

# **DRAFT FAQ REGARDING THE UNIVERSITY OF MICHIGAN INTERIM SEXUAL AND GENDER-BASED MISCONDUCT POLICY AND RELATED INTERIM PROCEDURES**

## **UMBRELLA POLICY**

**Q:** This Policy is only about sexual and gender based misconduct. Why are other forms of discrimination (e.g., race, disability and age) not covered by this Policy?

**A:** While these forms of discrimination are prohibited by the University, they are covered under other policies because the legal standards applicable to those forms of discrimination are different from those applicable to sexual misconduct. The University has generally had a separate policy to address sexual harassment (and now all forms of sexual and gender-based misconduct) for this reason. The policies that prohibit other forms of discrimination are [SPG 201.89-1 - Discrimination and Harassment](#) and the [Statement of Student Rights & Responsibilities](#)).

**Q:** Where may I report suspected discrimination concerns that are not covered by this Policy?

**A:** OIE is an appropriate starting point for all such reports. OSCR is also an appropriate starting point for Student on Student discrimination other than sex discrimination. In addition, you may contact DPSS or other appropriate law enforcement agencies if criminal behavior is suspected.

**Q:** Are there policies that apply to conduct that falls short of Prohibited Conduct, but that may nevertheless constitute bullying, harassment (not rising to the level of Prohibited Conduct) or other inappropriate behavior?

**A:** Yes, there are policies and resources for this type of disruptive behavior/conduct. In the student realm, the [Statement of Student Rights and Responsibilities has provisions in Section IV](#). In the faculty realm, [SPG 201.96](#) may apply. In the staff realm, [Human Resources offers guidance](#).

**Q:** Does this Policy cover Prohibited Conduct that occurs off campus?

**A:** There are many circumstances when off campus behavior would be covered under this Policy. For example, the Policy applies to an allegation that a Student has sexually assaulted another Student in an off campus apartment, a faculty member sexually harassed a Student while they were both attending a conference on behalf of the University, or a staff member engaged in sex or gender-based stalking of another staff member that included contacting them at work and outside of work.

**Q:** Why was this Policy implemented over the summer while many members of the University community are away from campus?

**A:** The University would have preferred to implement such an important policy while students are on campus to provide important feedback, but the time frames were established by the Department of Education. On May 6, 2020, the Department of Education issued its final Title IX regulations. Notwithstanding the fact that the country was in the midst of a pandemic and that the summer was rapidly approaching -- while many students and faculty members are away from campus -- the Department of Education imposed an effective date of August 14, 2020.

**Q:** Why are the Policy and Procedures interim?

**A:** Because the Department of Education imposed an August 14, 2020 effective date for the new policy, the Task Team responsible for developing the umbrella policy and related procedures was not able to engage with students, faculty, and staff the way it would have liked in advance of the effective date. As a result, the Policy and Procedures are interim so that the Task Team can engage with community members and solicit feedback. Moving forward this fall, the team that developed the Policy will reach out broadly across all campuses to share details of the policy and procedures. Beginning in early 2021, the team will formally engage the University community to solicit additional feedback before the Policy is finalized by July 1, 2021. The formal processes for gathering feedback will be shared later this year.

**Q:** How long do I have to decide whether to make a report?

**A:** While the University encourages reporting as soon as possible in order to provide support and resources and also address the matter when it is best able to obtain evidence (generally the first 180 days), an individual may make a report at any time.

**Q:** What happens after a report is submitted?

**A:** When a report is submitted, OIE ensures the impacted individual is made aware of and has access to support and resources. OIE then reviews the available information and conducts the Initial Assessment described in the applicable Procedures. At the same time, OIE is assessing what actions may be required under applicable laws and University policies, and what resolution options may be available so that the Complainant can make an informed decision about how to proceed.

**Q:** I am not sure if I want to make a formal report. What should I do?

**A:** Consider contacting one of the Confidential Resources, which are listed in the [Policy](#). Such offices can be a place to talk through options about reporting. Confidential Resources can assist Complainants in understanding their reporting options, and can assist Complainants in making reports to OIE or local law enforcement. Confidential Resources can also connect Complainants with officials in OIE and DPSS if there are specific questions.

