

# **Eastern Michigan University**

## **Report of Title IX Compliance Review**

**March 22, 2019**

Conducted by

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## **Executive Summary: Title IX Compliance Review**

Michigan law requires public institutions of higher education to “have a third party review its Title IX compliance office and related policies and procedures by the end of the 2018-2019 academic year.” M.C.L. § 388.1865b. Eastern Michigan University retained me to conduct a review pursuant to this statute, and this Executive Summary describes my review process and key findings.

I reviewed the following materials: the University’s Sexual Misconduct and Interpersonal Violence Policy; the Interim Student Investigative Procedures Involving Sexual Misconduct and Interpersonal Violence (effective as of November 28, 2018); the Student Investigative Procedures Involving Sexual Misconduct and Interpersonal Violence (effective through November 27, 2018); the Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff, or Visitors; the University’s Title IX investigation reports for all completed formal investigations during school year 2017-2018 and the fall semester of school year 2018-2019; a sample of the University’s files and documentation related to all reports of sexual misconduct and the Title IX office’s responses to those reports during school year 2017-2018 and the fall semester of school year 2018-2019; and a number of documents, templates and worksheets developed by the University’s Title IX implementers for use in their work. I also conducted a number of in-person interviews with University personnel responsible for implementing the University’s Title IX-related policies and procedures. I assessed these materials for compliance with the Title IX statute, regulations, and guidance documents issued by the Department of Education’s Office for Civil Rights.

Based on my review of these materials and my interviews of the University’s Title IX implementers, I determined to the best of my knowledge that Eastern complies with Title IX in all of the following aspects of its sexual misconduct policies and procedures:

- Definition of sexual harassment
- Designation, authority, training, and independence of its Title IX Coordinator
- Training of its Title IX Investigator and other policy implementers
- Designation, training, and response of responsible employees
- Immediate response by the Title IX office to reports of possible sexual misconduct
- Provision of interim measures
- Determination of the appropriate institutional response in cases where complainants request confidentiality or no University investigation
- Implementation and execution of the grievance process for sexual misconduct matters involving student respondents
- Process of Review Panel and appeals for sexual misconduct matters
- Implementation of informal resolution of complaints of possible sexual misconduct
- Efforts in prevention education

My recommendation moving forward is that the University continue with its high level of compliance. I also recommend that the University continue to enhance its handling of employee sexual misconduct matters in the same professional manner in which student matters are handled.

In sum, my review of Eastern Michigan University's Title IX compliance office and related policies and procedures reflects that the institution has made a very meaningful commitment to addressing sexual misconduct in its educational community. This commitment is reflected in the University's highly-trained and highly-competent Title IX Coordinator and Title IX Investigator; in its efforts to provide widespread prevention education and training to the University community; in its detailed student investigation procedures which are fair to both parties; and in the cooperation, respect and support the Title IX office receives from its many campus partners.

## I. Background

Title IX of the Education Amendments of 1972 (“Title IX”)<sup>1</sup> is the landmark federal civil rights law that prohibits educational institutions that receive federal funds from discriminating on the basis of sex. As discussed more thoroughly below, Title IX is implemented through federal regulations and guidance documents issued by the U.S. Department of Education’s Office for Civil Rights (“OCR”).

Among this federal Title IX legal backdrop, many states have enacted statutes to address the issue of sexual misconduct occurring in higher education communities. In effect since October 1, 2018, M.C.L. § 388.1865b regulates how public colleges and universities in Michigan handle sexual misconduct.<sup>2</sup> As explored more fully in subsequent sections of this Report, M.C.L. § 388.1865b requires public institutions of higher education to comply with certain investigative requirements, provide notifications of certain sexual misconduct reports to institutional leadership, and “have a third party review its Title IX compliance office and related policies and procedures by the end of the 2018-2019 academic year.” This Report details my review of Eastern Michigan University’s (“Eastern” or “University”) Title IX compliance office and related policies and procedures pursuant to this statute.

### A. Review Process

My work on the Title IX Compliance Review began in December 2018 and continued through the date of this Report. My work included reviewing the University’s Sexual Misconduct and Interpersonal Violence Policy (“Policy”), the Interim Student Investigative Procedures Involving Sexual Misconduct and Interpersonal Violence (effective as of November 28, 2018) (“Current Student Procedures”), the Student Investigative Procedures Involving Sexual Misconduct and Interpersonal Violence (effective through November 27, 2018) (“Prior Student Procedures”), and the Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff, or Visitors (“Other Procedures”);<sup>3</sup> examining the University’s Title IX investigation reports for all completed formal investigations during school year 2017-2018 and the fall semester of school year 2018-2019 (twenty total); examining a sample<sup>4</sup> of the University’s files and documentation related to all reports of sexual misconduct and the Title IX office’s responses to those reports during school year 2017-2018 and the fall semester of school year 2018-2019 (114 samples selected); and reviewing a number of documents, templates and worksheets developed by the University’s Title IX implementers for use in their work. I also conducted a number of in-person

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<sup>1</sup> 20 U.S.C. §1681 et seq.

<sup>2</sup> M.C.L. § 388.1865b defines sexual misconduct as including intimate partner violence, nonconsensual sexual conduct, sexual assault, sexual exploitation, sexual harassment, and stalking.

<sup>3</sup> The policies and procedures I reviewed are included together as Appendix A.

<sup>4</sup> The University’s documentation of all complaints was extensive, numbering in the several hundred. Based on my preliminary review of the complaint documentation, I determined that I would be able to adequately assess the University’s response by reviewing a large sample size.

interviews with University personnel responsible for implementing the University's Title IX-related policies and procedures. A list of the individuals interviewed is included as Appendix B.

In addition to fulfilling the mandate of M.C.L. § 388.1865b, the University asked me to review in particular the University's Title IX-related systems with respect to matters involving employee respondents. With regard to all of the areas under review, the University asked me to assess not only compliance with Title IX, in accordance with M.C.L. § 388.1865b, but also to consider national best practices.

### **B. Development of Review Criteria**

In reviewing the University's Title IX-related policies and procedures, I first considered Title IX's legal framework which includes the statute, implementing regulations, and guidance documents from OCR. I also considered the mandates contained in M.C.L. § 388.1865b. In addition to these sources, I drew upon my own experiences working on issues of sexual and relationship violence in campus communities as a sex crimes and domestic violence prosecutor in a college town, as both an external and in-house Title IX investigator, and as an interim Deputy Title IX Coordinator. Through my experience working in these fields, I have had the opportunity to observe first-hand the implementation of Title IX policies and procedures; the interaction between different academic and administrative units within institutions; the emotional and physical impacts of sexual and relationship violence on those who have experienced such violence; how individuals who have experienced sexual and relationship violence may navigate systems in place for addressing it; the importance of implementer neutrality and institutional fairness to both parties to the integrity of an institution's process; the need for clear and accurate communication among campus communities; the necessity of campus support systems for complainants<sup>5</sup> and respondents; as well as some common pitfalls institutions have experienced in their attempts to implement effective systems. Thus, I have also drawn from lessons learned during my career to develop a compliance evaluation perspective representing what I believe is the most accurate snapshot of best practices as identified in the law, in policy guidance efforts, and from practice.

It is my hope that the observations detailed below both fulfill the University's mandate to conduct a Title IX compliance review and also assist the University in providing a safe and healthy environment where all Eastern Michigan University students and employees can thrive.

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<sup>5</sup> Language is important, and practitioners in this field use various terms to refer to someone who has experienced sexual misconduct and to someone who is accused of engaging in sexual misconduct. Because this Report addresses sexual misconduct in the educational sphere where the terms "complainant" and "respondent" are typically used, those are the terms I have chosen.

## II. Summary of Legal Framework<sup>6</sup> and Structure of Report

Title IX states that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”<sup>7</sup> Title IX’s prohibition on sex discrimination includes sexual harassment and sexual violence.<sup>8,9,10</sup> Its protections cover students, staff, and faculty, and its prohibition applies to students, employees, and non-affiliated third parties. M.C.L. § 388.1865b also imposes requirements on public institutions of higher education in Michigan, as noted in the sections that follow.

The regulation of institutions’ treatment of sexual misconduct is wide-ranging. Broadly stated, if a school knows or reasonably should know about sexual misconduct, the school must take immediate action to end the misconduct, prevent its recurrence, and remedy its effects.<sup>11</sup> As pertinent to the scope of review envisioned by M.C.L. § 388.1865b and set forth in more detail below, Title IX requires schools to designate a Title IX coordinator<sup>12</sup> with appropriate training, authority and independence,<sup>13</sup> and adopt grievance procedures, implemented by individuals with appropriate training,<sup>14</sup> that are prompt and equitable<sup>15</sup> and that provide for the adequate, reliable and impartial investigation of complaints.<sup>16</sup>

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<sup>6</sup> This section provides a summary of Title IX’s requirements for institutions and should not be construed as a comprehensive analysis of institutions’ Title IX obligations. This summary is drawn from three sources: (1) the Title IX statute, 20 U.S.C. § 1681 et seq., (2) Title IX’s implementing regulations, 34 C.F.R. § 106, and (3) guidance documents from OCR. OCR has provided interpretive guidance to schools via significant guidance documents which assist schools in understanding and implementing Title IX. The most notable of these guidance documents that are in effect as of the date of this Report are the 2001 Revised Sexual Harassment Guidance (“2001 Guidance”), the 2015 Dear Colleague Letter on Title IX Coordinators (“2015 DCL”), the 2015 Title IX Resource Guide (“2015 Resource Guide”), and the September 2017 Q&A on Campus Sexual Misconduct (“2017 Q&A”). Throughout this Report, the term “Title IX” is used to refer to the regulatory standards set forth in all three of these sources.

<sup>7</sup> 20 U.S.C. § 1681.

<sup>8</sup> 2017 Q&A, p. 1.

<sup>9</sup> While typically the terms “sexual harassment” or “sex discrimination” are used in legal writing about Title IX, many institutions’ Title IX systems refer to “sexual misconduct.” For ease of reference and to use consistent language throughout the Report, I have used the term “sexual misconduct” to refer to all conduct prohibited under Title IX.

<sup>10</sup> Title IX’s prohibition on sex discrimination in education applies to a broad range of educational programs and activities, such as housing, admissions, athletics, and other areas, as set forth in detail in the Title IX regulations. Like many institutions, Eastern’s Title IX compliance office focuses on providing resources for individuals who may have experienced sexual misconduct and investigating and adjudicating claims of sexual misconduct; the office does not oversee every single aspect of Title IX. Because of the office’s focus and per the words of M.C.L. § 388.1865b, this compliance review is limited to the aspects of Title IX compliance that fall within the jurisdiction of Eastern’s Title IX compliance office.

<sup>11</sup> 2001 Guidance, pp. 10, 15.

<sup>12</sup> 34 C.F.R. § 106.8(a).

<sup>13</sup> 2015 DCL; 2015 Title IX Resource Guide, pp. 2-3.

<sup>14</sup> 2001 Guidance, p. 13.

<sup>15</sup> 34 C.F.R. § 106.8.

<sup>16</sup> 2001 Guidance, p. 20.

The Report that follows is organized by the main relevant compliance areas of Title IX that fall within the scope of the review mandated by MCL § 388.1865b. In each section below, I explain the applicable legal requirements and my observations regarding Eastern's compliance.

### **III. Definition of Sexual Harassment**

#### **A. Compliance Framework**

According to the guidance documents currently in effect, prohibited sexual harassment under Title IX is defined as unwelcome conduct of a sexual nature that denies or limits, on the basis of sex, the person's ability to participate in or receive benefits, services, or opportunities of the institution.<sup>17</sup> This includes sexual harassment commonly referred to as quid pro quo sexual harassment and hostile environment sexual harassment.<sup>18</sup>

#### **B. Observations**

The Policy provides an extensive discussion of sexual harassment, including a definition, an explanation of what a hostile environment is, and numerous examples of possible sexual harassment. The Policy defines sexual harassment as follows:

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

[1] Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or

[2] Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. 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, but not limited to: the frequency, nature, severity, location, duration and context of the conduct; whether the conduct implicates concerns related to academic freedom or protected speech.

