.edu/policies/criminal). In the context of sexual assault, intimate partner violence and stalking, federal law mandates that it is an adult Complainant's option to notify or decline to notify law enforcement.

9.7. Anonymous Reporting

9.7.1. Any individual may make an anonymous Report concerning Covered Behavior. Individuals may report an incident without disclosing their name, identifying the parties involved or requesting any action. However, depending on the extent of information available about the incident or the individuals involved, the University's ability to respond to an anonymous report or take further action may be limited. An anonymous report may be made online at wmich.edu/sexualmisconduct/report or by telephone at (269) 387-6316.

9.7.2. The Title IX Coordinator will review each anonymous Report to determine available actions. Where there is sufficient information, the University will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

9.8. Required Reporting

9.8.1. When Designated Officials are notified of Covered Behavior, they must immediately report the information to the Title IX Coordinator or designee in Institutional Equity. The Designated Official will keep all information they receive private. Notice to a Designated Official constitutes notice to the University and will initiate a response.

9.8.2. Anyone with information made known to them in their professional or official capacity regarding suspected mental or physical abuse or neglect of a child must immediately report such information directly to Michigan's Department of Human Services by calling 855-444-3911 (24/7 toll free number). You must submit a written report to the Department of Human Services within 72 hours of the initial verbal report. Reporters must also inform the Program Director or the Office of Precollege Programming. For purposes of this requirement, a "child" is anyone age 17 or younger.

9.8.3. Except as indicated in Section 9.6.4 above, all employees, students, contractors and other University-affiliated persons must promptly report crimes to Public Safety per the Duty to Report Criminal Acts Policy.

9.9. Timeframes for Reporting

9.9.1. There is no time limit for reporting Covered Behavior; however, all individuals are encouraged to report the behavior as soon as possible in order to maximize the University's ability to respond promptly and effectively. If the Respondent is not a member of the WMU Community at the time of the report, the University will still provide Supportive Measures to Complainant; however, its ability to investigate and/or take action may be limited. The University will assist a Complainant in identifying external reporting options.

9.9.2. If Complainant chooses not to file a Formal Complaint at the time of the Report, they may file a Formal Complaint at a later date.

10. Complainant Agency and Autonomy Not to Proceed

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

10.2. The Title IX Coordinator (in consultation with the Coordinated Response Team, as needed) will consider the following in evaluating a Complainant's requests for confidentiality, that no investigation occur, or that no formal action be taken:

10.2.1. the nature and scope of the alleged conduct, including whether the reported Covered Behavior involves the use of a weapon;

10.2.2. the Complainant's wish to pursue disciplinary action;

10.2.3. the respective ages and roles of the Complainant and Respondent;

10.2.4. the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;

10.2.5. whether there have been other reports of misconduct by the Respondent;

10.2.6. whether the Respondent threatened further sexual violence or other violence against the Complainant or others;

10.2.7. whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group such that there is an increased risk of future acts of sexual violence under similar circumstances;

10.2.8. whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);

10.2.9. considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and

10.2.10. the University's obligation to provide a safe and non-discriminatory environment.

10.3. Where the University determines that action should be taken that is inconsistent with Complainant's request not to proceed, the Title IX Coordinator will inform the Complainant about the University's chosen course of action. As part of providing Supportive Measures, the University may pursue steps to limit the effects of the alleged Behavior and prevent its recurrence in ways that do not involve disciplinary action against a Respondent or disclosing the identity of the Complainant. See section 12.2, Supportive Measures.

11. Formal Complaint

11.1. The Complainant may initiate a Formal Complaint at any time during or after an initial Report by contacting IE and submitting the Complaint in writing. A parent or legal guardian may file a Formal Complaint on behalf of their minor dependent or dependent with a disability.

11.2. The Title IX Coordinator may sign a Formal Complaint related to Covered Behaviors of which they have been made aware. In doing so, the Title IX Coordinator does not become a Complainant or a Party for the case.

12. Support Provisions

12.1. Support Person and/or Advisor

12.1.1. Complainant(s) and Respondent(s) may each have a support person and/or advisor of their choice present at any meeting related to the Report of Covered Behavior. For Bargaining Unit members, the advisor or support person may be a union representative.

