



Title IX Policy & Procedure

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Office for Institutional Equity and Inclusion (OIE)

- ▶ **Within the OIE** – the College’s Title IX Coordinator oversees compliance and investigation coordination of policy violations, and connecting those affected by discrimination, harassment, sexual misconduct, and gender-based violence with campus and community resources.
 - ▶ Responsible for the College’s compliance with:
 - ▶ **Policy on Prohibited Discrimination, Harassment, and Sexual Misconduct (including Title IX)**

Title IX Covers

- ▶ This Policy specifically prohibits sexual misconduct, including sexual assault, sexual harassment, gender-based harassment, sexual exploitation, stalking, domestic violence, and dating violence. In some cases, this conduct is also prohibited by or included in Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and/or the Violence Against Women Reauthorization Act of 2013. Sexual misconduct represents a serious breach of the College's commitment to fostering a positive educational and working environment

Definitions

- ▶ **Sexual Misconduct** – an umbrella term used to refer to a range of sex-based conduct prohibited by this Policy, including sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual misconduct includes: sexual assault, sexual harassment (including gender-based harassment, sexual exploitation, and hostile environment based on sex), stalking, domestic violence, and dating violence.

Definitions (continued)

- ▶ **Sexual Harassment** - unwelcome gender, sexuality or sexually based verbal, visual, physical, electronic, or other conduct.
 - ▶ *Sexual harassment under Title IX:* The Policy prohibits sexual harassment as defined for Title IX purposes, i.e., conduct by one or more individual respondents that, for each respondent, is sufficiently severe, pervasive, and objectively offensive to effectively deny the complainant equal access to the College's education program or activity; this includes sexual assault, dating violence, domestic violence, and stalking.
 - ▶ *Sexual harassment under the Policy:* The Policy also prohibits sexual harassment that does not meet the Title IX definition but that is sufficiently severe, persistent, or pervasive to unreasonably interfere with a person's ability to participate in or benefit from the College's education program or activity or to interfere with the terms or conditions of the person's employment, as judged by a reasonable person in the position of the individual subject to the conduct and considering all the circumstances. This can take the form of conduct by one or more individual respondents that, for each respondent, meets this definition or it can take the form of a cumulative hostile environment.

Definitions (continued)

- ▶ **Gender-Based Harassment**- unwelcome verbal, visual, physical, electronic, or other harassment based on sex, sex-stereotyping, gender identity, or gender expression, even if those acts do not involve conduct of a sexual nature but otherwise meeting the definition of sexual harassment.
- ▶ **Sexual Exploitation** – a form of sexual harassment that involves taking advantage of the sexuality and attractiveness of a person without that person's consent to make a personal gain or profit for oneself or for others. It is the abuse of a position of vulnerability, differential power, or trust for sexual purposes. (e.g., prostituting another person, recording and/or distributing images of sexual activity without consent, threatening to disclose a person's sexual orientation).

Definitions (continued)

- ▶ **Sexual Assault** - Any physical sexual act directed at another person without that person's consent, including instances where the person is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes or genders. This includes the following:
 - ▶ Rape: the carnal knowledge of a person without their consent, including instances in which the person is incapable of giving consent because of their age or temporary or permanent physical or mental incapacity
 - ▶ Sodomy: oral or anal sexual intercourse with another person without their consent, including instances in which the person is incapable of giving consent because of their age or temporary or permanent physical or mental incapacity
 - ▶ Sexual assault with an object: to use an object or instrument to unlawfully penetrate however slightly, the genital or anal opening of the body of another person without their consent, including instances in which the person is incapable of giving consent because of their age or temporary or permanent physical or mental incapacity
 - ▶ Fondling: the touching of the private body parts of another person for the purpose of sexual gratification without their consent, including instances where the person is incapable of giving consent because of their age or temporary or permanent mental incapacity
 - ▶ Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
 - ▶ Statutory rape: sexual intercourse with a person who is under the statutory age of consent

Definitions (continued)

- ▶ **Dating Violence** – any act of violence or a pattern of abusive behavior committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subject to the conduct. Whether there was such relationship will be gauged by the length, type and frequency of interaction between the person's involved in the relationship. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Definitions (continued)

- ▶ **Domestic Violence** – a felony or misdemeanor crime of violence committed against a current or former spouse or intimate partner; a person with whom the respondent shares a child in common; a person who is cohabitating with or has cohabitated with the respondent as a spouse or intimate partner; a person similarly situated to a spouse of the respondent under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth who is protected from the person's act under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Definitions (continued)

- ▶ **Stalking** – a course of conduct (including cyberstalking) on the basis of sex directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress. A “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker uses any method, device, or means to follow, monitor, observe, surveil, threaten, or communicate to or about a person, or interfere with a person’s property. Stalking can take place directly, indirectly, or through third parties. A “reasonable person” means a reasonable person under similar circumstances and with similar identities to the individual subject to the conduct. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Definitions (continued)

- ▶ **Retaliation** - an adverse action or other form of negative treatment carried out in response to good-faith reporting of or opposition to discrimination or harassment (including sexual misconduct) or participation in the investigation of a complaint. Individuals are also protected from retaliation for making good faith requests for accommodations on the basis of religion or disability. Retaliation can take the form of a discrete or individual act or ongoing harassing conduct.