I find the University's definition of sexual harassment is substantially in compliance with Title IX requirements.

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<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.*

## IV. Title IX Coordinator

### A. Compliance Framework

Title IX regulations require institutions to identify a Title IX coordinator, who is the employee responsible for coordination of the institution's compliance with Title IX.<sup>19</sup> An institution's Title IX coordinator must be independent and not have any conflicts of interest;<sup>20</sup> the person should therefore report directly to the institution's senior leadership.<sup>21</sup> Institutions must provide their "full support" to their Title IX coordinators, which includes making the role visible in the community and ensuring the person is adequately trained and informed.<sup>22</sup> In addition, institutions are prohibited from discriminating, intimidating, threatening, coercing for the purpose of interfering with the performance of their job responsibilities, and otherwise retaliating against their Title IX coordinator.<sup>23</sup>

An institution's Title IX coordinator must have comprehensive knowledge regarding Title IX.<sup>24</sup> Title IX coordinators should be trained on the different facets of Title IX, including regulatory provisions, applicable OCR guidance, and their institution's Title IX policies and grievance procedures.<sup>25</sup>

### B. Observations

Eastern's Title IX Coordinator is Dr. Melody Werner, who has been in the position since June 2015. From June 2015 through the 2017-18 academic year, Dr. Werner oversaw all sexual misconduct matters involving student respondents; matters involving employee respondents during that time were handled by the University's Office of Diversity and Affirmative Action. Beginning with the 2018-19 school year, the University moved sexual misconduct matters involving employee respondents to Dr. Werner's oversight. Dr. Werner reports directly to the Associate Vice President of Student Affairs, Dr. Calvin Phillips. Dr. Werner also has a "dotted line" to the University's President, which means that if Dr. Werner needs direct access to the President for any reason, she is authorized to do so. Eastern's President also meets quarterly with Dr. Werner.

Over the course of her time as Title IX Coordinator, Dr. Werner has been involved in drafting and revising the University's sexual misconduct policy and processes. She created uniform intake and investigative procedures and oversaw the hiring of the University's first full-time Title IX Investigator, Anika Anai-Williams. My review reflects that, as the University's first

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<sup>19</sup> 34 C.F.R. § 106.8(a).

<sup>20</sup> 2017 Q&A, p. 4.

<sup>21</sup> 2015 DCL, pp. 2-3.

<sup>22</sup> *Id.* at 4-7.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.*



full-time Title IX Coordinator, Dr. Werner has professionalized every aspect of how the University prevents, investigates, and redresses sexual misconduct.

Dr. Werner has adequate independence and authority in her role. There is no evidence or suggestion that Dr. Werner has any conflicts of interest as the University's Title IX Coordinator. In addition, based on my conversations with her and other Title IX implementers, it is clear that her campus partners respect her and understand the legal mandates of her work. Dr. Werner's campus partners complimented her efficiency, good communication skills, and accessibility. Under Dr. Werner, the implementation of interim measures runs smoothly. If an interim measure involves an academic accommodation, Dr. Werner emails the Provost's Office, and within minutes the Provost's Office coordinates that interim measure with the relevant professor. As this occurs, Dr. Werner prioritizes the privacy of the student involved, and the professor is told only that the accommodation is sought by the Title IX office without any other details about the matter. If the interim measure involves a change in housing, Dr. Werner contacts the Associate Director of Housing, Jeff Kortman, who also promptly acts upon Dr. Werner's request. If the matter involves an employee respondent, of which there have been few since Dr. Werner assumed oversight of employee sexual misconduct, Dr. Werner works directly with the department head to arrange interim measures. For some interim measures, like providing safety escorts on campus, Dr. Werner works with the University's Department of Public Safety. My review reflects that all of these systems work well, inter-departmental communication is excellent, and the parties in sexual misconduct matters are well-served by Dr. Werner's prominence and respect on campus.

Dr. Werner is supported in her work by the Case Review Team, which—in addition to Dr. Werner and Ms. Anai-Williams—is comprised of members from the Office of the General Counsel, the University's Executive Director of Public Safety and Chief of EMU Police, the Director of Community Wellness and Responsibility, and the Director of Diversity and Affirmative Action. The Case Review Team meets every one to three weeks. Members of the Case Review Team discuss pending matters as necessary, notify other members of the team of issues that may arise, discuss potential changes to policies and procedures, and serve as a sounding board for Dr. Werner as necessary. The Case Review Team provides Dr. Werner with robust support and input, which assists her in coordinating the University's Title IX policy and procedures effectively.

Dr. Werner has received extensive training related to Title IX and campus sexual misconduct. Since she began as the University's Title IX Coordinator three-and-a-half years ago, Dr. Werner has attended over twenty training programs. These programs include national Title IX training programs offered by nationally-recognized organizations and individuals. She has both attended training programs hosted off-site and brought national speakers and trainers to Eastern. Her trainings have included the following topics: Title IX compliance, conducting investigations (including advanced modules), trauma-informed practice, forensic experiential interviewing, maintaining fairness and equity among the parties, documentation and

recordkeeping for sexual misconduct processes, the University's policies and procedures, and the dynamics of sexual violence.

I find the University is substantially in compliance with the Title IX coordinator-related requirements of Title IX. As the University moves forward with Dr. Werner now coordinating matters involving employee respondents, the University may want to consider formalizing Dr. Werner's connection to, and support from, its human resources arm. This could take the form of adding a human resources representative to the Case Review Team, adding a dotted reporting line to human resources leadership, or some other arrangement that creates a bridge between Dr. Werner's work and the human resources department. Dr. Werner will benefit from more regular interactions with the University's human resources staff. As noted in subsequent sections in this Report, it is my recommendation that the University examine its Title IX systems and the labor union bargaining agreements to which the University is a party in order to ensure the Title IX grievance process coordinates rather than conflicts with any agreement terms regarding employee discipline. Formalizing Dr. Werner's relationship with human resources will serve to enhance that coordination.

## **V. Response to Reports of Sexual Misconduct**

### **A. Compliance Framework**

#### **1. Responsible Employees**

Reports of sexual misconduct may be made to an institution in a number of ways, including through a "responsible employee." An institution is deemed to have notice of sexual misconduct if a responsible employee is aware of the complaint.<sup>26</sup> A responsible employee is any employee who has the authority to take action to redress the misconduct, who has the duty to report any form of misconduct to appropriate institutional officials, or a person who a student could reasonably believe has this authority.<sup>27</sup> Because of the important role of responsible employees, institutions are required to train responsible employees so that they know how to identify harassment, how to respond appropriately, and that they are obligated to report sexual misconduct to the institution's Title IX coordinator.<sup>28</sup>

#### **2. Immediate Response**

Upon notice of sexual misconduct, a school must take immediate and appropriate steps to investigate or otherwise determine what occurred.<sup>29</sup> The appropriate steps may include implementing interim measures before the final outcome of an investigation.<sup>30</sup> Interim measures may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact

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<sup>26</sup> 2001 Guidance, p. 13.

<sup>27</sup> *Id.* at 13.

<sup>28</sup> *Id.*

<sup>29</sup> 2001 Guidance, p. 15.

<sup>30</sup> *Id.* at 16.

between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.<sup>31</sup> In addition, institutions must notify each individual who reports having experienced sexual assault by a student or employee that the individual has the option to report the matter to law enforcement, to the university, to both, or to neither, as the individual may choose.<sup>32</sup>

### 3. **Requests for Confidentiality/No Investigation**

If a student who experienced sexual misconduct insists their name not be revealed to the potential respondent, the institution is required to take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.<sup>33</sup> In evaluating whether it can honor a student's request for confidentiality, Title IX guidance instructs schools to consider the following factors: the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.<sup>34</sup>

#### **B. Observations**

##### **1. Responsible Employees**

The Policy states that all employees except confidential employees<sup>35</sup> are responsible employees. Dr. Werner provides responsible employee training to all new employees when they are hired, including annual training for new resident advisors ("RA"). Dr. Werner also provides on-request training to all campus constituencies. Because of their role and proximity to so many students, RA's tend to receive a large percentage of the disclosures of possible sexual misconduct. RA's receive in-depth training on being a responsible employee at the beginning of each school year: in addition to Dr. Werner's training, Mr. Kortman follows up with skill-building modules in which the new RA's practice handling a disclosure of possible sexual misconduct. New desk assistants in the residence halls receive their own responsible employee training. Additional responsible employee trainings are held in housing when new employees join the unit, approximately once a month. I reviewed the sexual misconduct and responsible employee training materials used by Mr. Kortman, and I find them to be excellent training tools.

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<sup>31</sup> 2017 Q&A, p. 2.

<sup>32</sup> M.C.L. § 388.1865b (1)(d).

<sup>33</sup> 2001 Guidance, p. 17.

<sup>34</sup> *Id.* at 17-18.

<sup>35</sup> Confidential employees are generally those employees who provide services in the medical and mental health fields.

Dr. Werner also provides annual, in-person responsible employee training to all staff in the University's Athletic Department. This training is sometimes provided in conjunction with the University's Executive Director of Public Safety and Chief of EMU Police.

I randomly selected and then reviewed 115 reports of possible sexual misconduct received by the Title IX office since September 2016. The reports, and actions taken in response to those reports, are recorded in the software system used by the Title IX office and other student affairs units. While some of those reports document complaints that were made directly to the Title IX office by the complainant, a large number of these complaints were submitted by responsible employees who were fulfilling their mandate to report all possible sexual misconduct to the University's Title IX Coordinator. My review reflected that the reports from the responsible employees were timely (usually within twelve to twenty-four hours of the disclosure) and contained as much information as the responsible employee had at the time. Housing leadership told me that employees who fail to fulfill the mandatory reporting duty of responsible employees are terminated.

Members of the Eastern Michigan University Police Department ("EMU PD") are also responsible employees, and they, like RA's, often receive an initial report of a sexual misconduct from a complainant. EMU PD patrol officers take an initial basic report, and as soon they determine the nature of the complaint, EMU PD immediately emails or texts Dr. Werner to make her aware of the complaint and informs her if the police are following up to investigate. EMU PD put together a helpful packet of information that is provided to every person who makes a complaint of possible sexual misconduct. The packet includes a two-and-a-half page FAQ list about Title IX at the University; a three-page form containing information regarding medical, mental health, and legal services for sexual assault developed to conform to the requirements of the State of Michigan laws that pertain to sexual assault and domestic violence victims' rights to access information (M.C.L. § 764.15c and M.C.L. § 780.753); a two-page information form entitled "Sexual Assault Evidence Kit Testing in Michigan: What Victims Have the Right to Know" (pursuant to M.C.L. § 752.956(3)); and a thirty-seven page, in-depth booklet entitled "Eastern Michigan University Sexual Assault Survivor Handbook," which was produced by the University's SMART Project. EMU PD also has specially-trained Special Victims Unit investigators who conduct the police investigation.

Based on my interviews, my review of responsible employee training materials, and my review of 115 reports of possible sexual misconduct, I find that the University is substantially compliant with the responsible employee-related mandates of Title IX.

## **2. Immediate Response**

For reports of possible sexual misconduct that are made directly in person or by phone call to the Title IX office by the complainant, Dr. Werner meets with the potential complainant to conduct a Title IX Assessment (discussed immediately below) to discuss the options and resources available. For reports the Title IX office receives via the on-line reporting system,

Dr. Werner responds by sending an email to the potential complainant. Dr. Werner typically sends that introductory email within twenty-four hours or less of receiving the report. Dr. Werner's emails, which have a kind, calm and friendly tone, offer assistance and support from the Title IX office, offer to provide information about the University's sexual misconduct procedures, offer to meet with the person, and provide Dr. Werner's contact information. If the person does not respond to Dr. Werner's initial outreach, Dr. Werner typically sends one to three more follow-up emails, depending on the circumstances and the information available to Dr. Werner at that time. All of Dr. Werner's outreach attempts are documented using the Title IX office's student affairs software system.

