

**THE UNIVERSITY OF MICHIGAN-FLINT  
INTERIM STUDENT PROCEDURES**

**Effective August 14, 2020**

**Flint Interim Student Procedures**  
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## **OVERVIEW**

This Appendix describes the procedures the University of Michigan-Flint uses when it receives a report of possible Prohibited Conduct by a Student (referred to as “Student Procedures” or “Procedures”). The Student Procedures are part of the [Policy on Sexual and Gender-Based Misconduct \(“Policy”\)](#). The University uses these Procedures to address allegations of Prohibited Conduct<sup>1</sup> and to impose sanctions, as appropriate.

The Policy and the Student Procedures may address the same topic, with the Policy providing more general guidance and the Procedures more specificity. These Procedures therefore must be read in conjunction with the Policy.

For information regarding available resources or how to make a report, please refer to Section VI and Section V, respectively, of the [Policy](#).

Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy.

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

At all times, it is within the University’s discretion to determine which policies and procedures apply and under which action may be taken. Some Prohibited Conduct may result in separate and additional proceedings under multiple University policies. A list of the potential policies and procedures that may apply can be found in the [Standard Practice Guide \(“SPG”\)](#).

### **III. INITIAL ASSESSMENT AND INTAKE**

#### **A. Initial Assessment**

When alleged Prohibited Conduct is first reported to the [Office for Institutional Equity \(“OIE”\)](#), OIE will assess the nature and circumstances of the report, including whether the names and/or any other personally identifiable information for the Complainant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident is provided, to facilitate the appropriate follow up:

- Assess the nature of the allegations to identify possible resolution options that may be available;

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<sup>1</sup> The University of Michigan Interim Policy on Sexual and Gender-Based Misconduct (“Policy”) prohibits the following types of conduct as defined in Section XI (also referred to collectively as “Prohibited Conduct”): Sexual and Gender-Based Misconduct (i.e., Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation and Violation of Supportive Measures); and Title IX Misconduct (i.e., *Quid Pro Quo* Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Intimate Partner Violence and Stalking; as defined by and within the scope of Title IX).

- Ascertain the ages of the Complainant and the Respondent, if known, and, if either party is a minor (under 18 years old), 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; and
- Notify the Department of Public Safety (“DPS”) of the report if the conduct, as alleged, would constitute a violation of law.

## **B. Intake with the Parties**

### **1. Complainant**

After receiving a report of possible Prohibited Conduct committed by a Student, OIE will promptly contact the Complainant, if one is identified or identifiable, to (1) discuss the availability of Supportive Measures; (2) ask about the Complainant’s wishes with respect to Supportive Measures; (3) explain that Supportive Measures are available with or without the filing of a Formal Complaint; and (4) explain how to file a Formal Complaint.

OIE will also provide the Complainant with a written explanation of available resources, options, and other important Policy information, including the following:

- Support and assistance available through University resources, including the Complainant’s option to seek Supportive Measures regardless of whether they choose to participate in a University or law enforcement investigation;
- The Complainant’s option to seek medical treatment and information on preserving potentially key forensic evidence and/or other potential evidence;
- The process for filing a Formal Complaint, if appropriate;
- The University’s procedural options, including investigative and adaptable resolution;
- The Complainant’s right to an advisor of the Complainant’s choosing who may be, but is not required to be, an attorney (see [Section VII \(A\)\(8\)](#) below);
- The University’s prohibition against Retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties, how to report acts of Retaliation, and that the University will take prompt action when Retaliation is reported;

- The opportunity to discuss with the Title IX Coordinator or designee the Complainant’s resources, rights, and options; and
- A copy of or link to the University’s [Policy on Sexual and Gender-Based Misconduct](#) and these Procedures.

## 2. Respondent

When OIE receives a Formal Complaint, OIE will ensure that a Respondent is informed of the following in writing:

- Notice of the allegations potentially constituting Prohibited Conduct, including the identities of the parties (if known), the date and location of the alleged incident (if known), potential Policy violations; that a determination regarding responsibility is made at the conclusion of the hearing (if a hearing is applicable); and that the Respondent is presumed not responsible for the alleged Prohibited Conduct prior to the determination;
- Support and assistance available through University resources;
- The Respondent’s right to an advisor of the Respondent’s choosing who may be, but is not required to be, an attorney (see [Section VII \(A\)\(8\)](#) below);
- The University’s prohibition against Retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties, how to report acts of Retaliation, and that the University will take prompt action when Retaliation is reported;
- The opportunity to discuss with the Title IX Coordinator or designee the Respondent’s resources, rights, and options; and
- A copy of or link to the University’s [Policy on Sexual and Gender-Based Misconduct](#) and these Procedures.

## IV. SUPPORTIVE MEASURES

A definition, explanation, and examples of Supportive Measures are described in to Section VIII of the [Policy](#).

### A. Confidential Resources for Supportive Measures

Individuals who wish to request Supportive Measures confidentially without making a report to OIE may do so through the Sexual Assault Advocate in the [Center for Gender and Sexuality \(CGS\)](#) or [Counseling and Psychological Services \(CAPS\)](#). These Confidential Resources can

often arrange Supportive Measures directly; however, they may need to interact with other University offices in order to implement the Supportive Measures. The Confidential Resource will not communicate with other University offices about arranging a Supportive Measure unless the individual requesting the Supportive Measure waives confidentiality for that purpose, with the understanding that the University office contacted may report the matter to [OIE](#).

#### **B. Non-Confidential Resources for Supportive Measures**

Respondents who wish to request Supportive Measures may also do so through the [Dean of Students Office](#), a non-confidential resource as identified in to Section V of the [Policy](#).

Individuals may also request Supportive Measures through [OIE](#). During the initial intake meetings with the Complainant, the Respondent, and witnesses, OIE will discuss Supportive Measures.

There may be some Supportive Measures, such as mutual restrictions on contact or communication between the parties, that the Title IX Coordinator approves and implements directly without involvement from other offices. In such instances, the Title IX Coordinator or their designee will notify the parties and, as appropriate, the Dean of Students or designee of such restrictions.

The Title IX Coordinator may also coordinate with the Dean of Students office (“DOS”), CGS, or another appropriate office. The designee within that office determines options to accommodate the Supportive Measures request and brings the recommendation to the Title IX Coordinator for approval. Once the Supportive Measures are approved, the designee coordinates and notifies the parties or affected individuals in writing of the Supportive Measures.

Implementation of Supportive Measures does not suggest that the University has made any decision about the merits of the report or Formal Complaint.

