

**The University of Michigan-Flint  
Interim Policy and Procedures on Student Sexual  
and Gender-Based Misconduct and  
Other Forms of Interpersonal Violence**

**Effective January 7, 2019**



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**THE UNIVERSITY OF MICHIGAN-FLINT INTERIM POLICY AND PROCEDURES  
ON STUDENT SEXUAL AND GENDER-BASED MISCONDUCT  
AND OTHER FORMS OF INTERPERSONAL VIOLENCE**

**I. POLICY STATEMENT**

The University of Michigan-Flint (University) supports its educational mission by fostering a community based on civility, dignity, diversity, inclusivity, education, equality, freedom, honesty, and safety. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community. The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities.

The University prohibits sexual assault, sexual and gender-based harassment, intimate partner violence, stalking, retaliation, and violation of interim measures (collectively Prohibited Conduct). Prohibited Conduct is expressly forbidden and will not be tolerated at the University. It may also violate federal and state law.

The University adopts this Interim Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence (Policy or Policy and Procedures) with a commitment to: (1) eliminating, preventing, and addressing the effects of Prohibited Conduct; (2) fostering an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; (3) providing a fair and impartial process for all parties; and (4) identifying the standards by which violations of this Policy will be evaluated and disciplinary action may be imposed. University students who violate this Policy may face disciplinary action up to and including expulsion.

The Policy and Procedures set forth how the University will proceed once it is made aware of possible Prohibited Conduct in keeping with our institutional values and to meet our legal obligations under [Title IX of the Education Amendments of 1972](#) (Title IX); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the [Violence Against Women Reauthorization Act of 2013 \(VAWA\)](#); and other applicable law.

**II. TO WHOM THIS POLICY AND PROCEDURES APPLY**

The Policy and Procedures apply to concerns of Prohibited Conduct involving one or more University students. For purposes of this Policy and throughout this document, “student” refers to a University student as defined by the Code of Student Conduct or a participant in any non-employment or volunteer-related University-related program or activity.

For purposes of this Policy, the individual who is reported to have experienced Prohibited Conduct, regardless of whether that individual makes a report or participates in the review of that report by the University, and regardless of whether that individual is a student is referred to as the Claimant. The individual who is reported to have committed Prohibited Conduct is referred to as the Respondent.

The University has jurisdiction over a Respondent whenever the Prohibited Conduct occurs:

- On University-controlled property; or
- Off campus, including online or electronic conduct, if the conduct:
  - Occurs in connection with a University-related program or activity, including University-sponsored study abroad, research or internship programs;
  - May pose a serious threat of harm to any member(s) of the University community, including where the reported conduct was not directed at any member(s) of the University community, but by its nature creates a risk that may pose a serious threat of harm to any member(s) of the University community; or
  - May have the effect of creating a hostile environment for any member(s) of the University community.

The specific procedures for reporting, investigating, and resolving Prohibited Conduct are based upon the nature of the Respondent's relationship to the University (student, employee, or third party). Where the Respondent is a student, the procedures are detailed in Sections VIII-XV below of the Policy and Procedures.

### **III. OTHER POTENTIALLY RELEVANT POLICIES AND PROCEDURES**

At all times, it is within the University's discretion to determine which policies apply and whether action will be taken under multiple policies. Some Prohibited Conduct may result in separate investigations and potential sanctions under multiple University policies. For example, schools or colleges within the University also have policies and honor codes, in addition to this Policy, that govern University-affiliated student organizations and that may be used, at the University's discretion, to address Prohibited Conduct committed in relation to student organization activities.

#### **A. WHERE THE RESPONDENT IS AN EMPLOYEE**

The policy and procedures for responding to reports of Prohibited Conduct committed by University employees or University-related volunteer programs or activities are set forth in the [University's Sexual Harassment Policy](#) (SPG 201.89-0).

#### **B. WHERE THE RESPONDENT IS BOTH A STUDENT AND AN EMPLOYEE**

If the Respondent is a student and an employee, the University's Institutional Equity Specialist, in consultation with the Title IX Coordinator or designee, will determine which policy and procedures apply based upon the facts and circumstances, such as whether the Respondent's status as a student or an employee is most closely related to the Prohibited Conduct. The procedures for responding to reports of Prohibited Conduct committed by student-employees,

where the employment role predominates, are set forth in the University's [Sexual Harassment Policy](#) (SPG 201.89-0).

### **C. WHERE THE RESPONDENT IS A THIRD PARTY**

A third party is any individual who is not a University student or employee or a participant in any University-related program or activity. The University's ability to take appropriate action against a third party will be determined by the nature of the relationship of the third party to the University. The University's Institutional Equity Specialist, in consultation with the Title IX Coordinator or designee, will determine the appropriate manner of resolution reflecting the University's commitment to a prompt and equitable process consistent with federal law, federal guidance, and this Policy.

Where the Respondent is a third party, the University's ability to take action may be limited.

Regardless of when or where the Prohibited Conduct occurred, the University will, whenever possible, offer resources and assistance to students (or members of the University community) who experienced and/or are affected by Prohibited Conduct. In those instances, when this Policy does not apply, the University will assist a Claimant in identifying and contacting external law enforcement and appropriate campus or community resources.

### **D. WHERE THE PROHIBITED CONDUCT IS COMMITTED IN THE CONTEXT OF ACTIVITIES OF A RECOGNIZED STUDENT ORGANIZATION**

Recognized Student Organizations (RSOs) are registered with [Student Involvement and Leadership](#) as either Sponsored Student Organizations or Voluntary Student Organizations. The University has jurisdiction over RSOs and may address Prohibited Conduct committed in relation to activities of RSOs through the [Code of Student Conduct](#).

Under this Policy, if the conduct alleged is a form of Prohibited Conduct, the Institutional Equity Specialist will be informed of, and maintain oversight over, the resolution of reports against RSOs to ensure that the University has taken appropriate action to eliminate the conduct, prevent its occurrence, and address its effects.

## **IV. TITLE IX COORDINATOR AND INSTITUTIONAL EQUITY SPECIALIST**

### **A. TITLE IX COORDINATOR**

The Title IX Coordinator is charged with monitoring the University's compliance with Title IX; ensuring appropriate education and training for students and employees; coordinating the University's investigation, response, and resolution of all reports under this Policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is supported by a Deputy Title IX Coordinator and other University administrators in the [Office for Institutional Equity \(OIE\)](#), the Division of Student Affairs, and other departments.

The Title IX Coordinator and Deputy IX Coordinator can be contacted by telephone, email, or in person during regular office hours:

**Jeffrey Frumkin**, Interim Title IX Coordinator  
**Elizabeth Seney**, Deputy Title IX Coordinator  
Institutional.equity@umich.edu

Office for Institutional Equity  
2072 Administrative Services Building  
1009 Greene Street  
Ann Arbor, Michigan 48109  
(734) 763-0235 (telephone)  
(734) 647-1388 (tty)

## **B. INSTITUTIONAL EQUITY SPECIALIST**

The Institutional Equity Specialist (IES) neutrally investigates allegations of student sexual misconduct and gender-based misconduct as it relates to student Respondents, as well as works in conjunction with the Title IX Coordinator for the proper resolution of all reports under this Interim Policy. The IES provides consultation, training, and resources to the Campus Community to assist with the University's compliance efforts with Title IX.

The IES can be contacted by telephone, email, or in person during regular office hours:

**Kirstie Stroble**, Institutional Equity Specialist  
Office of Human Resources  
213 University Pavilion  
202 E. Kearsley St.  
Flint, MI, 48502-1950  
(810-762-3150)  
[umfinstitutionalequity@umflint.edu](mailto:umfinstitutionalequity@umflint.edu)

The University encourages every student who may have experienced harm to get the support and information they need, regardless of whether they would like to move forward with a report of potential policy violations or criminal conduct to campus officials or to law enforcement. The University offers a wide range of resources to provide support and guidance in response to any incident of Prohibited Conduct.

For comprehensive information on accessing University and community resources, including emergency and ongoing assistance; health, mental health, and advocacy services; options for reporting Prohibited Conduct to the University and/or law enforcement; and available support with academics, housing, and employment, University students, faculty, and staff should refer to the [Our Community Matters Resource Guide](#) or contact the Office for Institutional Equity. Third parties should contact the Title IX Coordinator to discuss available University and/or community resources and reasonable available assistance.

## **V. CONFIDENTIAL AND NON-CONFIDENTIAL RESOURCES**

There is a distinction between making a report to the University or law enforcement through designated reporting options (listed below in Section VII) and seeking confidential assistance through confidential resources (listed below in Section V(A)). Not every campus or community resource is confidential and this section explains to whom individuals who have experienced Prohibited Conduct can talk without what they share being revealed to any other person without their express permission or as required by law.

### **A. CONFIDENTIAL RESOURCES**

Confidential Resources are those campus and community professionals who can maintain legally-protected confidentiality within the University for the individual who shared the information. Confidentiality means that information shared by an individual with a confidential resource cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Confidential Resources are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order.

Confidential Resources available to individuals include [Counseling and Psychological Services \(CAPS\)](#). For more information, please see the [Our Community Matters Resource Guide](#).

### **B. NON-CONFIDENTIAL RESOURCES**

University resources who are not Confidential Resources as defined above will make every effort to respect and safeguard the privacy of the individuals involved. Privacy means that concerns about Prohibited Conduct will be shared with a limited circle of University representatives who need to know only to assist in the assessment, investigation, and resolution of the report, and to the extent required by law or court order.

The Center for Gender and Sexuality (CGS) provides direct support to Claimants, including crisis intervention, advocacy, and assistance in connecting with other available support and resources.

The University Ombuds is available to Claimants, Respondents, or other students for assistance in resolving conflicts, disputes, or complaints on an informal basis.

The Dean of Students Office (DOS) provides direct support to Claimants, Respondents, or other students who are involved in reports of Prohibited Conduct. This support includes navigating academic, personal, and community impact; advising on policy and procedures; and connecting to other available support and resources.

Additional information about these and other resources is contained in [Our Community Matters Resource Guide](#).

## **VI. SUPPORTIVE AND PROTECTIVE MEASURES (ALSO KNOWN COLLECTIVELY AS INTERIM MEASURES)**

Interim measures may be both supportive and protective in nature. Supportive and protective measures are those services, accommodations, and other assistance the University puts in place after receiving notice of Prohibited Conduct, but before any final outcomes (investigatory, disciplinary, or remedial) have been determined. During the initial intake meetings with the parties, witnesses, or other impacted community members, the Institutional Equity Specialist (IES) will discuss interim measures. If an individual is interested in interim measures, the IES will determine what interim measures are possible and brings a recommendation to the Title IX or Deputy Title IX Coordinator for approval. Once the interim measures are approved, the IES coordinates and notifies the parties or affected individuals in writing of the interim measures. There may be some interim measures, such as a no contact order, that the IES informs the DOS of the interim measure(s) for implementation.

