

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

Understanding Key Changes to the Policy on Sexual Misconduct by Students

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Since August 2013, the University's response to sexual misconduct committed by students has been governed by The University of Michigan Policy on Sexual Misconduct by Students (Student Sexual Misconduct Policy).

During the past year, in response to new federal law and guidance, participant experiences and feedback, an evolving understanding of effective and promising practices nationally, and the ongoing Title IX review by the Office for Civil Rights, university stakeholders have engaged in a comprehensive and thoughtful evaluation of the Student Sexual Misconduct Policy to determine how best to revise university policies, procedures and practices.

This document offers a summary of the key changes in the university's new policy and the reasons for those changes. It also provides an overview of the process used to develop the new policy (Appendix A) and the recent changes in federal law and guidance (Appendix B).

The revised policy, newly titled The University of Michigan Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence (the policy), will be effective July 1, 2016. The policy explains:

- Prohibited conduct covered by the policy;
- To whom the policy applies;
- The role of the Title IX coordinator;
- University resources, including interim supportive and protective measures and the identification of confidential resources;
- Options for making a report to the university or law enforcement;
- The reporting responsibilities of university employees; and
- The procedures that will be followed to evaluate a report, investigate the conduct, and determine the appropriate resolution.

The development of the policy was a comprehensive and collaborative effort that included a rigorous and iterative drafting process with broad input from students, faculty and staff across the university, including those who work in this area. It also includes guidance from national experts outside the university and at other universities.

The policy balances important principles of autonomy and agency for the claimant;¹ due process rights and considerations; and the university's responsibility to maintain a safe, non-discriminatory environment free from sexual and gender-based harassment and other forms of interpersonal violence.

The revisions to the policy reflect:

- * Recent changes in federal law and guidance;
- * The university's experience with cases brought under prior policies;
- * Trauma-informed practices that encourage and support reporting and participation by claimants;
- * Fair and impartial processes that afford due process to both parties;
- * A desire to provide transparent information about university practices and provide all parties with clear, detailed information; and
- * An effort to create a more timely, efficient resolution process.

Summary of Key Changes and Reasoning

This section organizes the policy changes by category and provides some explanation for the revisions, including how the university incorporated the feedback it received from students, faculty, and staff throughout the policy development process.

I. Reorganized and included more information to help guide students and others through the process

Many individuals who provided online feedback and participated in community forums recommended making the policy more approachable, improving its overall clarity, and offering better guidance to students and others through the process. This included providing a resource guide, flow charts of the university processes, and links headings from the table of contents to the relevant sections.

Consistent with community feedback, the university reorganized the policy and, wherever possible, simplified and clarified its language.

The university provides more detailed information about how to access confidential resources or make a report, what will happen when a report is received, and how the university defines prohibited conduct and evaluates whether a violation of the policy has occurred.

Although the new policy is longer, it provides more information to help guide university students and other participants through the process. In addition, as many requested, the policy links to a resource guide, *Our Community Matters Resource Guide*, for students, faculty and staff; flowcharts explaining the University resolution process; and headings from the table of contents to the relevant sections.

Some examples of expanded content include:

¹ Recognizing that individuals may choose to self-identify as a victim or survivor, the policy uses the term claimant to refer to the individual who is reported to have experienced prohibited conduct. The policy uses the term respondent to refer to the individual who is reported to have engaged in prohibited conduct.

How the policy intersects with other university policies:

The new policy outlines the relevant policies and procedures that apply where the respondent is an employee, where the respondent is both a student and an employee, where the respondent is a third-party, and where the prohibited conduct is committed in the context of activities of a recognized student organization.

The policy also provides links to the university's Sexual Harassment Policy for ease of access.

How the University Shares Information About Prohibited Conduct with Law Enforcement:

The new policy explains the university's practice of sharing all available information regarding possible prohibited conduct on campus with the University of Michigan Police Department to ensure that public safety responsibilities are addressed and to meet federal reporting and timely warning requirements..