The University will keep confidential any Supportive Measures provided under this Policy to the extent possible, and will promptly address any reported Violation of Supportive Measures. An individual who believes a party has engaged in Violation of Supportive Measures (e.g., failure to abide by a mutual restriction on contact) should report their concern to OIE.

A Complainant or a Respondent concerned with the adequacy of Supportive Measures may raise those concerns with the Title IX Coordinator.

#### **V. RESOLUTION OPTIONS FOLLOWING AN INITIAL ASSESSMENT**

Upon completion of an initial assessment and intake, OIE will undertake one of these actions with the understanding that as a case progresses, the action warranted can change, as described in these Procedures.

- **Investigative resolution:** Investigative resolution includes, in the following order (1) an investigation by OIE resulting in a written report containing a summary of the



evidence; (2) a hearing, to determine by a preponderance of the evidence if there has been a Policy violation; (3) the imposition of sanctions and/or other appropriate remedies if there has been a finding that the Respondent is responsible for a violation of the Policy; and (4) the opportunity to challenge the outcome of the hearing or the sanction through an appeal. The University will strive to complete an investigative resolution, which begins with the determination that an investigation will be opened and continues through the completion of the investigation, hearing, and outcome within 135 calendar days, or within 180 days if any appeals are filed;

- **Adaptable resolution:** Adaptable resolution, coordinated through Ann Arbor's [Office of Student Conflict Resolution \("OSCR"\)](#), which usually occurs on the Flint campus or virtually, includes a spectrum of facilitated, structured, and adaptable processes that seek to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the University Community. This resolution pathway offers multiple modes of potential voluntary participation described in further detail in [Section VIII](#). Adaptable resolution does not include an investigation, hearing, or formal disciplinary action against a Respondent. However, remedies may include any appropriate and reasonable educational, restorative, and accountability-focused measures as agreed to by the parties and approved by the Title IX Coordinator. The University will strive to complete the adaptable resolution process within 90 calendar days; or
- **Other remedies:** May include training and other educational measures for members of the University Community.

Detailed information regarding investigative resolution, adaptable resolution, and other remedies is set forth below in [Sections VII](#), [VIII](#), and [IX](#) respectively.

OIE's course of action will be guided by: (1) whether the Complainant wishes to pursue investigative or adaptable resolution; (2) where the Complainant wishes to pursue adaptable resolution, whether the Respondent also wishes to pursue adaptable resolution, and, if both parties wish to pursue adaptable resolution, whether the Title IX Coordinator approves adaptable resolution; (3) whether the Complainant requests anonymity, that an investigative resolution not be pursued, and/or that no disciplinary action be taken; (4) the availability of information or evidence suggesting that a Policy violation may have occurred and the University's ability to proceed to completion of a process; and (5) 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 alleged Prohibited Conduct.

In all cases, the final decision on whether, how, and to what extent the University will proceed and whether other measures will be taken in connection with any report or Formal Complaint of possible Prohibited Conduct rests solely with OIE.

In addition, the time frames set forth in these Procedures 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 parties or witnesses; the need for language assistance or accommodation of disabilities ;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. The parties will be notified in writing to the extent the University exceed any of the time frames set forth above, and the reason for such extension.

**A. Where the Complainant Wishes to Pursue Investigative Resolution or Adaptable Resolution**

In every case in which the Complainant files a Formal Complaint with the Title IX Coordinator and requests an investigative resolution, OIE will determine whether investigative resolution is appropriate under the Policy. Specifically, an investigative resolution is appropriate if the alleged conduct at issue would constitute Prohibited Conduct, the University has disciplinary authority over the Respondent, and the University has, or has means to obtain, sufficient information about the alleged conduct to carry out the investigative resolution process (including consideration of the Complainant’s willingness to participate in the process). If investigative resolution is deemed appropriate, the University will initiate an investigative resolution.

Alternatively, a Complainant may file a Formal Complaint and request that the reported matter be resolved through an adaptable resolution process. In these instances, both parties must voluntarily consent in writing to pursue an adaptable resolution process and the Title IX Coordinator must determine it is appropriate for adaptable resolution. In determining whether a matter is appropriate for adaptable resolution, the Title IX Coordinator will consider the Complainant’s request in light of: (1) the safety of the parties and the campus community; (2) the Respondent’s interest in participating in adaptable resolution; (3) the parties’ opportunities to freely choose among resolution options; (4) whether the University has Title IX obligations to investigate the matter, and if so, whether the University has, or has means to obtain, sufficient information about the alleged conduct to carry out an investigative resolution process (including consideration of the Complainant’s willingness to participate in that process). If the matter is approved to be resolved through an adaptable resolution process, the Title IX Coordinator will refer the matter to OSCR as described further in [Section VIII](#) of these Procedures.

**B. Where the Complainant Requests Anonymity, That a Resolution Process Not be Pursued, and/or That No Disciplinary Action be Taken**

In some instances, the Complainant may not wish to file a Formal Complaint or participate in any process (the Complainant is encouraged, but not required, to participate). The University’s ability to investigate and respond to a report may be limited if the Complainant requests anonymity or declines to participate. However, in instances where a Complainant chooses not to participate in a

resolution process, the Title IX Coordinator will consider the Complainant's request in light of: (1) the availability of information or evidence suggesting that a Policy violation may have occurred and the University's ability to proceed effectively to completion of a process; and (2) whether the University has a 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.

**1. Determination That a Complainant's Request(s) Can be Honored**

Where the Title IX Coordinator determines that a Complainant'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 Complainant and the University Community. Those steps may include offering appropriate Supportive Measures to the Complainant, providing additional training and prevention programs, and/or providing other remedies. The Complainant may later choose to pursue adaptable resolution (if available) or investigative resolution under this Policy. The Title IX Coordinator also may later determine that a report be re-opened and pursued under the Policy and Procedures if any new or additional information becomes available.

**2. Determination That a Complainant's Request(s) Cannot be Honored**

In those instances when the Title IX Coordinator determines that the University must proceed with an investigative resolution when a Complainant chooses not to sign a Formal Complaint, the Title IX Coordinator will file a Formal Complaint and initiate an investigative resolution. In such instances, OIE will notify the Complainant in writing that the University intends to initiate an investigative resolution, but that the Complainant is not required to participate in the investigative resolution or in any of the actions taken by the University.

