

**THE UNIVERSITY OF MICHIGAN INTERIM POLICY  
ON SEXUAL AND GENDER-BASED MISCONDUCT**

**Effective August 14, 2020**

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**On Sexual and Gender-Based Misconduct**  
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## **I. POLICY STATEMENT**

The University of Michigan, comprised of the Ann Arbor campus, the University of Michigan-Dearborn, the University of Michigan-Flint, and Michigan Medicine (collectively the “University”), is committed to creating and maintaining a safe and non-discriminatory campus community that is free from Sexual and Gender-Based Misconduct<sup>1</sup> and that enables individuals engaged in its Programs or Activities (as defined in [Section II](#) below) to participate fully in the scholarly, research, educational, patient care, and service missions of the University. The University does not discriminate on the basis of sex or gender in any of its Programs and Activities.

The University of Michigan *Interim Policy on Sexual and Gender-Based Misconduct* (“Policy”) prohibits the following types of conduct as defined in [Section XI](#) below (also referred to collectively as “Prohibited Conduct”):

**Sexual and Gender-Based Misconduct** (i.e., Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation and Violation of Supportive Measures); and

**Title IX Misconduct** (i.e., *Quid Pro Quo* Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Intimate Partner Violence and Stalking; as defined by and within the scope of Title IX).

The University must define and respond to Title IX Misconduct as required by regulations issued in May 2020 by the U.S. Department of Education to implement Title IX of the Education Amendments of 1972, codified at 34 C.F.R. Part 106 (the “Title IX Regulations”). The Title IX Regulations allow the University to define and regulate Prohibited Conduct that falls outside the definition of Title IX Misconduct, but which the University is committed to addressing as a matter of University policy and/or as required by other applicable law. Accordingly, the University’s Policy prohibiting Sexual and Gender-Based Misconduct and Title IX Misconduct is consistent with the Title IX Regulations, as well as the University’s mission and commitment to ensuring a safe and non-discriminatory campus community.

Prohibited Conduct undermines the character and purpose of the University and the University will take appropriate prompt and effective action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. Prohibited Conduct may also constitute crimes that violate federal and state law.

The University adopts this Policy with a commitment to: (1) eliminating, preventing, and addressing the effects of Prohibited Conduct; (2) fostering an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; (3) providing a fair and impartial process for all parties; and (4) identifying the procedures by which violations of this Policy will be evaluated. Employees, Students, or Third Parties (as defined in [Section II](#) below)

<sup>1</sup> Terms defined in [Section II](#) below are capitalized throughout the Policy.

who violate this Policy may face, as appropriate, disciplinary action up to and including termination, expulsion, or other actions.

It is the responsibility of every member of the University Community to foster an environment free of Prohibited Conduct. All members of the University Community are encouraged to take reasonable and prudent actions to prevent or stop such behavior.

This Policy sets forth how the University will proceed once it is made aware of possible Prohibited Conduct. The Policy is in keeping with our institutional values and is intended to meet our obligations under Title VII of the Civil Rights Act of 1964 (“Title VII”); Title IX of the Education Amendments of 1972 (“Title IX”) and regulations promulgated thereunder in 2020; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”), with respect to its application to Prohibited Conduct; and other applicable law and regulations.

## **II. POLICY DEFINITIONS**

For purposes of this Policy, some key terms are defined below. Additional terms are defined within the text of the Policy.

- A. Complainant:** “Complainant” is used to refer to a Student, Employee, or Third Party who is reported to have experienced Prohibited Conduct and who participates in a process undertaken by the University to address the report of Prohibited Conduct. In some instances, the person who is reported to have experienced Prohibited Conduct may not wish to participate in the process. In those cases, the University may pursue a resolution process under this Policy without a participating Complainant. For ease of reference, “Complainant” will also be used throughout this Policy and related procedures to refer generally to an individual who is reported to have experienced Prohibited Conduct, even if they do not participate in any related process.
- B. Confidential and Non-Confidential Resources:** “Confidential Resources” are available to provide individuals with assistance, support, and additional information and are prohibited from disclosing confidential information unless: (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order. Confidential Resources may be required to report non-identifying information to DPSS for crime reporting purposes.

“Non-Confidential Resources” are available to provide individuals with assistance, support, and additional information, but are not designated as confidential and may have broader obligations to report information that is shared with them. Non-Confidential Resources will make reasonable efforts to respect and safeguard the privacy of the individuals involved. Privacy means that concerns about Prohibited Conduct will only be shared with University

representatives, such as OIE, responsible for assessment, investigation, or resolution of the report or otherwise properly responding to issues raised; to DPSS for crime statistics reporting; and to the extent required by law or court order.

- C. Division of Public Safety and Security or DPSS:** “Division of Public Safety and Security” or “DPSS” refers collectively to the University of Michigan Police Department (“UMPD”), the University of Michigan-Dearborn Department of Police and Public Safety (“DPPS”), the University of Michigan-Flint Department of Public Safety (“DPS”), Michigan Medicine Security, Housing Security, and University Security Services.
- D. Employee:** “Employee” means all faculty (i.e., regular instructional, supplemental instructional, research track, and visiting faculty), librarians, archivists, curators, graduate student instructors, graduate student staff assistants, graduate student research assistants, postdoctoral research fellows, and all regular and temporary staff.
- E. Formal Complaint:** “Formal Complaint” means 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.
- F. Individuals with Reporting Obligations:** “Individuals with Reporting Obligations” or “IROs” are individuals who are required to report to [OIE](#) information about alleged Prohibited Conduct. Individuals with Reporting Obligations are (1) University administrators and supervisors and (2) Employees in certain designated positions and units or departments. A list of Individuals with Reporting Obligations and more information about Individuals with Reporting Obligations can be found in [Section VII](#). As set forth in [Section VII](#), some Individuals with Reporting Obligations have the authority to institute corrective measures on behalf of the University and are required to report all information about Prohibited Conduct that they receive, regardless of how and when they learned of the information.
- G. Office for Institutional Equity:** “Office for Institutional Equity” or “OIE” at Ann Arbor, Dearborn, and Flint are collectively referred to as “OIE” in this Policy.
- H. Patient:** “Patient” means a Patient of the University of Michigan Academic Medical Center as defined in [Regents Bylaw 11.36](#).
- I. Program or Activity:** A University “Program or Activity” includes: (1) any location, event, or circumstance where the University exercises substantial control over both the Respondent and the context in which the conduct occurs; (2) any building owned or controlled by a Student organization recognized by the University; and (3) a University campus. Conduct that occurs off campus in

locations or at events with no connection to the University is unlikely to occur in a Program or Activity of the University.