12.1.2. During investigative meetings, the advisor and support person are both silent and non-participating entities who are there solely to observe and provide support. However, either Party or their advisor/support person may request a short break during the investigative meetings to confer.

12.1.3. If the case proceeds to a hearing, the advisor is then responsible for asking questions on behalf of the Party. An advisor is required; if a Party does not have an advisor, the University will provide one at no charge.

12.1.4. An advisor may be an attorney. Advisors should make themselves available for meetings throughout the process.

12.1.5. Prior to their participation, the advisor and/or support person will be required to review and agree to the University's policies and procedures, privacy protections and expected rules of participation and decorum. The University shall determine what constitutes appropriate behavior on the part of a support person and advisor.

12.2. Supportive Measures

12.2.1. As part of its Assessment, the University may provide Supportive Measures based on information gathered from a Report or individual consultation with each Party. The Title IX Coordinator, or designee, has the discretion to implement these measures as appropriate and in accordance with applicable University policies.

12.2.2. Supportive Measures are designed to protect the Parties involved. They are not sanctions. Supportive Measures are non-disciplinary, non-punitive measures available to either Party, without cost and regardless of whether the Complainant chooses to pursue an investigation.

12.2.3. Supportive Measures may include:

12.2.3.1. Referral to counseling, medical, and/or other healthcare services;

12.2.3.2. Safety planning;

12.2.3.3. Public safety transportation and escort on campus;

12.2.3.4. Changing class schedule, including the ability to take an "incomplete," drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty);

12.2.3.5. Changing residence building;

12.2.3.6. Changing work schedule or job assignment;

12.2.3.7. Referral for academic accommodations and support services, such as tutoring;

12.2.3.8. Instituting a no contact order; or

12.2.3.9. Any other remedy that can be tailored to the individuals involved in order to achieve the goals of this Policy

12.2.4. While evaluating the need for Supportive Measures, the University may consider whether emergency removal of the Respondent is necessary. After conducting an individualized safety and risk analysis, the University may remove a Respondent from a University program or activity on an emergency basis if it determines that a Respondent poses an immediate threat to the physical health or safety of any individual arising from the allegations of Sexual Misconduct.

12.2.4.1. The emergency removal will remain in place pending the results of an investigation or until the threat to health or safety has passed.

12.2.4.2. If the University institutes emergency removal, Respondent will receive notice and an opportunity to challenge the decision immediately following their removal. For students, emergency removal follows the Interim Suspension provisions and process set forth in the WMU Student Code (see wmich.edu/studentrights/code). Employees will be placed on Administrative Leave.

12.2.4.3. For employees, Administrative Leave may also be warranted when circumstances suggest the presence of Respondent would significantly hinder the investigation.

12.2.5. Selection of Supportive Measures and whether to implement emergency removal will vary depending on the facts of each case. WMU will consider a number of factors, including:

12.2.5.1. the specific needs expressed by the Complainant and/or Respondent;

12.2.5.2. the age of the Parties involved;

12.2.5.3. the severity or pervasiveness of the allegations;

12.2.5.4. any continuing effects on either Party or the Campus Community;

12.2.5.5. whether the Complainant and Respondent share the same residence building, dining hall, class, transportation, or job location;

12.2.5.6. overall safety of the campus community;

12.2.5.7. whether judicial measures have been taken to protect the Complainant (e.g., civil protection orders); and

12.2.5.8. Respondent's due process rights.

12.2.6. While Supportive Measures are in place, the Title IX Coordinator, in consultation with other University administrators, may maintain contact with the Parties so that all safety, emotional, and physical well-being concerns can be reasonably addressed.

12.2.7. Supportive Measures will be kept Private to the extent that maintaining that privacy does not impair the University's ability to provide assistance.

13. Grievance Process

When responding to a Report of Covered Behavior, the University will undertake a Grievance Process in a timely manner. The Grievance Process includes assessment (including Supportive Measures or emergency removal) and informal resolution or formal resolution (investigation, hearing, finding, appeal of finding, sanction, appeal of sanction). The Grievance Process and Procedures are available at [wmich.edu/sexualmisconduct].

14. Evidentiary Standard

The University will determine responsibility for violation of Policy using the preponderance of the evidence standard.

15. Constitutional Protections

15.1. Nothing in this Policy should be interpreted to limit constitutionally protected First Amendment Rights, Due Process Rights of the 5th and 14th Amendments, or restrict any other Constitutional rights.