**VI. EMERGENCY REMOVAL**

If, after an individualized safety and risk analysis, the University determines that the Respondent's presence on campus or in the University's Program or Activity poses an immediate threat to the physical health or safety of any Student or another individual arising from the allegations of Prohibited Conduct, the Dean of Students or designee, may immediately suspend the Student pending a post-removal opportunity for a meeting. Except in extraordinary circumstances, that meeting will be scheduled as soon as possible, typically within two (2) 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 suspension remains in place following the meeting, the Respondent may submit an appeal to the Vice Chancellor for Student Affairs (VCSA) within five

(5) calendar days from notification. The VCSA or designee, will make a final decision within five (5) calendar days from receipt of the appeal.

## **VII. INVESTIGATIVE RESOLUTION**

A flowchart depicting the investigative resolution process can be found [here](#). The University will strive to complete the investigative resolution within 180 days, which includes an investigation, hearing, finding, sanctions as applicable, and appeals, if any.

### **A. Core Principles**

- 1. Impartiality.** The Title IX Coordinator, investigator, case manager, hearing officer, those who determine sanctions, and the external reviewer each must be impartial and free of any actual conflict of interest or bias.

A Complainant or a Respondent who has concerns that the Title IX Coordinator or 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:

Mike Hague  
Vice Chancellor of Business and Finance  
234 University Pavilion  
303 E. Kearsley Street  
Flint, MI 48502-1950  
(810)762-3324  
[mjhague@umich.edu](mailto:mjhague@umich.edu)

The Vice Chancellor of Business and Finance will assess the circumstances and determine whether a different investigator should be assigned to the matter.

Information about how a Complainant or a Respondent who has concerns that the assigned case manager, hearing officer, individual determining sanctions, or external reviewer 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, is contained within the appropriate respective sections of these procedures.

- 2. Presumption of Good Faith Reporting.** The University presumes that reports of Prohibited Conduct are made in good faith.

3. **Presumption of Non-Violation and Standard of Proof – Preponderance of the Evidence.** The Respondent is presumed not to have violated the Policy unless it is determined through applicable procedures that a preponderance of the evidence supports a finding of a Policy violation.
4. **False Statements.** A person who makes a materially false statement in bad faith in the course of a proceeding may be subject to disciplinary action. A determination regarding responsibility, standing on its own, is insufficient to conclude that any party made a materially false statement in bad faith.
5. **“Statement” Means Factual Assertions Made by a Party or Witness.** A Statement might include a factual assertion made during an interview or conversation, written by the individual making the assertion (including those found in a Formal Complaint), and memorialized in the writing of another (e.g., in an investigative report, police report, or medical record).
6. **Participation by the Parties and Witnesses Is Voluntary.** The Complainant, the Respondent, or witnesses may choose to participate or decline to participate in the investigative resolution. However, even if a Complainant or a Respondent declines to participate, the University may deem it necessary to continue to investigate the report. Non-participation by a party or witness may impact the outcome of the investigative resolution. Coercing any party or witness not to participate in the investigative resolution constitutes retaliation and violates University policy.
7. **Expectations of Complainant, Respondent, and Witnesses.** The Complainant, the Respondent, the witnesses and others sharing information in the process are expected to provide all relevant information at the time of their interview, or as soon as otherwise possible, and to be truthful and complete in their statements throughout the process.

A party or witness who elects to participate in the process is expected, although not compelled, to participate in all aspects of the process (e.g., a witness who chooses to participate is expected to make themselves available for an interview and hearing if requested to do so).

If a party or witness elects to not participate in the live hearing, or participates in the hearing but refuses to answer questions posed by the other party through their advisor, the hearing officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility. This limitation does not apply to a party or witness’s refusal to answer questions posed by the hearing officer. In other words, if a party or witness refuses to answer the hearing officer’s

questions, the hearing officer can still rely on that party or witness's statements when making their determination, so long as that party or witness has submitted to cross-examination by the other party or both parties, in the case of a witness. Regardless of whether the unanswered questions are posed by a party, their advisor, or the hearing officer, the hearing officer will never draw any inferences based solely on a party or witness's absence or refusal to answer questions.

If a party does not appear for the hearing, their advisor may still appear for the purpose of asking questions of the other party and witnesses.

8. **Advisors.** Throughout the investigative resolution process, the Complainant and the Respondent may have an advisor of their choice. An advisor is an individual chosen by a party to provide support and guidance during the resolution process. An advisor may be, but is not required to be, an attorney.

A party may request to consult with their advisor at any point. However, the advisor may not represent or otherwise speak for the party they are supporting except during the cross-examination portion of hearing. Specifically, during a hearing, the advisor may ask the other party and witnesses relevant questions. If a party does not have an advisor available at the hearing, the University will select an advisor to ask questions on behalf of that party, as described in [Section VII \(A\)\(8\)](#), below, of these procedures.

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 advisor and to take appropriate steps to ensure compliance with the Policy and these Procedures.

9. **Prior Sexual Conduct of the Complainant.** Prior sexual contact between a Complainant and a Respondent is not relevant to prove character or reputation and will never be used for those purposes. Questions and evidence about the Complainant's prior sexual behavior are not relevant unless: they are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; they concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; or if due process under the applicable law otherwise requires it. For example, if the question being determined is whether consent was given through mutually understandable words or actions, information about the manner in which consent has previously been communicated between the parties may be relevant in determining whether consent was sought and given during the

incident in question. The hearing officer will determine the relevance of this information.

10. **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 whether the Respondent violated the Policy.

The relevance of pattern evidence will be determined 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 hearing officer will determine the relevance of this information.

11. **Witnesses.** Witnesses must have observed the acts in question or have information relevant to the Formal Complaint and will not be permitted to participate in the investigation or hearing 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. The witness' feedback may be attached or otherwise incorporated into the final investigation report as deemed relevant by the OIE investigator.

Where witnesses are interviewed as part of the investigation, the investigator will produce a written summary of each witness' interview or the key relevant information from the interview, which will identify the witness by name and relationship to each person and the University; this summary will then be shared with the Complainant and the Respondent for their review and comment. This information will be included in the investigation report.

## **B. Ongoing Assessment**

Throughout the investigation process described below, OIE will continue to assess the most appropriate procedures for addressing the allegations.

1. **Consolidation of Investigation.** OIE has 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 Complainants, a single or multiple Respondents, and conduct that is temporally or logically connected. If investigations involving multiple Complainants and/or multiple Respondents are consolidated, each party will have access to all of the information being considered; including information as provided by all involved Complainants, all involved Respondents, and all involved witnesses.