**Q:** What happens if I tell someone about an experience of misconduct? Do I have a choice whether they report it?

**A:** Whether you have a choice in the experience, being reported depends on who you tell. A person who is an Individual with Reporting Obligations (“IRO”) is required to share the information with OIE. Some IROs, like Deans, have this requirement no matter how they learned of the possible Prohibited Conduct. Others, like supervisors and Student Life staff, only have this requirement if they learn of the concerns in the scope of their work. Confidential Resources are available and they won’t share what you tell them with anyone, except with your permission or limited circumstances related to safety. If you tell someone who is neither an IRO, nor a Confidential Resource, they can choose whether to report what you shared or not, and it is okay for you to tell them your preference or ask if they plan to make a report.

If you tell someone about an incident of Prohibited Conduct who is obligated to report it, you will still have choices. OIE will contact you, and you can choose whether you respond, whether you seek additional information about resolution options, and whether you participate in a resolution option -- even if OIE needs to move forward to address the concerns, you are not obligated to participate in the process.

**Q:** What is an “IRO”?

**A:** “Individuals with Reporting Obligations” are obligated to report to OIE information they learn regarding Prohibited Conduct. IROs include “officials with authority” to institute corrective measures (e.g., President, Executive Officers, Deans and Department Chairs, and Head Coaches for Varsity Athletics), but also many of the other positions previously designated as “Responsible Employees” under the former policy (e.g., those serving in vice, associate, and assistant roles to Executive Officers; academic and staff supervisors; and all members of Student Life and Athletics, except for those working in dining, maintenance, or custodial roles), and other positions, such as certain HR staff, advisors to recognized student groups and faculty and staff who provide direct oversight of University-related travel abroad for students. Both groups of IROs are obligated to report any information they learn about Prohibited Conduct. However, “officials with authority” have broader reporting responsibilities under the new Title IX regulations. They are required to report all information about Prohibited Conduct that they receive regardless of how and when they learn of the information. For example, officials with authority must report information they learn about Prohibited Conduct even if they learn of it at a cocktail party with friends or while on vacation in Tahiti.

**Q:** Does the role of “Responsible Employee” still exist under the new Policy? How does it relate to the new role of “Individuals with Reporting Obligations”?

**A:** The Department of Education no longer uses the term “Responsible Employee” in the new Title IX regulations. Instead, they refer to individuals with “actual knowledge” of sexual misconduct (e.g., individuals with authority to institute corrective measures). Under the new Title IX regulations, once the University has “actual knowledge” of possible Title IX Misconduct, the Title IX Coordinator must respond promptly and in a prescribed manner. To support the obligations of the Title IX Coordinator, the University created a new term and new group referred to as “Individuals with Reporting Obligations” (or “IROs”) who are

obligated to report to OIE information they learn regarding Prohibited Conduct. While this group is more expansive than is required under the new Title IX regulations, it is consistent with both the Title IX regulations and our community's expectations as to when we will respond to reports of Prohibited Conduct.

**Q:** What is the difference between a report and a Formal Complaint?

**A:** Any individual can make a report of suspected Prohibited Conduct directly to OIE. When OIE or the Title IX Coordinator receives a report of Prohibited Conduct, OIE will, in all cases where the Complainant is identified, contact the Complainant to: (1) discuss the availability of Supportive Measures; (2) ask about the Complainant's wishes with respect to Supportive Measures; (3) inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and (4) explain how to file a Formal Complaint.

A Formal Complaint is a document signed by a Complainant or by the Title IX Coordinator alleging that a Respondent engaged in Prohibited Conduct and requesting initiation of the University's resolution processes.