### **A. SUPPORTIVE MEASURES**

Supportive measures are typically implemented for individual students, and are designed to address the student's safety, well-being, and continued access to educational opportunities. Supportive measures are available regardless of whether the person who requests a measure makes a report to the University or to law enforcement; whether the person participates in any investigation; or whether the University or law enforcement investigates a report that has been submitted. The University may implement supportive measures for Claimants, Respondents, witnesses, and other members of the University community. Supportive measures are voluntary and may be modified or discontinued at any time at the request of the individual.

Supportive measures may, among other things, include:

- Academic support services and accommodations, including the ability to reschedule exams and assignments, transfer course sections, or withdraw from courses without penalty;
- An escort to ensure safe movement between classes and activities;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- On-campus medical services and/or assistance in connecting to community-based medical services;
- Housing assignment or contract modifications (for University Housing) or assistance with residence modification if living off-campus;

- Work schedule or job assignment modifications (for University employment);
- No contact directives (to instruct an individual to stop all attempts at communication or other interaction with another individual);
- Assistance with obtaining personal protective orders; or
- A combination of any of these measures.

## **B. PROTECTIVE MEASURES**

Protective measures are measures that typically involve action by the University involving a Respondent. Failure to comply with these measures may result in a separate violation under this Policy. Protective measures are only available following the initiation of a University investigation. The nature of the protective measures is based upon the facts reasonably available at the time of the decision to implement the protective measures

Protective measures may include:

- No contact directives (to instruct an individual to stop all attempts at communication or other interaction with another individual);
- Limiting an individual's access to certain University facilities or activities;
- Academic schedule modifications (typically to separate Claimant and Respondent);
- Work schedule or job assignment modifications including suspending employment with or without pay (for University positions);
- Placing a hold on transcripts, meaning that the University may prevent a student from registering for classes or receiving a copy of their transcript or diploma;
- Withholding or delaying the conferral of a degree;
- Imposing an interim suspension; or
- A combination of any of these measures.

Protective measures may also be appropriate for witnesses and other members of the University community, following the initiation of an investigation. Implementation of supportive or protective measures should not be taken to suggest that the University has made any decision about the merits of the report.

Protective measures are not imposed mechanically, and are instead selected based on an individualized inquiry of the facts and circumstances of each individual case and student. They

are designed to balance the protection of the parties with minimizing the impact on each student's ability to access the University's programs and activities.

The University will keep private any supportive or protective measures provided under this Policy to the extent practicable, and will promptly address any violation of protective measures under this Policy and Procedures.

Supportive or protective measures or both may be kept in place beyond the resolution of the matter. Claimants who wish to request supportive measures confidentially may do so through the Institutional Equity Specialist. Respondents who wish to request supportive measures may do so through the Institutional Equity Specialist.

The Claimant or Respondent may present a written challenge regarding the need for or the adequacy of supportive or protective measures to the IES. Once a written challenge of interim measures is received, the IES or designee will schedule a meeting with the party challenging the interim measures, hear the party's concerns, conduct any necessary follow-up, and render a decision regarding the need for or the adequacy of the supportive or protective measures within seventy-two (72) hours of the meeting.

Claimants or others should report information concerning a violation of protective measures to the Institutional Equity Specialist as soon as possible, and should dial 911 in situations of immediate health or safety concern.

If a Respondent's actions pose an immediate danger to any member of the University community, the Vice Chancellor for Student Affairs (VCSA), or designee, may immediately suspend the student pending a meeting. Except in extraordinary circumstances, that meeting will be scheduled as soon as possible, typically within two calendar days. At this meeting, the Respondent will be informed of the nature of the alleged violation, presented with available evidence, and given the opportunity to make a statement and present evidence. If the emergency remains in place following the meeting, the Respondent will be offered a hearing option as soon as practicable, typically within ten calendar days, pursuant to the [Code of Student Conduct](#).

## **VII. REPORTING OPTIONS**

The University strongly encourages prompt reporting of conduct that may violate this Policy. Reports of Prohibited Conduct may be made directly to the IES. Some forms of Prohibited Conduct may also constitute crimes and the University strongly encourages individuals to make reports to law enforcement including the [University of Michigan-Flint Department of Public Safety](#), the Institutional Equity Specialist, or both.

Any individual (including a student, employee, visitor, guest, or other third party) not just the Claimant may make a report under this Policy. An individual may choose to report to law enforcement, the University, to both, or not at all. Support and resources are always available regardless of the chosen reporting option.

Making a report to law enforcement or the University by contacting a reporting option (as listed below) means that the report will be shared with others as appropriate.

### **A. REPORTING TO LAW ENFORCEMENT**

The University encourages anyone who experiences or witnesses Prohibited Conduct to make a report to UMPD, which has a dedicated unit for responding to and investigating sexual assaults, intimate partner violence, stalking, and child abuse. Prompt reporting allows law enforcement to collect and preserve evidence.

An individual who wishes to pursue criminal action in addition to, or instead of, making a report to the University for a Policy violation may contact law enforcement directly by calling:

- 911 (for emergencies);
- Department of Public Safety (DPS): (810) 762-3322 (non-emergencies);
- Flint Police Department: (810) 237-6800; or
- Genesee County Sheriff's Department: (810) 257-3407.

An individual has the right to report an incident, or to decline to report an incident, to law enforcement. An individual may decline to participate in a law enforcement interview. **A report to law enforcement, even the UM-Flint DPS, is separate from a non-criminal report to the University.**

Upon request, University staff will help an individual make a report to law enforcement. For example, the Center for Gender and Sexuality (CGS) will assist any person in making a report to law enforcement, no matter where the Prohibited Conduct occurred. For reports of off-campus Prohibited Conduct, UM-Flint DPS can assist in identifying the appropriate law enforcement agency to which to make the criminal report.

### **B. REPORTING TO THE UNIVERSITY**

Individuals who choose to pursue action under this Policy should make a non-criminal report to the University Title IX Coordinator's representative in Flint, the Institutional Equity Specialist, in person, by email, or by phone:

- **Kirstie Stroble**, Institutional Equity Specialist  
Office of Human Resources  
213 University Pavilion  
202 E. Kearsley St.  
Flint, MI, 48502-1950  
(810-762-3150)  
[umfinstitutionalequity@umflint.edu](mailto:umfinstitutionalequity@umflint.edu)
- Contacting the Title IX Coordinator in person, by e-mail or by phone:  
**Jeffrey Frumkin**, Interim Title IX Coordinator  
(734) 763-0235 or (734) 647-1388 (tty)

Institutional.equity@umich.edu  
2072 Administrative Services Bldg.  
1009 Greene St., Ann Arbor, MI 48109

- Reporting on-line through the IES website:  
<https://www.umflint.edu/hr/discrimination-discriminatory-harassment-and-sexual-misconduct-reporting-form>

Individuals can receive help with reporting to the University from designated University staff, including but not limited to the CGS, Dean of Students, UM-Flint DPS, or the [University Ombuds](#).

### **1. Anonymous Reports**

Any individual may make a report of Prohibited Conduct to the University, and if preferred, may do so without disclosing one's name at <http://studentsexualmisconductpolicy.umich.edu/report-an-incident>. Depending on the level of information available about the incident or the individuals involved, the University's ability to respond to an anonymous report may be limited. The University will, however, take whatever steps it deems appropriate and in the best interests of the overall University community, consistent with the information available.

### **2. Time Frame for Reporting an Incident**

Although the University does not limit the time frame for reporting Prohibited Conduct, to promote timely and effective review, the University strongly encourages individuals to report possible Prohibited Conduct within 180 calendar days of the last occurrence of the concerning conduct. A report made to the University after 180 days may make it more difficult to gather relevant and reliable information. There are no time restrictions on filing a criminal report with UM-Flint DPS.

If the Respondent is no longer a student or participant in any University-related program or activity at the time of the report, or if the conduct does not fall within the scope of the Policy, the University may not be able to take action against the Respondent. The University will, however, help a Claimant identify reporting options outside the University and provide support and resources.

### **3. How the University Shares Information about Prohibited Conduct with Law Enforcement**

Upon learning of concerns of possible Prohibited Conduct, the Institutional Equity Specialist will submit a report to UM-Flint DPS. The purpose of this report is to comply with the University's federal reporting obligations, to facilitate accurate compilation of crime statistics, and to ensure that other public safety responsibilities are addressed. The report to UM-Flint DPS contains all available information known to the investigator at the time, including the identities of the parties involved, a brief summary of the reported conduct, and whether the Claimant has and/or is

willing to speak with law enforcement. The investigator role is described fully in Section-XIII(A)(1).

After submitting the initial report, if there are significant developments in the available information or the Claimant indicates whether they wish to meet with law enforcement, the Institutional Equity Specialist will update UM-Flint DPS accordingly. The Claimant or others may be contacted by UM-Flint DPS or another law enforcement agency to follow-up on the information received from the University. An individual may decline to participate in a law enforcement interview.

#### **4. Information on Amnesty to Students when Reporting Prohibited Conduct**

Sometimes students are reluctant to seek help after experiencing Prohibited Conduct, or may be reluctant to help others who may have experienced Prohibited Conduct, because they fear being held responsible by the University or law enforcement for drug use or underage alcohol consumption. To better ensure that individuals who may be at medical risk as a result of alcohol intoxication or drug consumption will receive prompt and appropriate medical attention, the State of Michigan has adopted a medical amnesty law to remove perceived barriers to seeking help.

Michigan law includes exemption from prosecution for the following:

- A minor who voluntarily accesses a health facility or agency for treatment or observation after consuming alcohol or other drugs;
- Any minor who accompanies an individual who voluntarily accesses a health facility or agency for treatment or observation after consuming alcohol or other drugs; or
- Any minor who initiates contact with law enforcement or emergency medical services personnel for the purpose of obtaining medical assistance in connection with their own personal consumption of alcohol or other drugs; or consumption by others.

Similarly, the University will not pursue University misconduct charges against any participant in an investigation under this Policy for potential violations of other University policy for personal consumption of alcohol or other drugs identified during an investigation, as long as 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 assessment, educational discussion or pursue other non-disciplinary options to address the alcohol or other drug use.

### **C. REPORTING BY UNIVERSITY EMPLOYEES**

#### **1. Responsible Employees**

Responsible employees must immediately report any information they learn about suspected Prohibited Conduct to the Institutional Equity Specialist. Responsible employees may include non-employees in addition to employees. Failure by a responsible employee to timely report a suspected Prohibited Conduct may subject them to appropriate discipline, up to and including removal from their position. Responsible employees may report to the Institutional Equity Specialist through any of the reporting options previously noted in Section VII(C)(1) or by going to <https://portal.dpss.umich.edu/public/reporting/> and selecting the Responsible Employee Information Sharing option.