2. **Concurrent Legal Proceedings.** At the request of law enforcement, and subject to the provisions in these Procedures pertaining to notifying the Respondent of the Formal Complaint, the University may agree to temporarily defer proceeding with part or all of the investigative resolution process until after some or all of the law enforcement investigation is complete (e.g., deferring until the initial law enforcement evidence gathering phase is complete).
3. **Required Dismissal of Title IX Misconduct.** If at any time during the handling of a Formal Complaint of Title IX Misconduct, the Title IX Coordinator determines that:
  - The conduct alleged in the Formal Complaint would not constitute Title IX Misconduct if proved;
  - The conduct alleged in the Formal Complaint did not occur in a University Program or Activity; or
  - The conduct alleged in the Formal Complaint did not occur against a person in the United States.

The parties will be notified in writing that the allegations of Title IX Misconduct must be dismissed and the reason for dismissal. If the behavior at issue would still, as alleged, constitute Sexual or Gender-Based Misconduct, this dismissal for Title IX purposes may have no practical effect on the University's investigation and the allegations of Sexual and Gender-Based Misconduct may continue to be addressed under these Procedures.

If a Formal Complaint of Title IX Misconduct is dismissed for one of the above reasons, the parties may appeal that dismissal using the process described in [paragraph 5](#) below.

4. **Other Dismissal and Closure.** In addition to the dismissal of a Formal Complaint for Title IX purposes, the Title IX Coordinator may, in their discretion, dismiss a Formal Complaint and/or otherwise close an investigative resolution if at any time:



- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw their Formal Complaint of Title IX Misconduct or allegations of Sexual Misconduct;
- The Respondent is no longer a Student of or employed by the University, as applicable; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination on the underlying allegations of the Formal Complaint.

If Title IX Misconduct is dismissed pursuant to this section, the parties may appeal that dismissal using the process described in paragraph 5, below.

**5. Appeal of Dismissal of Title IX Misconduct.** If allegations of Title IX Misconduct are dismissed for a reason set forth in [paragraph 3](#) or [4](#), above, either party may appeal that dismissal on the following bases only:

- Procedural irregularity that materially affected the dismissal determination;
- New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could materially affect the determination; and/or
- The Title IX Coordinator or designee making the dismissal decision had a conflict of interest or bias for or against the Complainants or Respondents generally or the individual Complainants or Respondents that materially affected the dismissal decision.

An appeal of the dismissal of a Formal Complaint must be filed no later than five (5) calendar days after the date on which the University transmitted the written determination to the parties. The appeal shall consist of a plan, concise, and complete written statement of no more than five (5) pages, outlining the basis for appeal and all relevant information to substantiate the appeal.

The University will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The other party may then have a period of five (5) calendar days from the date of notice to submit a statement in support of the written determination and/or in opposition to the appeal. This statement will be limited to five (5)

pages. Any such statement will be shared with the party who filed the appeal and their advisor.

The appeal review will be conducted by the Associate Vice President for Institutional Equity (“AVPIE”) on the Ann Arbor campus. The AVPIE will review the matter based on the issues identified in the appeal(s) materials. The AVPIE may, at any time, freely consult with or request additional information from the Title IX Coordinator, OGC, and other University administrators as necessary. The parties may object to the service of the AVPIE by providing a written statement as to why the party believes that the AVPIE has a conflict of interest or bias. The Vice Chancellor for Business and Finance or designee will make decisions regarding such objections and the appointment of an alternative decision-maker as necessary.

The AVPIE or alternate decision-maker will strive to complete the appeal review within five (5) calendar days of receipt of all documents. The AVPIE will issue a written decision describing the result of the appeal and the rationale for the result; and OIE will provide the written decision simultaneously to both parties.

6. **Acceptance of Responsibility.** The Respondent may, at any time in the investigation or hearing process, elect to resolve the investigative resolution process by accepting responsibility for the Prohibited Conduct, in which case the OIE investigator will issue a brief investigation report or the hearing officer will issue a brief outcome determination summarizing the allegations and stating that the Respondent has accepted responsibility, and refer the matter to the Assistant Director, Community Standards and Ethical Development (Assistant Director) or designee to determine sanctions. In such a case, the Complainant and Respondent may each offer a brief written input statement as described below in Section VII. E. 2.

### C. **Investigation Process**

An investigation will afford both the Complainant and the Respondent an opportunity to submit information and other evidence and to identify witnesses. Although the obligation to gather information as part of the investigation is on the University, the parties are expected to provide any relevant information within their knowledge or possession to the investigator, and to do so as early in the process as possible. During an investigation, the investigator will meet separately with the Complainant, the Respondent, and the relevant witnesses; and offer the parties an equal opportunity to submit and/or identify related and relevant information or evidence; and gather other relevant information or evidence reasonably available to the investigator. Following the interview(s) with each party and witness, the parties and witnesses will each be provided with a draft

summary of their own statement or key relevant information therefrom so that they have the opportunity, within three (3) calendar days, to comment on the summary and ensure its accuracy and completeness. Any resulting feedback may be attached or otherwise incorporated into the final investigation report to the extent deemed relevant by the OIE investigator. As described below, after the investigator has conducted interviews and gathered other available evidence and before any determination is reached, the parties receive a preliminary written report and evidence for their review and comment. The parties' feedback may be attached or otherwise incorporated into the final investigation report to the extent deemed relevant by the OIE investigator.

- 1. Role of Investigator and Case Manager.** When an investigative resolution is initiated, an investigator will be designated who will be responsible for gathering evidence directly related to the allegations at issue in the investigative resolution.<sup>2</sup> The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. A case manager will also be designated. The investigator and case manager have distinct, complementary roles. Neither the investigator nor the case manager has a decision-making role in the process, and neither is an advocate for either the Complainant or the Respondent at any point in the process. The investigator is responsible for conducting an investigation as described in these Procedures.

Following the investigation, the case manager provides administrative support as a consistent point of contact for both parties throughout, facilitating the hearing and, as applicable, sanctioning and appeals processes.

Both the investigator and the case manager can serve as resources to provide parties with information. The case manager provides information on scheduling and logistics. The investigator provides information about the resolution processes, and can assist in identifying and connecting the parties with other resources.

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<sup>2</sup> The Title IX Coordinator may designate themselves to investigate.

2. **Notice of the Investigation and Notice of Interviews.** The Respondent will be informed in writing of the initiation of the investigation prior to their interview. The written notice will include, among other information: the identities of the parties (if known); the date and location of the alleged incident (if known); potential Policy violations; information that the Respondent is presumed not to have violated the Policy; and the other information set forth in [Section III \(B\)\(2\)](#) above. Such notice will be provided with sufficient time for the Respondent to prepare for the interview. The Complainant and Respondent will also receive written notice of the date, time, location, and purpose of any follow-up or additional interviews with sufficient time for the Complainant/Respondent to prepare for the interview.