Use of the Word Claimant instead of Complainant:

This change responds to community concerns that the term complainant – derived from the word complaint – has a negative connotation when used to describe a person who is reported to have experienced prohibited conduct. The new policy uses claimant instead of complainant.

How the University Will Evaluate a Claimant's Request for Anonymity, that an Investigation not be Pursued, and/or that No Disciplinary Action be Taken:

The new policy builds upon the information in the Student Sexual Misconduct Policy regarding how the university will evaluate a claimant's express preference for resolution. The new policy provides a clear and explicit list of the factors the university will consider in determining how to balance a claimant's request against broader health and safety considerations and the university's obligations to maintain an educational environment free from harassment and discrimination.

Available Supportive and Protective Measures:

The new policy provides an expanded discussion of the range of supportive and protective measures that the university makes available to help those who have experienced prohibited conduct. The policy outlines examples of supportive measures and protective measures and affirms that measures are available regardless of whether a report is pursued with the university or law enforcement.

How the University Determines the Appropriate Sanction:

The new policy contains an explicit list of factors the university, through the Sanctioning Board, will consider in determining the appropriate sanction. Those factors include:

- * The nature of the conduct at issue,
- * The impact of the conduct on the claimant, the impact of the conduct on the community or the university;
- * Prior misconduct by the respondent, including the respondent's relevant prior

discipline history, both at the university or elsewhere, and any criminal convictions;

- * Whether the respondent has accepted responsibility for the conduct, which may be considered as a mitigating factor;
- * Maintenance of a safe and respectful environment conducive to learning;
- * Protection of the university community;
- * And, any other mitigating, aggravating, or compelling circumstances as set forth in the impact or mitigation statements provided by the claimant and respondent, respectively, or otherwise in order to reach a just and appropriate resolution in each case.

II. Defined More Types of Prohibited Conduct

The Student Sexual Misconduct Policy prohibited a range of conduct under a broad definition of sexual misconduct (including both sexual assault and sexual harassment). The new policy explicitly prohibits additional forms of conduct, including gender-based harassment, stalking, intimate partner violence, and violation of interim measures:

Gender-Based Harassment:

Under the policy, gender-based harassment is defined as harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the behavior is made a condition of a person's employment, academic standing, or participation in any university programs and/or activities or such conduct creates a hostile environment.

Intimate Partner Violence:

Under the policy, intimate partner violence, which includes domestic violence, dating violence and relationship violence, is a specific form of prohibited conduct. Intimate partner violence includes any act of physical violence, threatened act of physical violence, economic or emotional abuse that occurs between individuals who are or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. In community roundtable sessions, students expressed strong support for including intimate partner violence in the policy.

Stalking:

Stalking is not specifically named as a separate form of prohibited conduct under the sexual misconduct policy, but has been addressed either as a form of sexual harassment or under the Statement of Student Rights and Responsibilities. Under the policy, stalking will be specifically identified as a form of prohibited conduct. As defined in the policy, stalking occurs when a person engages in a course of conduct toward another person under circumstances that would cause a reasonable person to fear bodily injury to themselves or to others, or experience substantial emotional distress.

Violation of Interim Measures:

Under the Sexual Misconduct Policy, violation of interim measures is not a specific form of prohibited conduct. Under the proposed revisions, violation of interim measures is a form of prohibited conduct.

Expanded Definitions of Consent and Incapacitation:

Many community members, especially students, noted that the Sexual Misconduct Policy did not provide enough information regarding incapacitation, especially as it relates to intoxication from alcohol or other drug use. The new policy provides significantly more information on incapacitation, factors that may be used to assess incapacitation, how it differs from intoxication, and how the university will evaluate whether consent has been freely sought and voluntarily given.