The following individuals are, for purposes of this Policy, responsible employees:

- Regents, who are not employees but, rather, Constitutional Officers under the Michigan Constitution;
- Executive officers (including those serving in the role of Associate or Assistant Vice President/Provost, as designated by the executive officer);
- Deans, directors, department heads/chairs (including those serving in assistant or associate roles);
- Graduate and undergraduate program directors or chairs;
- Supervisors who have hiring or firing power over at least three employees who are not student or post-doc employees;
- University faculty or staff providing oversight to, or traveling with, students<sup>1</sup> on University related travel abroad, including University-sponsored study abroad, research, fieldwork, or internship programs;
- Faculty and staff, who serve as advisors to University-recognized student groups;
- Any individual, whether an employee or not, who serves as a coach of a club sports team;
- All staff working in Student Affairs, the Division of Public Safety, the Department of Human Resources and OIE, except those who serve in non-supervisory positions in dining services, clerical or custodial/maintenance capacities;
- All temporary and student employees serving as Resident Advisors and Student Safety Patrol;
- Campus Security Authorities designated by the University under the Clery Act not otherwise specified in this provision; and
- Individuals serving in any of the positions described above on an acting or interim basis.

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<sup>1</sup> "Students" means University students or students from other U.S. based institutions participating in University related travel abroad.

Faculty and staff who do not meet any of these criteria are not considered responsible employees. Individuals who are Confidential Resources are not responsible employees. In addition, healthcare providers while acting in their professionally licensed treatment capacity (for example, physicians, nurses, dentists, pharmacists, and mental-health professional, including psychologists and social workers) are not required under this Policy to report a violation unless otherwise required to do so by law or other professional obligation.

Other than a Resident Advisor, a student employee whose employment causes them to be designated as a responsible employee is only a responsible employee to the extent that they learn about suspected Prohibited Conduct in the course of their employment. Any Resident Advisor and any non-student staff and faculty who is designated as a responsible employee is a responsible employee at all times, regardless of whether they learn of suspected Prohibited Conduct within or outside of the role that causes them to be designated as a responsible employee.

Any questions regarding who is a responsible employee should be directed to the [Office of the Vice President and General Counsel](#) (OGC) at (734)764-0304 or the Institutional Equity Specialist at (810) 762-3150 or the Director of Human Resources at (810) 762-1350.

## **2. All Other Employees**

Reporting is an important tool to address Prohibited Conduct. Thus, while all other employees who are not designated as Confidential Resources should safeguard an individual's privacy, they are also strongly encouraged to share any information about such conduct with OIE and the Institutional Equity Specialist.

## **3. Confidential Resources**

As explained above, Confidential Resources will not share information about an individual (including whether that individual has received services) unless (1) given permission to do so by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order.

# **VIII. PROHIBITED CONDUCT**

Conduct under this Policy is prohibited regardless of the sex, sexual orientation and/or gender identity or expression of the Claimant or Respondent. Prohibited Conduct includes the following specifically defined forms of behavior: sexual or gender-based harassment, sexual assault, intimate partner violence, stalking, retaliation, and violation of interim measures.

## **A. SEXUAL OR GENDER-BASED HARASSMENT**

### **1. Sexual Harassment**

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in Section VIII(A)(2)(a) and/or (b) below are present.

## **2. Gender-Based Harassment**

Gender-based harassment includes harassment based on actual or perceived gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (a) or (b) below, are present.

(a) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities, or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or

(b) Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably (i) interferes with, (ii) limits, or (iii) deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior.

Although a sexually harassing hostile environment is generally created through a series of incidents, a severe incident, even if isolated, can be sufficient. For example, a single instance of sexual assault may constitute sexual harassment.

Examples of conduct that may constitute sexual or gender-based harassment include:

- Unwanted touching or sexual advances;
- Unwanted written, verbal, or electronic statements of a sexual nature, directed at an individual including sexually suggestive comments, jokes, or innuendos;
- Written, verbal, or electronic statements that disparage a person based on a perceived lack of stereotypical masculinity or femininity or perceived sexual orientation;
- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purposes of compromising that person's ability to give consent to the alleged sexual activity;

- Allowing other individuals to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., FaceTime, Snapchat, Skype or live-streaming of images) without consent of the participant(s);
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
- Recording, photographing, disseminating, or transmitting intimate or sexual utterances, sounds, or images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without the consent of the participants;
- Excluding a person from a program or activity based on pregnancy;
- Touching oneself sexually for others to view without their consent;
- Excluding a person from a program, activity or facility based on sexual orientation or gender identity.

In some cases, harassment may be based on multiple protected class bases included in the University's [Nondiscrimination Policy Notice](#). In general, harassment by a student, involving protected class bases other than actual or perceived gender, sexual orientation, gender identity, or gender expression, falls under the [Code of Student Conduct](#) (Code) and may be addressed accordingly by the Office of Student Conduct and Community Standards (OSCCS). Where there is an indication that reported harassment may be based on both gender (including sexual orientation, gender identity, or gender expression) and another protected class basis (e.g., race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight, or veteran status), the Institutional Equity Specialist, in consultation with the Title IX Coordinator and the Director of OSCCS, will assess the available information in order to determine whether the matter is most appropriately addressed under this Policy, under the *Code*, or for different aspects of the matter to be addressed separately under each.

The Institutional Equity Specialist, in consultation with the Title IX Coordinator, will have final decision-making authority regarding whether and how a matter is addressed under this Policy, and the OSCCS Director will have final decision-making authority regarding whether and how a matter is addressed under the *Code*.

## **B. SEXUAL ASSAULT**

Sexual assault is touching of a sexual nature, including: vaginal or anal intercourse; anal, oral or vaginal penetration with an object; oral-genital contact; or other sexual contact that occurs without consent. Sexual contact includes: (a) intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these

body parts; or (b) making an individual touch another person or themselves with or on any of these body parts. Consent, as well as the terms force, coercion, and incapacitation are further defined below.

## **1. Consent**

Consent is a clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions, to engage in a particular activity. Consent must be voluntarily given and cannot be obtained through coercion or force. For purposes of this Policy, in evaluating whether consent was freely sought and given, the issue is whether the Respondent knew, or reasonably should have known, that the activity in question was not consensual or that the Claimant was unable to consent due to incapacitation. Incapacitation, coercion, and force are defined below.

A person who initiates a specific sexual activity is responsible for obtaining consent for that activity.

Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may not be sufficient to ascertain consent.

Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual consent to engage in any sexual activity each time it occurs.

Consent to engage in one sexual activity at one time is not consent to engage in a different sexual activity or to engage in the same sexual activity on a later occasion.

Consent to engage in sexual activity with one person is not consent to engage in sexual activity with any other person.

Consent can be withdrawn by any party at any point. Once consent is withdrawn, the sexual activity must cease immediately.

## **2. Incapacitation**

Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

A person who is incapacitated is unable, temporarily or permanently, to give consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

When alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give consent. The impact of alcohol and other drugs varies from person to person, and a person's level of intoxication may vary based upon the nature and quality of the substance imbibed, the person's weight, tolerance, ingestion of food and other circumstances. A person's level of impairment may also change rapidly.

In evaluating consent in cases of alleged incapacitation, the University asks two questions: (1) *Did the person initiating sexual activity know that the other party was incapacitated?* And, if not, (2) *Should a sober, reasonable person, in the same situation, have known that the other party was incapacitated?* If the answer to either of these questions is "yes," consent was absent and the conduct is likely a violation of this Policy.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs often include slurred or incomprehensible speech, unsteady manner of walking, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: Do you know where you are? Do you know how you got here? Do you know what is happening? Do you know whom you are with?

One should be cautious before engaging in sexual activity when either party has been drinking alcohol or using drugs. The use of alcohol or other drugs may impair either party's ability to determine whether consent has been sought or given. If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexual activity. A Respondent's intoxication will not excuse the Respondent from the obligation to obtain consent as described in this Policy.

### **3. Coercion**

Coercion is conduct, including intimidation and express or implied threats of immediate or future physical, emotional, reputational, financial, or other harm to the Claimant or others, that would reasonably place an individual in fear, and that is employed to compel someone to engage in sexual activity.

### **4. Force**

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether to participate in sexual activity.

## **C. STALKING**

Stalking occurs when a person engages in a course of conduct toward another person under circumstances that would cause a reasonable person to fear bodily injury to themselves or to others, or experience substantial emotional distress. Stalking often involves individuals who are

known to one another or who have a current or previous relationship, but may also involve individuals who are strangers. Stalking behavior generally addressed under this Policy typically includes one or more of the following elements:

- Is sexual or romantic in nature;
- Is committed by a Claimant's current or former partner of an intimate, romantic or sexual relationship; or
- Is related to the Claimant exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, sexual orientation, gender identity, or gender expression of the Claimant.

The Institutional Equity Specialist, in consultation with the Title IX Coordinator will determine if the reported conduct meet these criteria. Stalking behavior not addressed under this Policy may be addressed under the [Code of Student Conduct](#) as harassment.

For purposes of this Policy, course of conduct means two or more unwelcome acts in which a person directly, indirectly, or through other persons, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person, or interferes with a person's property.

#### **D. INTIMATE PARTNER VIOLENCE**

Intimate partner violence, also referred to as dating violence, domestic violence, or relationship violence, is any act of violence or pattern of emotionally or financially abusive behavior that one person uses against a current or former partner in a sexual, dating, spousal, domestic, or other intimate relationship, to gain or maintain power and control over another.

The determination of whether any conduct constitutes intimate partner violence is whether the conduct is so severe, pervasive or persistent as to significantly interfere with an individual's ability to learn and/or work or cause substantial emotional distress, when judged both objectively (meaning that a "reasonable person" would find the behavior to be emotionally abusive) and subjectively (meaning the impacted individual felt the behavior was emotionally abusive).

Intimate partner violence may include any form of Prohibited Conduct under this Policy; physical assault; or a pattern of abusive behavior. Intimate partner violence can be a single act or a pattern of behavior within a relationship.

#### **E. RETALIATION**

Retaliation means any adverse action taken by individuals or groups against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy. Retaliation may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity

protected under this Policy. A good faith pursuit by either party of civil, criminal or other legal action, internal or external to the University, does not constitute retaliation.

## **F. VIOLATION OF PROTECTIVE MEASURES**

Protective measures are typically measures Respondents are required to comply with and may include: no-contact directives, work or academic schedule or housing modifications or other actions that the University may implement to protect and/or support Claimants, witnesses, or other members of our University community as appropriate. Protective measures are discussed in more detail in Section VI(B) above. Failure of a Respondent to comply with protective measures as required is a separate and independent violation of this Policy.