- J. Prohibited Conduct:** “Prohibited Conduct” refers to Sexual and Gender-Based Misconduct (Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation and Violation of Supportive Measures) and Title IX Misconduct (i.e., *Quid Pro Quo* Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault, and Sex-Based Intimate Partner Violence and Stalking; as defined by and within the scope of Title IX). For a definition of each type of Prohibited Conduct, please refer to [Section XI](#) below.
- K. Protected Activity:** “Protected Activity” includes most elements of participation in the University’s processes related to this Policy, including but not limited to reporting Prohibited Conduct; pursuing a resolution of Prohibited Conduct; providing evidence in any investigation or hearing; or intervening to protect others who may have experienced Prohibited Conduct. Retaliation against any person because of Protected Activity is prohibited under this Policy, as discussed in [Section XI \(B\)\(8\)](#).
- L. Reasonable Person:** “Reasonable Person” means a person using average care, intelligence, and judgment in the known circumstances.
- M. Respondent:** “Respondent” is an individual who is reported to have engaged in conduct that could constitute Prohibited Conduct.
- N. Student:** "Student" generally means an individual who was selected “for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education Program or Activity operated by the University.” An individual is a Student from the time they first register for classes or attend on-campus Student orientation until degree conferral, or they are otherwise ineligible to register for courses without seeking readmission. For purposes of Title IX Misconduct as defined in [Section XI \(C\)\(1\)](#) below, “Student” also means an individual who, for the purpose of obtaining education, is participating in a University Program or Activity.
- O. Supportive Measures:** “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.

- P. Third Party:** “Third Party” means all University contractors, guests, vendors, visitors, volunteers, and any individual who is participating in a University Program or Activity, but who, for purposes of alleged Prohibited Conduct, is neither enrolled in an academic program and/or course at the University nor acting as an Employee (e.g., an individual who is participating in a summer camp; an individual who is attending a Program or Activity by invitation or that is open to the public; or an individual who is not enrolled in an academic program and/or course at the University, but who is participating in a University study abroad program).
- Q. University Community:** “University Community” refers to University Students and Employees.

### **III. POLICY SCOPE AND APPLICABILITY**

This Policy applies to Students, Employees, and to the extent noted below, Third Parties, including Patients. This Policy covers two general types of Prohibited Conduct: Sexual and Gender-Based Misconduct and Title IX Misconduct.

This Policy covers acts of Sexual and Gender-Based Misconduct (as defined in [Section XI \(B\)](#) below) committed by or against Students, Employees, and Third Parties when the Prohibited Conduct occurs:

- On campus or other property owned or controlled by the University;
- In the context of a University Program or Activity including, but not limited to, University-sponsored study abroad, research, field work, practica, internship programs, online programs, employment, or patient care services rendered at the University of Michigan Academic Medical Center as defined in [Regents' Bylaw 11.36](#); or
- Outside of a University Program or Activity, but potentially poses a serious threat of harm, has a continuing adverse effect on, or creates a hostile environment for Students, Employees, or Third Parties while on campus or other property owned or controlled by the University or in any University Program or Activity. In determining whether the University has jurisdiction over off-campus or online conduct that did not occur in a University Program or Activity, the University will consider the severity of the alleged conduct, the risk of on-going harm, whether both parties are members of the University Community, impact on University Programs or Activities, and whether off-campus conduct is part of a series of actions that occurred both on and off campus.

This Policy also covers Title IX Misconduct (as defined in [Section XI \(C\)](#) below) committed by or against Students and/or Employees in a University Program or Activity, in the United States.

This Policy supersedes any conflicting information in any other University policies with respect to the definitions or procedures relating to Prohibited Conduct.<sup>2</sup>

#### **IV. APPLICABLE PROCEDURES UNDER THIS POLICY**

The specific procedures for assessing, reviewing and resolving Prohibited Conduct depend upon the nature of the Respondent's relationship to the University, and when a Respondent is an Employee or a Third Party, on the type of Prohibited Conduct at issue.

The Respondent is a Student:

If the Respondent is a Student and the alleged conduct would constitute either Sexual and Gender-Based Misconduct or Title IX Misconduct, the University will use the [Student Procedures](#) for responding to the alleged conduct.

The Respondent is an Employee:

If the Respondent is an Employee, the University will use the Employee Procedures. The specific process the University will use to respond to a complaint of Prohibited Conduct will depend on whether the alleged conduct is Misconduct, as defined in this Policy. Please see [Employee Procedures](#) for details.

The Respondent is *both* a Student and an Employee:

OIE will determine whether Student or Employee Procedures apply based upon the facts and circumstances, and whether those circumstances relate more closely to the Respondent's status as a Student or an Employee.

The Respondent is a Third Party:

The University's ability to take appropriate corrective action against a Third Party will be determined by the nature of the Third Party's relationship to the University. Complaints against Third Parties are addressed using the [Employee Procedures](#).

When the University receives a report of behavior that could violate this Policy as well as other University policies, the University will determine which policy/ies and procedures apply and whether action will be taken under this Policy exclusively, or under multiple policies and/or procedures. A list of potentially related policies and procedures can be found in the [Standard Practice Guide \(SPG\)](#). In the event that at the time of a report or the conclusion of an investigation it becomes apparent that the alleged conduct, if true, would not constitute Prohibited Conduct, the matter may be adjudicated under another applicable policy or procedure.

#### **V. CONFIDENTIAL AND NON-CONFIDENTIAL RESOURCES**

<sup>2</sup> Unless specifically prohibited by Title IX or other applicable law, neither this Policy nor the accompanying procedures alter Employees' existing rights under other University policies and procedures that provide for pre-disciplinary meetings, reviews of, and/or challenges to, employment status-related decisions (e.g., Regents' Bylaw 5.09, faculty grievance procedures, applicable collective bargaining agreements, SPG 201.08, and SPG 201.12).

Supportive resources are available at the University. Some of these resources are designated as confidential. Other resources provide support, but may need to involve OIE and/or DPSS. Regardless of whether the University determines that Prohibited Conduct occurred, the University will offer resources or assistance to Complainants, Respondents, witnesses, and other affected University Community members after receiving notice of alleged Prohibited Conduct. The University will also assist those individuals in identifying and contacting external law enforcement agencies and community resources.

#### **A. Confidential Resources**

Confidential Resources are available to provide individuals with assistance, support, and additional information and are prohibited from disclosing confidential information unless: (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order. Confidential Resources may be required to report non-identifying information to DPSS for crime reporting purposes.