If, during the investigation, additional information is disclosed that may constitute additional Prohibited Conduct under the Policy, the Respondent will be accordingly informed in writing and will have an opportunity to respond to those allegations consistent with these Procedures.

3. **Evidence.** The investigator, not the Complainant or the Respondent, is responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given the opportunity, and is encouraged, 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 University is responsible for gathering evidence sufficient to reach a determination regarding responsibility, all parties are expected to share any relevant information and/or any information that is requested by the investigator, and to do so as early in the process as possible or upon request. Failure to do so may lead the hearing officer to draw a negative inference from a refusal to provide information that the hearing officer knows or reasonably believes exists.

The investigator will review all information identified or provided by the parties as well as any other evidence they obtain. The investigator has the discretion not to interview a witness if they do not possess relevant evidence, or if the evidence provided would be cumulative. Evidence directly related to the allegations in the Formal Complaint obtained as part of the investigation will be shared with the parties for their review and comment, as described below.

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, OIE 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 OIE.

4. **Use of Law Enforcement Evidence.** Where OIE is made aware that there is a concurrent criminal investigation, the investigator will make reasonable efforts to contact DPS or other applicable law enforcement agency to 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.

In some instances, aspects of a criminal investigation may be available and relevant to the University's process; however, standards for criminal investigations are often different from the preponderance of the evidence standard used to determine violations of this Policy. Therefore, the University will not base its decisions under this Policy solely on law enforcement determinations and/or the outcomes of any criminal proceedings.

5. **Time Frame for Completion of Investigation.** The University will strive to complete the investigation phase of the process, meaning the period from commencement of an investigation through to completion of a final investigation report, within 90 calendar days. An investigation commences with the determination that an investigation will be opened, typically either the date of the Complainant's interview, receipt of a Formal Complaint, or such time as the Title IX Coordinator determines that an investigative resolution will be opened.

Additional time beyond 90 calendar days may be 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 parties and/or witnesses, the need for language assistance or accommodation of disabilities; 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.

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

The investigator will provide the parties and their advisors, if any, with the preliminary report, which will include, as applicable, the Complainant's statement, the Respondent's statement, each witness' statement and a summary of any other information the investigator in their discretion

deems relevant. At the same time, the investigator will also provide each party and their advisors, if any, all evidence directly related to the allegations in the Formal Complaint that was obtained as part of the investigation. The evidence will be provided in an electronic format.

The Complainant and the Respondent will generally have one opportunity to concurrently review the preliminary report and evidence and provide feedback in response. The Complainant and the 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 ten (10) pages of comments, additional documents or other evidence) within ten (10) calendar days after it is sent to them for review. As parties are encouraged to provide all relevant evidence as early as possible in the process, any party providing new evidence in their response to the preliminary report should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report.

Generally, only information that is provided to, or otherwise obtained by, the OIE investigator 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 must be provided to the investigator during the investigation phase of the process and otherwise will not be allowed during the hearing, unless the party asking that additional information be considered has clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the hearing officer may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence.

7. **Final Investigation Report.** After receiving any comments submitted by either party, or after the ten (10) calendar day comment period has lapsed without comment, the investigator will, as appropriate, pursue any additional investigative steps as needed (as determined by the investigator) and issue a final investigation report.

The investigator's final investigation report will contain all information from the preliminary report, as supplemented by the relevant feedback submitted, and any additional information gathered.

8. **Referral to Hearing.** The case manager will provide the final investigation report and evidence file to the parties and the hearing officer simultaneously, along with information regarding the hearing process, as described below. The parties will have ten (10) calendar days to review the final investigation report and provide a written response to the hearing officer.

If the University learns that the Complainant, the Respondent, or a material witness will not attend the hearing, the Title IX Coordinator will determine whether the University will proceed with the hearing.

#### **D. Hearings**

Following the investigation, the parties will be afforded a live hearing as described below.

1. **Hearing officer.** Hearings will be facilitated by a hearing officer, who will make the decision as to whether or not the Respondent(s) violated the Policy provisions at issue using a preponderance of the evidence standard. The hearing officer has broad authority to determine the order of presentation, timing, overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and, with rationale, what cross-examination questions will or will not be permitted. The hearing officer also 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(s).

Hearing officers will be informed of the identities of the parties so that they can identify any conflict of interest to the Title IX Coordinator or designee. At the discretion of the Title IX Coordinator, an alternate hearing officer will be assigned. The parties will be notified by the case manager of the identity of the selected hearing officer in advance of the hearing, and parties may, within three (3) calendar days of such notice, object to the hearing officer by providing to the Title IX Coordinator a written statement as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator will make decisions regarding such objections and the appointment of alternate hearing officers, as necessary. If a potential conflict of interest is discovered outside of the three (3) days, it is within the discretion of the Title IX Coordinator to appoint an alternate hearing officer.

2. **Scheduling.** When OIE issues the final investigation report, the case manager will concurrently forward a copy of the investigation report and evidence file to the hearing officer, the Complainant, and the Respondent. The case manager will coordinate the scheduling of the parties' pre-hearing meetings as discussed below in [Section VI \(D\)\(4\)](#) and a hearing date, time, and location, and notify the parties of the same. The hearing officer will strive to complete a hearing within 15 calendar days from the issuance of the investigation report.
3. **Technology Used at the Pre-Hearing Meetings and Hearing.** As a default, the live hearing will be conducted virtually, with technology enabling all participants (hearing officer, parties, advisors, and witnesses) to see and hear one another in real time. Alternatively, the University in its discretion may decide for the hearing to occur with the parties located in separate rooms of the same location with technology enabling the hearing officer and the parties to simultaneously see and hear the party or the witness answering questions.
4. **Pre-hearing Meeting.** Coordinated through the case manager, each party will meet separately with the hearing officer to plan for the hearing and to identify their advisor (who may also attend the pre-hearing meeting); to review the Formal Complaint and issues of interest to the hearing officer and the party; to describe the procedures to be followed at the hearing; to discuss as set forth in [Section VII \(D\)\(5\)](#), below, the process of raising a concern that the Assistant Director cannot conduct a fair and unbiased review; to identify the names of the witnesses that will be asked to appear; to discuss any technology that will be used at the hearing and how to operate such technology; and to answer any other questions or share information prior to the hearing. The hearing officer also will discuss the time allotted for the hearing and any time limitations. The hearing officer will provide all relevant and significant information to the parties at the pre-hearing meeting. If either party does not attend the pre-hearing 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 for the hearing by the pre-hearing meeting.