## **IX. UNIVERSITY RESOLUTION**

As set forth in more detail below, the University uses two processes to resolve reports of Prohibited Conduct under this Policy: (1) investigative resolution, which involves an investigation, a hearing, and, if applicable, sanctions, and an appeal; and (2) adaptable resolution, which includes restorative options for resolving reports of Prohibited Conduct. Both investigative resolution and adaptable resolution are described in more detail below in Section XIII and Section XIV, respectively. The Institutional Equity Specialist, in consultation with the Title IX Coordinator or designee, will determine the appropriate manner for addressing the concerns raised, after making an initial assessment of the reported information. Where the Claimant requests anonymity, that investigative resolution not be pursued, or that no disciplinary action be taken, after receiving input from the Institutional Equity Specialist in consultation with the Title IX Coordinator and/or Office of the General Counsel will determine next steps, if any.

The University will strive to complete resolution of any matter, meaning the period from commencement of an investigation, which begins with the notice of an investigation to the Respondent, through completion of the investigation, and hearing and sanction, if any, within ninety (90) calendar days. This time frame may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; comply with a request by law enforcement for temporary delay to gather evidence; accommodate the availability of witnesses; account for University breaks or vacations; account for case complexities (including the number of witnesses and volume of information provided by the parties), or for other legitimate reasons. If one or both of the parties pursue an appeal, the University will strive to complete resolution, meaning the period from commencement of an investigation through completion of the appeal, within one hundred twenty (120) calendar days.

Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness, fairness, and promptness.

## **X. INITIAL ASSESSMENT AND INTAKE**

After receiving a report of Prohibited Conduct committed by a student, the Institutional Equity Specialist (IES) or designee will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. An initial assessment

typically will be made within seventy-two (72) hours after receiving a report of Prohibited Conduct, unless the Claimant requests anonymity, that investigative or adaptable resolution not be pursued, or that no disciplinary action be taken, in which case the IES will consult with the Title IX Coordinator or designee, typically within two to three weeks after the reported Prohibited Conduct was made, or within one week of the Claimant's request described above.

As part of the initial assessment, the Institutional Equity Specialist will assess the Claimant's safety and well-being and offer the University's immediate support and assistance; assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Claimant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident; and ascertain the ages of the Claimant and Respondent, if known, and, if either of the parties is a minor (under 18), take all necessary actions based upon the facts and circumstances of the case, including contacting the appropriate child protective service agency, if required by law. The Institutional Equity Specialist will also ensure that the Claimant receives a written explanation of all available resources and options, including the following:

- Immediate support and assistance available through University resources, including the Claimant's right to seek interim measures, including supportive measures regardless of whether they choose to participate in a University or law enforcement investigation; and/or protective measures, when the University pursues an investigation;
- The Claimant's right to seek medical treatment and information on preserving potentially key forensic and other evidence;
- The University's procedural options including investigative and adaptable resolution;
- The Claimant's right to an advisor of Claimant's choosing;
- The University's prohibition against retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation;
- The opportunity to meet with the Institutional Equity Specialist in person to discuss their resources, rights, and options.

When the Institutional Equity Specialist decides to initiate an investigative resolution, impose protective measures, or take any other action that impacts a Respondent, the Institutional Equity Specialist will also ensure that Respondent is notified and receives written information on available resources and options. The Institutional Equity Specialist will ensure that a Respondent is informed of:

- The nature of the investigation, including the identities of the parties (if known), a concise summary of the conduct at issue, and potential Policy violations;
- The immediate support and assistance available through University resources;

- The Respondent’s right to an advisor of Respondent’s choosing;
- The University’s prohibition against retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation; and
- The opportunity to meet with the Institutional Equity Specialist in person to discuss their resources and options.

The University recognizes that it is important to take into account the needs of Claimants when deciding upon a course of action. Accordingly, either during the intake and initial assessment or as part of the University’s actions following an initial assessment, the University will offer a meeting, to occur in person if practicable and desired by the Claimant, with the Claimant to discuss the University’s procedural options, including investigative or adaptable resolution. This initial meeting will be conducted by the Institutional Equity Specialist (IES).

The IES will be responsible for explaining all options under the investigative resolution. The IES will be responsible for communicating various information to the Claimant regarding adaptable resolution procedures and for facilitating all logistics relating to any investigative or adaptable resolution.

In the event Claimant elects investigative resolution, the IES is responsible for providing Claimant and Respondent the investigation report; coordinating all hearing logistics; providing the notice of hearing outcome to the parties; coordinating all sanctioning logistics, including the exchange of any sanctioning input statements; providing the sanctioning determination to the parties; facilitating an appeal; and providing the decision of the external reviewer to the parties. The IES and the OSCCS Director are neutral and neither is an advocate for either the Claimant or Respondent at any point in the process.

When Claimant and Respondent agree to participate in adaptable resolution, the IES will work with the Title IX Coordinator or designee to coordinate all adaptable resolution logistics, including coordinating an adaptable resolution intake with an appointed staff member, ensuring timely facilitation of the agreed upon type of adaptable resolution, including all logistics (such as when, where, and how the adaptable resolution process will take place).

## **XI. UNIVERSITY ACTIONS FOLLOWING AN INITIAL ASSESSMENT**

Upon completion of an initial assessment, the Institutional Equity Specialist will determine the course of action under this Policy, which may include:

- Investigative resolution: includes in the following order (a) an investigation by the IES resulting in a written report containing a summary of the evidence; (b) a hearing, to determine by preponderance of the evidence, if there has been a Policy violation; (c) the imposition of sanctions and other appropriate remedies if there has been a finding; and (d) opportunity to challenge the outcome of the hearing or the sanction through an appeal;

- **Adaptable resolution:** is typically a facilitated or structured interaction between the Claimant, Respondent, and/or other affected community members that seeks to identify and meet the needs of the Claimant while providing an opportunity for the Respondent and/or other affected community members to repair harm (to the extent possible). Adaptable resolution includes a separate initial intake meeting by a trained adaptable resolution coordinator and each of the parties to identify interests and needs. At the respective initial intake meetings, parties will independently explore a range of adaptable resolution processes as set forth in greater detail in Section XIV below. For adaptable resolution to be used, the parties must reach agreement on a preferred approach. Adaptable resolution typically does not include an investigation, hearing, or disciplinary action against a Respondent (including transcript notations), but may include imposing appropriate and reasonable remedies, including education and training, as agreed to by the parties. Any agreement reached through adaptable resolution will be binding on the parties and may not be appealed. However, either party may discontinue the adaptable resolution process at any time (up to the point of agreement) and request investigative resolution. Should the process revert to investigative resolution, information obtained through the alternative resolution process may not be utilized in the investigative resolution.
- **Additional remedies:** may include training and other educational measures to members of the University community.

Detailed information regarding investigative resolution, adaptable resolution, and additional remedies is set forth below in Sections XIII, XIV, and XV, respectively.

The Institutional Equity Specialist’s course of action will be guided by: (1) whether the Claimant wishes to pursue investigative resolution; (2) whether the Claimant requests anonymity, that an investigation/hearing not be pursued, and/or that no disciplinary action be taken; (3) the availability of information or evidence suggesting that a policy violation may have occurred and (4) the University’s Title IX obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent and address the effects of the Prohibited Conduct.

**A. WHERE THE CLAIMANT WISHES TO PURSUE INVESTIGATIVE RESOLUTION**

In every case in which the Claimant reports Prohibited Conduct and requests an investigation and the University has disciplinary authority over the alleged Respondent, the Institutional Equity Specialist will conduct an initial assessment to determine if investigative resolution is appropriate under the Policy. If investigative resolution is deemed appropriate, the University will initiate an investigation.

Generally, if the reports of Prohibited Conduct are against someone who has no affiliation with the University, the University’s actions will be limited.

Even though the University's ability to take direct action against such a person may be limited, the University will still take steps to provide the Claimant immediate support and assistance available through University resources and resources available from entities outside the University (including law enforcement).

**B. WHERE THE CLAIMANT REQUESTS ANONYMITY, THAT AN INVESTIGATION NOT BE PURSUED, AND/OR THAT NO DISCIPLINARY ACTION BE TAKEN**

A Claimant may request that their name or other personally-identifiable information not be shared with a Respondent, that no investigation/hearing be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, the University will forward Claimant's requests, along with all available information about the report gathered during the initial assessment, to a review panel, described in Section XII below.

**C. WHERE THE CLAIMANT REQUESTS THE MATTER BE RESOLVED THROUGH ADAPTABLE RESOLUTION**

A Claimant may request to the Institutional Equity Specialist that the reported matter be resolved through the adaptable resolution process. In these instances, the Institutional Equity Specialists will consult with the Title IX Coordinator to determine whether that approach is appropriate and whether the University needs to take additional actions. The Title IX Coordinator has the discretion to determine that a matter is inappropriate for adaptable resolution and will generally balance the request against the factors set forth in Section XII in reaching a determination. The matter is appropriate to be resolved through an adaptable resolution process; the Title IX Coordinator will refer the matter to the appropriate office to implement. An agreement to pursue adaptable resolution does not preclude the possibility of subsequently initiating the investigative resolution procedures if adaptable resolution is unsuccessful.

**XII. REQUESTS FOR ANONYMITY OR NO INVESTIGATION/HEARING**

If a Claimant requests anonymity, that an investigation/hearing not be pursued, or that no disciplinary action be taken, the IES will consider the Claimant's request and will consult with the Title IX Coordinator to determine whether the outcome of Claimant's request.

The Institutional Equity Specialist will balance the Claimant's request against the following factors in reaching a determination on whether the request can be honored:

- The nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- The respective ages and roles of the Claimant and Respondent;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;

- Whether there have been other reports of other Prohibited Conduct or other misconduct by the Respondent;
- Whether the report reveals a pattern of misconduct related to Prohibited Conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- The Claimant’s interest not to pursue an investigation or disciplinary action and the impact of such actions on the Claimant;
- Whether the University possesses other means to obtain relevant evidence;
- Due process considerations for both the Claimant and the Respondent;
- The University’s obligation to provide a safe and non-discriminatory environment;
- Any other available and relevant information.

The Title IX Coordinator will provide guidance to the Institutional Equity Specialist such as:

- Their individual and collective perspectives on whether, how, and to what extent, the University should further investigate the report of Prohibited Conduct;
- What steps may be possible or appropriate when a Claimant and/or Respondent is unknown or the Claimant requests anonymity and/or not further investigative or facilitate resolution;
- What other measures or remedies might be considered to address any effects of the reported behavior on the campus community;

The Institutional Equity Specialist, in consultation with the Title IX Coordinator, will make a determination regarding the appropriate manner of resolution under the Policy. The University will seek resolution consistent with the Claimant’s request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the Claimant and the University community.