#### **Ann Arbor Campus including Michigan Medicine**

##### Complainant Advocacy & Support:

- For Students and Employees: [Sexual Assault Prevention and Awareness Center](#) (“SAPAC”) provides direct support to Complainants, including crisis intervention; advocacy; assistance in navigating academic, personal, medical, and community impact; and referrals to campus and community resources. (734) 764-7771, 24-hour crisis line (734) 936-3333.

##### Counseling:

- For Students: [Counseling and Psychological Services](#) (“CAPS”): (734) 764-8312 (includes 24 hour service)
- For Student-Athletes: [Athletic Counseling Team](#): (734) 647-9656
- For Central Campus Faculty and Staff: [Faculty and Staff Counseling and Consultation Office](#): (734) 936-8660
- For Michigan Medicine Faculty and Staff: [Office of Counseling and Workplace Resilience](#): (734) 763-5409
- For Students and Employees: [CEW+ Career and Educational Counseling](#): (734) 764-6360

##### Ombuds:

- For Students: [University Ombuds](#): (734) 763-3545
- For Faculty: [Faculty Ombuds](#): (734) 763-2707
- For Staff: [Staff Ombuds](#): (734) 936-0600

University Health Service:

- For Students: [Wolverine Wellness Medical and Health Educators](#): (734) 763-1320
- For Students and Employees: [Sexual Assault Services at the University Health Service](#) (“UHS”). UHS provides medical services for those who have experienced sexual assault, including sexual assault medical exams conducted by a Sexual Assault Nurse Examiner (“SANE”) from Washtenaw County: (734) 764-8320

**Dearborn Campus**

Counseling:

- For Students: [Counseling and Psychological Services](#): (313) 593-5430
- For Faculty and Staff: [Faculty and Staff Counseling and Consultation Services](#): (734) 936-8660

Ombuds:

- For Students: [Ombuds Services](#): (313) 593-5440
- For Faculty: [Faculty Ombuds](#): (313) 593-5240

**Flint Campus**

Complainant Support:

- For Students: [Center for Gender and Sexuality](#) (Only the Sexual Assault Advocate is Confidential): (810) 237-6648

Counseling:

- For Students: [Counseling and Psychological Services](#) (“CAPS”): (810) 762-3456

- For Faculty and Staff: [Faculty and Staff Counseling and Consultation Office](#): (734) 936-8660

Ombuds:

- For Faculty: [Faculty Ombuds](#)

**B. Non-Confidential Resources**

Non-Confidential Resources are available to provide individuals with assistance, support, and additional information, but who are not designated as confidential and may have broader obligations to report information that is shared with them. Non-Confidential Resources will make reasonable efforts to respect and safeguard the privacy of the individuals involved. Privacy means that concerns about Prohibited Conduct will only be shared with University representatives, such as OIE, responsible for assessment, investigation, or resolution of the report or otherwise properly responding to issues raised; to DPSS for crime statistics reporting; and to the extent required by law or court order.

**Ann Arbor Campus including Michigan Medicine**

- For Students: The [Dean of Students Office](#) (DOS) provides direct support to Complainants, Respondents, or other Students who are involved in reports of Prohibited Conduct. This support includes providing help with navigating academic, personal, and community impact, advising on policy and procedures, and connecting to other available support and resources. The [Respondent Support Program](#) is housed in the DOS and has dedicated trained staff, who provide direct support to Respondents who are involved in reports of Prohibited Conduct. (734) 764-7420.
- For Faculty: [Academic Human Resources](#): (734) 763-8938
- For Staff: [Staff Human Resources](#): (734) 763-2387
- For Michigan Medicine Staff: [Michigan Medicine Human Resources](#): (734) 647-5538

**Dearborn Campus**

- For Students: [Center for Social Justice and Inclusion](#): (313) 583-6445
- For Faculty and Staff: [Human Resources](#): (313) 593-3568

**Flint Campus**

- For Students: [Dean of Students Office](#): (810) 762-5728

- For Faculty and Staff: [Human Resources](#): (810) 762-3150

Additional information about these and other resources is contained in Our Community Matters Resource Guides:

[Ann Arbor](#): [Our Community Matters Resource Guide](#)

[Dearborn](#): [Our Community Matters Resource Guide](#)

[Flint](#): [Our Community Matters Resource Guide](#)

## **VI. REPORTING**

The University strongly encourages any individual to make a report of suspected Prohibited Conduct directly to OIE through any of the reporting methods outlined below. Reports can also be made to the Individuals with Reporting Obligations listed in [Section VII](#), but the University strongly encourages reporting to OIE so that OIE may promptly discuss the availability of Supportive Measures and available processes with the Complainant, including by contacting the Complainant when another person makes the report.

Recognizing that some forms of Prohibited Conduct may also constitute crimes, the University also strongly encourages any individual who experiences, witnesses, or learns of possible criminal conduct to report to DPSS or local law enforcement. Prompt reporting allows law enforcement to collect and preserve evidence.

Set forth below is information regarding how to make a report of any form of Prohibited Conduct to the University, how to file a Formal Complaint, and how to report to DPSS:

### **A. Reporting to the University**

#### **1. Contact the Office for Institutional Equity and Title IX Coordinator**

##### **a. How to Make Reports of Prohibited Conduct**

Reports of Prohibited Conduct, whether Sexual and Gender-Based Misconduct or Title IX Misconduct, should be made to OIE. Making a report means informing OIE about the suspected Prohibited Conduct.

Individuals may also contact OIE to ask about this Policy and related procedures, or to otherwise inquire about the University's responses to Prohibited Conduct in its Programs and Activities.

OIE, including the Title IX Coordinator, can be contacted by telephone or in person by appointment during regular office hours (Monday – Friday: 8:00 a.m. – 5:00 p.m.), or by email

24 hours a day, 7 days a week. Online reporting is also available on a 24/7 basis. Contact information is as follows:

Campus	Name	Contact Information	Online Reporting
<b>Ann Arbor</b>	<b>Elizabeth Seney</b> , Title IX Coordinator – Ann Arbor	Office for Institutional Equity 2072 Administrative Services Building 1009 Greene Street Ann Arbor, Michigan 48109 (734) 763-0235 (telephone) (734) 647-1388 (TTY)	<a href="#">Discrimination, Discriminatory Harassment and Sexual and Gender-Based Misconduct Reporting Form</a>  <a href="mailto:institutional.equity@umich.edu">institutional.equity@umich.edu</a>
<b>Dearborn</b>	<b>Pamela Heatlie</b> , Director, Office for Institutional Equity and Title IX Coordinator – Dearborn	Office for Institutional Equity 1114 Administration Building 4901 Evergreen Road Dearborn, MI 48128 (313) 436-9194	<a href="#">Sexual and Gender-Based Misconduct Reporting Form</a>  <a href="mailto:InstitutionalEquityDearborn@umich.edu">InstitutionalEquityDearborn@umich.edu</a>
<b>Flint</b>	<b>Kirstie Stroble</b> , Interim Director and Title IX Coordinator, Office for Institutional Equity – Flint	Office for Institutional Equity 234 University Pavilion 303 E. Kearsley Street Flint, MI 48502-1950 (810) 237-6517	<a href="#">Discrimination, Discriminatory Harassment And Sexual and Gender-Based Misconduct Reporting Form</a>  <a href="mailto:InstitutionalEquityFlint@umich.edu">InstitutionalEquityFlint@umich.edu</a>