5. **Advisors.** Each party may have an advisor of their choice present at the hearing. The advisor does not participate in the hearing except for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the University will, without fee or charge to the party, provide an advisor of the University's choice, for the sole and limited purpose of conducting cross-examination on behalf of that party. No later than ten (10) calendar days before the hearing, parties must inform the Student Conduct Advisor of any advisor of choice who will accompany them to the hearing, so that it is known whether or not there is a need to arrange for the presence of a University-provided advisor.

At a time and in a manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of their advisee. However, the advisor may request to consult privately in a non-disruptive manner with their advisee during the hearing and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the appointment of an alternate University-provided advisor.

6. **Conduct of the Hearing and Relevance.** The hearing is not intended to be a repeat of the investigation. Before the hearing, the hearing officer will receive a copy of the evidence gathered during the investigation, the final investigation report, any attachments thereto, and copies of the parties' written responses to the investigation report, if any, which will be part of the information of record to be considered by the hearing officer. The hearing officer will review the final investigation report and related materials and will be well versed in the facts of the case. Attendance at the hearing is limited to the parties, advisors, witnesses, hearing officer, case manager, and Assistant Director. If a party chooses to avail themselves of a University-provided advisor to conduct cross-examination at the hearing, but the party has been working with a different advisor prior to the hearing, both advisors may also attend; however, only the University-provided advisor for the purposes of cross-examination may participate directly in 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.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the hearing officer, followed by the hearing officer asking relevant initial questions of the parties. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility. The hearing officer may ask follow-up questions as necessary. Subject to the discretion of the hearing officer, the questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to witnesses, and then the parties' advisors will be permitted to ask relevant questions of witnesses. Such cross-examination of the parties and witnesses by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by the party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, a Respondent, or a witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors may raise concerns to the hearing officer about any decision regarding relevance at the time the decision is made.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent or due process would otherwise require such questions and evidence under applicable laws.

Information protected under a legally recognized privilege (e.g., privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not considered unless the information is relevant and the person holding the privilege has waived the privilege.

If a party or witness elects to not participate in the live hearing, or participates in the hearing but refused to answer questions posed by the other party through their advisor, the hearing officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility. This limitation does not apply to a party or witness's refusal to answer questions posed by the hearing officer. In other words, if a party or witness refuses to answer the hearing officer's questions, the hearing officer can still rely on that party or witness's statements when making their determination, so long as that party or witness has submitted to cross-examination by the other party or both parties, in the case of a witness. Regardless of whether the unanswered questions are posed by a party, their advisor, or the hearing officer, the hearing officer will never draw any inferences about the determination regarding responsibility based solely on a party or witness's absence or refusal to answer questions.

Generally, the hearing officer will exclude from the hearing any witness who was not previously identified to the other party. If the party wishing to present a witness has clearly demonstrated that a witness not interviewed during the investigation was not reasonably available (or not reasonably known to the parties) at the time of the investigation or that the witness is likely to have information that has significant relevance to a material fact at issue in the investigation, the hearing officer has the discretion to allow that witness to be interviewed. The interview will generally be conducted by the investigator and a summary of information provided by the witness will be made available to both parties for their review and comment prior to the hearing.

At the discretion of the hearing officer, parties (but not their advisors) will be given an opportunity to make a closing statement at the conclusion of the hearing.

7. **Record of Hearing.** The University will create a transcript of the hearing and make it available to the parties for inspection and review. Any other recording is prohibited. No camera, TV, or other equipment, including any cellphones, will be permitted in the hearing room except as arranged by the University.
8. **Determination Regarding Responsibility.** The hearing officer will strive to complete the written determination regarding responsibility (the “Hearing Outcome”) within 30 calendar days of the hearing. The hearing officer will apply the preponderance of the evidence standard when making such determinations. The Hearing Outcome will include:
  - Identification of the section(s) of the Policy alleged to have been violated;
  - A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including but not limited to, as applicable, the notification to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of definitions of Prohibited Conduct in the Policy to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; and
  - Identification of the University’s procedures and permissible bases for the Complainant and Respondent to appeal (as outlined below in [Section VII \(F\)](#)).

The hearing officer will provide the case manager with the Hearing Outcome. If there is a finding that the Respondent is not responsible for a violation of the Policy, the case manager will share the Hearing Outcome with the parties. If there is a finding that the Respondent is responsible for a violation of the Policy, the case manager will share the determination regarding responsibility with the Assistant Director who will undertake a sanctioning determination. If sanctions are appropriate, they will be assigned in accordance with Section (VII)(E) below and the hearing officer will update the Hearing Outcome to include the sanctioning determination.

## **E. Sanctions and Remedies**

If the Respondent is found to have violated the Policy, the Respondent will be sanctioned and appropriate remedies will be provided to the Complainant. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the University has wide latitude in the imposition of sanctions and remedies tailored to the facts and circumstances of the Prohibited Conduct, the impact of the conduct on the Complainant and University Community, and accountability for the Respondent. Sanctions or interventions may also serve to remedy the discriminatory effects of the Prohibited Conduct on the Complainant and others, including any systemic actions found to be appropriate for the broader University Community. Remedies will be designed to restore or preserve equal access to the University's Program or Activity. Other interventions may include targeted or broad-based educational programming or training.

### **1. Sanctioning Determination**

The Assistant Director, Community Standards and Ethical Development (Assistant Director), or designee, is responsible for making the sanctioning determination. The Assistant Director or designee must be impartial and free of any actual conflict of interest. If the Assistant Director has concerns that they cannot make a fair and unbiased sanctioning determination, the Assistant Director may report those concerns to the Title IX Coordinator as early as possible but no later than three (3) calendar days after the conclusion of the hearing and at their discretion a different staff member will be assigned to determine the sanctions. Similarly, a Complainant, a Respondent, or any other participant who has concerns that the Assistant Director may report those concerns to the Title IX Coordinator as early as possible but no later than three (3) calendar days after the conclusion of the hearing. The Title IX Coordinator will assess the circumstances and determine whether a different staff member should be assigned to make the sanctioning determination. The Assistant Director or designee will attend the hearing and review the final investigation report, additional information from student conduct regarding the Respondent's disciplinary record, if any, and any sanctioning input statement provided by the parties as set forth below. The Assistant Director may consult with the Title IX Coordinator or the hearing officer as necessary. The Assistant Director will strive to complete the sanctioning determination within 30 days of the hearing.