**A. DETERMINATION THAT A CLAIMANT'S REQUEST(S) CAN BE HONORED**

Where the Institutional Equity Specialist, in consultation with the Title IX Coordinator, determines that a Claimant’s request(s) can be honored, the University may nevertheless take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Claimant and the University community. Those steps may include offering appropriate remedial measures to the Claimant, providing targeted training and prevention programs, and/or providing or imposing other remedies. The Claimant may later choose to pursue adaptable resolution (if available) or investigative resolution under this Policy. The

Institutional Equity Specialist also may request that a report be re-opened and pursued under the Policy and Procedures if any new or additional information becomes available.

## **B. DETERMINATION THAT A CLAIMANT'S REQUEST(S) CANNOT BE HONORED**

In those instances, when the Institutional Equity Specialist, in consultation with the Title IX Coordinator, determines that the University must proceed with an investigation/hearing despite the Claimant's request that it not occur, the Institutional Equity Specialist will notify the Claimant that the University intends to initiate investigative resolution, but that the Claimant is not required to participate in the investigation/hearing or in any of the actions taken by the University.

The University's ability to fully investigate and respond to a report may be limited if the Claimant requests anonymity or declines to participate in an investigation/hearing. The University will, however, pursue other steps to limit the effects of the Prohibited Conduct and prevent its recurrence.

In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation/hearing, and whether other measures will be taken in connection with any allegation of Prohibited Conduct, rests solely with the Title IX Coordinator.

## **XIII. INVESTIGATIVE RESOLUTION**

A flowchart depicting the investigative resolution process, including an investigation; a hearing; the imposition of sanctions and other appropriate remedies if there has been a finding, and the opportunity to challenge the hearing outcome or the sanction through an appeal, can be found [here](#).

Investigative Resolution typically begins when:

- A Claimant has reported one or more instances of Prohibited Conduct and requests, at any time, an investigation of the concern and notice of the investigation has been delivered to the Respondent; or
- After receiving a report of Prohibited Conduct, the Institutional Equity Specialist, in consultation with the Title IX Coordinator, has determined, based on the totality of the circumstances and the information available that an investigative resolution process is required to ensure the health and safety of the Claimant or University community members.

The Institutional Equity Specialist, in consultation with the Title IX Coordinator, will identify the most effective means address a report.

The investigative resolution, including a hearing where warranted, incorporate the following core principles and rights and responsibilities.

1. **Presumption of Good Faith Reporting.** The University presumes that reports of Prohibited Conduct are made in good faith. A finding that the behavior at issue does not constitute a violation of this Policy or that there is insufficient evidence to conclude that the incident occurred as reported does not mean that the report was made in bad faith.
2. **Presumption of Non-Responsibility.** The Respondent is presumed to be not responsible until a preponderance of the evidence supports a finding that the Respondent violated the Policy.
3. **Participation by the Parties and Witnesses Is Voluntary.** Claimants, Respondents, or witnesses may choose to participate or decline to participate in the investigative resolution process. However, even if a Claimant or a Respondent declines to participate, the University may deem it necessary to continue to investigate the report.
4. **Expectation of Claimant, Respondent, and Witnesses.** The Claimant, Respondent, witnesses and others sharing information with the investigator or the hearing officer are expected to provide all relevant and truthful information and to do so at their earliest opportunity to facilitate prompt resolution.
5. **Acceptance of Responsibility.** The Respondent may, at any time in the investigation or hearing process, elect to resolve the resolution process by accepting responsibility for the Prohibited Conduct, in which case the Title IX Coordinator will issue a brief investigation report or the hearing officer will issue a brief outcome determination summarizing the allegations and stating the Respondent has accepted responsibility and refer the matter to OSCR to determine the appropriate sanctions.
6. **Advisers.** Throughout the investigative resolution and hearing process, a Claimant, a Respondent or witness may have an adviser of their choice. An adviser is an individual chosen by a Claimant, a Respondent, or a witness to provide support and guidance during the review of a report of Prohibited Conduct under this Policy. An adviser may not be a witness or otherwise have any conflicting role in the process. An adviser may be an advocate and/or an attorney.

Any person who serves as an adviser should plan to make themselves available for meetings throughout the investigation process, as well as the hearing. The adviser may assist with all written submissions made by a Claimant or a Respondent, may assist with preparing questions or other information for the Claimant or the Respondent to be used at the hearing, and may facilitate scheduling and other processes. During any meeting or proceeding, the adviser is present to observe and provide support and counsel to the participant. The adviser may not present evidence on a party's behalf, present argument, examine witnesses, testify, disrupt, or otherwise obstruct the meeting or proceedings.

The University (including any official acting on behalf of the University such as the hearing officer or external reviewer) has the right at all times to determine what constitutes appropriate behavior on the part of an adviser and to take appropriate steps to ensure compliance with the Policy.

7. **Prior or Subsequent Conduct of the Respondent.** Prior or subsequent conduct of the Respondent will never be used to prove character, but may be considered for other purposes, such as determining pattern, knowledge, intent, or the Respondent's reasons for taking the action. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation.

The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. The investigator or hearing officer will determine the relevance of this information and both persons will be informed via inclusion of such information in the preliminary report or outcome determination if evidence of prior or subsequent conduct is deemed relevant.

8. **Prior Sexual Contact Between Claimant and Respondent.** Prior sexual contact between a Claimant and a Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history between the parties is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the question being determined is whether consent was given through mutually understandable actions (rather than words), information about prior sexual contact, in the totality of the evidence considered, may help the investigator understand the manner and nature of sexual communication between the two persons. This information may therefore be relevant in determining whether consent was sought and given during the incident in question.

However, and as noted above, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act. Consent on one occasion does not, by itself, constitute consent on a subsequent occasion. The investigator or hearing officer will determine the relevance of this information and both parties will be informed via inclusion of such information in the preliminary report or outcome determination if evidence of prior sexual contact is deemed relevant.

In addition, and as required by applicable state and federal law, other prior sexual activity of the Claimant or the Respondent may be relevant only in certain, very limited circumstances.

9. **Witnesses.** Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character.

Witnesses will have the opportunity to discuss the investigation process and participate in an interview. Following the interview, a witness will be provided with a draft summary of their statement so that they have the opportunity to comment on the summary and ensure its accuracy and completeness.

Where witnesses are interviewed as part of the investigation, the investigator will produce to the Claimant and the Respondent for their review and comment a written summary of the witness' interviews, which will identify the witness by name and relationship to each person and the University. This information will be provided in or with the preliminary investigation report.

## A. INVESTIGATION

An investigation will afford both the Claimant and Respondent an opportunity to submit information and other evidence and to identify witnesses. During an investigation, the investigator typically will meet separately with the Claimant, Respondent and pertinent witnesses; offer the parties the equal opportunity to submit and/or identify related and relevant information or evidence; and gather other relevant information or evidence, including documents, photographs, disciplinary history, social media, communications between the parties, medical records (subject to the consent of the applicable person) and other electronic records as appropriate. Following the interview, each person will be provided with a draft summary of their statement so that they have the opportunity to comment on the summary and ensure its accuracy and completeness.

The Claimant or Respondent may, under limited and extenuating circumstances, make a request to the investigator to submit a written statement instead of participating in an interview. The Claimant or Respondent also may provide other supporting materials relevant to the matter. However, it is the responsibility of the University, not the Claimant or Respondent, to gather relevant evidence to the extent reasonably available. The University's review will be thorough, reliable, and impartial.

1. **Role of Investigator.** Whenever an investigative resolution is initiated, the Institutional Equity Specialist will typically serve as the investigator, although the investigator may be any appropriately trained individual. The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience.

A Claimant or Respondent who has concerns that the assigned investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), may report those concerns to the Title IX

Coordinator or designee who will assess the circumstances and determine whether a different investigator should be assigned to the matter.

Investigators do not function as advocates for Claimants or Respondents. Investigators can, however, identify campus support and other resources for Claimants and Respondents and refer them to DOS or the CGS to coordinate services for students upon request.

2. **Notice of the Investigation.** Before any interview by an investigator of the Respondent, the Respondent will be informed in writing of the initiation of the investigation. The written information will include the identities of the parties, if known, a concise summary of the conduct at issue (including when and where it occurred, if known), and potential Policy violations. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may also constitute Prohibited Conduct under the Policy.
3. **Evidence.** The investigator, not the Claimant or Respondent, is responsible for gathering relevant evidence to the extent reasonably possible. However, each person will be given the opportunity to identify witnesses, provide other relevant information, such as documents, communications, photographs, and other evidence, and suggest questions to be posed to the other party or witness. Although the investigator need not do so, the investigator may draw a negative inference from a refusal to provide information that the investigator knows exists.

The investigator will review all information identified or provided by the parties as well as any other evidence they obtain and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. All evidence obtained as part of the investigation will be shared with the parties for their review and comment, as described below.

In general, a person's medical and counseling records are confidential and not accessible to the investigator unless the person voluntarily chooses to share those records with the investigator. In those instances, the information, if relevant, will be summarized in the preliminary report for both parties' review, and the relevant portions of the medical records made available for the non-sharing party's review.

The investigator may consult experts who have no connection to the reported incident when expertise on a specific topic or submitted evidence is needed to gain a fuller understanding of the relevance or value of the evidence or the issue at hand. In instances where an expert is consulted, the IES will determine whether the expert has any conflicts of interest or bias. The expert's identity will be shared with both parties so that they may also have the opportunity to identify any risk of such conflicts or bias for assessment by the IES.

4. **Consolidation of Investigation.** The Institutional Equity Specialist, in consultation with the Title IX Coordinator or designee, have the discretion to

consolidate multiple reports into a single investigation if evidence relevant to one incident might be relevant to the others. Consolidation might involve a single or multiple Claimants, a single or multiple Respondents, and conduct that is temporally or logically connected. If investigations involving multiple Claimants and/or multiple Respondents are consolidated, each party will have access to all of the information being considered, including as provided by all involved Claimants, all involved Respondents, and all involved witnesses.

5. **Coordination with Law Enforcement.** Where the University is made aware that there is a concurrent criminal investigation, the investigator will inform any law enforcement agency that is conducting its own investigation that a University investigation is also in progress; ascertain the status of the criminal investigation; and determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

At the request of law enforcement, the University may agree to temporarily defer part or all of the investigation/hearing until after the initial evidence-gathering phase of the law enforcement investigation is complete. The investigator will communicate with the parties, consistent with the law enforcement request and the University's obligations, about resources and support, procedural options, anticipated timing, and the implementation of any necessary interim measures for the safety and well-being of all affected individuals.