## 2. Reports to Individuals with Reporting Obligations

Individuals who are designated by the University as Individuals with Reporting Obligations (see [Section VII](#)) are obligated to report to OIE any information they learn about Prohibited Conduct, as discussed in more detail below. Individuals with Reporting Obligations should not attempt to determine whether the behavior at issue constitutes Prohibited Conduct; instead, they must report all information about potential Prohibited Conduct to OIE, and OIE will determine how to most appropriately handle the report. A list of Individuals with Reporting Obligations and a description of their obligations is set forth in [Section VII](#).

## 3. Anonymous Reporting

Individuals who are not Individuals with Reporting Obligations may, if they prefer, make reports of Prohibited Conduct to OIE without disclosing their name, by using the online reporting form listed in the above chart for the relevant campus or, on a 24/7 basis, by the following method:

Campus	Name	Contact Information	Online Reporting
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Depending on the level of information available about the incident and the individuals involved, the University’s ability to respond to an anonymous report may be limited. The University will, however, take whatever steps it deems appropriate and in the best interests of the overall University Community, consistent with the information available.

**B. Reporting to Law Enforcement**

An individual who experiences, witnesses, or learns of possible criminal conduct should contact law enforcement directly by calling:

- 911 (for emergencies) or

<b>Division of Public Safety (DPSS)</b>	University of Michigan Police Department (UMPD) Special Victims Unit (dedicated unit for responding to and investigating sexual assaults, intimate partner violence, stalking, and child abuse)	(734) 763-1131
	University of Michigan – Dearborn Department of Police and Public Safety	(313) 593-5333
	University of Michigan – Flint Department of Public Safety	(810) 762-3333
<b>Ann Arbor Local Law Enforcement</b>	Ann Arbor Police Department	(734) 994-2911
	Ypsilanti Police Department	(734) 483-9510
	Washtenaw County Sheriff Department	(734) 971-8400
<b>Dearborn Local Law Enforcement</b>	Dearborn Police Department	(313) 943-2241
	Wayne County Sheriff Department	(313) 224-2222
<b>Flint Local Law Enforcement</b>	Flint Police Department	(810) 237-6800
	Genesee County Sheriff Department	(810) 257-3407

**C. Receipt by the University of Reports of Prohibited Conduct**

Any individual may report Prohibited Conduct. It is not necessary for a reporting party or Complainant to determine in advance whether the behavior at issue meets the definition of Prohibited Conduct. Upon receipt of a report, OIE will undertake a continuing assessment to determine the form of Prohibited Conduct at issue and, in cases involving Employees and/or Third Parties, which procedures are applicable.<sup>3</sup>

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.

The process for filing a Formal Complaint is described in greater detail in [Section VIII](#), but a Formal Complaint may be filed by a Complainant when a report is made or at another time thereafter, and may be filed with respect to conduct that constitutes Sexual and Gender-Based Misconduct or Title IX Misconduct. In some cases, as explained in further detail in [Section VIII](#), the Title IX Coordinator may file a Formal Complaint even where the Complainant has not decided to do so.

## **D. Additional Information about Reporting**

### **1. Time Frame for Reporting an Incident to the University**

The University strongly encourages individuals to report possible Prohibited Conduct promptly. To promote timely and effective review and appropriate corrective action (when applicable), the University encourages individuals to report possible Prohibited Conduct within 180 calendar days. Although the University does not limit the time for reporting Prohibited Conduct, it may be more difficult for the University to gather relevant and reliable evidence or to take corrective action regarding conduct that is reported to have occurred relatively long ago.

If the Respondent is no longer a Student, Employee, or a person who is participating or attempting to participate in any University Program or Activity at the time of the report, and/or if the reported conduct does not fall within the definition of Prohibited Conduct, the University's ability to take action against the Respondent under the Policy may be limited. The University will, however, help a Complainant identify other options

<sup>3</sup> Consistent with Title IX and applicable law, the University uses the same procedures for all Prohibited Conduct allegations involving Student Respondents. In cases involving Employee Respondents, the University uses one of two procedures, both which are designed to comply with applicable law while also promoting procedural efficiency and, to the extent practicable, consistency with other University policies, practices and procedures.

outside the University, such as local law enforcement, and provide support and resources.

## **2. Information on Amnesty to Students When Reporting Prohibited Conduct to the University**

Sometimes Students are reluctant to seek help after experiencing Prohibited Conduct, or may be reluctant to help others who may have experienced Prohibited Conduct, because they fear of being held responsible by the University or law enforcement for illegal drug use or underage alcohol consumption.

To encourage individuals to report Prohibited Conduct and seek medical care, the University will not pursue University misconduct charges against any Student in an investigation under this Policy for potential violations of University policy for personal consumption of alcohol or other drugs identified during an investigation, as long as 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 assessment, educational discussion, or pursue other non-disciplinary options to address the alcohol or other drug use.

In addition, to better ensure that individuals who may be at medical risk as a result of alcohol intoxication or drug consumption will receive prompt and appropriate medical attention, the State of Michigan has adopted a [Medical Amnesty Law](#) to remove perceived barriers to seeking help. Michigan law includes exemption from prosecution any minor, defined as some under 21, who:

- Voluntarily accesses a health facility or agency for treatment or observation after consuming alcohol or other drugs;
- Accompanies an individual who voluntarily accesses a health facility or agency for treatment or observation after consuming alcohol or other drugs; or
- Initiates contact with law enforcement or emergency medical services personnel for the purpose of obtaining medical assistance in connection with their own personal consumption of alcohol or other drugs; or consumption by others.

## **VII. INDIVIDUALS WITH REPORTING OBLIGATIONS**

Individuals with Reporting Obligations (“IROs”) are required as set forth below to share with OIE details they receive about Prohibited Conduct within 48 hours of learning of those details. IROs must provide their name, title, and contact information when making their report and can

do so by contacting OIE as set forth in [Section VI \(A\)\(1\)](#) above. Failure by an IRO to promptly share with OIE all details they receive about Prohibited Conduct may subject them to appropriate discipline, up to and including termination of employment, in accordance with an applicable process.