### **2. Party Input Regarding Desired Remedies**

Within seven (7) calendar days following the hearing, but prior to the date on which the hearing officer issues their determination, the Complainant

and Respondent may each offer a brief written input statement to the case manager, who will forward them to the Assistant Director regarding desired remedies should the hearing officer determine that the Respondent violated the Policy. The written input statements may not exceed five (5) pages, including attachments. The Assistant Director will share the input statement(s) with the other party, but not with the hearing officer.

An input statement from the Complainant is a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing the Complainant's preferences regarding appropriate remedies and sanctions if the hearing officer determines the Respondent violated the Policy. An 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 remedies and sanctions if the hearing officer determine the Respondent violated the Policy.

Each party's decision whether to provide a sanctioning input statement is voluntary.

The Assistant Director may use information from these statements to help determine the Respondent's sanction.

### **3. Factors Considered in Sanctioning**

In determining the appropriate sanctions, the Assistant Director, or designee, will be guided by a number of considerations, including:

- The nature of the conduct at issue;
- The impact of the conduct on the Complainant;
- 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 disciplinary 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 Complainant 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.

#### 4. Possible Sanctions or Interventions Directly Impacting Respondent

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

- **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 compensation limited to the actual and verifiable replacement or repair value of property lost or damaged;
- **Restriction from Employment at the University:** Termination of or prohibition on University employment;
- **Class/Workshop/Training/Program Attendance:** Enrollment in and verified completion of a class, workshop, training, online 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 are not limited to, the following: STARRSA Educational Intervention for Sexual Misconduct, Alcohol Education, Alcohol Assessment, Conflict Coaching, Wellness Coaching, Anger Management, Counseling, 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;
- **University Housing Removal:** Removal from University housing. Removals may be temporary or permanent depending on the circumstances;
- **Permanent or Fixed-Duration Removal from Specific Courses or Activities:** Suspension or transfer from courses or activities at the University for a specified period of time;

- **Permanent No Contact:** Permanent 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; or
- **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.

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 appropriate under this and other applicable processes.

## 5. **Possible Interventions to Remedy Discriminatory Effects on the Complainant and Others**

The Assistant Director will also be responsible for identifying and implementing any non-disciplinary actions necessary to prevent recurrence of the conduct and to remedy its discriminatory effects on the Complainant 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, community-focused restorative processes, education or training, monitoring or other individual support needed to remedy the harm. The Assistant Director will identify what actions the University will take, who will be responsible for implementing such actions, and by when. To the extent, the Assistant Director determines that non-disciplinary interventions for the Complainant or others are not necessary, the Assistant Director will identify why such remedies are not needed.



## **6. Written Notice of Sanction(s) and Interventions**

The case manager will provide to the Complainant and the Respondent simultaneously a Hearing Outcome that includes both the determination regarding responsibility and the sanctioning determination and intervention(s). The sanctioning determination portion of the Hearing Outcome will include the sanction(s) and intervention(s), a summary of the Assistant Director's rationale in support of the sanction(s) and intervention(s), and the appeal process, including permissible grounds for appeal.

## **F. Appeals of Hearing Outcome**

Either party may file a written appeal from a Hearing Outcome. Either party may appeal the determination regarding responsibility on the following bases only:

- Procedural irregularity that materially affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could materially affect the outcome of the matter; and/or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that materially affected the outcome of the matter.

Either party 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.

Appeals must be filed with the Dean of Students (DOS) or designee within 14 calendar days of the date of the issuance of the Hearing Outcome. The DOS or designee may deem a late submission reasonable only under extraordinary or extenuating circumstances. The appeal shall consist of a plain, concise written statement of no more 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, up to ten (10) pages, to an appeal submitted by the other party. Any response by the opposing party must be submitted to DOS or designee within 14 calendar days of

DOS or designee providing notice of the other party's appeal. All appeal documents from each party will be considered together in one submitted appeal.

## **1. External Reviewer**

An external reviewer will conduct the appeal review. The external reviewer will be a neutral party outside of the University.

The external reviewer must be impartial and free from bias or conflict of interest. If the external reviewer has concerns that they cannot conduct a fair or unbiased review, the external reviewer must report those concerns to the Associate Vice President for Institutional Equity ("AVPIE") on the Ann Arbor campus and a different external reviewer will be assigned to the appeal. Similarly, a Complainant or a Respondent who has concerns that the assigned external reviewer cannot conduct a fair and unbiased review, may report those concerns to the AVPIE 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, the Office of General Counsel, 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 an appeal of the finding or the sanction, the external reviewer may consider the investigation report; the hearing transcript; the Hearing Outcome, including the sanctioning determination; any written appeal by the parties outlining any basis for altering the finding of responsibility and/or sanctions; and any sanctioning input statements. The external reviewer also may consider any other materials the University (or the external reviewer) deems relevant and that have been shared with the parties.

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

- If there was a significant deviation from procedure that impacted the outcome of the case in a way that is fundamentally unfair, remand the matter to the Title IX Coordinator or the hearing officer, as appropriate, with corrective instructions from the external reviewer;
- If new information that was unavailable with reasonable diligence and effort earlier in the proceedings would alter the hearing outcome, remand the matter to the hearing officer to determine whether a new hearing is necessary and/or whether any modifications may need to be made to the hearing outcome;
- If the Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter, remand the matter to the AVPIE to find a replacement for whomever was biased; 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 these Procedures.

If a new hearing is deemed necessary following an appeal and results in a different determination, either party can appeal the new hearing outcome 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;
- The Title IX Coordinator, investigator, or hearing officer in the remanded investigation and/or hearing had a conflict of interest or bias for or against the Complainants or the Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter;
- 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/or
- 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.

If the hearing results in a new sanction, either party can appeal the new sanction subject to the following ground:

- The sanction was 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 14 calendar days of receipt of all documents.

The external reviewer will provide the determinations to the VCSA or their designee who may accept or modify the determinations made by the external reviewer within 72 hours of receiving the external reviewer's decision. If the VCSA or their designee does not complete the review within 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 case manager.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the VCSA's decision, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

## **VIII. ADAPTABLE RESOLUTION**

The University recognizes that it is important to take into account the needs of Students, some of whom may prefer not to utilize an investigative resolution process. Adaptable resolution is a voluntary, remedies-based, structured process between or among affected parties that balances support and accountability without formal disciplinary action against a Respondent, while focusing on the expressed needs of the harmed party(ies). Adaptable resolution is generally designed to allow a Respondent to acknowledge harm and take responsibility for repairing harm (to the extent possible) experienced by the Complainant 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 Complainant while maintaining the safety of the University Community. The University will strive to complete adaptable resolution within 90 days from the date that the Title IX Coordinator approves the Formal Complaint for adaptable resolution.