Standards for criminal investigations are different than the standards for a violation of this Policy, and therefore, the University will not base its decisions under this Policy solely on law enforcement determinations and/or the outcomes of any criminal proceedings. The University will fulfill its legal and ethical obligation to take immediate and appropriate action in response to a report of Prohibited Conduct, even if there are other external processes or procedures pending in connection with that same report. Similarly, if the University finds Prohibited Conduct has occurred, the University will take appropriate action, regardless of external proceedings that may also be pending.

6. **Time Frame for Completion of Investigation.** The University will strive to complete the investigation, meaning the period from commencement of an investigation, which begins with notice of the investigation to the Respondent, through to completion of an investigative report, within fifty-five (55) calendar days. The commencement of an investigation will be opened, typically either the date of the Claimant's interview or such other time as the Claimant provides sufficient information for the investigator to proceed with an investigation, and requests that an investigation be opened, or such time as the IES determines, following consultation with the Title IX Coordinator, that an investigation/hearing will be opened. Additional time beyond fifty-five (55) days may be necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence, to accommodate the availability of parties and/or witnesses, to account for

University breaks or vacations, to account for case complexities including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

With reasonable frequency throughout the investigation, except where a party requests otherwise, the IES will update the Claimant and Respondent as to the status of the investigation.

7. **Preliminary Investigation Report.** After each person has had the opportunity to comment on their own statement and to identify witnesses and other potential information, and the investigator has completed witness interviews and the gathering of evidence, the investigator will prepare a preliminary report.

The investigator will provide the parties with the preliminary report, which will include, as applicable, the Claimant's statement, Respondent's statement, each witness' statement and either a copy or written summary of any other information the investigator deems relevant. At the same time, the investigator will also provide each party the evidence obtained as part of the investigation. The evidence will be provided in an electronic format that restricts the parties from downloading or copying the evidence.

The Claimant and Respondent will have one opportunity to concurrently review the preliminary report and provide feedback in response. The Claimant and Respondent must submit any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigator, up to fifteen (15) pages, within ten (10) calendar days after it is sent to them for review. The Institutional Equity Specialist or designee may, in their discretion, waive the page limit on the feedback the parties can provide the investigator, for good cause. The parties' feedback will be attached to the final investigative report.

Only information that is provided to the IES or otherwise uncovered by the IES during the course of the investigation may be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the hearing officer should be provided to the investigator prior to the hearing and will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation.

8. **Final Investigation Report.** After receiving any comments submitted by either person, or after the ten (10) calendar day comment period has lapsed without comment, the investigator will address any relevant issues identified by the Claimant and/or Respondent, and as appropriate, pursue any additional investigative steps as needed, and issue a final investigative report.

The investigator's final written report will contain all information from the preliminary report, as supplemented by the relevant feedback submitted; and any additional information gathered. If the Respondent admits responsibility, the investigator's final written report will contain a short summary of the allegations and the Respondent's admission of responsibility.

The investigator's report must be reviewed and approved by the Title IX Coordinator, or designee, before it is issued. The Institutional Equity Specialist or designee will provide a copy of the final investigation report to the Claimant and Respondent simultaneously. In addition to the final investigation report, the IES will also provide written information about next steps.

If a Claimant has chosen not to participate in the investigation but requests to be notified of the outcome, the University will notify the Claimant. If a Claimant has requested not to be notified of the outcome, the University will honor that decision. In such cases, the University will not send the notification to the Claimant, but may proceed with any necessary follow-up, as appropriate, if the case proceeds to a hearing, sanctioning, or appeals phase of the process.

9. **Referral to Hearing.** The Institutional Equity Specialist will provide the final investigation report to the parties, along with information regarding the hearing process. If a hearing is required, the parties will have ten (10) days to review the final investigative report and provide a response to the hearing officer.

If the University learns that Claimant, Respondent, or a material witness will not attend the hearing, the Institutional Equity Specialist, in consultation with the Title IX Coordinator, will determine in their discretion whether the University will proceed with the hearing.

## **B. HEARING**

The hearing is an opportunity for the parties to address the hearing officer in person and for the hearing officer to obtain information to answer any outstanding questions following the investigation that is necessary to make a determination of whether a Policy violation occurred.

The University expects that both the Claimant and Respondent will attend a prehearing meeting and the hearing, but neither party is required to participate in the prehearing meeting or the hearing.

1. **Hearing Officer.** The hearing will be conducted by a hearing officer, who is selected by the General Counsel in consultation with the Vice Chancellor for Student Affairs. The hearing officer will receive annual training regarding the University's policies and procedures, the handling of student sexual misconduct cases, and other relevant issues.

The hearing officer must be impartial and free from bias or conflict of interest. The parties will be informed of the identity of the hearing officer and vice versa before the prehearing conference. If the hearing officer has concerns that he or she cannot conduct a fair or unbiased review, the hearing officer may report those concerns in advance of the prehearing conference to the Title IX Coordinator or designee and a different hearing officer will be assigned. Similarly, a Claimant or Respondent who has concerns that the assigned hearing officer cannot conduct a fair and unbiased hearing, may report those concerns to the Title IX Coordinator or designee who will assess the circumstances and whether a different hearing officer should be assigned.

The hearing officer has broad discretion to determine the hearing format. The hearing officer is responsible for maintaining an orderly, fair and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person.

The Claimant or Respondent may make requests to the Institutional Equity Specialist related to the format or the nature of their participation in the hearing. The Institutional Equity Specialist will work with the hearing officer to accommodate reasonable requests, including the option for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and the parties to simultaneously see and hear the party answering questions.

2. **Scheduling.** When OIE refers a case to a hearing, the Institutional Equity Specialist will forward a copy of the investigation report to the hearing officer, Claimant, and Respondent. The Institutional Equity Specialist will schedule a hearing date, time, and location and notify the parties of the same. The hearing officer will strive to complete a hearing within fourteen (14) calendar days from the issuance of the investigation report.
3. **Standard of Evidence.** In all cases before a hearing officer, the standard of proof is a preponderance of evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the reasonable evidence and reasonable inferences from the evidence, that the Respondent violated this Policy.
4. **Record of Hearing.** The hearing and any prehearing conference are closed to the public. The Claimant, Respondent, and witnesses are each allowed to have one adviser of their choice present throughout the hearing process. The University shall keep an official transcript (including any audio recordings) of the hearing and any other recording is prohibited. No camera, TV, or other equipment, including cellphones, will be permitted in the hearing room except as arranged by the University.
5. **PreHearing Meeting.** The Institutional Equity Specialist will convene a separate prehearing meeting with each of the parties and the hearing officer to plan for the hearing and to identify the advisers of the parties; to review the complaint and issues

of interest to the hearing officer and parties; to describe the procedures to be followed at the hearing; to discuss and determine whether the OSCCS Director or designee has a conflict; to identify the names of witnesses that will be asked to appear; and to answer any other questions or share information prior to the hearing. The hearing officer will also discuss the time allotted for the hearing and any time limitations. The hearing officer will provide all relevant and significant information to the other party. If either party does not attend the prehearing meeting, the hearing officer will determine whether and how that absence affects the ability of the University to move forward with the hearing, as well as the hearing schedule.

The parties and the hearing officer are expected to identify witnesses by the prehearing. The hearing officer may, in his or her discretion, exclude from the hearing, witnesses who were not previously identified to the other party.

6. **Adaptable Resolution.** The University permits adaptable resolution of complaints whenever requested and appropriate. During the prehearing conference and up to 48 hours prior to a hearing, the Claimant can request adaptable resolution, and both the Claimant and Respondent have the option to voluntarily consent to engage in one of the facilitated processes described in Section XIV, with the recommendation of the Institutional Equity Specialist and approval of the Title IX Coordinator.
7. **Case Presentation.** The hearing is not intended to be a repeat of the investigation. The hearing officer will be well-versed in the facts of the case based upon the investigation report and the parties' responses to the investigation report, if any. The Claimant and Respondent and their advisers, OSCCS staff member, and the Hearing Officer will attend the hearing. Other University administrators may attend at the request of or with the prior approval of the hearing officer, but the parties will be notified in advance of anyone who will be in attendance.

The hearing officer has absolute discretion to decide upon a format for the hearing and to determine which witnesses are relevant to their outcome determination. A hearing officer may decline to hear from a witness where they conclude that the information is not necessary for their outcome determination.

A typical hearing may include brief opening remarks by the hearing officer; questions posed by the hearing officer to one or both of the parties; follow-up questions by one party to the other (typically with the Respondent questioning the Claimant first); questions by the hearing officer to any witness; and follow-up questions by either party to any witness (typically with the Respondent questioning the witness first). The hearing officer also will afford either party an opportunity at the end of the hearing to offer closing remarks. A decision whether to offer closing remarks is completely voluntary.

8. **Expectation of the Claimant, Respondent, and Witnesses at a Hearing.** The Claimant, Respondent, witnesses and other individuals sharing information with the

hearing officer are expected to provide truthful information in any proceeding under this Policy.

- 9. Notice of Hearing Outcome.** Following the hearing, the hearing officer will consider all of the evidence and make a determination, by a preponderance of the evidence, whether the Respondent has violated the Policy. The hearing officer will issue a written notice of hearing outcome, which will contain the hearing officer's factual findings, determination of whether a Policy violation occurred, and a summary of the hearing officer's rationale in support of the hearing outcome. The hearing officer will strive to issue the written notice of hearing outcome within fourteen (14) calendar days of the hearing.

The Institutional Equity Specialist will provide the notice of hearing outcome to the Claimant and Respondent simultaneously, and will strive to do so within three (3) calendar days of receipt of the hearing officer's written notice of hearing outcome. The notice of hearing outcome will include information about next steps, which may include the sanctioning process (in the event there is sufficient evidence to support a Policy violation), and/or the appeal process.

If a Claimant has chosen not to participate in the investigation, but requests to be notified of the outcome, the University will notify the Claimant. If a Claimant has requested not to be notified of the outcome, the University will honor that decision. In such cases, the University will not send the notification to the Claimant, but may proceed with any necessary follow-up, as appropriate, if the case proceed to a sanctioning or appeals phase of the process.

## **C. SANCTIONS**

If the Respondent is found responsible for Prohibited Conduct, the University will initiate a sanctioning process designed to eliminate the conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and fulfilling its Title IX obligations. Sanctions or interventions may also serve to remedy the discriminatory effects of the Prohibited Conduct on the Claimant and others as appropriate, including any systemic actions found to be appropriate for the broader university community. Other remedies may include targeted or broad-based educational programming or training.

The Office of Student Conduct and Community Standards (OSCCS) will facilitate the sanctioning process outlined in this Policy upon receipt of the Investigation Report and will make a sanctioning determination within ten (10) calendar days after the Claimant and the Respondent are notified of the hearing outcome.