Through Dr. Werner, the University's response to reports of sexual misconduct is to respond in a prompt manner with accessible and inviting language for the purpose of trying to determine what occurred and to determine if the potential complainant needs assistance from the University. I was particularly struck by the calm directness and simplicity of Dr. Werner's outreach emails. Rather than containing legalese or off-putting formal language, Dr. Werner's outreach emails use everyday language to communicate appropriate compassion, availability for assistance, and offers to provide more information. Students responded well to Dr. Werner's letters; in a number of matters I reviewed, I saw responses from students expressing thanks for Dr. Werner's outreach but informing her that they were not seeking any assistance or interventions from the Title IX office. My review reflects that the University is substantially compliant with the Title IX requirements related to its immediate response to reports of possible sexual misconduct.

I do note that the Title IX office should consider adding some information to its initial outreach letters. Specifically, to comply with MCL § 388.1865b, the University is required to inform those who report sexual misconduct of their right to report the matter to the police as well as the school. My review made clear that if the person ultimately meets with Dr. Werner, Dr. Werner informs them at that time of their reporting options. However, as is the case at many institutions, many potential complainants choose not to meet with the Title IX Coordinator. While the simplicity of Dr. Werner's emails is one of the positive aspects I noted, I nonetheless suggest that Dr. Werner either add a line in her initial outreach emails about the person's right to report to the police, or that she make a regular practice of attaching a copy of (or including a link to) the Policy, which contains that reporting information as well as other important information about the school's manner of addressing sexual misconduct.

### **3. Title IX Assessment**

At Dr. Werner's first in-person meeting with a potential complainant, she conducts a Title IX Assessment in accordance with section IV.B. of both the Current Student Procedures and the Prior Student Procedures.<sup>36</sup> At this meeting, Dr. Werner covers a range of important

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<sup>36</sup> While the Title IX Assessment stage is not explicitly set forth in the Other Procedures, Dr. Werner's rule of thumb in the few employee respondent matters she has coordinated has been to meet with the parties and have a

information. Per both versions of the Student Procedures, the purpose of the meeting is to do the following:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement;
- Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the Complainant of the importance of the preservation of evidence;
- Provide the Complainant with information about on-and off-campus resources;
- Notify the Complainant of the available interim measures;
- Provide the Complainant with an explanation of the procedural options, including informal resolution and formal resolution;
- Inform the Complainant and the Respondent they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the complaint, and that the advisor may accompany them to any meeting or proceeding under this policy;
- Assess for pattern evidence or other similar conduct by the Respondent;
- Explain the University's policy prohibiting retaliation.

For matters that proceed to an investigation, Dr. Werner also conducts an initial meeting with the respondent, who, along with the complainant, also gets written notice of the allegations. In her meeting with each party, Dr. Werner goes over a form entitled "Information for Complainants and Respondents," which is included as Appendix C. Parties in an investigation also get a copy of this form to take home with them. This form provides important detailed information about the investigative process, including the parties' right to an advisor, the availability of interim measures, a statement of the University's prohibition on retaliation (which is also included in the Policy), and a list of support resources.

#### **4. Interim Measures**

The Other Procedures, the Current Student Procedures and the Prior Student Procedures all address interim measures. First, the Other Procedures state as follows:

The University will take interim measures as necessary to prevent the Complainant from being subjected to discrimination or harassment during the investigative process. The

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conversation similar to the information covered in the Title IX Assessment as described in the Current and Prior Student Procedures.

University will take steps to ensure that any interim measures taken do not adversely affect the Complainant.

Turning to the Student Procedures, because the Current and Prior Student Procedures contain identical information on interim measures, they are discussed together in this subsection. Section III. of the both Student Procedures addresses interim measures more extensively than the Other Procedures. It provides that the following interim measures are available to both a complainant and a respondent:

- Imposition of “No-Contact” directives for any or all parties;
- Change in class schedule, including the ability to transfer course sections or drop a course without penalty;
- Rescheduling of exams and assignments;
- Change in work schedule or job assignment;
- Change in living arrangements;
- Limiting an individual or organization’s access to certain University facilities or activities pending resolution of the matter;
- Providing an escort to ensure safe movement between classes and activities;
- Providing counseling services and assistance in setting up an initial appointment;
- Providing academic support services, such as tutoring;
- Removal from campus housing in accordance with the policies and procedures of the University;
- Other remedies which are deemed appropriate.

The Student Procedures provide that interim suspensions may also be imposed, following certain processes.

As noted above in the section on Title IX coordinator-related mandates, Dr. Werner has established strong professional relationships with her campus partners and efficient systems for implementing interim measures. Interim measures in the form of assistance are offered to all potential complainants at the University, regardless of whether the person pursues a formal investigation. In my review of the documentation of reports of possible sexual misconduct and the Title IX office response, I reviewed numerous instances of Dr. Werner coordinating assistance for potential complainants whose complaints did not result in formal investigations, including referrals to the University’s counseling center, extensions in class assignments, and other accommodations.

In matters for which the University conducts a full investigation, Dr. Werner offers interim measures to both the complainant and the respondent. Based on my review of the University’s procedures and documentation of responses to reports, I find the University is substantially in compliance with Title IX requirements regarding interim measures.

## 5. Requests for Confidentiality/No Investigation

At Eastern during the Compliance Review period, a number of potential complainants requested their identity not be disclosed to the potential respondent;<sup>37</sup> an even larger number of potential complainants requested no investigation by the University's Title IX office. This dynamic, which, based on my experience, is common at institutions of higher education across the country, presents Dr. Werner with a choice of whether to heed the potential complainant's wishes for no investigation or whether, based on other safety or policy concerns, the University must proceed with some form of intervention. To make this determination, Dr. Werner considers the factors set forth in section IV.B. of the Current and Prior Student Procedures:

- The seriousness of the conduct;
- The roles of the Complainant and Respondent;
- Whether there have been other complaints or reports of harassment or misconduct against the Respondent;
- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence;
- Whether the Respondent has a history or arrests or prior conduct violations (At Eastern Michigan or elsewhere) indicating a history of violence;
- Whether the alleged Respondent threatened further sexual violence or other violence against the student or others;
- Whether the sexual violence was committed by multiple individuals;
- Whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances;
- Whether sexual violence was perpetrated with a weapon;
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

These factors include the factors set forth in the 2001 Guidance. The University's procedures also state that when a potential complainant requests confidentiality or no investigation, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request not share identifying information or pursue an investigation, but its ability to do so may be limited by that request. This statement mirrors the language of the 2001 Guidance. I find the University is substantially in compliance with Title IX's requirements regarding complainants who request confidentiality or no University investigation.

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<sup>37</sup> A request that a complainant's identity not be disclosed to the potential respondent functions, in practice, as a request that the University not take disciplinary action against the potential respondent. A respondent at a public institution has a Due Process right to be informed of the allegations and to respond. It would be difficult for a respondent to exercise those rights if the University withheld the complainant's identity.



## VI. Grievance Procedures and Investigations of Complaints

### A. Compliance Framework

Title IX requires that institutions adopt grievance procedures that are prompt and equitable and that provide for the adequate, thorough and impartial investigation of complaints.<sup>38</sup> The implementers of those procedures must be adequately trained.<sup>39</sup> Grievance procedures may include informal mechanisms for resolving complaints, but for sexual assault complaints, mediation is not permitted, even on a voluntary basis.<sup>40</sup>

OCR guidance documents set forth a number of elements that must be present for a process to be considered prompt and equitable. Policies must apply to complaints of sexual misconduct carried out by employees, students, and third parties;<sup>41</sup> designate reasonably prompt<sup>42</sup> time frames for the major stages of the process.<sup>43</sup> The process must balance the rights of the complainant and the respondent, and the determination of whether a person violated an institution's sexual misconduct policy must be made using either the preponderance of the evidence standard or the clear and convincing standard.<sup>44</sup> Institutions are not permitted to limit the choice of advisor for the parties, but may impose equal restrictions regarding the extent to which the advisor may participate in the proceedings.<sup>45</sup>

Both parties should be given an equal opportunity to present witnesses and other evidence, and both parties should receive notice of the outcome of the complaint.<sup>46</sup> Title IX guidance documents specifically address the Constitutional guarantee of Due Process granted to students and employees of public institutions. Guidance documents provide that the procedural rights established by an institution pursuant to Title IX must be interpreted consistent with any federally guaranteed Due Process rights involved in a complaint proceeding.<sup>47</sup>

The decision-maker in a sexual misconduct investigation must make findings of fact and conclusions as to whether the facts support a finding of responsibility for each allegation of misconduct alleged.<sup>48</sup> For investigations involving medical issues occurring at public institutions, no medical experts that have an actual or apparent conflict of interest may be

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<sup>38</sup> 2001 Guidance, p. 20.

<sup>39</sup> *Id.* at 21.

<sup>40</sup> *Id.* The 2017 Q&A appears to permit all forms of informal resolution on a voluntary basis for all forms of sexual misconduct. However, many institutions continue to heed the prohibition on using mediation in sexual assault matters contained in the 2001 Guidance, which I recommend as a current best practice given that the two guidance sources appear to be in conflict.

<sup>41</sup> *Id.* at 20.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> 2017 Q&A, p. 5.

<sup>45</sup> *Id.*

<sup>46</sup> 2001 Guidance, p. 20.

<sup>47</sup> *Id.* at 22.

<sup>48</sup> 2017 Q&A, p. 5.

used.<sup>49</sup> When the institution issues reports of investigations to the parties, the institutions must issue identical reports to complainants, respondents, and administration.<sup>50</sup>

## **B. Observations**

### **1. Written Policies and Procedures**

Eastern's substantive information about sexual misconduct, including scope of policy, definitions, prohibitions, and other information is contained in the Policy, which applies to all members of the University community. The University's grievance procedures are set forth in its Current and Prior Student Procedures<sup>51</sup> for complaints against students and in the Other Procedures for all other respondents. Both the Student Procedures (in section I.) and the Other Procedures (on page 4) provide notice of where complaints may be filed. Together, the Student Procedures and the Other Procedures apply to complaints alleging sexual misconduct carried out by employees, students, or third parties.

Both the Student Procedures and the Other Procedures contain provisions regarding informal resolution of complaints. According to Section IV.C. of the Student Procedures, informal resolution is available only if the Title IX Coordinator has determined it may be appropriate in the Title IX Assessment. The Student Procedures provide that participation in informal resolution is voluntary, but that Informal Resolution may not be used in cases involving sexual assaults. The Other Procedures also provide that informal resolution is voluntary, but that informal resolution will not be used in cases involving sexual assault.

With respect to formal investigations, both the Student and the Other Procedures state that the parties will have the right to present witnesses and other evidence. The Student Procedures are particularly detailed and comprehensive with respect to the steps of an investigation and the guidelines for the parties. All sets of procedures include a reference to the timeframes within which investigations will normally be concluded: the Current Student Procedures provide that the University will make every effort to resolve investigations that involve a hearing within 120 days, and for those that do not involve a hearing, within 100 days. The Prior Student Procedures provided that the University would make every effort to complete investigations within 60 days. The Student Procedures also set forth timeframes for several components of the investigative process (e.g., parties have two days to review the Draft Summary, extensions of three days are available, investigator begins preparation of the Preliminary Report at the end of the two-day review period, parties may elect a Hearing within two days of reviewing the Preliminary Report). The Other Procedures provide that the University will strive to complete investigations within 90 days. While both the Student Procedures and the Other Procedures permit the parties to have an advisor/support person during the investigation, the Student Procedures permit that person to be an attorney; the

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<sup>49</sup> M.C.L. § 388.1865b (1)(b).

<sup>50</sup> M.C.L. § 388.1865b (1) (c)

<sup>51</sup> In this section, where the Current and Prior Student Procedures are identical, I use the more general "Student Procedures" to refer to both of them.

Other Procedures explicitly prohibit the parties from having an attorney present during the investigation.

The Student Procedures provide that the parties will receive written notice that an investigation has been initiated, and the notice will include a description of the complaint, the potential policy violations at issue, the name and contact information of the assigned investigator, and a copy of the investigative procedures. Determinations of responsibility under the Student Procedures are made according to the preponderance of the evidence standard.