III. Clarified Employee Reporting Responsibilities

The Sexual Misconduct Policy identified reporting options and confidential resources. Faculty, staff and students commented during the draft review process that explicit policy information was needed regarding responsible employees. The new policy provides additional guidance about which university employees have a reporting obligation under Title IX so that claimants have information about where and how their information may be shared if they choose to make a report to a university employee. University employees designated as responsible employees are required to immediately report information about suspected prohibited conduct to the Office for Institutional Equity or the Title IX coordinator. The following individuals are responsible employees:

- Regents;
- Executive Officers (including those serving in the role of associate or assistant vice president/provost, as designated by the executive officer);
- Deans, directors, department heads/chairs (including those serving in assistant or associate roles);
- Graduate and undergraduate chairs;
- Supervisors who have hiring or firing power over at least three employees who are not student or post-doctoral employees;
- Any advisors to university-recognized student groups;
- All individuals working in the Student Life Division, the Division of Public Safety and Security, Intercollegiate Athletics, and the Office for Institutional Equity, except those who serve in non-supervisory positions in dining services, clerical or custodial/maintenance capacities;
- Campus security authorities designated by the university under the Clery Act not otherwise designated above; and

- Individuals serving in any of the positions described above on an acting or interim basis.

Faculty and staff who do not meet any of these criteria are not considered responsible employees. Individuals serving in confidential positions are not responsible employees.

In addition, other individuals, who are not employees, but who exercise some degree of authority or control over students, such as an advisor to a student group or a coach to a club sport team also are immediately required to report information about suspected prohibited conduct to the Office for Institutional Equity or the Title IX coordinator.

IV. Streamlined the University's Formal Resolution Process

Many community members and stakeholders as well as participants in the current policy process identified the time length for resolving reports and the complexity of the formal resolution process as their most significant concerns with the current policy. The university has revised the formal resolution process to make the process timelier and less burdensome on claimants, respondents and witnesses.

Under the current policy, the Office for Institutional Equity makes a finding after an investigation, and the Office of Student Conflict Resolution facilitates sanctions through a resolution process or through determination by a resolution officer with approval from the dean of students. Both parties have the opportunity to appeal either the finding or the sanctions to an Appeals Board comprised of a faculty member, staff member, and student, reviews and decides the appeal. The Appeals Board's determination is subject to review and final approval by the vice president for Student Life.

Under the new policy, the investigative process under OIE will remain the same, although, as outlined below, the investigative protocols have been clarified. The sanctioning and appeal processes, however, have been revised in an effort to improve timely outcomes. The revised procedures include three potential steps:

- 1) The Office for Institutional Equity conducts an investigation and makes a finding regarding whether a policy violation has been committed;
- 2) A Sanctioning Board, comprised of a designee of each of the following: Central Student Government, the president, and the vice president for Student Life will review the investigative report, as well as any impact or mitigation statements from the parties and will render a sanction; and
- 3) if either the claimant or respondent appeal the finding or sanctions, an external reviewer (typically an attorney outside of the university with significant legal experience and university training regarding sexual misconduct, sexual and gender-based harassment, intimate partner violence, and stalking, as well as the university's policy and procedures and resources for students) will review the appeal and make findings or remand the report for further action. The

external reviewer's determination is subject to review and final approval by the vice president for Student Life, who must accept or modify the determinations within seventy-two (72) hours.

V. Clarified the University's Investigation Process

The new policy contains a significantly expanded overview of the investigative protocols followed by OIE. Many of these additions respond to requests from participants to provide more detailed information on the practices of the investigative process. Others respond to anticipated federal guidance and emerging practices in the field nationally. The protocols added to the policy both formalize existing practices and add information to provide greater transparency into the investigative process. The investigative process was carefully reviewed to ensure that it is both trauma-informed and that it meets the hallmarks of procedural due process requirements. Examples of information now provided in the policy include:

Notice of Investigation:

Both the claimant and the respondent will be informed in writing of the identities of the parties, a concise summary of the conduct at issue, and the potential policy violations at issue.

Right to an Adviser:

The new policy specifically incorporates the right to an adviser of choice, which may include an attorney.