The positions identified in the list below are IROs. IROs denoted with an asterisk (\*) are officials of the University who have the authority to institute corrective measures on behalf of the University. IROs who have the authority to institute corrective measures on behalf of the University, have broader reporting responsibilities and are required to report all information about Prohibited Conduct that they receive, regardless of how and when they learned of the information, e.g., whether the information was shared with them in the scope of their employment or in some other capacity, including if they learned during a classroom or research activity, awareness event, or other exempt disclosures as outlined below. Those serving in vice, associate, and assistant roles to Executive Officers, Deans, and Department Chairs are not covered by these broader reporting responsibilities. IROs that are not denoted with an asterisk (\*) are not obligated to report matters that arise outside of the scope of their employment as outlined below.

The following IROs are required to report to OIE information about Prohibited Conduct:

#### **Administrators**

- Board of Regents members\*;
- President\*;
- Executive Officers/Chancellors\*;
- Those serving in vice, associate, and assistant Executive Officer/Chancellor roles;
- Deans\*;
- Those serving in vice, associate, and assistant Dean roles;
- Department Chairs\*;
- Those serving in associate and assistant Department Chair roles; graduate chairs, and undergraduate chairs; and
- Academic and staff supervisors (i.e., employees who have authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward, or discipline other employees).

#### **Student Life**

- All Student Life staff members responsible for imposing discipline/sanctions/remedies in response to non-academic student misconduct (excluding student staff), including Office of Student Conflict Resolution staff on the Ann Arbor campus; Dean of Students Office staff and Assistant Director, Community Standards and Ethical Development on the Flint

campus; and the Dean of Students and Student Conduct Advisor on the Dearborn campus\*;

- All staff members (including any individual, whether an Employee or not, who serves as a coach of a club sports team), excluding clerical, custodial, maintenance, and dining employees; and
- Resident-Advisors in Housing and Residential Education.

### **Athletics**

- Athletic Director and Head Coaches for Varsity Athletics\*; and
- All athletics staff members, excluding clerical, custodial, maintenance, and dining employees.

### **Office for Institutional Equity**

- OIE Directors (including those serving in associate and assistant roles) and Title IX Coordinators\*; and
- All other OIE staff, excluding clerical employees, interns, and student staff.

### **Division of Public Safety and Security**

- All staff members, excluding clerical, custodial, and maintenance employees.

### **Other**

- All human resource staff members (central, school, college, division, and/or unit) who are responsible for handling employment issues, excluding clerical and transactional employees;
- All faculty and staff members who provide direct oversight of University-related travel abroad experiences for students, including University-sponsored study abroad, research, fieldwork, or internship programs;
- All faculty and staff members who accompany students on University-related travel abroad; or
- Faculty and staff serving as identified advisers to student organizations required by their campus to have a named faculty or staff adviser. For Ann Arbor, this includes faculty and staff serving as identified advisers to Sponsored Student Organizations. For Dearborn, this includes faculty and staff serving as identified advisers to Sponsored Student Organizations and Registered Student Organizations. For Flint, this includes faculty and staff serving as identified advisers to Recognized Student Organizations. Unless designated as an IRO in another role at the University, staff and faculty members

who serve as such advisors are only IROs with respect to concerns they become aware of connected to the student organization they advise.

Except for IROs in those positions delineated with an asterisk (\*) above, IROs are not required to report to OIE when incidents of Prohibited Conduct are communicated/disclosed during a classroom discussion, in an assignment for a class and in discussions outside of class time (e.g., during office hours related to the assignment), or as part of a research project directly associated with the class, even when such disclosure would otherwise be considered within the scope of the IRO's employment.

Except for IROs in those positions delineated with an asterisk (\*) above, IROs also are not required to report information about Prohibited Conduct disclosed: (1) at sexual misconduct public awareness events (e.g., Take Back the Night, candlelight vigils, protests, or survivor speak-outs in which participants may disclose incidents of Prohibited Conduct); or (2) unless otherwise provided in the Institutional Review Board ("IRB")-approved consent, during a non-minor participant's involvement as a subject in an IRB-approved human subjects research protocol ("IRB Research"), even when such disclosure would otherwise be considered within the scope of the IRO's employment.

Confidential Resources and licensed healthcare workers acting in that capacity at UHS and Michigan Medicine are not IROs.

In addition to being designated as an IRO, an individual may also have reporting obligations under the Clery Act as a Campus Security Authority ("CSA"). Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education, but does so in an anonymized manner that does not include the specifics of the crime or any identifying information about persons involved in an incident. For more information about who is a CSA, please refer to the [DPSS website](#).

If you are unsure of whether you are an IRO, please contact OIE to help clarify your role and responsibilities.

When OIE or the Title IX Coordinator receives a report of Prohibited Conduct from an IRO, 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 to the Complainant the process for filing a Formal Complaint.

## **VIII. FORMAL COMPLAINTS**

When OIE or the Title IX Coordinator receives a report of Prohibited Conduct, OIE will in all cases contact the Complainant, if their identity is known, and explain the process for filing a Formal Complaint. A Formal Complaint is submitted by the Complainant to OIE in person, by mail, or by email. The Formal Complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint.

When a Formal Complaint is filed, OIE will evaluate it for a number of things, including whether the Complainant is participating in or attempting to participate in a Program or Activity (e.g., a job applicant, an applicant for admission to an academic program, a recent graduate who is applying to a different academic program at the University, etc.).

The Title IX Coordinator has discretion to file a Formal Complaint even if the Complainant chooses not to, and even if the Complainant chooses not to participate in a University resolution process. In general, the Title IX Coordinator will seek to respect the Complainant's wishes not to file a Formal Complaint. However, when the Respondent is an Employee; when a significant safety concern is presented; or when OIE concludes that failure to pursue a Formal Complaint may fail to meet the University's duties under the law; the Title IX Coordinator will usually sign a Formal Complaint. The factors the Title IX Coordinator will consider are described in greater detail in Section V (B)(2) of the [Student Procedures](#) and Section IV (B) of the [Employee Procedures](#).

After a Formal Complaint has been filed by the Complainant or the Title IX Coordinator, the University will commence the appropriate resolution process.

Where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to a formal or informal resolution process.

## **IX. SUPPORTIVE MEASURES**

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. A Complainant who requests Supportive Measures has the right to file a Formal Complaint, either at the time the Supportive Measure is requested or at a later date. Any Complainant who requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint under this Policy.