Under the Student Procedures, the parties in an investigation are provided with a Draft Summary,<sup>52</sup> which summarizes all of the interviews conducted and includes all the evidence collected. The parties have an opportunity to review the Draft Summary and provide comment or additional evidence to the investigator.

At the next stage of the grievance process, the Current Student Procedures and the Prior Student Procedures differ.

#### **a. Prior Student Procedures**

The Prior Student Procedures, which were in effect during the majority of the timeframe under Title IX compliance review, provided that following the parties' review of the Draft Summary, the investigator would prepare a final report, which included an investigative finding with respect to each allegation of sexual misconduct, and the rationale for each finding. Following the completion of the final report, the Title IX Coordinator assigned the matter to a Review Panel comprised of three University employees with no prior experience with the parties, the witnesses, or the incidents in question. The Review Panel then met to determine whether: (1) The investigation was conducted in a fair, impartial, and reliable manner; (2) The information is sufficient to support the factual findings; and (3) There is a rational basis, applying a preponderance of the evidence standard, for the recommended finding(s) of responsibility or no responsibility. The Review Panel then either affirmed or rejected the investigator's finding(s). If the final report was rejected in whole or part, the Review Panel had several options for subsequent proceedings.

Under the Prior Student Procedures, if a finding of responsibility was affirmed, the Review Panel then determined the appropriate sanctions. The Prior Student Procedures provide that the Review Panel shall consult with the Title IX Coordinator in making its determinations with respect to affirming the final report and the imposition of sanctions. The Prior Student Procedures set forth the range of possible student sanctions that may be imposed, as follows: warning, housing restriction(s), assessment and treatment, restrictions on participation or use, probation, deferred suspension, suspension from the University, revocation or withholding of

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<sup>52</sup> While the procedures to this point are the same in the Current and Prior Student Procedures, this stage was called the "Draft Investigation Report" in the Prior Student Procedures.

diploma and degree, permanent dismissal, and any other sanctions as may be appropriate at the discretion of the University.

The Prior Student Procedures provide that the parties will simultaneously receive written notice of the outcome, the sanction, and the rationale for both. Either party has the right to appeal the outcome and/or sanction. Dr. Phillips conducted appeals, and his review was limited to determining whether any of the following grounds for appeal exist: (1) New information that could affect the finding of the investigator or Review Panel and was not available through the exercise of due diligence at the time of the investigation; (2) A deviation from University policy or procedure that materially affected the outcome; (3) Sanctions too harsh or too lenient. Dr. Phillips' decision on appeal was final.

### **b. Current Student Procedures**

Under the Current Student Procedures, following the Parties' review of the Draft Summary, the investigator prepares a Preliminary Report, which contains a summary of all of the evidence collected, notations regarding the Parties' feedback on the Draft Summary, and an analysis of that evidence as it relates to the Policy. The Preliminary Report does not contain a finding. The Parties then have an opportunity to review the entire Preliminary Report.

The Parties next have the opportunity to choose to participate in a Hearing. The Current Student Procedures set forth in detail the circumstances in which a Hearing will and will not take place. If no Hearing takes place, the investigator finalizes the Preliminary Report by adding a written finding as to whether the Policy was violated, and then submits the final report to the Review Panel. The Review Panel process is identical to the Review Panel process in the Prior Student Procedures. The Current Student Procedures also contain a list of possible sanctions that is identical to the list in the Prior Student Procedures.

If a Hearing takes place, the Title IX Coordinator assembles a Hearing Panel comprised of three University employees who have no prior experience with the parties, witnesses, or incidents in question. The Current Student Procedures set forth in detail the hearing scope and process. Following a Hearing, the Hearing Panel is responsible for issuing a Notice of Outcome and for determining appropriate sanctions, if any.

The appeal process under the Current Student Procedures is identical to that in the Prior Student Procedures.

### **c. Other Procedures**

The Other Procedures, which govern the investigative process for non-student respondents, are much less detailed than the Student Procedures. They provide that the investigator shall determine if there is unlawful discrimination based on the preponderance of the evidence standard, reflecting that non-student respondent investigations are conducted through a single investigator model. The Other Procedures do not provide for an appeal. The Other

Procedures state that potential remedies include “discipline up to and including discharge” for the respondent.

#### **d. Observations Regarding Procedures as Written**

The University appropriately modified its student grievance procedures to include a hearing following the ruling in *Doe v. Baum et al.*, 903 F.3d 575 (6<sup>th</sup> Cir. 2018), which mandated live hearings with cross examination at public higher education institutions in student investigations involving credibility determinations and where the respondent faced suspension or expulsion. This modification to a hearing process comports with the current Sixth Circuit interpretation of Due Process rights in sexual misconduct grievance proceedings. Based on my review of the Current and Prior Student Procedures, I find the University is substantially in compliance with Title IX with respect to its grievance process for student respondents, both before and after *Doe v. Baum* was issued.

The University has already undertaken changes with respect to its grievance procedures for non-student respondents by moving those matters to the jurisdiction of its Title IX office. This move has created more consistency across University sexual misconduct investigations. I recommend the University continue to move forward in this integration by considering a revision to its grievance procedures as they apply to non-student respondents. The University may want to incorporate some aspects of its highly-developed Student Procedures into the non-student procedures, as I find the Student Procedures reflect substantial compliance with Title IX as well as many of the national best practices that I am familiar with regarding written investigative procedures. I note that in revising its non-student respondent procedures, the Title IX office should consult with representatives in the University staff and academic human resources departments regarding the numerous bargaining agreements to which the University is a party. Several of those agreements contain terms (such as timeframes for investigations, requirements for treatment of employees pending an investigation, etc.) that could impact the investigative process; it will be critical for those who are revising the Other Procedures to understand any such terms and make sure any revised non-student respondent procedures do not run afoul of them while at the same time making sure that that any revised procedures comply with Title IX.

## **2. Investigations**

Sexual misconduct investigations at Eastern are conducted by Title IX Investigator Anika Anai-Williams. Ms. Anai-Williams, an attorney, has extensive relevant experience and training. Her knowledge of the dynamics of sexual and interpersonal violence stems, in part, from her prior position as a legal advocate at a sexual assault and domestic violence advocacy organization. Since joining Eastern, Ms. Anai-Williams has participated in numerous high-quality trainings on Title IX investigations, including multi-level civil rights investigation training modules provided by a nationally-recognized training organization. She has achieved investigator certification from several reputable certifying organizations, and has attended many other investigative training programs. I find that Ms. Anai-Williams’ advanced level of

training and experience satisfies Title IX's requirement that those handling these matters receive appropriate training.

Ms. Anai-Williams is the University's first dedicated full-time Title IX Investigator. Ms. Anai-Williams has developed several worksheet-style documents that she uses in her investigations that aid her in following the Policy and the applicable procedures, and that aid her in documenting her investigative work. One document tracks witnesses, and reflects which party identified each witness, each witness's affiliation with the University, the date of each witness interview, and notes. Ms. Anai-Williams also developed an "Investigation Timeline Compliance Template." This worksheet sets out the major investigative phases, and includes space for Ms. Anai-Williams to indicate if she met the time goals; if not, to indicate the reason for any delay; and to note the date she notified the parties of the delay. Ms. Anai-Williams created a third worksheet, the "Communications Log Template." This form provides space for Ms. Anai-Williams to note each time she communicates with any person related to a particular investigation, the details of each contact (email, phone conversation, etc.; and time and date), and whether any follow-up or resolution is needed following each communication. With these documents, Ms. Anai-Williams has established an investigative system that is likely to follow Eastern's Policy and procedures in practice and that is well-documented. Ms. Anai-Williams has brought a high level of professionalism and expertise to her work as a Title IX Investigator at Eastern, as illustrated by her organization, efficiency, and documentation style.

Prior to November 28, 2019, determinations of responsibility under the Policy were made by Ms. Anai-Williams. Ms. Anai-Williams issued detailed investigative reports, which included factual findings, conclusions regarding policy violations, and rationale for those findings and conclusions.

I reviewed the twenty investigation reports issued during the Title IX Compliance Review timeframe. The investigation reports include detailed documentation of Ms. Anai-Williams' collection of evidence, consideration and discussion of evidence that both supports and does not support the ultimate conclusion reached, extensive step-by-step analysis and rationale for findings, separate findings for each allegation, and high-quality writing. The investigation reports reflect that Ms. Anai-Williams follows Eastern's investigative procedures. I find Ms. Anai-Williams' analyses and conclusions reflect a deep understanding of the dynamics of sexual and interpersonal violence, a strong knowledge and ability to apply Eastern's sexual misconduct policy, and a commitment to fairness to both parties.

The average completion time for Ms. Anai-Williams' investigations was 100 days. For those investigations conducted before November 28, 2018, this length of time exceeds the 60-day aspirational goal set forth in the Prior Student Procedures. My review of the investigation reports does not reflect that Ms. Anai-Williams unduly delayed any of the investigations; rather, the investigation reports reflect that she made every effort to interview identified witnesses, that she conducted extensive interviews, that she provided additional opportunities

for both parties to review new evidence as she collected it, and that she took care to document and analyze the evidence (which was sometimes voluminous) carefully and fairly. Thus, it appears that Ms. Anai-Williams is conducting investigations in as “prompt” a manner as possible given that many matters are complex and time-intensive. I know from my experience that conducting thorough and fair investigations into matters of this importance often takes longer than 60 days, and often longer than 100 days as well. By changing the anticipated timeframes to 100 days (matters without a hearing) and 120 days (matters with a hearing), the University is providing more realistic expectations to the parties regarding the amount of time their investigation will take.<sup>53</sup> I further note that, based on the investigation worksheets Ms. Anai-Williams follows, she is mindful of delays, notes the reasons for delays, and notifies the parties when delays occur. Because I find the investigative process was not unduly lengthy under the particular circumstances of the matters and because Ms. Anai-Williams appears to have completed them in a manner that was expeditious but did not compromise thoroughness or fairness, I find the University is substantially compliant with Title IX’s requirement that investigations be conducted promptly.

I confirmed with Dr. Werner that she is aware of M.C.L. § 388.1865b’s specific mandates regarding investigations, namely that for matters involving medical issues no medical experts that have an actual or apparent conflict of interest may be used, and that an institution must issue identical investigation reports to complainants, respondents, and administration. While Dr. Werner is aware of these requirements, no circumstance has yet arisen at Eastern that implicates either one.

With the change in the aspirational timeframe for completed investigations, I find the University is substantially in compliance with respect to its investigations of allegations of sexual misconduct.

### **3. Review Panel and Appeals**

Following Ms. Anai-Williams’ completion of the final investigation report, student respondent matters move to the Review Panel stage. Review Panels are comprised of three University employees. Eastern’s Review Panel members participate in regular training provided by an external national Title IX attorney. Their training covers the legal framework of Title IX, understanding the job of the investigator, understanding the role of the Review Panel, and a skill-building workshop. Review Panel members also receive training on the imposition of sanctions from Dr. Phillips and Dr. Werner. The Other Procedures do not include a Review Panel stage.

Appeals, which are permitted by both parties, under the Student Procedures are made to Dr. Phillips. Dr. Phillips receives regular training provided by an external national Title IX

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<sup>53</sup> I note that none of these timeframes—60, 100 or 120 days—are mandated by any legal source; rather, they are procedural expectations that the University has selected and imposed on itself.

attorney. His training covers the legal framework of Title IX, understanding the job of the investigator, understanding the role of the Review Panel, and a skill-building workshop.

I find the University is substantially in compliance with respect to its Review Panel and appeals processes.

#### **4. Informal Resolution of Complaints**

During the Title IX Compliance Review timeframe, Dr. Werner resolved approximately twelve complaints through informal resolution. All informal resolutions occurred for matters in which a complainant expressed concern about sexual or gender-based harassment; Dr. Werner has never used or suggested informal mediation in sexual violence matters. Those informal resolutions involved one-on-one conversations between Dr. Werner and the respondent in which she discussed issues such as boundaries, behaviors, staying away from a complainant, and in which she obtained agreement from each respondent to comply with community norms around those issues. I find the University is substantially compliant with respect to how it implements informal resolution of complaints of possible sexual misconduct.