15.2. First Amendment free speech rights protect speech on matters of public interest. They do not protect illegal activity, sexual harassment as defined by this Policy, destruction of property, or speech that materially and substantially disrupts classes or campus activities.

16. Exceptions: none

17. Accountability

17.1. WMU Community: For students, failure to follow this Policy could lead to sanctions under the Student Code, up to and including expulsion. For administrators, faculty and staff, failure to follow this Policy could lead to disciplinary action up to and including dismissal consistent with Human Resources policy and applicable bargaining agreements.

17.2. Federal and State Law: Federal and state funding is premised on compliance with the laws and guidance referenced in this Policy. The University could lose Federal or state funding for failure to comply.

18. Title IX and Sexual Misconduct

18.1. The University's definition of Sexual Misconduct is broader than the behavior covered solely by the Title IX implementing regulations.

18.2. Title IX defines Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (3) ''Sexual assault'' as defined in 20 U.S.C. 1092(f)(6)(A)(v), ''dating violence'' as defined in 34 U.S.C. 12291(a)(10), ''domestic violence'' as defined in 34 U.S.C. 12291(a)(8), or ''stalking'' as defined in 34 U.S.C. 12291(a)(30).

18.3. For Title IX to apply, the incident must be reported (1) while the Complainant is participating or attempting to participate in a University educational program or activity (i.e. as an applicant, current student, current employee); (2) while the University has control of the Respondent; (3) and the incident must have occurred on property owned or operated by the University, in the United States.

18.4. Formal Complaints that meet the Title IX definition and jurisdictional criteria have specific Grievance Process requirements. Individuals will be notified whether their complaint is covered under Title IX and will have

the opportunity to appeal that designation.

18.5. Individuals who were subjected to Sexual Harassment that meets the definition and criteria under Title IX, and who believe the University's response was deliberately indifferent and/or failed to meet procedural requirements, have a right to contact the ED Office for Civil Rights (OCR). Additionally, employees have a right to contact the Equal Employment Opportunity Commission (EEOC) regarding their rights under Title VII. See section 21, Contact Information.

19. Related Procedures and Guidelines

Resources for assistance following incidents of sexual or gender-based harassment and violence available online.

Procedures and Guidelines for the Grievance Process

National Science Foundation Sexual Harassment Notices

Consensual Sexual Relations

Student Code

20. Additional Information

20.1. Other forms of prohibited discrimination and/or harassment, including race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, protected veteran status, height, weight, and marital status, are governed by the University's Non-Discrimination Policy which is located at wmich.edu/policies/non-discrimination-policy.

20.2. Coordination with Law Enforcement

20.2.1. The University encourages Complainants and Respondents to pursue their legal rights regarding criminal claims of Covered Behavior that may also violate federal or state law. The University will offer assistance to involved parties so they may file criminal reports and/or cooperate with law enforcement agencies.

20.2.2. The University's Policy, definitions and burden of proof may differ from Michigan or federal criminal law. Neither law enforcement's determination of whether to prosecute a Respondent, nor the outcome of any criminal prosecution, determine whether a violation of this Policy has occurred. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

20.2.3. At the request of law enforcement, the University may defer its Grievance Process until after the initial stages of a criminal investigation. If the University delays for this reason, it will communicate with the Complainant regarding Supportive Measures, rights, and procedural options under this Policy to assure safety and well-being during the criminal investigation. The University will promptly resume the Grievance Process under this Policy as soon as it is informed that law enforcement has completed its initial investigation.

20.3. Training Requirements

Every person involved in the resolution of a Report of Covered Behavior must complete all legally required training. These individuals include the Executive Director of IE, the Title IX Coordinator and their designees, Coordinated Response Team members, Investigators, Hearing Officers, Appeals Committee members, Disciplinary Authorities (designated Office of Student Conduct staff, designated Human Resources staff, Directors of Collective Bargaining, the Vice President for Student Affairs and their designee), designated Public Safety staff and CSA's. IE will post all training material on a University web page so it is accessible to the public.

21. Contact Information

21.1. Confidential Resources

21.1.1. Counselors at Counseling Services in Sindecuse Health Center wmich.edu/healthcenter/counseling (269) 387-1850 or the Center for Counseling and Psychological Services in Sangren Hall, (269) 387-5105, and Grand Rapids Clinic (616) 771-4171.