Consent

- ▶ **Consent** – Consent is an affirmative decision to engage in mutually accepted sexual contact or activity. Consent must be informed, freely given, and mutual. Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Consent is demonstrated through mutually understandable words and/or actions that indicate a willingness to engage freely in sexual activity. Consent may not be inferred from silence, passivity, lack of verbal or physical resistance, or lack of active response alone. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact. Consent can be withdrawn at any time.

Consent

- ▶ Consent does not exist if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that a reasonable person would view as eliminating an individual's ability to exercise their own free will to choose whether or not to have sexual contact.
- ▶ A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent, and consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.
- ▶ In the state of Michigan, consent cannot be given by minors under the age of 16.

Consent

- ▶ A person cannot consent to sexual activity if that person is unable to understand the nature of the activity due to circumstances, including the following:
 - ▶ The individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring.
 - ▶ The individual has a mental disability that impairs his/her/their ability to provide consent.
 - ▶ The individual is incapacitated (beyond mere drunkenness) due to drug or alcohol consumption, either voluntarily or involuntarily.
 - ▶ An individual is incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in an act.
- ▶ The perspective of a reasonable person will be the basis for determining whether a respondent knew, or reasonably should have known, whether a complainant was able to freely give consent and whether consent was given. Being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

Resolution Process

▶ Notice

- ▶ Upon receipt of a formal complaint of Title IX sexual misconduct (see Section III of the Policy: severe, pervasive, and objectively offensive sexual harassment; sexual assault; dating violence; domestic violence; and stalking), the Title IX Coordinator will provide written notice to the parties who are known that includes:
 - ▶ An explanation of the complaint procedures in this Policy.
 - ▶ A description of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. This will include the identities of the parties involved in the incident, if known; the conduct allegedly constituting sexual misconduct; and the date and location of the alleged incident, if known.
 - ▶ A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the investigation and hearing.
 - ▶ An explanation that the parties may have an advisor of their choice (who may be, but is not required to be, an attorney), and that they may inspect and review the evidence obtained during the investigation.
 - ▶ Information about the prohibitions against retaliation and against knowingly making false statements or knowingly submitting false information.

Investigative Process

- ▶ All formal complaints of alleged sexual misconduct covered by these procedures are investigated under the general oversight of the Title IX Coordinator; however, the Coordinator will not participate in making any recommendations or determinations. Any party may challenge the participation of the Title IX Coordinator for bias or conflict of interest; such a challenge will be resolved by the Human Resources Director. No party has a right to disqualify the Coordinator absent a demonstrated bias.
- ▶ The Coordinator will appoint a qualified investigator to conduct the investigation and prepare an investigative report, including recommended findings.
- ▶ Any party may raise issues of bias or conflict of interest with regard to the investigator. The Title IX Coordinator will weigh these issues and resolve them accordingly. No party has a right to disqualify an investigator absent a demonstrated bias or conflict.

Investigation Process

- ▶ The investigation process includes:
 - ▶ 1. Providing the complainant with the opportunity to meet with the investigator and/or to provide a written statement.
 - ▶ 2. Providing the respondent with the opportunity to meet with the investigator and/or to provide a written statement.
 - ▶ 3. After meeting with the parties and/or obtaining their statements, the investigator will gather and review any additional information and documents the investigator deems relevant, including but not limited to student and personnel files, witness statements, law enforcement and investigation documents, and additional statements from the complainant and the respondent.

Investigation Process

- ▶ The investigator will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other evidence indicating that the respondent is responsible for the alleged conduct as well as indicating that the respondent is not responsible.
- ▶ In any meetings or conversations with the investigator, the parties can be accompanied by an advisor of their choice (who may be, but is not required to be, an attorney). However, an advisor cannot speak for the party they are advising; rather, the advisor's role will be limited to quietly conferring with the party.
- ▶ The investigator will provide each party with written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate.
- ▶ A party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, cannot be used in any part of the complaint resolution process unless the College obtains that party's voluntary, written consent.
- ▶ Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant during any part of the complaint resolution process, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Investigation Process

- ▶ 4. Prior to completion of the investigative report, the College will send to each party and the party's advisor, if any, all evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.
 - ▶ This will include all evidence indicating that the respondent is responsible for the alleged misconduct as well as all evidence indicating that the respondent is not responsible. It will also include evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, whether obtained from a party or other source.
 - ▶ It will not include sensitive personally identifying information (e.g., social security numbers, contact information, etc.).
- ▶ 5. The parties will have 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- ▶ 6. The investigator will create a report of the investigation that summarizes the relevant evidence and includes recommended findings based on that evidence. Any credibility determinations made by the investigator to support their recommended findings must not be based on a party's status as a complainant, respondent, or witness.