### **VII. Prevention and Education**

#### **A. Compliance Framework**

Title IX's prevention-related mandates are fairly general. Title IX guidance states that an institution is engaging in a preventive practice just by having a policy that specifically prohibits sexual harassment and a statement that the institution will not tolerate sexual harassment.<sup>54</sup> At the state level, M.C.L. § 388.1865b requires each public institution to provide an in-person sexual misconduct prevention presentation or course, which must include contact information for the Title IX office of the university to all freshmen and incoming transfer students enrolled. For all students not considered freshmen or incoming transfer students, public institutions must provide an online or electronic sexual misconduct prevention presentation or course.

#### **B. Observations**

The Policy specifically prohibits sexual harassment, and as discussed throughout this Report, the University has detailed grievance procedures in place. The Policy also states that the all forms of sexual misconduct “will not be tolerated.”

Eastern provides robust sexual misconduct prevention education to its students. Dr. Werner provides annual, in-person presentations for all new incoming freshmen students. That presentation is then recorded and sent to every student (including graduate students) who is registered for classes.

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<sup>54</sup> 2001 Guidance, p. 19.



Dr. Werner also established a Title IX education training and advocacy committee, which created a five-year training plan on sexual misconduct. Under this plan, several groups around campus, including faculty from the gender studies department and staff of the women's resource center, provide a variety of trainings to various campus constituencies. Training topics include consent and bystander intervention. I find the University is substantially in compliance with the prevention-related requirements of Title IX.

## **VIII. Notice to University Leadership**

### **A. Compliance Framework**

Under M.C.L. § 388.1865b, an institution's Title IX coordinator is required to provide quarterly reports to its governing board and the president or chancellor containing aggregated data of the number of sexual misconduct reports that the office received for the academic year, the types of reports received, including reports received against employees, and a summary of the general outcomes of the reports and investigations.<sup>55</sup>

Title IX coordinators are also required to notify the president or chancellor and a member of the university's governing board in writing of cases where multiple allegations of sexual misconduct against an employee were made and that resulted in the university finding that no misconduct occurred.<sup>56</sup> In such instances, the institution is required to take all appropriate steps to ensure that the matter is being investigated thoroughly, including hiring an outside investigator for future cases involving that employee.<sup>57</sup>

### **B. Observations**

Following the enactment of M.C.L. § 388.1865b, Dr. Werner quickly familiarized herself with the statute and organized the Title IX office to comply with the new mandates. Dr. Werner now provides the President with quarterly reports containing the requisite Title IX information. I confirmed with Dr. Werner that she is aware of the other statutory obligations regarding the other specific circumstances in which she is required to notify University leadership, although a situation has not yet arisen at Eastern that implicates those circumstances. I find the University is substantially in compliance with M.C.L. § 388.1865b's requirements regarding notice to leadership.

## **IX. Conclusion**

My review of Eastern Michigan University's Title IX compliance office and related policies and procedures reflects that the institution has made a very meaningful commitment to addressing sexual misconduct in its educational community. This commitment is reflected in the University's highly-trained and highly-competent Title IX Coordinator and Title IX Investigator; in its efforts to provide widespread prevention education and training to the

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<sup>55</sup> M.C.L. § 388.1865b.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

University community; in its detailed student investigation procedures which are fair to both parties; and in the cooperation, respect and support the Title IX office receives from its many campus partners. Moving forward, I recommend the University continue to enhance its handling of employee Title IX matters in the same professional manner in which student matters are handled.

Appendix A  
Policies and Procedures Reviewed



# Interim Student Investigative Procedures

## Involving Sexual Misconduct and Interpersonal Violence

[Effective November 28, 2018]

The *Sexual Misconduct and Interpersonal Violence Policy* applies to all forms of Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, and Retaliation (“Prohibited Conduct”) at Eastern Michigan University. All matters related to that policy, including inquiries or complaints, may be referred to the University’s Title IX Coordinator:

**Title IX Coordinator**

Melody A. Werner  
734-487-3617

Email: [mwerner@emich.edu](mailto:mwerner@emich.edu)

Trained Title IX Deputy Coordinators who can also offer assistance are available in the offices of Housing, Athletics, and Human Resources. They can be reached at:

Sharon Abraham  
Director, Diversity and Affirmative Action  
Human Resources  
734.487.3430  
[sabraha1@emich.edu](mailto:sabraha1@emich.edu)

Jeanette Zalba  
Director of Housing and Residence Life  
734.487.5372  
[jzalba@emich.edu](mailto:jzalba@emich.edu)

Erin Kido  
Senior Associate Athletics Director EMU  
Convocation Center  
734.487.8172  
[ekido@emich.edu](mailto:ekido@emich.edu)

The investigatory procedures for claims against students under the University's Sexual Misconduct and Interpersonal Violence Policy are contained in this document. The procedures for claims against faculty, staff and third parties can be found in the [Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff, or Visitors](#).

## **Introduction**

The Investigatory Procedures are guided by principles of fairness and respect for all parties. Resources are available to provide guidance throughout the investigation and resolution of the complaint. Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. Additional guidance about the role of the advisor is contained in the Appendix.

## **Review, Investigation, and Resolution Procedure:**

The University will support any Complainant or Respondent in understanding how to navigate the Complaint Resolution Procedures. There are several options available to resolve a report of Prohibited Conduct. These options include both informal and formal resolutions processes. Upon receipt of a report, the University will conduct a Title IX Assessment. After consultation with the complainant, the University may pursue informal resolution (in limited cases only) or formal resolution (which includes a thorough review and investigation).

### **I. Role of the Title IX Coordinator:**

The President of the University has appointed a Title IX coordinator to oversee the University's central review, investigation, and resolution of reports of sexual harassment, sexual violence, intimate partner violence, and stalking under the University's procedures for resolution of complaints. The Title IX Coordinator also coordinates the University's compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence, intimate partner violence, and stalking involving students, staff, and faculty;
- Informed of all reports of complaints of sexual harassment, sexual violence, intimate partner violence, and stalking involving students, staff, and faculty reported to responsible employees;
- Responsible for evaluating a Complainant's request that their name not be shared with the Respondent or that no investigation go forward in the context of the University's responsibility to provide a safe and nondiscriminatory environment for all;
- Responsible for tracking patterns and assessing the impact of individual incidents on climate and culture;
- Responsible for determining appropriate interim measures;
- Responsible for monitoring processes to ensure that the requirement for a prompt and equitable review are met;
- Knowledgeable and trained in state and federal laws that apply to matters of sexual harassment, as well as University policy and procedure;
- Available to advise any individual, including a Complainant, a Respondent or witness, about the courses of action that are available at the University, both informally and formally, and in the community, and what involvement that individual may or may not

have in the process;

- Available to provide assistance to any University employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, intimate partner violence, or stalking;
- Available to provide assistance to the Executive Director of Public Safety (or designee) regarding how to respond appropriately to reports of sexual violence;
- Responsible for coordinating policies and procedures with local law enforcement, and victim advocacy and service providers;
- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this procedure;
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture.

Inquiries or complaints concerning the application of Title IX may be referred to the University's Title IX Coordinator:

**Title IX Coordinator**

Melody A. Werner

734-487-3617

Email: [mwerner@emich.edu](mailto:mwerner@emich.edu)

Trained Title IX Deputy Coordinators who can also offer assistance are available in the offices of Housing, Athletics, and Human Resources.

It is the University's intention that through these procedures, any complaint will be resolved internally. However, a complaint can also be filed with the following agencies:

**United State Department of Education**

Clery Act Compliance Division

[clery@ed.gov](mailto:clery@ed.gov)

**Office for Civil Rights**

[OCR@ed.gov](mailto:OCR@ed.gov)

**The Equal Employment Opportunity Commission**

[info@eeoc.gov](mailto:info@eeoc.gov)

**Michigan Department of Civil Rights**

[www.michigan.gov/mdrc/](http://www.michigan.gov/mdrc/) or 517-335-3165

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the Complainant believes was discriminatory. There is no time limit for making a report to Eastern Michigan; however, if the Respondent is no longer a student or employee, the University's authority to pursue disciplinary action may be limited. Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects.

The Complaint Resolution Procedures are guided by principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Complainants or

Respondents, to provide guidance throughout the investigation and resolution of the complaint. Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. The Title IX Coordinator shall assist a Complainant or Respondent in obtaining an advisor upon request. Additional guidance about the role of the advisor is contained in the Appendix.

## II. Time Frame for Resolution:

Eastern Michigan University will make every effort to successfully resolve all reports (through the imposition of sanction or final remedies) that do not involve a hearing within 100 days and those that involve a hearing within 120 days. The time allotted for the appeal process is not included in the 100 and 120 day time estimate. In general, a Complainant and Respondent can expect the process will proceed according to the time frames provided in this procedure. However, any timeframe expressed in this policy, including the 100 and 120 day time estimates, may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may exist for a variety of factors, including the complexity of the circumstances of each case, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate reasons.

Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. All parties involved are entitled to periodic status updates on the progress of the investigation and resolution of the complaint and any subsequent appeal. During the period that an investigation is pending, the University may deny and/or delay issuance of a degree for an accused student.

## III. Interim Measures:

### A. **Overview**

Upon receipt of a report of sexual harassment, sexual violence, intimate partner violence, or stalking and potentially through the completion of any appeals, the University will take reasonable and appropriate interim measures to protect the parties involved. The Title IX Coordinator, or designee, will maintain consistent contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed. Interim measures may be imposed at any time regardless of whether formal disciplinary action is sought by the Complainant or the University in order to ensure the preservation of the Complainant's education experience and the overall University environment. Interim measures will be kept private to the extent that maintaining privacy would not impair the ability of the university to provide interim measures.

A Complainant or Respondent may request separation or other protection, or the University may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader University community and/or the integrity of the process. A decision to arrange for such separation or other protection need not be based on a finding of responsibility, and shall not be interpreted as a finding of fault. Interim measures are initiated based on information gathered during a report and are not intended to be permanent resolutions: hence, they may be amended or withdrawn as additional information is gathered. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The University will take immediate and responsive action to enforce a previously

implemented measure.

## **B. Range of Measures**

Interim Measures will be implemented at the discretion of the University, and will be established by the Title IX Coordinator. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- Imposition of “No-Contact” directives for any or all parties;
- Change in class schedule, including the ability to transfer course sections or drop a course without penalty;
- Rescheduling of exams and assignments;
- Change in work schedule or job assignment;
- Change in living arrangements;
- Limiting an individual or organization’s access to certain University facilities or activities pending resolution of the matter;
- Providing an escort to ensure safe movement between classes and activities;
- Providing counseling services and assistance in setting up an initial appointment;
- Providing academic support services, such as tutoring;
- Removal from campus housing in accordance with the policies and procedures of the University;
- Other remedies which are deemed appropriate;
- Interim suspensions –
  - An interim suspension may be imposed by the Associate Director of the Office of Wellness and Community Responsibility when there is reason to believe that the student(s)/student organization’s conduct poses a substantial threat of harm to oneself or others, threatens or endangers University property, or disrupts the stability and continuance of normal University operations and functions.
  - A student will be denied access to the residence halls, and/or to the campus (including classes), and to all other University activities or events, which the student might otherwise be eligible to participate in or attend.
  - A student will be notified of an interim suspension orally, by written notice served on the student, or by written notice sent to the email address on record. The interim sanctions or interim suspension takes effect the day they are issued.
  - A student given an interim suspension will be given an opportunity to appear before the Associate Vice-President of Student Affairs or a designee within three (3) working days in order to discuss the following issues only:
    - The reliability of the information concerning the student alleged misconduct.
    - Whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on University premises poses a substantial and immediate threat to himself/herself, to others, or to property.
  - The Associate Vice President of Student Affairs or his/her designee may affirm or alter the interim suspensions based on the discussion with the student. If the decision is affirmed, the Associate Vice President of Student Affairs or his/her designee will inform the student of that decision at the conclusion of the discussion. If the interim suspension is affirmed by the Associate Vice President of Student Affairs, the Title IX Coordinator will expedite the investigation of the



alleged violation so that the interim suspension will not be prolonged.