### **1. Role of the Office of Student Conduct and Community Standards (OSCCS)**

Whenever a sanction is to be assessed, the Director of the Office of Student Conduct and Community Standards (OSCCS) will typically serve as the sanctioning agent, although it may be

any appropriately trained individual. The sanctioning agent must be impartial, free to any actual conflict of interest, and have specific relevant training and experience. If a Claimant or Respondent, who has concerns that the Sanctioning Agent cannot issue sanctions in a fair and unbiased way (e.g. has a personal connection with one of the parties, etc.), may report those concerns to the Dean of Students who will assess the circumstances and determine whether a different sanctioning agent should be assigned to the matter.

## **2. Sanctioning Process**

To ensure effective transition between phases of the process the Claimant and Respondent will be provided equal opportunity to meet with an OSCCS staff member to understand the sanctioning phase of the process, if applicable, and/or any appeals phase that may also be applicable.

The OSCCS staff member will attend the hearing and review the investigation report, any additional information regarding the Respondent's disciplinary record, if any, and any sanctioning input statement provided to OSCCS by the parties as set forth below. The OSCCS staff member may consult with the Title IX Coordinator of the hearing officer as necessary. The OSCCS staff member will strive to render a written sanctioning determination within five (5) calendar days of receiving the materials from the Institutional Equity Specialist.

## **3. Sanctioning Input Statement**

Both the Claimant and the Respondent may each offer a brief written sanctioning input statement within five (5) calendar days of receiving the notice of a Policy violation. The purpose of the sanctioning input statements is for the parties to explain what sanction(s) they believe the OSCCS staff member should implement and why. A sanctioning input statement from the Claimant is a written statement describing the impact of the Prohibited Conduct on the Claimant and expressing the Claimant's preferences regarding appropriate sanctions. A sanctioning input statement from the Respondent is a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions imposed. The Claimant or Respondent's decision whether to provide a sanctioning input statement is completely voluntary. OSCCS may use information from these statements to help determine the Respondent's sanction.

The sanctioning input statements may not exceed five (5) pages, including attachments. The OSCCS staff member will share any sanctioning input statements with the other party. The OSCCS staff member will review all information submitted in a sanctioning input statement for relevance and appropriateness and may determine that some or all of the information submitted is not appropriate for review.

## **4. Factors Considered in Sanctioning**

In determining the appropriate sanctions, the assigned OSCCS Staff member will be guided by a number of considerations, including:

- The nature of the conduct at issue;
- The impact of the conduct on the Claimant;
- The impact of the conduct on the community or the University, including protection of the University community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, and any criminal convictions, if such information is available, known and reliable;
- Whether the Respondent has accepted responsibility for the conduct, which may be considered as a factor that may lessen, not increase, the severity of the sanctions;
- Maintenance of a safe and respectful environment conducive to learning;
- The necessity of any specific action in order to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Claimant or other University community members; and
- Any other mitigating, aggravating, or compelling circumstances, including those set forth in the sanctioning input statements, to reach a just and appropriate resolution in each case.

## 5. Possible Sanctions or Interventions Directly Impacting Respondents

The list of potential sanctions or interventions includes one or more of the following:

- **Formal Reprimand:** A formal notice that the Code has been violated and that future violations will be dealt with more severely;
- **Disciplinary Warning:** A designated period of time which may involve restrictions of student privileges and/or set specific behavioral expectations;
- **Disciplinary Probation:** A designated period of time during which the student is not in good standing with the University. The terms of disciplinary probation may involve restrictions of student privileges and/or set specific behavioral expectations;
- **Restitution:** Reasonable and limited compensation for loss, damage, or injury to the appropriate party in the form of money or material replacement;
- **Restriction from Employment at the University:** Prohibition of or limitation on University employment;

- **Class/Workshop/Training/Program Attendance:** Enrollment in and verified completion of a class, workshop, training, on line learning, program, and/or follow up meetings with staff members any of which could help the student and/or the University community. Examples include, but not limited to, the following: Alcohol Education, Alcohol Assessment, Individual Marijuana Education Program, Conflict Coaching, Wellness Coaching, Anger Management, Counseling (recommended & voluntary only), scheduled Check In Meetings with staff member, and Healthy Relationship/Consent/Wellness Education coaching;
- **Educational Project:** Completion of a project specifically designed to help the student understand why certain behavior was inappropriate and to prevent its recurrence;
- **Service:** Performance of one or more tasks designed to benefit the community and help the student understand why the behavior was inappropriate;
- **University Housing Transfer or Removal:** Placement in another room or housing unit or removal from University housing. Housing transfers or removals may be temporary or permanent depending on the circumstances;
- **Removal from Specific Courses or Activities:** Suspension or transfer from courses or activities at the University for a specified period of time;
- **No Contact:** Restriction from entering specific University areas and/or from all forms of contact with certain persons;
- **Suspension:** Separation from the University for a specified period of time or until certain conditions are met;
- **Expulsion:** Termination of student status for an indefinite period;
- **Transcript notation, hold, and/or notification to other institutions:** A notation of non-academic disciplinary action may be made on a transcript and/or the University may notify other institutions of non-academic disciplinary action. In addition, the University may place a hold on transcripts, meaning that the University may prevent a student from registering for classes, receiving a copy of their transcript /diploma, or both;
- **Withholding, delaying, or revoking the conferral of the degree:** The University may delay the conferral of the degree pending the outcome of an investigation or withhold the conferral of the degree due to a finding of Prohibited Conduct. In extraordinary circumstances, the University may revoke the conferral of the degree;

Student-employees who are reported to have engaged in Prohibited Conduct in their employment capacity will continue to be subject to review under the [University's Sexual Harassment Policy](#) (SPG 201.89-0) rather than under this Policy. If a student-employee is found to have engaged in

Prohibited Conduct, the student-employee may be subject to sanctions both in connection with their employment and in connection with their student status (as listed here), as appropriate under applicable processes.

#### **6. Possible Interventions to Remedy Discriminatory Effects on the Claimant and Others**

In addition to identifying disciplinary sanctions and other interventions that directly affect the Respondent, the OSCCS staff member will also be responsible for identifying and implementing any non-disciplinary actions necessary to prevent recurrence of the harassment and actions to remedy its discriminatory effects on the Claimant and others as appropriate, including any systemic actions found to be appropriate for the broader University community. Such interventions may include academic accommodations, counseling, reimbursement, education or training, monitoring or other individual support needed to remedy the harm. The OSCCS staff member will identify what actions the University will take, who will be responsible for implementing such actions, and by when. To the extent the OSCCS staff member determines that non-disciplinary interventions for the Claimant or others are not necessary, the OSCCS staff member will identify why such remedies are not needed.

#### **7. Written Notice of Sanction(s) and Intervention(s)**

OSCCS will provide the written notice of the sanction(s) and intervention(s) to the Claimant and Respondent simultaneously. The notice will include the sanction(s) and intervention(s), a summary of the assigned OSCCS staff member's rationale in support of the sanction(s) and intervention(s), and the appeal process.

#### **D. APPEALS OF FINDINGS OR SANCTIONS**

Both a Claimant and Respondent may generally appeal the hearing outcome, the sanctions and interventions, or both, subject to the groups for appeal set forth below. If the Respondent accepted responsibility for the allegation, either party may appeal the sanction determination, but not the Policy violation. The appeal will be conducted in an impartial manner and equivalent rights will be provided to both parties throughout the process.

A Claimant may appeal the hearing officer's determination that there is insufficient evidence to support a Policy violation within seven (7) calendar days of the date of the written notice of the investigation outcome. The appeal shall consist of a plain, concise, and complete written statement outlining the basis for appeal and all relevant information to substantiate the claim and should be submitted to the Dean of Students.

A Respondent may appeal the hearing officer's determination that there is sufficient evidence to support a Policy violation within seven (7) calendar days of the date of the written notice of sanction. The appeal shall consist of a plain, concise, and complete written statement outlining the basis for appeal and all relevant information to substantiate the claim and should be submitted to the Dean of Students.

Either party may appeal the sanction or intervention imposed by the sanctioning agent within seven (7) calendar days of the date of the written notice of sanction.

To appeal the hearing outcome or the sanctions, a party must submit a written request to the Dean of Students within seven (7) calendar days of the date of the notice of hearing outcome or sanctions, whichever is relevant. The Dean of Students may deem a late submission reasonable only under extraordinary or extenuating circumstances. The appeal shall consist of a plain, concise, and complete written statement of no greater than ten (10) pages, outlining the basis for appeal and all relevant information to substantiate the appeal. If a party's appeal includes an assertion that new relevant evidence unavailable earlier in the proceedings exists and that includes written or other documentary evidence, such evidence will not be subject to this page limit.

Each party will be given the opportunity to review and respond in writing to an appeal submitted by the other party. Any response by the opposing party must be submitted to the Dean of Students within seven (7) calendar days. All appeal documents from each party will be considered together in one submitted appeal.

## **1. Grounds for Appeals**

Claimant or Respondent may appeal the findings or hearing outcome, as appropriate, on one or both of the following grounds:

- A significant deviation from the procedures that impacted the outcome of the investigation/hearing in a way that is fundamentally unfair; or
- There is new and relevant information that was unavailable, with reasonable diligence and effort, at the time of the investigation or, as appropriate, the hearing that is sufficient to alter the hearing outcome.

Claimant or Respondent may appeal the sanction on the following ground:

- The sanction was clearly inappropriate and/or disproportionate to the conduct for which the person was found responsible.

## **2. External Reviewer Will Conduct Appeal Review**

The appeal review will be conducted by an external reviewer. The external reviewer will be a neutral party outside of the University. The external reviewer will be chosen by OGC in consultation with VCSA. The external reviewer will receive annual training regarding the University's policies and procedures, the handling of student sexual misconduct cases, and other relevant issues.

The external reviewer must be impartial and free from bias or conflict of interest. If the external reviewer has concerns that he or she cannot conduct a fair or unbiased review, the external reviewer may report those concerns to the Title IX coordinator and a different external reviewer will be assigned to the appeal. Similarly, a Claimant or Respondent who has concerns that the assigned external reviewer cannot conduct a fair and unbiased review, may report those concerns to the Title IX Coordinator who will assess the circumstances and determine whether a different external reviewer should be assigned to the appeal.

The external reviewer will review the matter based on the issues identified in the appeal(s) materials. The external reviewer may, at any time, freely consult with or request additional information from the Title IX Coordinator, OGC, and other University administrators as necessary. The external reviewer has the authority to determine the appropriateness of evidence, including whether certain evidence should be considered, and the strength and value that evidence will be given. In deciding the appeal of the finding or the sanction, the external reviewer may consider the investigation report, the hearing transcript, the notice of hearing outcome, and any written appeal by the parties outlining any basis for altering the hearing outcome and/or sanctions, the sanctioning determination, and any sanctioning input statements. The external reviewer also may consider any other materials the University deems relevant and that have been shared with the parties.