**Q:** What are Supportive Measures?

**A:** Supportive Measures are individualized services, accommodations, and other assistance that the University offers and may put in place, without fee or charge. Supportive Measures are designed to restore or preserve equal access to the University's Programs and Activities, protect the safety of all parties and the University's educational environment, and/or deter Prohibited Conduct, without being punitive or disciplinary in nature or unreasonably burdening the other party. Supportive Measures are available regardless of whether the matter is reported to the University for the purpose of initiating a proceeding under this Policy and before, after, and regardless of whether a Formal Complaint is filed. Some examples of Supportive Measures include academic support services and accommodations; work schedule or job assignment modifications (for University employment); changes in work or housing location; and mutual restrictions on contact or communications between the parties.

**Q:** Why are there two types of Prohibited Conduct under the Umbrella Policy -- Sexual and Gender-Based Misconduct and Title IX Misconduct?

**A:** The Umbrella Policy continues to cover all sex discrimination and sexual and gender-based harassment as Prohibited Conduct, some of which is also considered Title IX Misconduct requiring specific federally mandated response.

If the University only prohibited behaviors that meet the limited definition of sexual harassment under the new Title IX regulations, the University would not meet its obligations under other laws nor would it be acting consistent with either its mission and values or our community's expectations.

For example, under the Title IX regulations, sexual misconduct that occurs off campus and not in a building owned by the University or a recognized student organization likely would not be prohibited.

Because much of the sexual misconduct that the University currently prohibits exceed the narrow definition of sexual misconduct in the new Title IX regulations, the Policy also defines Prohibited Conduct to include Sexual and Gender-Based Misconduct, which includes a broader definition of sexual harassment than the sexual harassment definition under Title IX Misconduct and does not include the strict jurisdictional requirements. For example, Sexual and Gender-Based Misconduct under the Umbrella Policy allows the University to continue to respond to sexual harassment involving conduct that is severe, persistent, or pervasive; a sexual assault against a Student or Employee on a study abroad program; and Student-on-Student stalking that takes place off campus.

**Q:** Could Prohibited Conduct also constitute a “hate crime”?

**A:** The University of Michigan’s Department of Public Safety and Security provides information about hate crimes. For additional information, please see their website, available [here](#).

**Q:** Do I have to know what type of Prohibited Conduct I experienced before I make a report?

**A:** No. If you think you may have experienced Prohibited Conduct of any kind, even if you aren’t sure whether you did or what it might be called under the Policy, OIE or Confidential Resources can help you identify whether and how this Policy applies, what options you may have under the Policy and Procedures, and what other resources are available to you.

## **EMPLOYEE PROCEDURES**

**Q:** Why are there two separate processes under the Employee Procedures?

**A:** There are two processes because of the desire to keep employment processes for any type of misconduct as consistent as possible, to have processes that encourage reporting of Sexual and Gender-Based Misconduct, and due to the University's legal obligations. Previously, the federal government indicated that employment discrimination was to be handled consistent with Title VII; however, the new Title IX regulations indicate that complaints against Employees that meet the definition of Title IX Sexual Harassment as outlined in the regulations must be handled in a prescribed manner. Neither the Title IX definition nor the prescribed procedures are consistent with the University's legal obligations under Title VII, and vice versa. For this reason, two procedures were necessary. The procedures for handling matters that are not Title IX Misconduct are consistent with how the University handles discrimination complaints in general and employment matters overall.

**Q:** Why can't Employees appeal all findings related to discrimination and harassment investigations instead of just Title IX Misconduct?

**A:** Cases that fall under the new Title IX regulations offer an appeal procedure regarding the finding because it is required. In that event, both parties may appeal, including a

Complainant in a case where it was found the Employee did not violate the Policy and a Respondent in the case where a Policy violation is found. Appeals of investigative findings for other forms of discrimination and harassment allegations are not offered to Employees. As such, an appeal of a finding is not offered for Sexual and Gender-Based Misconduct (or other forms of discrimination); however, if there is a finding of a Policy violation and corrective action is taken, the Employee may grieve that corrective action under applicable employment/collective bargaining agreement processes. This is consistent with processes available to Employees when any form of corrective action is taken.