#### IV. Complaint Resolution Procedures:

##### **A. Overview of Options**

The University is committed to providing all members of the University community with a safe place to live, learn, and work. Consistent with this priority, the University will respond promptly and equitably to all allegations of Prohibited Conduct. Any individual may make a report under the Sexual Misconduct and Interpersonal Violence Policy, which will indicate a review of the complaint as outlined in this section.

The University's response to reports of sexual harassment, sexual violence, intimate partner violence, and stalking under this policy is pursued in multiple stages: report, assessment, investigation, resolution, and appeal. At each of these stages, the University is committed to maintaining fairness for all parties and to balancing the needs and interest of the individuals involved with the safety of the community as a whole.

Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects. The Title IX Coordinator will only consult with those who "need to know" in order to implement procedures under this policy.

Upon receipt of a report, the Title IX Coordinator will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment, sexual violence, sexual exploitation, intimate partner violence, and stalking. The assessment will consider the nature of the report, the safety of the individual and the campus community, the Complainant's expressed preference for resolution, and the necessity for any interim measure to protect the safety of the Complainant or the community.

Following the initial assessment, the University may, at the discretion of the Title IX Coordinator:

1. Seek Informal Resolution that does not involve disciplinary action against a Respondent;  
or
2. Seek Formal Resolution by initiating an investigation to determine if the disciplinary action is warranted.

Each resolution process is guided by the same principles of fairness and respect for all parties. Any individual who violates these standards will be held accountable for their behavior through a process that protects the rights of both the Complainant and the Respondent. Resources are available for Complainants and Respondents, to provide support and guidance throughout the investigation and resolution of the complaint.

##### **B. Title IX Assessment**

When a report is made, the Title IX Coordinator will conduct an initial Title IX assessment. The first step of this assessment will usually be a preliminary meeting between the Complainant and the Title IX Coordinator. In the course of this assessment, the University will consider the

interest of the Complainant and the Complainant's expressed preferences for manner of resolution. Where possible and when supported by the facts and circumstances, the University will seek action consistent with the Complainant's request.

As part of the initial assessment of the facts, the University will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement;
- Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the Complainant of the importance of the preservation of evidence;
- Provide the Complainant with information about on-and off-campus resources;
- Notify the Complainant of the available interim measures;
- Provide the Complainant with an explanation of the procedural options, including informal resolution and formal resolution;
- Inform the Complainant and the Respondent they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the complaint, and that the advisor may accompany them to any meeting or proceeding under this policy;  
(Additional guidance about the role of the advisor is contained in the Appendix).
- Assess for pattern evidence or other similar conduct by the Respondent;
- Explain the University's policy prohibiting retaliation.

The initial interview review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the University has sufficient information to determine the best course of action.

At the conclusion of the Title IX Assessment, the Title IX Coordinator will determine the appropriate manner of resolution, which may include Informal Resolution or the initiation of an investigation to determine if disciplinary action is warranted. It is at the discretion of the Title IX Coordinator to determine which method of resolution is appropriate. Any individual wishing to explore alternative resolution methods is encouraged to discuss these options with the Title IX Coordinator.

Where the Complainant requests that their identity not be shared with the Respondent or that the University not pursue an investigation, the University must consider this request in the context of the University's responsibility to provide a safe and non-discriminatory environment for all University community members. The University, through the Title IX Coordinator, will take all reasonable steps to investigate and respond to the complaint consistent with the request not to share identifying information or pursue an investigation, but its ability to do so may be limited by the request. Under these circumstances, the Complainant's request will be balanced against the following factors:

- The seriousness of the conduct;
- The roles of the Complainant and Respondent;
- Whether there have been other complaints or reports of harassment or misconduct against the Respondent;

- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence;
- Whether the Respondent has a history or arrests or prior conduct violations (At Eastern Michigan or elsewhere) indicating a history of violence;
- Whether the alleged Respondent threatened further sexual violence or other violence against the student or others;
- Whether the sexual violence was committed by multiple individuals;
- Whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances;
- Whether sexual violence was perpetrated with a weapon;
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

The University will take all reasonable steps to investigate and respond to the report consistent with the request not to share the identifying information or pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the University is unable to take action consistent with the request of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action, which may include the University seeking disciplinary action against the Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

At the conclusion of the initial Title IX assessment, the Complainant will receive a written notice of the determination about how the University plans to proceed. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University seeks action that would impact a Respondent, such as protective measures that restrict the Respondent's movements on campus, the initiation of an investigation, or the decision to request the Respondent's involvement in an Informal Resolution.

### **C. Informal Resolution**

Informal Resolution is an alternative approach designed to stop the Prohibited Conduct without taking disciplinary action against a Respondent. An Informal Resolution does not require a full investigation. The decision whether to use Informal Resolution will be decided on a case-by-case basis. Where the Title IX assessment concludes that Informal Resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to educational, extracurricular, and employment activities at the University and to eliminate a hostile environment. Depending on the form of Informal Resolution used, it may be possible for a Complainant to maintain anonymity.

Informal Resolution, even if voluntary, may not be used in cases involving sexual assault. The decision to pursue Informal Resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation is voluntary, and a Complainant or Respondent can request to end Informal Resolution and initiate an investigation at any time. Additionally, if an informal resolution is reached but either party fails to abide by the resolution, the Title IX Coordinator may initiate an

investigation and formal resolution, if deemed appropriate.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which will typically be completed within sixty (60) days of the conclusion of the initial Title IX assessment.

## **D. Formal Resolution**

### **1. Investigation**

#### a) Overview of Investigation:

Where the initial Title IX assessment concludes that Prohibited Conduct may have occurred, based on the University's determination that an investigation should be pursued based on the potential risk of harm or threat to public safety, the Title IX Coordinator will initiate an investigation. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

Throughout the investigation and resolution, a Complainant or Respondent may have an advisor of their choosing present at any meeting or proceeding. Additional guidance about the role of the advisor is contained in the Appendix.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the University campus community, and take appropriate measures designed to end the misconduct, prevent its recurrence, and address its effects.

#### b) Notice of Investigation

Both the Complainant and the Respondent will receive written notice that an investigation has been initiated. The notice will include the description of the complaint, the potential policy violations at issue, the name and contact information of the assigned investigator, and a copy of the investigative procedures.

#### c) Investigator

The University will designate an investigator who has specific training and experience investigating allegations of Prohibited Conduct. The investigator may be an employee of the University, an external investigator engaged to assist the University in its fact gathering, or both. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest.

#### d) Investigative Steps

The investigator will conduct the investigation in an appropriate manner in the light of the circumstances of the case. The investigator will coordinate the gathering of information from the Complainant, the Respondent, and any other individual who may have information relevant to the determination. The investigator may consider prior or subsequent conduct that is relevant to evaluating the current conduct. The investigative interviews may be audio-recorded and notes of the interview will be maintained by the University until the parties have

had the opportunity to review and comment on the draft summary. The investigator will also gather any available physical evidence, including documents, communications between parties, and other electronic records as appropriate and as described more fully below. The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information.

e) Complainant and Respondent Interviews

The investigator will interview the Complainant and Respondent separately. Each party will be asked to participate in an initial interview and may be asked to participate in a follow up interview(s) as needed.

f) Other Sexual History

The Sexual History of a Complainant or Respondent will never be used to prove character or reputation. An investigation under this policy may consider prior or subsequent sexual history between the parties if the investigator, with the agreement of the Title IX Coordinator, determines that there was a prior or ongoing relationship between the Complainant and Respondent and the investigator is asked to determine whether consent was sought and given. As noted in other sections of the policy, whether someone consented on a prior or subsequent occasion is not evidence that the person consented on this occasion, and consent must be sought and given each time. Any prior or subsequent sexual history between the parties will only be used to help understand the manner and nature of communications between the parties and the context of the relationship. If the investigator and Title IX Coordinator determine that prior or subsequent sexual history should be considered both the Complainant and Respondent will be notified and have the opportunity to provide any additional relevant information to the investigator.

g) Witness Interviews

The investigator will make a good faith effort to contact and interview any witness identified by the parties or in the documentation, including those no longer at the University. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator may also interview any other individual he or she finds to be potentially relevant to the allegations of the complaint. The investigator will inform each witness that they are prohibited from retaliating against the Complainant and Respondent or other witnesses, and request that the witness respect the privacy of the parties and the integrity of the process.

h) Experts

The investigator may contact any expert they determine is necessary to ascertain the facts related to the complaint. An expert witness may be contacted for an informal consultation or for a professional opinion regarding information learned from the investigation.

i) Documents/Records Review

In addition to reviewing any documents submitted by the Complainant and Respondent, the investigator will try to obtain such other physical or medical evidence relevant to the investigation as the investigator determines, in their judgement, to be necessary, including but not limited to documents, police records, electronic or other records of communications between the parties or witnesses and records of other relevant information. In obtaining such information the investigator will comply with applicable laws and Eastern Michigan University policies.

j) Site Visits

The investigator may visit relevant sites or locations and record observations through written or electronic documentation, such as videos or photographs.

k) Consideration of Other Conduct by a Respondent

Evidence of an occurrence or occurrences of sexual or other relevant behavior so distinctive and so closely resembling either party's version of the alleged encounter as to tend to prove a material fact, including whether consent was sought or given, may be admissible. Where there is evidence of a pattern of similar conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a policy violation, this information may be deemed relevant to the determination of policy violation or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous or subsequent incident was substantially similar to the conduct cited in the report or indicates a pattern of behavior and substantial conformity with that pattern. Where there is a prior finding of a policy violation by the Respondent for a similar act of prohibited conduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and assigning of a sanction.

l) Consolidation of Investigation

The investigator and the Title IX Coordinator have the discretion to consolidate multiple reports against a Respondent into one investigation if the evidence related to each incident would be relevant in reaching a determination in the other incident. In addition, in gathering the facts, the investigator may consider similar prior or subsequent allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant.

m) Concurrent Law Enforcement Investigation

If there is a concurrent criminal investigation, at the request of law enforcement, the University may agree to defer its Title IX fact-gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the Complainant and Respondent regarding Title IX rights, procedural options, and the implementation of interim measures to assure the safety and well-being of all affected individuals. The University will promptly resume its Title IX fact-gathering as soon as law enforcement has released the case of review following the initial criminal investigation.

n) Investigation Summary

At the conclusion of the investigation, the investigator will prepare a draft summary that summarizes the interviews with the Complainant, Respondent, witnesses, experts, and any other individuals with relevant information, and will also include any evidence collected.

o) Review of Draft Summary

Before the investigative report is finalized, the Complainant and Respondent will be given the opportunity to review the draft summary. Such review will take place in-person at a location designated by the Title IX Coordinator. Unless other arrangements are made for good cause, the Complainant and the Respondent will make arrangements to review the report within five (5) days of notification by the Title IX Coordinator. If exigent circumstances exist such that a Complainant or Respondent is unable to attend the review in person, the Title IX Coordinator in her discretion may allow for an alternate means to view the report. Consistent with FERPA

or safety concerns, identifying information about the Complainant or witnesses may be redacted at the discretion of the Title IX Coordinator. A Complainant and Respondent may submit any additional comment or evidence to the investigator within two (2) days of the opportunity to review the report. A Complainant and Respondent may also raise concerns about the inclusion of any evidence, even if relevant, that the party believes may be more harmful than probative. Upon request by either the Complainant or Respondent prior to the expiration of the two (2) day period, an additional three (3) days may be granted to submit additional comments or evidence to the investigator.

p) Preliminary Report

Upon receipt of any additional information or comments by the Complainant or Respondent, or after the two (2) day comment period has lapsed without comment, the investigator will prepare the Preliminary Report. In completing the Preliminary Report, the investigator, in consultation with the Title IX Coordinator, will determine whether any information included in the report should be excluded.