Use of Medical and Counseling Records:

The new policy specifically provides that medical and counseling records are confidential and not accessible to the investigator unless the party voluntarily chooses to share the records as part of the investigation.

Identification of Witnesses:

In keeping with a fair and equitable process, the new policy requires that the identity of any witness interviewed in the investigation be shared with the claimant and respondent.

Prior Sexual Contact between Parties:

The new policy provides detailed information about how prior sexual contact between the parties will be considered in the investigation. The new procedures would allow prior sexual contact between the claimant and respondent to be considered only under specific, limited circumstances.

Prior or Subsequent Conduct of the Respondent:

Similarly, the new policy provides detailed information about how prior or subsequent conduct by the respondent may be considered in determining responsibility.

APPENDIX A – POLICY DEVELOPMENT PROCESS

A proposed draft policy, titled The University of Michigan Policy on Student Sexual Misconduct Including Intimate Partner Violence and Stalking in the Context of Intimate Relationships (the Draft Policy), was shared with all students, faculty, and staff Oct. 1, 2015, with an invitation to review the policy and provide feedback by Nov. 6, 2015. The university received feedback from more than 325 individuals. The draft policy was also shared with OCR in October 2015.

In addition, the university hosted close to 30 student, faculty and staff roundtable discussions during the fall to assure that the draft policy was accessible to all constituencies and to elicit community feedback. Roundtable discussions for students were scheduled or co-hosted with Central Student Government, the Spectrum Center (for self-identified LGBTQ students), Culture Shift (for students involved in sexual violence prevention activism), the Trotter Multicultural Center (for self-identified students of color), and the Office for Greek Life. Roundtable discussions for faculty and staff were scheduled on multiple dates throughout October. The university also conducted targeted vetting sessions with key staff and faculty stakeholders, including meetings with more than 35 staff stakeholders involved in student sexual misconduct prevention and response, the Faculty Advisory Committee on Student Sexual Misconduct that the university engaged to provide expert advice and counsel to senior leadership, college deans, associate deans, and deans of student affairs; and several subcommittees of our faculty governing body.

As part of the university's efforts to assess the effectiveness of our policies and procedures, the university contacted all claimants and respondents who were involved in the resolution of a report under the Sexual Misconduct Policy since August 2013 to invite their feedback about the process. The university also considered information gathered through the climate surveys conducted in the winter and spring of 2015.

The draft policy was further refined following comments, feedback and recommendations from each of these many venues.

APPENDIX B – RECENT LEGAL MANDATES AND GUIDANCE

Since 2013, the federal law and regulatory framework governing campus responses to sexual and gender-based harassment and interpersonal violence has expanded significantly. Significant legal developments include:

- Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA), enacted in March 2013, became effective in March 2014. VAWA amended the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (the Clery Act), imposing new requirements relating to dating violence, domestic violence and stalking, and expanding requirements relating to sexual assault. VAWA is posted [here](#).
- On April 29, 2014, OCR issued a significant guidance document, “Questions and Answers on Title IX and Sexual Violence” (the Q&A), clarifying issues following OCR’s April 4, 2011 Dear Colleague Letter and providing further guidance about OCR’s expectations for campus responses under Title IX. The Q&A is posted [here](#).
- On October 20, 2014, the U.S. Department of Education issued final regulations, effective on July 1, 2015, implementing VAWA’s amendments to the Clery Act. These changes affect several aspects of the University disciplinary process, including affording both a Claimant and a Respondent equal rights throughout the process, the right to an advisor of choice, the right to timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings, and the right to simultaneous written notice of the outcome, the sanction, and the rationale for each. A copy of the final regulations is posted [here](#).
- On April 24, 2015, OCR released a Dear Colleague Letter on Title IX Coordinators and accompanying Title IX Resource Guide. The Dear Colleague Letter is available [here](#), and the Title IX Resource Guide [here](#).