### **A. Circumstances in Which Adaptable Resolution May be Used**

The Title IX Coordinator 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 is without pressure or compulsion

from others. The adaptable resolution process may be pursued following the filing of a Formal Complaint.

The University will provide the parties a written notice disclosing the allegations, the requirements of the adaptable resolution process, and any consequences resulting from participating in the process, including the records that will be maintained or could be shared. The written notice will inform the parties that either can request to end adaptable resolution at any time before an agreement is reached and pursue an investigative resolution. The written notice will also inform the parties that information gathered and utilized in adaptable resolution by and between the parties cannot be used in any other University process, including investigative resolution, if adaptable resolution ends and investigative resolution begins or resumes.

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, identify unique expressed needs and interests, and develop a written resolution agreement to address the harm and prevent future Prohibited Conduct;
- Participation is voluntary and both a Complainant and a Respondent, as well as any other participating individuals, must consent in writing to participation in adaptable resolution;
- Adaptable resolution procedures do not include in-person mediation and are distinct from mediation;
- The University will not pressure or compel any party to participate in any particular form of adaptable resolution; and
- Adaptable resolution processes are designed to address harm and prevent additional potential harm. The adaptable resolution facilitator may, in their judgement, discontinue an adaptable resolution process when they determine that one or more of the parties have been coerced or where the adaptable resolution process may not have the intended effect.

## **B. Adaptable Resolution Options**

The adaptable resolution options will be facilitated by a trained coordinator within OSCR (the adaptable resolution coordinator). The adaptable resolution coordinator typically will be someone other than the assigned case manager, the Associate Director, or the Director. The adaptable resolution coordinator must be impartial and free from bias or conflict of interest. If the adaptable resolution coordinator has concerns that they cannot facilitate a fair process, the adaptable

resolution coordinator may report those concerns to the OSCR Director and, at their discretion; a different adaptable resolution coordinator will be assigned. Similarly, a Complainant, a Respondent, or any other participant who has concerns that the assigned adaptable resolution coordinator cannot enable a fair process, may report those concerns to the OSCR Director who will assess the circumstances and determine whether a different adaptable resolution coordinator should be assigned to the adaptable resolution process.

With approval from the Title IX Coordinator, after consultation and intake with the adaptable resolution coordinator, the Complainant and the Respondent must 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 Complainant, the 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 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 individuals who have experienced harm can come together with an individual(s) who assumes responsibility for repairing harm, with the goal of creating a plan or agreement to repair 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. The parties must agree on all those who will be present;
- **Restorative Shuttle Agreement:** An indirect, facilitated conversation individually with the Complainant, the Respondent, and/or other participants to discuss experience and perspective and explore interests while working towards meeting 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 to create an agreement to repair harm; and/or
- **Community Supported Accountability Circle (“CSA”):** A facilitated interaction between the Respondent and University faculty and/or staff designed to provide accountability, structured support, and the development of a learning plan. The focus of a CSA is to balance support and accountability for an individual who has acknowledged their obligation to repair harm, prevent future harm, and willingness to engage

in an individual educational process. The CSA model does not require participation from the Complainant.

A mutual voluntary resolution agreement may include, for example:

- Agreement for the Respondent to participate in STARRSA, an educational program designed to prevent additional harm;
- Agreement for the Respondent to complete an educational plan with regular meetings with the adaptable resolution coordinator or other appropriate University staff or faculty member;
- Agreement for the Respondent to participate in alcohol education classes;
- Agreement for the Respondent to participate in regular meetings with an appropriate University individual, unit, or resource;
- Agreement to extension of a no contact directive on the part of the Respondent;
- Agreement, by the Respondent, to not participate in specific University Program(s) or Activity(ies);
- Agreement by the Respondent to refrain from attending specific events;
- Agreement by the Respondent to participate in counseling sessions; and/or
- Agreement by the Respondent to voluntary, temporary or permanent separation from the University.

Individuals who wish to participate in an adaptable resolution process must have successfully completed preparatory meetings with an appropriate staff member(s) within OSCR. An OSCR staff member will assist Students with coordination of adaptable resolution. Adaptable resolution will occur on the Flint campus or virtually, at the discretion of the adaptable resolution coordinator.

Individuals may be accompanied by an advisor 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 agreement reached in adaptable resolution must be documented by the adaptable resolution coordinator and approved by the Title IX Coordinator or designee to ensure consistency with the University's Title IX obligations. An

agreement will not be considered valid if the Title IX Coordinator or designee does not approve it.

If the Title IX Coordinator or designee approves an agreement after the parties have voluntarily reached consensus as to its terms, the Respondent will be required to comply with the agreement. Typically, an agreement also includes agreed upon consequences when obligations under the agreement are not fulfilled. Should the process revert to investigative resolution, information obtained through the adaptable resolution process may not be utilized in the investigative resolution. 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 Title IX Coordinator will maintain records of all reports and conduct referred for adaptable resolution. While considering the voluntary and participant-driven nature of adaptable resolution, the University will strive to complete adaptable resolution within 90 calendar days of the initial assessment.

#### **IX. ADAPTABLE INTERVENTIONS OR REMEDIES FOR THE UNIVERSITY COMMUNITY**

In addition to the sanctions and/or interventions applied to the Respondent, and regardless of whether the University pursues an investigative resolution or takes other formal disciplinary action, the Title IX Coordinator 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 Supportive Measures previously established;
- Identifying the need for any additional or ongoing measures, supports and remedies; or
- Revising University policies, practices, or services.

#### **X. RECORDS RETENTION**

The University shall retain for a period of seven (7) years after the date of case closure: the official file relating to an adaptable resolution, including any result of the adaptable resolution process and/or the official file relating to an investigative resolution, including any investigation hearing, sanctioning, and/or appeals processes involving allegations of Prohibited Conduct. In cases in which a Respondent was found to have violated the Policy and was expelled, the University may retain such official case files indefinitely. For each report of conduct within the scope of the Policy, the University will also retain for seven (7) years records of any actions,



including any Supportive Measures, taken in response to a report to OIE or Formal Complaint. If the University does not provide a Complainant with Supportive Measures, the University will document why such a response was not clearly unreasonable in light of the known circumstances.

## **XI. ANNUAL REPORT**

The Title IX Coordinator will issue an Annual Report to the University 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.