In preparing the Preliminary Report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the investigator will not include information that is irrelevant, more prejudicial than probative, or immaterial. The investigator may also redact statements of personal opinion, rather than direct observation or reasonable inferences from the facts and statements as to general reputation for any character trait, including honesty.

The investigator will submit the Preliminary Report to the Title IX Coordinator. The Preliminary Report will include (1) an investigative summary, including all investigation materials subject to the guidelines set forth in the preceding section, taking into account responses from the Complainant and Respondent; and (2) an analysis of the evidence collected during the investigation as it relates to the Sexual Misconduct and Interpersonal Violence Policy.

q) Review of Preliminary Report

The Title IX Coordinator may grant each of the Complainant and Respondent the opportunity to review the entire Preliminary Report. In such a case, the Complainant and Respondent will also each be given the opportunity to choose to participate in a Hearing and must elect to do so within 2 days after their opportunity to review the Preliminary Report.

A Hearing will **not** take place in each of the following scenarios:

- a) If both Complainant and Respondent decline to participate in a Hearing (in this case the parties have waived their opportunity to do so);
- b) If Complainant elects to participate in a Hearing but Respondent declines to do so (in this case Respondent has waived the opportunity to do so, and there will be no limitation on possible sanctions); or
- c) If Respondent elects to participate in a Hearing but Complainant declines to do so. (See below, however, for a description of the limitation on possible sanctions in this case).
- d) If the Title IX Coordinator does not grant each of the Complainant and Respondent the opportunity to review the entire Preliminary Report and to choose to participate in a Hearing. (See below, however, for a description of the limitation on possible sanctions in

this case).

In each of these four scenarios, the investigator will finalize the Preliminary Report by preparing and including in the report a written finding as to whether the Sexual Misconduct and Interpersonal Violence Policy was violated (and, if applicable, a finding as to whether any additional University policies were violated). The finding will be based on the preponderance of the evidence standard (i.e., whether it is more likely than not that a policy was violated). The final report will then be submitted to the Review Panel.

If both the Complainant and Respondent elect to participate in a Hearing, the Title IX Coordinator will schedule a Hearing.

## **2. Hearing**

### a) Hearing Panel

The Title IX Coordinator will assign each Hearing to a Hearing Panel. The members of the Hearing Panel shall be fair, impartial and neutral decision-makers. The Hearing Panel shall have received appropriate training to participate as informed, impartial and neutral decision-makers. The Hearing Panel shall be comprised of three University employees. One of Hearing Panel members will be designated as the Hearing Panel Chair. The Hearing Panel members shall have no prior experience with the parties, witnesses, or incident(s) in question that would present any actual conflict of interest. The Complainant and Respondent will be informed of the composition of the Hearing Panel and may raise a challenge based upon bias or conflict to the Title IX Coordinator before the Hearing begins.

The Title IX Coordinator will provide each member of the Hearing Panel with a copy of the entire Preliminary Report.

### b) Description of Hearing

The Hearing is for the purpose of cross-examination of witnesses only. Cross-examination is defined as: the questioning of a Party or witness by a Party or its advisor in order to ascertain the credibility of the witness's statements in the Preliminary Report. A Party and its Advisor are prohibited from conducting direct examination of witnesses (i.e., questions to a witness by the Party who the witness's testimony would tend to support). A Party and its Advisor are also prohibited from providing opening or closing statements at the Hearing. At least five days before the date of the Hearing, the Complainant and Respondent must each provide to the Title IX Coordinator a list of witnesses, which may include the Complainant and Respondent as witnesses, who the Party or its Advisor will cross-examine at the Hearing. The Title IX Investigator may not be called as a witness. Each Party must also submit a Questions List, providing each question the Party or its Advisor will ask its witness(es). There is no limitation to the number of questions that may be submitted on a Questions List, as the Questions List represents a Party's opportunity to be as thorough as that Party desires during cross-examination. (A Party will only be given a 10 minute recess per witness during the Hearing to submit follow up questions for review and approval.) The Title IX Coordinator will submit to the Hearing Panel Chair the list of witnesses and the Questions List.



The Hearing Panel Chair will review each list of witnesses and each Questions List prior to the Hearing. In general, the Hearing Panel will not permit questions that would be irrelevant, more prejudicial than probative, or immaterial. Additionally, the Hearing Panel will not permit questions that would be in violation of state or federal law, including rape shield laws. Prior to, or at the start of, the Hearing, the Hearing Panel will inform each Party of any of their respective witnesses or questions that will not be permitted.

The Hearing Panel Chair is responsible for maintaining an orderly, fair, impartial and respectful Hearing. The Hearing Panel Chair has broad authority to respond to disruptive or harassing behaviors, including adjourning the Hearing or excluding the offending person. All Hearings are closed to the public. Any recording of the Hearing is prohibited. The Title IX Coordinator may attend the hearing.

If reasonable efforts to accommodate witness schedules are not successful, the unavailability of a witness is not a ground for postponement of the Hearing. Parties shall not discourage a witness from appearing for the Hearing. The Hearing Panel may, but is not required to, draw an Adverse Inference against a Party if a witness is unavailable for cross-examination. If a Complainant has agreed to a Hearing but does not appear for cross-examination, then the Hearing Panel may not consider deferred suspension, suspension, or expulsion as a sanction. If Respondent has agreed to a Hearing but does not appear for cross-examination, Respondent has waived the right to the hearing and there will be no limitation on possible sanctions. Each Party, or its Advisor, may ask the witness only questions that the Party provided on its Questions List and which the Hearing Panel approved. A Party may also make reference at the Hearing to any evidence that is included in the Preliminary Report. After all initial questioning of a witness is complete, either Party may have only a 10 minute recess per witness to submit additional questions to the Hearing Panel for evaluation. The Hearing Panel Chair will evaluate the proposed additional questions based upon the same criteria used to evaluate the Questions List and a Party will then be permitted to ask a witness only additional questions the Hearing Panel approves.

A Party, or its Advisor, is permitted to cross-examine the other Party. A Party may request to participate as a witness by using technology that enables live testimony while allowing the Party-witness to be present in a different room.

The Hearing Panel Chair will exclude witnesses from those parts of the Hearing in which the witness does not testify. However, a Party and its Advisor may be present in the hearing room throughout the Hearing.

To establish that a Respondent violated the Sexual Misconduct and Interpersonal Violence Policy, the Hearing Panel must determine that it is more likely than not that the Respondent violated the Policy. This standard of proof is also known as a preponderance of evidence. After the Hearing the Hearing Panel will issue a Notice of Outcome (as described below).

### **3. Review Panel**

When no Hearing takes place, the Title IX Coordinator will assign the matter to a Review Panel. The members of the Review Panel shall be fair and impartial decision-makers. The Review Panel shall have received appropriate training to participate as informed and impartial decision-makers. The Review Panel shall be comprised of three University employees. The Review Panel members shall have no prior experience with the parties, witnesses, or incident(s) in question that would

present any actual conflict of interest. The Complainant and Respondent will be informed of the composition of the Review Panel and may raise a challenge based upon bias or conflict to the Title IX Coordinator before the review begins.

The Review Panel will review the final investigation report to determine whether the investigation was conducted in a fair, impartial, and reliable manner;

- a. The information is sufficient to support the factual findings; and
- b. There is a rational basis, applying a preponderance of the evidence standard, for the recommended finding(s) of responsibility or no responsibility.

In reaching a determination, the Review Panel may elect to meet with the investigator, but the Review Panel may not conduct its own investigation or hearing.

After the Review Panel has concluded its review of the final investigative report and any additional information requested, the Review Panel shall either affirm or reject the investigator's finding(s).

### **Review Panel Rejection of Investigator's Report, in Whole or in Part:**

The Review Panel may:

1. Accept or reject the investigator's finding in whole or in part and modify the investigative report accordingly;
2. Request that further investigation be undertaken by the same or another investigator;
3. Request that a de novo investigation be conducted.

### **Review Panel's Acceptance of Investigator's Report:**

1. If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is insufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will affirm the finding of no responsibility.
2. If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will consider the imposition of a sanction designed to eliminate the misconduct, prevent its reoccurrence, and remedy its effects. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

## **4. Sanctions**

The Hearing Panel or Review Panel is responsible for determining the appropriate sanction and remedy, subject to consultation and approval by the Title IX Coordinator.

The Hearing Panel or Review Panel may impose a sanction deemed appropriate after a consideration of all the relevant information. In general, the imposition of sanctions will take effect immediately and will not be deferred pending the resolution of the appeal.

The sanctions may include disciplinary action up to and including suspension from the University or permanent dismissal. A full list of the range of sanctions for students is contained later in this policy. However, disciplinary action imposed upon the Respondent may not include

deferred suspension, suspension, or expulsion if:

1. the Title IX Coordinator did not grant the Parties the opportunity to review the Preliminary Report and the choice to participate in a Hearing; or a Respondent elected to participate in a Hearing but the Complainant elected not to participate in a Hearing; or
2. a Respondent was not presented with the opportunity to cross-examine the Complainant as part of the Hearing.

Sanctions may be issued individually, or a combination of sanctions may be imposed. The determination of sanctions is based upon a number of factors including: the nature of the conduct by the Respondent; the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by the Respondent; the impact of the violation on the community, its members, or its property; any previous Title IX or Conduct violations; and any mitigating or aggravating circumstances.

In situations where it is determined that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability, or other protected class, the sanction imposed may be enhanced to account for the bias motivation.

For a student employee who is acting in the scope of his/her employment at the time of the incident, the sanction may include any permissible sanction from the Sexual Misconduct and Interpersonal Violence Policy or the personnel policies for employees.

#### Possible Student Sanctions

1. **Warning:** Notice to a student or organization that continuation or repetition of conduct found to be in violation of the Sexual Misconduct and Interpersonal Violence Policy may result in further disciplinary action.
2. **Housing Restriction(s):** Housing restrictions include, but are not limited to, restricted access to any or all parts of residence halls, the loss of room selection privileges, relocation to another University residential facility, requirement to move on-or off-campus at an individual's own expense, removal of guest privileges, and/or restriction from specific housing options.
3. **Assessment and Treatment:** Referral to the Wellness Center or approved off-campus agency for assessment and/or treatment.
4. **Restrictions on Participation or Use:** Restrictions on participating may include the revocation, or the loss for a stated period of time or under a stated set of conditions, of a student's ability to participate in certain University-approved activities, including, but not limited to, varsity sports, clubs, organizations (including but not limited to Greek organizations), or leadership positions in such sports, clubs, and organizations.
5. **Probation:** A specified period of time requiring maintenance of exemplary conduct. Further violations during this time may result in more serious sanctions than are imposed in the absence of probationary status. During a probationary period, the terms imposed on an organization will also be binding on its members.
6. **Deferred Suspensions:** A student or organization on deferred suspension has been found responsible for conduct that warrants suspension from the University. In the exercise of its discretion, the University has determined to withhold immediate imposition of the suspension and allow the individual or organization to remain on campus, usually with additional terms of compliance. If a student or organization is found in violation of any aspect of the Sexual Harassment and Misconduct Policy or of terms of compliance

during the period of the Deferred Suspension, the deferment of this suspension may be lifted and the suspension will become effective immediately, resulting in separation from the University for the remainder of the suspension period. In addition, any other sanctions for the new violation(s) will be imposed. During a period of deferred suspension, the terms imposed on an organization will also be binding on the members of the organization.