### **3. Decision of External Reviewer**

The external reviewer may conclude that there are no relevant issues of concern and therefore recommend that the hearing outcome and/or the sanctioning determination be affirmed and communicated to the Vice Chancellor for Student Affairs as noted below.

In the alternative, the external reviewer may identify issues of concern. If so, the external reviewer will provide, in writing, to the Institutional Equity Specialist, copying the Title IX Coordinator, one of the following recommended actions and any additional instructions or recommendations they deem appropriate under the circumstances:

If there was significant deviation from procedure that impacted the outcome of the case in a way that is fundamentally unfair, remand the matter to the Institutional Equity Specialist or new investigator or the hearing officer, as appropriate, with corrective instructions from the external reviewer.

- If new information would alter the hearing outcome, remand the matter to the hearing officer to determine whether a new hearing is necessary and whether any modifications may be needed to be made to the hearing outcome; or
- If the external reviewer determines the sanctions to be clearly inappropriate or disproportionate, they will alter the sanctions or interventions accordingly. The external reviewer's decision regarding sanctions is final. There will be no further opportunity for the parties to appeal the sanctions, except as set forth in the following paragraph of this Policy.

If a new hearing is deemed necessary following an appeal and results in a different determination, the Claimant or Respondent can appeal the new finding subject to the following grounds:

- A significant deviation from the procedures during the remanded hearing that impacted the outcome of the hearing in a way that is fundamentally unfair;
- There is new and relevant information that was unavailable, with reasonable diligence and effort, at any prior time during the process that would alter the remanded hearing outcome; and
- If the new and different outcome determination is a finding of responsibility, following the sanctioning process, the parties may appeal the sanction as clearly inappropriate and/or disproportionate to the conduct for which the person was found responsible.

The external reviewer will strive to complete the appeal review within seven (7) calendar days of receipt of all documents.

The external reviewer will provide these determinations to the Vice Chancellor for Student Affairs (VCSA) or their designee who may accept or modify the determinations made by the external reviewer within seventy-two (72) hours of receiving the external reviewer's decision. If the VCSA or their designee does not complete the review within seventy-two (72) hours, the review will be waived and the external reviewer's determination will be deemed final. The VCSA'S final and unreviewable decision will be made available to the participating parties, in writing, simultaneously, by the Dean of Students as soon as is reasonably possible.

#### **XIV. ADAPTABLE RESOLUTION**

The University recognizes that it is important to take into account the needs of students, some of whom may prefer not to go through investigative resolution. Adaptable Resolution is a voluntary, remedies-based, structured interaction between or among affected parties that balances support and accountability without formal disciplinary action against a Respondent. Adaptable resolution is generally designed to allow a Respondent to acknowledge harm and accept responsibility for repairing harm (to the extent possible) experienced by Claimant and/or the University community. Adaptable Resolution is designed to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the Claimant while maintaining the safety of the campus community.

##### **A. CIRCUMSTANCES IN WHICH ADAPTABLE RESOLUTION MAY BE USED**

The Institutional Equity Specialist, in consultation with the Title IX Coordinator or designee, reviews the matter to the extent necessary to confirm that it is of the type that would be appropriate for an adaptable resolution process and that use of an adaptable resolution process

was without pressure or compulsion from others. The adaptable resolution options available under this Policy recognize:

- The goal of adaptable resolution is to address the Prohibited Conduct, identify ways that individuals and/or the community have been harmed, and develop a resolution agreement to address the harm and prevent future Prohibited Conduct;
- Participation is voluntary and both a Claimant and Respondent, as well as any other participating individuals, must consent in writing to participation in adaptable resolution;
- The written consent will inform the Claimant and Respondent that either can request to end adaptable resolution at any time and pursue an investigative resolution. Information gathered and utilized in adaptable resolution by and between the parties cannot be used in any other University process, including investigative resolution if facilitate resolution ends and investigative resolution begins or resumes;
- The University will not compel a Claimant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of adaptable resolution;
- Prohibited Conduct affects Claimants, Respondents, witnesses, friends, community members, family members, and others;
- Claimants, Respondents, and other participants in adaptable resolution often benefit when resolution processes and outcomes are tailored to meet their unique needs and interests;
- Claimants and other participants in adaptable resolution may find it useful to meet with a Respondent who acknowledges the substance of the underlying events and who acknowledges that Claimants or other participants have reported experiencing harm as a result;
- Structured interactions between participants can facilitate long-term healing and reduce recidivism; and
- Participants in adaptable resolution processes must be protected from secondary victimization and other potential harms, including the pressure to proceed through adaptable resolution instead of investigative resolution.

## **B. ADAPTABLE RESOLUTION OPTIONS**

The adaptable resolution options will be enabled by a trained coordinator identified by the Title IX Coordinator or designee (the adaptable resolution coordinator). The adaptable resolution coordinator typically will be someone other than the assigned investigator/IES, OSCCS staff, or the Dean of Students. The adaptable resolution coordinator must be impartial and free from bias

or conflict of interest. If the adaptable resolution coordinator has concerns that he or she cannot facilitate a fair or unbiased process, the adaptable resolution coordinator may report those concerns to the Title IX Coordinator and a different adaptable resolution coordinator will be assigned to the appeal. Similarly, a Claimant, Respondent, or any other participant who has concerns that the assigned adaptable resolution coordinator cannot enable a fair and unbiased process, may report those concerns to the Title IX Coordinator who will assess the circumstances and determine whether a different adaptable resolution coordinator should be assigned to the restorative process.

With recommendation from the Institutional Equity Specialist and approval from the Title IX Coordinator, after consultation and intake with the adaptable resolution coordinator, the Claimant and Respondent may voluntarily agree on the process that best meets the interests and needs of the parties. Adaptable resolution may include one or more of the following restorative approaches:

- **Facilitated Dialogue:** A structured and facilitated conversation between two or more individuals, most often the Claimant, Respondent, and/or other community members. The focus is often on providing a space for voices to be heard and perspectives to be shared. Depending on the stated interests, the participants may sometimes work towards the development of a shared agreement, although working towards an agreement is not always the intended outcome.
- **Restorative Circle or Conference Process:** A facilitated interaction where the individuals who have experienced harm can come together with an individual(s) who assume responsibility for repairing the harm (to the extent possible). A circle or conference may include multiple members of the community to explore individual and community impact, harm, obligations, and opportunity for repairing them. Parties must agree on all those who will be present.
- **Shuttle Negotiation:** An indirect facilitated conversation individually with the Claimant, Respondent, and/or other participants to discuss experience and perspective and explore interests while working towards meetings expressed needs. This negotiated process does not require direct interaction between the parties or the parties and other participants, but rather, independently, with a coordinator.
- **Circle of Accountability (COA):** A facilitated interaction between Respondent and University faculty and/or staff designed to provide accountability, structured support, and the development of a learning plan. The focus of a COA is to balance support and accountability for an individual who has acknowledged their obligation to repair harm and willingness to engage in an educational process. The COA model does not require participation from the Claimant, but as with other types of adaptable resolution, it must be voluntary for the Claimant and Respondent.

Measures that may be agreed to as a result of the resolution process may include:

- Alcohol education classes for the Respondent;
- Regular meetings with an appropriate University individual, unit, or resource;
- Permanent extension of a no contact directive;
- Restriction from participation in specific clubs and/or organizations;
- Respondent restriction from participation in particular events;
- Respondent completion of an educational plan with regular meetings with the adaptable resolution coordinator or other appropriate University staff or faculty member; and/or
- Counseling sessions for the Respondent

Individuals who wish to participate in an adaptable resolution process must have successfully completed preparatory meetings with an appropriate staff member(s). The OSCCS staff member will assist students with coordination of adaptable resolution.

Individuals may be accompanied by an adviser at any meetings related to the adaptable resolution process. Information shared or obtained during adaptable resolution will be treated as private to the extent permitted by law and will not result in subsequent disciplinary actions by the University.

### **C. ADAPTABLE RESOLUTION AGREEMENTS**

Any agreements reached in adaptable resolution must be documented by the adaptable resolution coordinator, endorsed by the Institutional Equity Specialist, and approved by the Title IX Coordinator to ensure consistency with the University's Title IX obligations. An agreement will not be considered valid if the Title IX Coordinator does not approve it.

If the Title IX Coordinator approves an agreement after the parties have voluntarily reached consensus as to its terms, the Respondent will be required to comply with the agreement. Failure to comply with the agreement may result in a violation of the [Code of Student Conduct](#). If no agreement is reached, the matter may be referred to Institutional Equity Specialist for further action. Once the Title IX Coordinator approves an agreement, the parties are bound by its terms and cannot return to investigative resolution.

To fairly assess pattern or systemic behavior, the Institutional Equity Specialist will maintain records of all reports and conduct referred for adaptable resolution. The time frame for completion of adaptable resolution may vary, but the University will seek to initiate action within thirty (30) calendar days of the initial assessment.

## **XV. FACILITATED INTERVENTIONS OR REMEDIES FOR THE UNIVERSITY COMMUNITY**

In addition to the sanctions/interventions applied to the Respondent, and regardless of whether the University pursues an investigative resolution or takes other formal disciplinary action, Institutional Equity Specialist may find it helpful or necessary to request or require a Respondent

or others to undertake specific steps designed to eliminate the misconduct, prevent its recurrence, and/or remedy its effects. Examples include, but are not limited to, the following:

- Requesting or requiring a University entity to provide training for its staff or members;
- Requesting or requiring a Respondent to receive training;
- Continuing any of the protective and supportive measures previously established;
- Identifying the need for any additional or ongoing measures, supports and remedies; or
- Revising University policies, practices, or services.

## **XVI. RECORDS RETENTION**

The University shall retain for a period of seven (7) years after the date of case closure: the official OIE and OSCCS case file relating to an investigative resolution, including any sanctioning and/or appeals processes involving allegations of Prohibited Conduct. In cases in which the Respondent was found to have violated the Policy and was expelled, the University may retain such official case files indefinitely.

## **XVII. POLICY REVIEW**

This Policy is maintained by the OIE, UM-Flint Human Resources, and the Vice President and Office of the General Counsel. The University will review and update this Policy, as appropriate, each year. The University will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year.

## **XVIII. ANNUAL REPORT**

The Institutional Equity Specialist will issue an [Annual Report](#) to the University of Michigan-Flint community providing an overview of the number and nature of reports of Prohibited Conduct received during the preceding fiscal year. The report will provide the community with an overview of response efforts.