

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

Members of the WMU Community have the right to be free from sexual and gender-based discrimination, harassment, violence, and all other forms of prohibited conduct described in this Policy. All members of the Community are expected to conduct themselves in a manner that does not unduly deprive,

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

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

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

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

: any person taking one or more courses at the University, pursuing undergraduate, graduate, or professional studies; any person who withdraws from WMU after a charge of an alleged violation of the WMU Student Code or any University policy; or someone who is not officially enrolled for a particular term, but who has a continuing relationship with the

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

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

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

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

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

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

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

7.6.5. sex-based bullying

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

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

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

: a course of physical or verbal conduct directed at another individual on the basis of sex or gender identity, in a manner that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two

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

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

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

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

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

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

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

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

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

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

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

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

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

are not required to report behaviors to Public Safety that fall outside of those contemplated by the Clery Act (behavior that occurs off campus, sexual and gender-based harassment, sexual exploitation and retaliation).

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

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

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

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

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

Individuals who report potential Covered Behavior in good faith will not be subject to University disciplinary action under the Western Michigan University Student Code of Conduct for their own consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational

discussion or pursue other non-disciplinary, educational remedies regarding alcohol or drug use. The University will not ask about or investigate the citizenship status of any individual who submits a Report.

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

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

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

9.6.4 A Complainant has the right to notify, or decline to notify, law

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

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

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

9.9.1. There is no time limit for reporting Covered Behavior; however, all individuals are encouraged to report Covered Behavior as soon as possible.

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

- 10.2.1. the nature and scope of the alleged conduct, including whether the reported Covered Behavior involves the use of a weapon;
- 10.2.2. the Complainant's wish to pursue disciplinary action;
- 10.2.3. the respective ages and roles of the Complainant and Respondent;
- 10.2.4. the risk posed to any individual or to the campus community by not proceeding including the risk of additional violence;
- 10.2.5. whether there have been other reports of misconduct by the Respondent;
- 10.2.6. whether the Respondent threatened further sexual violence or other violence against the Complainant or others;
- 10.2.7. whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) or

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

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

Support Person and/or Advisor

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

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

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

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

12.1.5 Prior to their participation, the advisor and/or support person will be required to review and agree to the University's policies and procedures,

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

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

12.2.5.2 the age of the Parties involved;

12.2.5.3 the severity or pervasiveness of the allegations;

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

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

12.2.5.6 overall safety of the campus community;

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

12.2.5.8 Respondent's due process rights.

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

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

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

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

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

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

: none

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

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

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

Title IX defines Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively fails on the

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

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

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

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

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

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

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

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

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

WMU Department of Public Safety (WMU DPS)*
Postal Address: 511 Monroe Street, Kalamazoo, MI 49006 USA
Emergency Telephone: 911
Telephone: ~~(269)~~ 387-5555

***WMU DPS must direct incidents outside of their jurisdiction to the appropriate local law enforcement authority**

Office for Civil Rights (Regional Office)
U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, OH

- **Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688**

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Chief of Staff and Secretary to the Board of Trustees