When OIE receives a report of possible Prohibited Conduct, they will contact the Complainant to (1) discuss the availability of Supportive Measures; and (2) explain that Supportive Measures are available with or without filing a Formal Complaint. When the report involves a University Employee, the Title IX Coordinator will also explain the University's obligation to investigate or otherwise respond to the report.

An individual may choose to request Supportive Measures from a Confidential Resource, listed below, regardless of whether any complaint is filed with OIE or law enforcement. If Supportive Measures are provided through a Confidential Resource, this action will not prompt any other institutional response.

Supportive Measures may also be requested by and made available to Respondents, witnesses, and other affected members of the University Community.

### **Confidential Resources**

#### Ann Arbor:

Students: [Sexual Assault Prevention and Awareness Center](#) (for Complainants) and [CAPS](#); and

Employees: [Faculty and Staff Counseling and Consultation Office](#) and [Sexual Assault Prevention and Awareness Center](#) (for Complainants)

#### Michigan Medicine:

Employees: [Office of Counseling and Workplace Resilience](#)

#### Dearborn:

Students: [Counseling and Psychological Services](#) and [Ombuds Services](#); and

Employees: [Faculty and Staff Counseling and Consultation Office](#)

#### Flint:

Students: [Counseling and Psychological Services](#) or the [Sexual Assault Advocate in the Center for Gender and Sexuality](#) (for Complainants); and

Employees: [Faculty and Staff Counseling and Consultation Office](#)

To determine the appropriate Supportive Measure(s) to be implemented, the University conducts an individualized assessment based on the facts and circumstances of a situation. Supportive Measures will not be disciplinary or punitive in nature and will not unreasonably burden, or unreasonably interfere with the University Program or Activity pursuits of the other party. Whether a possible Supportive Measure would unreasonably burden the other party is a fact-specific determination that takes into account the nature of the programs, activities, opportunities, and benefits in which an individual is participating.

Examples of Supportive Measures include:

- Academic support services and accommodations, including the ability to reschedule classes, exams and assignments; transfer course sections; modify an academic schedule (typically to separate the Complainant and the Respondent) or withdraw from courses;

- Work schedule or job assignment modifications (for University employment);
- Changes in work or housing location;
- An escort to ensure safe movement on campus;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- Mutual restrictions on contact or communication between the parties, although one-way restrictions may be appropriate to help enforce a preliminary injunction, restraining order, or other order of protection issued by a court, or in other special circumstances;
- Temporarily limiting an individual's access to certain University facilities or activities;
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absence;
- Increased monitoring and security of certain areas of the campus;
- Reassignment of Patient to another physician; or
- Any combination of these measures.

The University will maintain Supportive Measures provided to the Complainant or Respondent as confidential to the extent that maintaining such confidentiality would not impair the University's ability to provide the Supportive Measures.

#### **X. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE**

The University has procedures that provide for emergency removal of Students and Third Parties and administrative leave or suspension for Employees. These processes are described in greater detail in Section VI of the [Student Procedures](#) and Section V of the [Employee Procedures](#).

#### **XI. PROHIBITED CONDUCT**

Prohibited Conduct under this Policy includes Sexual and Gender-Based Misconduct (i.e., Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation and Violation of Supportive Measures) and Title IX Misconduct (i.e., *Quid Pro Quo* Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Intimate Partner Violence and Stalking; as defined by and within the scope of Title IX)

For Employees, in those instances in which reported behavior could constitute both Sexual and Gender-Based Misconduct and Title IX Misconduct, the procedures applicable to Title IX Misconduct generally will be used as long as Title IX Misconduct is under investigation. Please see Section VIII in the [Employee Procedures](#) for additional information. Title IX Misconduct procedures will not be used if, for whatever reason, the Title IX Misconduct is no longer under investigation, and the procedures applicable to Sexual and Gender-Based Misconduct will be used. As set forth in [Section III](#) above, there is only one set of applicable procedures for Students, irrespective of whether the alleged Prohibited Conduct is Sexual and Gender-Based Misconduct or Title IX Misconduct.

Whether someone has engaged in Prohibited Conduct under this Policy will be assessed under a Reasonable Person standard, as defined above in [Section II](#).

#### **A. Consent**

Some forms of Prohibited Conduct involve the issue of Consent. For purposes of this Policy, Consent is a clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions, to engage in Sexual Activity.

For purposes of this section, Sexual Activity refers to any conduct of a sexual nature for which Consent is required under this Policy (i.e., Sexual Contact, as defined below and behaviors identified in the definition of Sexual Exploitation, below, that require consent). A person who initiates Sexual Activity is responsible for obtaining Consent for that conduct. Consent cannot be obtained by Force or in circumstances involving Incapacitation, as defined below.

In evaluating whether Consent was given under this Policy, the issue is:

- Did the person initiating Sexual Activity know that the conduct in question was not consensual?
- If not, would a Reasonable Person who is unimpaired by alcohol or drugs have known that the conduct in question was not consensual?

If the answer to either of these questions is “Yes,” Consent was absent and the conduct is likely a violation of this Policy.

Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may not be sufficient to determine Consent.

Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual Consent to engage in any Sexual Activity each time it occurs. In cases involving prior or current relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Consent.

Consent to engage in a particular Sexual Activity at one time is not Consent to engage in a different Sexual Activity or to engage in the same Sexual Activity on a later occasion.

Consent can be withdrawn by any party at any point. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the Sexual Activity. Once Consent is withdrawn, the Sexual Activity must cease immediately.

Given the inherent power differential in the context of a professional faculty-student, staff-student or supervisor-supervisee interactions, when the Respondent is the faculty member, staff member, or supervisor, the University will generally apply heightened scrutiny to an assertion of Consent.<sup>4</sup>

## **1. Force**

Force includes the use of physical violence, threats, and/or coercion.

Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.

Threats are words or actions that would compel a Reasonable Person to engage in unwanted Sexual Activity. Threats may be implicit or explicit, but must be of such a nature that they would reasonably cause fear. Examples include threats to harm a person physically or to cause a person academic, employment, reputational, or economic harm.

Coercion is the use of an unreasonable amount of pressure that would overcome the will of a Reasonable Person. Coercion is more than an effort to persuade, entice, or attract another person to engage in Sexual Activity. When a person makes clear a decision not to participate in a particular Sexual Activity, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can become coercive. In evaluating whether Coercion was used, the University will consider: (1) the frequency, intensity, and duration of the pressure; (2) the degree of isolation of the person being pressured; and (3) any actual or perceived power differential between the parties in the context of their respective roles within the University.