21.1.2. Medical/clinical staff at Sindecuse Health Center https://wmich.edu/healthcenter/clinic (269) 387-3287.

21.1.3. The FIRE Place, a student peer-support and resources center located in Sindecuse Health Center, (269) 387-2990 or hpe-firepeered@wmich.edu.

21.1.4. Ordained clergy/pastoral counselors acting as advisor of any faith or spiritual-focused registered student organization.

21.1.5. Off campus community resources, including sexual assault crisis counselors and domestic violence resources (such as the YWCA, www.ywcakalamazoo.org/, (269) 385-3587), local state assistance agencies and ordained clergy/pastoral counselors.

21.1.6. Employee Assistance Program, wmich.edu/hr/resources/eap, (269) 372-4500; 1-800-523-0591.

21.2. WMU Resources for reporting Covered Behavior

Title IX Coordinator: Felicia Crawford
Postal Address: WMU Office of Institutional Equity, 1903 West Michigan Avenue, Kalamazoo, MI 49008-5405 USA
Campus Location: 1220 Trimpe Building
Email: oie-info@wmich.edu
Telephone: (269) 387-6316
Online Incident Report: wmich.edu/sexualmisconduct/report

WMU Department of Public Safety (WMU DPS)*
Postal Address: 511 Monroe Street, Kalamazoo, MI 49006 USA
Emergency Telephone: 911
Telephone: (269) 387-5555
*WMU DPS must direct incidents outside of their jurisdiction to the appropriate local law enforcement authority

21.3. Contact Information for filing a State or Federal Complaint

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

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

22. FAQs

22.1. If I am a high school student who is taking a class at WMU, does this Policy apply to me?

Yes. This Policy applies to anyone who is taking "one or more classes" at WMU.

22.2. How does this Policy apply to criminal proceedings arising out of the same facts that led to the Title IX investigation?

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

22.3. How can the University subject someone to discipline under this Policy when the alleged behavior or location is explicitly excluded from the Title IX implementing Regulations?

The Title IX regulations merely set the floor for what the University considers Sexual Misconduct. Although you cannot file a complaint with the Department of Education based on the University's handling of behavior that does not meet the definition of Sexual Harassment, the University may still consider that behavior to violate its code.

22.4. Does an incident have to occur on campus to be reported to the University?

No. Anyone may report any incident at any time. See section 9 for reporting options.

22.5. If my guest violates this Policy or is otherwise found responsible for misconduct, will I be held responsible for their behavior?

Yes. Please refer to your housing conduct rules or contact the Office of Student Conduct for additional information.

22.6. Are faculty required to Report disclosures of Covered Behavior?

Faculty members who receive a disclosure in their role as instructor are not required to Report. A faculty member acting in a capacity listed under Designated Official (e.g., as Dean) is required to Report as described. Faculty are not required to Report, but are encouraged to contact the Title IX Coordinator to confidentially discuss how to best support the person who disclosed.

22.7. If I filed a Report before August 14, 2020, will my case be evaluated under this Policy or under the old Sexual Assault and Misconduct Policy?

Only incident that are alleged to have occurred on or after August 14, 2020, will be evaluated under this Sexual- and Gender-Based Misconduct Policy.

REFERENCES

- Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688
- Department of Education, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (May 19, 2020)
- Violence Against Women Act, 42 U.S.C. §§ 13701-14040 (1994)
- Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f)
- Elliot Larsen Civil Rights Act, Act 453 of 1976
- The Michigan Child Protection Law, 1975 PA 238, MCL 722.621 et. seq.

RELATED POLICIES

- Eligibility To Serve As WMU Principal Investigators On Sponsored Projects Policy

HISTORY

Effective date of current version	January 1, 2021
Revision history	Thursday, December 10, 2020 - 2:27pm Final version adopted and approved by the Board of Trustees

AUTHORIZATION

Certified by	**Felicia Crawford** Director, Title IX Compliance and Title IX Coordinator
At the direction of	**Kahler Schuemann** Chief of Staff and Secretary to the Board of Trustees

Maps

Parking

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WMU Notice of Non-Discrimination
Land Acknowledgment Statement
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