**Q:** Who will serve the role of Employee advisors at hearings?

**A:** As with other employment processes (e.g., faculty grievance committee, staff grievance committee), members of the University community will serve as trained volunteers. Employees will be able to have a trained volunteer assigned as an advisor or, as noted in the Policy, to have their own advisor.

**Q:** Can Patients file complaints under the Employee Procedures?

**A:** Yes and no. Not all Patient complaints of Sexual or Gender-Based Misconduct are addressed under this Policy. Patients may file Formal Complaints of Title IX Misconduct under the Policy, but if Patients have concerns about Sexual or Gender-Based Misconduct that does not meet the definition of Title IX Misconduct, those concerns should be brought to the Department of Public Safety and Security (if criminal conduct is alleged) or the Office of Patient Relations and Clinical Risk. <https://www.uofmhealth.org/contact-us/feedback>

**Q:** Do the Title IX Procedures for Patients include a hearing?

**A:** Yes. A hearing officer who is not the same person as the investigator will review the case and make a decision. The hearing for Patient complaints is not live. Instead, the parties submit written questions to the hearing officer, who will pose them in writing to the other party, who will then answer them in writing.

**Q:** Will OIE be managing the review of all Title IX Misconduct cases for employees, including those covered by a collective bargaining agreement?

**A:** Yes. OIE will review all cases in which Formal Complaints of Title IX Misconduct are made against Employees. However, if the allegation falls outside Title IX, the matter will continue to be addressed under the applicable collective bargaining agreement, as has been the case in the past.

**Q:** If I use a University-provided advisor for purposes of conducting the cross-examination, can I request a different hearing advisor if I believe he/she is biased?

**A:** No. You may elect to identify your own advisor if you choose not to use the University-provided advisor.

**Q:** Are Employees represented by unions covered by the Title IX Procedures?

**A:** The new Title IX regulations apply the Title IX Procedures to all Employees including Employees represented by a union. The University is in the process of discussing with the University unions necessary modifications of the collective bargaining agreements to comply with the Title IX regulations.

**Q:** Who can I choose as an advisor?

**A:** You are free to choose anyone to act as your advisor. However, the University recommends that you choose an individual who can assist you during the process and has a schedule that will allow them to be available during the process. If you are involved in a matter in which a Formal Complaint of Title IX Misconduct has been made and a hearing may take place, you should select an advisor who is willing to conduct cross-examination on your behalf.

**Q:** Why isn't the University providing advisors during the investigation process?

**A:** The new Title IX regulations require the University to provide advisors only for the purpose of cross-examination during the Title IX hearing process. The University's decision not to supply Employees with advisors during the investigation process is consistent with University practices for all other internal employment processes. Please note that individuals may choose to bring their own advisor to any meeting that occurs in the investigation process; however, that person is not provided by the University.

**Q:** Did the standard of proof change with the new Title IX regulations?

**A:** No. The standard of proof for all employment matters under the Employee Procedures continues to be a preponderance of evidence, which means that 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.

**Q:** I am a party in a pending case under SPG 201.89-0. Which procedures will apply on and after the August 14, 2020 effective date?

**A:** The [Interim Employee Procedures](#) effective August 14, 2020 will apply to all pending cases under the current SPG 201.89-0, as well as to any new cases, irrespective of when the prohibited conduct allegedly occurred.

## **STUDENT PROCEDURES**

**Q:** I was sexually assaulted off campus by a U-M student; can I still report this to the University?

**A:** Yes. You can report this to OIE, as well as local law enforcement. OIE will explain available support and resources, as well as options that may be available under the Policy.

**Q:** I was sexually assaulted at a fraternity/sorority house off campus. Does the Policy cover my situation?

**A:** Yes. The Policy would apply to off campus behavior in the building of a recognized student organization. If the fraternity or sorority is not a recognized student organization, the Policy is likely to apply if both individuals are members of the University community, there is continued impact in a University Program or Activity, or other factors. OIE is always available to answer questions as to whether the Policy might apply to certain situations and individuals are always encouraged to report so that behavior that does fall under the Policy may be addressed and impacted individuals can be offered support and resources.