<sup>4</sup> Separate and apart from the issue of Consent under the Policy, the University has prohibited many faculty-student relationships and staff-student relations under the [Prohibitions Regarding Sexual, Romantic, Amorous, and/or Dating Relationships Between Teachers and Learners SPG 601.22](#) and [Employee-Student Relationships SPG 601.22-1](#), respectively.

## 2. Incapacitation

Incapacitation or Incapacitated means that a person lacks the ability to make informed, deliberate choices about whether or not to engage in Sexual Activity.

Consent cannot be gained by taking advantage of the Incapacitation of another, where the person initiating Sexual Activity knows or reasonably should know that the other is Incapacitated.

A person who is Incapacitated is unable to give Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that Sexual Activity was requested, suggested, initiated, and/or is taking place. A person may be Incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

When alcohol or other drugs are involved, Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily Incapacitated solely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give Consent.

In evaluating Consent in cases of alleged Incapacitation, the University considers:

- Did the person initiating Sexual Activity know that the other party was Incapacitated?
- If not, would a Reasonable Person who is unimpaired by alcohol or drugs have known that the other party was Incapacitated?

If the answer to either of these questions is “Yes,” Consent was absent and the conduct is likely a violation of this Policy.

One is not expected to be a medical expert in assessing Incapacitation by drugs or alcohol. One must look for the common and obvious signs that show that a person may be Incapacitated, regardless of the amount of alcohol or drugs consumed. Although every individual may manifest signs of Incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady manner of walking, combativeness, emotional volatility, vomiting, or incontinence. A person who is Incapacitated may not be able to understand some or all of the following questions: Do you know where you are? Do you know how you got here? Do you know what is happening? Do you know whom you are with?

It is important to be cautious before engaging in Sexual Activity when any person involved has been drinking alcohol or using drugs. The use of alcohol or other drugs may impair an individual's ability to determine whether Consent has been sought or given. If there is doubt about an individual's level of intoxication, the safe thing to do is to refrain from engaging in Sexual Activity. Being impaired by alcohol or other drugs is not a defense to a failure to obtain Consent.

## **B. Sexual and Gender-Based Misconduct**

### **1. Sexual Assault**

Sexual Assault is Sexual Contact that occurs without Consent.

Sexual Contact includes:

- Intentional sexual touching of another person's breasts, buttocks, or genitals, whether clothed or unclothed (including intentional touching with ejaculate);
- Intentional sexual touching with one's breast, buttocks, or genitals (including touching with ejaculate);
- Making a person touch another person or themselves with or on any of these body parts; and/or
- Vaginal, oral, or anal penetration or contact by a penis, tongue, finger, or other object.

### **2. Sexual Exploitation**

Sexual Exploitation is intentional conduct by which an individual takes or attempts to take non-consensual sexual advantage of another for one's own benefit, or to benefit anyone other than the one being exploited.

Examples of Sexual Exploitation include doing any of the following:

- Intentionally or knowingly causing the Incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Consent to Sexual Activity;
- Intentionally or knowingly engaging in voyeurism, including observing or allowing another(s) to observe private sexual or intimate activity (e.g., disrobing, bathing, toileting) without the Consent of the individual(s) being observed, whether from a

hidden location or through electronic means (e.g., Skype or live-streaming of images);

- Intentionally or knowingly recording or photographing, or disseminating or posting images of private sexual or intimate activity and/or a person's intimate parts (including genitalia, groin, breasts and/or buttocks) without Consent;
- Intentionally or knowingly, without Consent, engaging in the recruitment, transportation, harboring, or receipt of a person(s) for the purposes of a commercial sex act(s);
- Intentionally or knowingly demanding financial compensation, Sexual Contact, or some other benefit under threat of disseminating or posting an image, video or other recording, of private sexual or intimate activity and/or a person's genitalia, groin, breasts, and/or buttocks;
- Intentionally or knowingly exposing another person to a sexually transmitted infection without the other's knowledge; and/or
- Intentionally or knowingly, through one's actions, aiding or assisting another person in committing an act of Prohibited Conduct.

### **3. Sexual Harassment**

Sexual Harassment is any unwelcome conduct of a sexual nature, whether verbal, graphic (e.g., pictures and videos), physical, or otherwise, when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, living environment, or participation in any University Program or Activity;
- Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity; and/or
- Such conduct creates a hostile environment. A hostile environment exists when the unwelcome conduct of a sexual nature is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a University Program or Activity or creates an intimidating, hostile, offensive, or abusive environment for that individual's

participation in a University Program or Activity. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior. Although a hostile environment is generally created through a series of incidents, for purposes of this Policy, a severe incident, even if isolated, can be sufficient.

This definition of Sexual Harassment addresses intentional conduct. It may also include conduct that results in negative effects even though such negative effects were unintended. Unwelcome conduct of a sexual nature constitutes Sexual Harassment if a Reasonable Person would consider it sufficiently severe, persistent, or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a University activity or living environment.

Examples of conduct that may constitute Sexual Harassment include but are not limited to:

- Unwanted intentional touching such as kissing, hugging, or sexual touching that otherwise does not typically constitute Sexual Assault, defined above;
- Unwanted sexual advances, including repeated unwanted requests for dates, or repeated unwanted requests for sexual contact;
- Unwanted written, verbal, or electronic statements of a sexual nature, including sexually suggestive comments, jokes, or innuendos;
- Exposing one's genitalia, breasts, or buttocks, to another; and/or
- Touching oneself sexually for others to view.

#### **4. Gender-Based Harassment**

Gender-Based Harassment includes harassment based on actual or perceived sex, sexual orientation, gender identity, gender expression, or pregnancy. Such harassment may include acts of aggression, intimidation, or hostility, whether verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the behavior:

- Adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University Program or Activity;
- Is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity; and/or
- Creates a hostile environment for that individual's participation in a University Program or Activity. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a University Program or Activity, or creates an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living, or participation in a University Program or Activity. Conduct must be deemed severe, persistent, or pervasive from both a subjective and objective standard. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior. Although a harassing hostile environment is generally created through a series of incidents, for purposes of this Policy, a severe incident, even if isolated, can be sufficient to constitute a hostile environment.

Examples of conduct that may constitute Gender-Based Harassment include but are not limited to:

- A series of written, verbal, or electronic statements that disparage a person based on their actual or perceived sex, gender identity, gender expression, sexual orientation, or pregnancy;
- Threats of violence toward an individual based on their actual or perceived identity; within a protected class, or toward an entire sex, gender identity, gender expression, sexual orientation, or pregnancy status as a group; and/or
- Defacing University property, or another individual's property, with symbols or language intended or understood by a Reasonable Person to disparage or threaten a person or group based on sex, gender identity, gender expression, sexual orientation, or pregnancy.