Investigation Process

- ▶ 7. The College will send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy at least 14 calendar days prior to the hearing. The parties can provide a written response to the report, but must do so no later than four (4) days before the hearing.
- ▶ 8. The investigation report, including recommended findings and the evidence on which it is based, will be forwarded to the Hearing Officer at the same time it is sent to the parties.
- ▶ 9. The parties and their advisors can only use the evidence presented to them by the investigator and the investigative report for purposes of the complaint process; they cannot copy, photograph, download, disclose, or disseminate these materials to anyone else.
- ▶ 10. Either party involved in the investigation may request a written update at any point from the Title IX Coordinator.

Hearing Process

- ▶ The College may, at its discretion, arrange for the hearing to be conducted in person or through videoconferencing (so that the Hearing Officer and parties can simultaneously see and hear each other or witnesses as they present their information and answer questions); however, if either party requests the use of videoconferencing, the College must provide it.
- ▶ The Hearing Officer has general authority over the conduct of the hearing, including the authority to set time frames for witness testimony and limit the length of any opening/closing statements.
- ▶ A respondent, complainant, advisor, and/or witness may not use electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) during a hearing, unless authorized by the Hearing Officer.

Hearing Process

- ▶ The general course of procedure for a hearing is as follows: introductions; respondent's statement accepting or denying responsibility; questioning of each party by the Hearing Officer and the other party; testimony/questioning of other material witnesses (if applicable); any closing comments from the complainant; and any closing comments from the respondent.
- ▶ The parties can be accompanied to the hearing and any related meeting or proceeding by the advisor of their choice (who may be, but is not required to be, an attorney); a party's witness can also serve as the party's advisor. However, except for purposes of cross-examination (explained below), the advisor cannot speak for the party they are advising; rather, the advisor's role will be limited to quietly conferring with the party.
- ▶ The Hearing Officer will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other evidence provided and obtained during the investigation indicating that the respondent is responsible for the alleged conduct as well as indicating that the respondent is not responsible.

Hearing Process

- ▶ The Hearing Officer will make all the evidence gathered during the investigation available to each party at the hearing.
- ▶ The Hearing Officer and/or the parties can call the investigator as a witness. However, the investigator may not testify as to statements made by others, including the complainant or respondent, if the individual who made a statement does not submit to cross-examination.

Hearing Process

- ▶ Each party's advisor may ask the other party and any witnesses all relevant questions and relevant follow-up questions, including those challenging credibility.
 - ▶ Before a complainant, respondent, or 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.
 - ▶ If a party does not have an advisor present at the hearing, the College will provide the party with an advisor of the College's choice at no charge to conduct cross-examination on behalf of that party. The advisor's role is limited to relaying a party's own questions to the other party or witness. The advisor need not have any particular skill or qualification to serve in this role.
 - ▶ If a party or witness does not submit to cross-examination at the hearing, the Hearing Officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Hearing Process

- ▶ Any credibility determinations made by the Hearing Officer to support their findings must not be based on a party's status as a complainant, respondent, or witness.
- ▶ The College will create an audio recording and/or transcript, of the hearing and make it available to the parties for inspection and review.
- ▶ After the hearing, the Hearing Officer will issue a written determination regarding responsibility. The Hearing Officer has an independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations made by the investigator in the investigative report.
- ▶ Should the Hearing Officer determine that the respondent violated the Sexual Misconduct Policy, the Hearing Officer will refer the case to the appropriate College official for determinations of sanctions and remedies before issuance of the Notice of Outcome.

Appeals

- ▶ Both the complainant and the respondent will be notified simultaneously and in writing of the following procedures for the respondent and the complainant to appeal the result of the hearing:
- ▶ Both the complainant and the respondent are entitled to appeal the decision of the Hearing Officer.
- ▶ An appeal must be filed, in writing, within five (5) calendar days of the written Notification of Outcome. The appeal should be turned in to the Title IX Coordinator.
- ▶ The grounds for appeal are:
 - ▶ New evidence not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome.
 - ▶ The Title IX Coordinator, investigator(s), or decision-maker(s) had a demonstrated 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.
 - ▶ Procedural irregularities that affected the outcome.
- ▶ All decisions by the Appellate Officer are final.

Appellate Process

- ▶ The Appellate Officer will first determine whether the appeal meets the grounds for appeal. If the appeal is not based on a proper ground for appeal, it may be rejected. If so, the Appellate Officer will notify all parties within 10 business days of the appeal filing that the appeal will not be reviewed.
- ▶ If the appeal satisfies the grounds for appeal, the Appellate Officer will notify the other party within five (5) calendar days of receipt of the appeal and provide them an opportunity to respond to the appeal within the next five (5) calendar days.
- ▶ The Appellate Office will make a finding on the appeal within 15 business days of the appeal being filed, unless extended for good cause. If the timeframe for the decision is to be extended, the Appellate Officer will notify the parties of the extension and the reasons for it.
- ▶ The complainant and the respondent will be notified simultaneously and in writing of the result of the appeal and the reasons for the result.

Questions

- ▶ Jess Irvine– Title IX Coordinator
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