**Q:** My case is going to a hearing. My roommate told me I need an attorney and I cannot afford one. What are my options?

**A:** During the hearing, the University will provide an attorney to you, free of charge, for the sole purpose of asking questions (cross-examination) on your behalf. For information on student advisors provided by the University for purposes of conducting cross-examination, please ask the OIE investigator or case manager (Ann Arbor and Flint) or student conduct advisor (Dearborn).

**Q:** I think I want to make a report to OIE, but the Policy and the processes seem overwhelming. Is there anyone who can assist me through the various steps?

**A:** Confidential Resources identified in the [Policy](#) are available to assist Complainants. They can help Complainants make reports to OIE or law enforcement and may be available to accompany individuals to meetings throughout the process. These Confidential Resources can also assist with any help that might be needed with housing (Ann Arbor and Flint campuses), academic accommodations, or referrals to additional support people.

**Q:** I cannot decide if I should file a complaint with OIE. How long does the entire process generally take?

**A:** The University strives to complete investigations in a timely manner. We will make every effort to complete investigations within 180 days. Although this may sound like a long period of time, this includes the OIE investigation, the hearing, and any appeal determination.

**Q:** I'm not sure if what I experienced falls under the Policy or counts as misconduct. What are my options?

**A:** Please report your experience even if you are not sure if it falls under the Policy. If you report your experience to OIE, the Title IX Coordinator will determine whether the information you provide constitutes Prohibited Conduct under the Policy. They can also help

connect you to resources and support. You can also reach out to a Confidential Resource to talk through options.

**Q:** I am not sure I am ready to make a report. Who can I contact to talk to confidentially?

**A:** Confidential Resources, who are prohibited from disclosing confidential information except in limited circumstances, are available on each campus to provide Students with assistance, support, and additional information. A list of Confidential Resources is available in [Sec. V of the Policy](#).

**Q:** I'm worried if I make a report I'll be retaliated against. Can the University help protect me from retaliation?

**A:** Retaliation against anyone who reports an incident of Prohibited Conduct, or who participates in a University process related to such an incident, is prohibited under the University's Policy. The University will not only take steps to prevent retaliation but also take appropriate action if it occurs. If you have any concerns about retaliation, please contact the Title IX Coordinator.

**Q:** Did the standard of proof change with the new Title IX regulations?

**A:** No. The standard of proof for all Student matters under the Student Procedures continues to be a preponderance of evidence.

**Q:** I am a party in a pending case under the current student sexual misconduct policy. Which procedures will apply on and after the August 14, 2020 effective date?

**A:** The [Interim Student Procedures](#) effective August 14, 2020 will apply to all pending cases under the current student sexual misconduct policy, as well as to any new cases, irrespective of when the prohibited conduct allegedly occurred.

**Q:** I want to make a report about the sexual harassment I've experienced by another Student, but I don't want to go to a hearing. What are my options?

**A:** The Student Procedures offer both Investigative Resolution and Adaptable Resolution. Adaptable Resolution does not involve a hearing. It is a voluntary, remedies-based process that Complainants may request when reporting to OIE. Complainants may request (1) no further action, (2) Investigative Resolution, or (3) Adaptable Resolution. For more on Adaptable Resolution, see [Student Procedures, Section VIII](#).

**Q:** I'm a Respondent in a case involving another Student. I'm confused by the Policy and next steps, who can assist me?

**A:** OIE is always available to answer questions about the Policy and procedures, and recognizes that parties may have questions throughout the process. In addition, Respondents are able to work with an advisor of their choosing. The Ann Arbor campus has a [Respondent Support](#)

[Program, through the Dean of Students Office](#), to assist Respondents in understanding the Policy and various procedural steps. The Dearborn campus offers assistance through [CAPS](#) and [Ombuds Services](#). The Flint campus offers assistance through the [Dean of Students Office](#), as well as [CAPS](#). The University will also provide, at the time of the hearing (if there is one), an external attorney to conduct the cross examination if you do not have an advisor who can do this.