This definition of Gender-Based Harassment addresses intentional conduct. It also may include conduct, which results in negative effects even though such negative effects were unintended. Unwelcome behavior

constitutes Gender-Based Harassment if a Reasonable Person would consider it sufficiently severe, persistent, or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a University activity or living environment.

In some cases, harassment may be based on multiple protected class bases included in the University's Nondiscrimination Policy Notice. In general, harassment involving protected class bases other than actual or perceived gender, sexual orientation, gender identity, or gender expression might fall under other University policies. For matters involving Student Respondents, this would include the Student Code of Conduct in effect at the specific campus. For matters involving Employee or Third Party Respondents, this could include, but is not limited to the [Discrimination and Harassment Policy, SPG 201.89-1](#). Where reported harassment may be based on both sex or gender (including actual or perceived sex, sexual orientation, gender identity, gender expression or pregnancy) and another protected class basis (e.g., race, color, national origin, age, marital status, disability, religion, height, weight, or veteran status), OIE will consult with other University officials, as needed, determine whether the matter is most appropriately addressed under this Policy or another University Policy, or whether different aspects of the matter should be addressed separately under each.

## **5. Sex and/or Gender-Based Stalking**

This Policy addresses stalking on the basis of sex or gender. Stalking occurs when an individual engages in a course of conduct directed at a specific person under circumstances that would cause a Reasonable Persons to:

- Fear for their own safety or the safety of others; or
- Suffer substantial emotional distress.

Course of conduct means two or more acts, including but not limited to, acts in which a person directly, indirectly or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

Where a report of Stalking involves the alleged behavior of a Student, the Title IX Coordinator will determine if the reported conduct meets these criteria. Alleged stalking behavior by a Student that does not fall under

<sup>5</sup> For purposes of this definition of Sex and/or Gender-Based Stalking only, the definition of "Reasonable Person" is a Reasonable Person under similar circumstances and with similar identities to the Complainant.

this Policy may be addressed under the relevant Student Code of Conduct on the [Ann Arbor](#), [Dearborn](#), or [Flint](#) campus, as applicable.

Where a report of Stalking involves the alleged behavior of a faculty or staff member, or Third Party, OIE, in consultation with the applicable Human Resources unit, will determine if the reported conduct meets the above criteria. Alleged Stalking behavior by a faculty or staff member, or a Third Party may be addressed under the [Violence in the University Community Policy, SPG 601.18](#)

## **6. Intimate Partner Violence**

Intimate Partner Violence collectively “IPV”, includes Dating Violence and Domestic Violence.

The term “Dating Violence” means violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship shall be determined based on the reporting party’s statement and with a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

Dating Violence includes, but it is not limited to, sexual or physical abuse or the threat of such abuse.

The term “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Michigan.

## **7. Sex and Gender-Based Discrimination**

Sex and Gender-Based Discrimination is conduct that is based upon an individual’s sex, sexual orientation, gender identity, gender expression, or pregnancy that:

- Adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University Program or Activity; and/or
- Is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity.

Some examples of conduct that may constitute prohibited Sex or Gender Based Discrimination may include, but are not limited to:

- Denying a person access to an educational or employment program based on that person's sex, sexual orientation, gender identity, gender expression, or pregnancy;
- Denying raises, benefits, promotions, and/or other conditions of employment on the basis of a person's sex, sexual orientation, gender identity, gender expression, or pregnancy; and/or
- Preventing any person from using University facilities or services because of that person's sex, sexual orientation, gender identity, gender expression, or pregnancy.

## **8. Retaliation**

Retaliation means an adverse action taken against a person for making a report or Formal Complaint of Prohibited Conduct; being alleged to have committed Prohibited Conduct; assisting or participating, or refusing to participate, in any proceeding under this Policy. Retaliation may include intimidation, threats, coercion, or discrimination including adverse employment or educational actions that would discourage a Reasonable Person from engaging in activity protected under this Policy.

The exercise of rights protected under the First Amendment does not constitute Retaliation. Pursuit of civil, criminal, or other legal action, internal or external to the University does not constitute Retaliation.

Initiating disciplinary proceedings against an individual for making a materially false statement in bad faith in the course of a proceeding under the Policy does not constitute Retaliation under this Policy; however, a determination regarding responsibility, alone, is insufficient to conclude that any party made a materially false statement in bad faith.

## 9. Violation of Supportive Measures

Supportive Measures are discussed in more detail in [Section IX](#). Failure to comply with Supportive Measures as required is a separate and independent violation of this Policy.

### C. Title IX Misconduct

When reported behavior meets the following definition, it may constitute Title IX Misconduct and will be addressed under the procedures applicable to Title IX Misconduct, even if the behavior also may constitute Sexual and Gender-Based Misconduct. If at any point the University determines that the matter does not meet the definition of Title IX Misconduct, the matter will continue to be addressed under the Student Procedures or Employee Procedures, as applicable to Sexual and Gender-Based Misconduct.<sup>6</sup> Conversely, if the University is investigating reported Sexual and Gender-Based Misconduct and receives information that indicates the behavior at issue meets the definition of Title IX Misconduct, the matter will continue under the procedures applicable to Title IX Misconduct.

#### **Title IX Misconduct:**

- Occurs in the United States;
- Occurs in a University Program or Activity; and
- A Formal Complaint must also be filed.
- Is conduct on the basis of sex in which:
  - An Employee conditions the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
  - A Student, Employee, or Third Party engages in unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies another person equal access to a University Program or Activity; or
  - A Student, Employee, or Third Party engages in: Sex or Gender-Based Stalking (defined above); Dating Violence (defined above); Domestic Violence (defined above); or Sexual Assault as defined for purposes of the FBI's Uniform Crime Reporting (NIBRS) program, as below:
    - **Rape:**
      - The carnal knowledge of a person (i.e., penile-vaginal penetration), without the

<sup>6</sup> Consistent with Title IX and applicable law, the University uses the same procedures for all Prohibited Conduct allegations involving Student Respondents. In cases involving Employee Respondents, the University uses one of two procedures, both of which are designed to comply with Title IX and other applicable law while also promoting procedural efficiency and, to the extent practicable, consistency with other University policies, practices and procedures.

Consent of that person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be Complainants under this definition);

- Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity;
- To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of that person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, “private body parts” includes breasts, buttocks, or genitals, whether clothed or unclothed);
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of Consent.