7. **Suspension from the University:** A student suspended from the University may not participate in classes or other University activities and may not be on University property (except by appointment, arranged in advance with the Title IX Coordinator (or designee) or the Associate Vice President of Student Affairs (or designees)) for the period of time specified in the notice of suspension. Suspension extending beyond the semester in which action is taken shall consist of units of full semesters and/or summer sessions. In no case shall the suspension terminate prior to the end of a semester. Courses taken at another institution during this period of suspension will not be accepted for transfer at the University. Conditions for resuming active status on campus following suspension may be imposed by the University. A sanction of immediate suspension will go into effect within 24 hours of receipt of the outcome letter unless otherwise noted in the outcome letter and shall remain in effect throughout any appeal process. An organization that is suspended shall be required to forfeit its ability to conduct group-sponsored activities or to participate in University-sponsored activities, and any University support for the organization will be withdrawn, during the period of suspension.
8. **Withholding, delaying, or revoking the conferral of the degree:** The University may delay the conferral of the degree pending the outcome of an investigation or withhold the conferral of the degree due to a finding of Prohibited Conduct. In extraordinary circumstances, the University may revoke the conferral of the degree.
9. **Permanent Dismissal:** For an individual, permanent termination of student status includes exclusion from any University property, University sponsored, or University affiliated events. A person Permanently Dismissed for the University is denied the rights and privileges of inclusion in the Eastern Michigan University community both as a student and as an alumnus/alumna. Permanent Dismissal will go into effect within 24 hours of receipt of the outcome letter unless otherwise noted in the outcome letter, and shall remain in effect throughout any appeals process. For an organization, permanent termination of the organization's relationship and status with the University, which includes termination of access to facilities, funding, and/or right to assemble as an organization on University property and at University-sponsored or affiliated events. An organization expelled from the University is denied the rights and privileges of inclusion in the Eastern Michigan University community as an organization.
10. **Other:** Such other sanctions as may be appropriate at the discretion of the University. Failure to complete any sanction may result in further disciplinary or other action.

## 5. Notice of Outcome

Both the Respondent and the Complainant will simultaneously receive written notice of the outcome, the sanction, and the rationale for both.

To provide notice of the outcome, University-issued email is the primary means of communication. Alternative methods may be used, if appropriate.

The notice of outcome will include the findings as to whether there has been a policy violation and the rationale for the result. The notice of outcome will also include the sanction and the rationale for the sanction. The Respondent will be informed of the date by which the requirements must be

satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be fully informed of any sanctions and remedies that directly relate to the Complainant, including information about the Respondent's presence on campus (or in a shared class or residence hall), that may help a Complainant make informed decisions or work with the University to eliminate harassment and prevent its recurrence. The notice of outcome will also provide each party with their appeal options.

The University may also notify appropriate University officials, such as the Executive Director of Public Safety, faculty members, residence life staff, coaches, as necessary, to implement the outcome and/or sanctions.

### Appeal

Either party may appeal the outcome and/or sanction. The appeal will be conducted in an impartial manner. The Associate Vice President for Student Affairs will conduct appeals. A review of the matter will be prompt and narrowly tailored to stated appeal grounds. The limited grounds for appeal are as follows:

1. New information that could affect the finding of the investigator Hearing Panel or Review Panel, and was not available through the exercise of due diligence when the Party was permitted to present the information;
2. A deviation from University policy or procedure that materially affected the outcome;
3. Sanctions too harsh or too lenient.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. Dissatisfaction with the outcome of the investigation is not grounds for appeal. The appeal must be submitted to the Title IX Coordinator within five (5) days of the date of the outcome letter. Upon receipt of the appeal, the Title IX Coordinator will forward the request to the Associate Vice President for Student Affairs.

The Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within five (5) days from the receipt of the appeal. In the event both parties initially appeal the findings, each party will be provided notice and a copy of the other party's appeal.

Upon receipt of the appeal and any response, the Title IX Coordinator will coordinate and be copied on all matters related to the appeal.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter. The Associate Vice President of Student Affairs shall consider the merits of an appeal only on the basis of the three grounds for appeal. The Associate Vice President of Student Affairs will review the written investigation report and all supporting documents and may consult with both parties.

Appeals are not intended to be a full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation regarding the grounds for the appeal. This is not an opportunity for the Associate Vice President of Student Affairs to substitute his/her judgment for that of the original reviewing body merely because s/he disagrees with the finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is a clear error based

on the stated appeal grounds. The Associate Vice President of Student Affairs can:

1. Affirm the original findings, or
2. Alter the findings, and/or
3. Alter the sanctions, depending on the basis of the requested appeal.

If the appeal is based on procedures not having been followed in a material manner, the Associate Vice President of Student Affairs can ask that a new investigation and/or imposition of sanctions occur. In the case of new and relevant information, the Associate Vice President of Student Affairs can recommend that the case be returned to the Review Panel to assess the weight and effect of the new information and render a determination after considering the new facts.

The Associate Vice President of Student Affairs will communicate the result of the appeal to the Complainant and Respondent within ten (10) days from the date of the submission of all appeal documents by both parties. Decisions on Appeals are final.

## **B. Additional Considerations**

### Group Infractions

When members of a student group, organization, team, or individuals act in concert in violation of the Sexual Misconduct and Interpersonal Violence Policy, their conduct may be reviewed as a group or as individuals, and an investigation may proceed against the group as joint Respondents or against one or more involved individuals as appropriate given available information and circumstances.

A student group, organization, or team's officers and membership may be held collectively and individually responsible when violations of the Sexual Misconduct and Interpersonal Violence Policy by the organization or its members take place at organization sponsored events, have received the consent or encouragement of the organization or the organization's leaders or officers, or was known or reasonably should have been known to the membership or its officers.

In any such action, determinations as to responsibility will be made and sanctions may be assigned collectively and individually. However, if an individual who is a Respondent in a Group Infractions matter may be subject to an individual sanction that may include deferred suspension, suspension or expulsion, then that individual Respondent shall have the right to review the Preliminary Report and request a Hearing pursuant to the procedure described above.

### Records

The Title IX Coordinator will retain records of all reports, allegations, and complaints, regardless of whether the matter is resolved by Title IX assessment, Informal Resolution, or Formal Resolution. In general, records will be maintained for the duration of the Respondent's enrollment at the University and may be retained for no less than seven years following the Respondent's departure from the University.

### Students

Findings of responsibility in matters resolved through Formal Resolution are part of a student's conduct record. Such records shall be used in reviewing any further conduct or in developing sanctions and shall remain a part of a student's conduct record.

Complaints resolved by a Title IX assessment or Informal Resolution are not part of a student's

conduct file or academic record. The conduct files of students who have been suspended, permanently dismissed, or who withdrew pending disciplinary action from the University are maintained in the Office of Wellness and Community Responsibility for seven years after their departure from the University.

Further questions should be directed to the Associate Director of the Office of Wellness and Community Responsibility. Records of disciplinary action involving organizations are maintained in the Office of Wellness and Community Responsibility indefinitely.

Students who declare an interest in studying abroad through the Academic Programs Abroad are subject to a conduct record check. Information that will be shared with the Office of Academic Programs Abroad includes, but is not limited to, determination of sexual misconduct violations. It is within the sole discretion of the University, through the Office of Academic Programs Abroad, to determine whether a student who has violated University policy is eligible to study abroad. Consideration and qualification for study abroad are not disciplinary determinations but may be affected by a student's disciplinary record.

## V. Appendix and Definition of Terms:

**Adverse Inference:** If a non-Party witness fails to appear at the Hearing, an inference may be drawn that cross-examination of the missing witness would have garnered testimony favorable to the Party that would have cross-examined the missing witness.

**Advisor:** Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. The advisor may be any person, including an attorney engaged at the party's expense, who is not otherwise a party or witness in the investigation. The advisor may accompany the Complainant or Respondent to any meeting or related proceeding with an investigator or a University employee. Except for during a hearing, the advisor may not speak on behalf of the Complainant or Respondent or otherwise actively participate in, or in any manner disrupt, the meeting or proceeding; rather, at such times, the advisor may only confer quietly with the Complainant or Respondent to provide advice or support. An advisor is permitted to cross examine witnesses on behalf of a Party during a Hearing. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process in accordance with the University's objective of completing the resolution process in sixty (60) days or less.

The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. No copies of written materials or any other evidence will be given directly to an advisor, although the parties may share such information with an advisor as necessary to assist them in the proceedings.

**Complainant:** An individual who invokes the University's investigation and resolution process to determine if the sexual misconduct policy has been violated and identifies him or herself as a victim of the alleged misconduct. In some circumstances, the University may assume the role of Complainant.

**Party or Parties:** A term referring to the Complainant and Respondent, either individually or collectively.

**Prohibited Conduct:** Prohibited Conduct is defined in the University's Sexual Misconduct and Interpersonal Violence Policy ([link](#)) and includes Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender Based Harassment and Retaliation.

**Respondent:** Any individual(s) or organization(s) alleged to have violated the Sexual Misconduct and Interpersonal Violence Policy and against whom a complaint has been brought to the attention of the University.

**Student:** Any student enrolled at the University at the time of the alleged sexual misconduct. For the purposes of this policy, student status begins when a student has accepted an offer for admission to the University and ends when the student has graduated, withdrawn, been permanently dismissed, or otherwise separated permanently from the University.

**Title IX:** Title IX refers to the Educational Amendments of 1972 (Title IX), 20 U.S.C. §§1681 et seq., and its implementing regulations, 32 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The University is required to comply with Title IX. Sexual harassment of students, which includes acts of sexual misconduct described in this policy, is a form of sex discrimination prohibited by Title IX.

**Victim:** Any individual who has been harmed by an act or acts of sexual misconduct.

**Witness:** Any individual, including Complainant and Respondent, who has seen, heard, or otherwise knows or has information about a violation.

Effective Date: July 1, 2016

- Reviewed and updated: September 27, 2017
- Reviewed and updated: November 28, 2018
- Reviewed and updated: January 11, 2019





# Student Investigative Procedures

Involving

Sexual Misconduct and Interpersonal Violence

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

The *Sexual Misconduct and Interpersonal Violence Policy* applies to all forms of Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, and Retaliation (“Prohibited Conduct”) at Eastern Michigan University. All matters related to this Policy, including inquiries or complaints may be referred to the University’s Title IX Coordinator:

### **Title IX Coordinator**

Melody A. Werner

734-487-3617

Email: [mwerner@emich.edu](mailto:mwerner@emich.edu)

Trained Title IX Deputy Coordinators who can also offer assistance are available in the offices of Housing, Athletics, and Human Resources. They can be reached at:

Sharon Abraham

Director, Diversity and Affirmative Action

Human Resources

734.487.3430

[sabraha1@emich.edu](mailto:sabraha1@emich.edu)

Jeanette Zalba

Director of Housing and Residence Life

734.487.5372

[jzalba@emich.edu](mailto:jzalba@emich.edu)

Erin Kido

Senior Associate Athletics Director

EMU Convocation Center

734.487.1050

[ekido@emich.edu](mailto:ekido@emich.edu)

The investigatory procedures for claims against students under the University’s Sexual Misconduct and Interpersonal Violence Policy are contained in this document. The procedures for claims against faculty, staff and third parties can be found in the [Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff, or Visitors](#).

## **Introduction**

The Investigatory Procedures are guided by principles of fairness and respect for all parties. Resources are available to provide guidance throughout the investigation and resolution of the complaint. Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. Additional guidance about the role of the advisor is contained in the Appendix.

STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL  
VIOLENCE INVESTIGATORY PROCEDURE

**Review, Investigation, and Resolution Procedure:**

The University will support any Complainant or Respondent in understanding how to navigate the Complaint Resolution Procedures. There are several options available to resolve a report of Prohibited Conduct. These options include both informal and formal resolutions processes. Upon receipt of a report, the University will conduct a Title IX Assessment. After consultation with the complainant, the University may pursue informal resolution (in limited cases only) or formal resolution (which includes a thorough review and investigation).

I. Role of the Title IX Coordinator:

The President of the University has appointed a Title IX coordinator to oversee the University's central review, investigation, and resolution of reports of sexual harassment, sexual violence, intimate partner violence, and stalking under the University's Procedures for Resolution of complaints. The Title IX Coordinator also coordinates the University's compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence, intimate partner violence, and stalking involving students, staff, and faculty;
- Informed of all reports of complaints of sexual harassment, sexual violence, intimate partner violence, and stalking involving students, staff, and faculty reported to responsible employees;
- Responsible for evaluating a Complainant's request that their name not be shared with the Respondent or that no investigation go forward in the context of the University's responsibility to provide a safe and nondiscriminatory environment for all;
- Responsible for tracking patterns and assessing the impact of individual incidents on climate and culture;
- Responsible for determining appropriate interim measures;
- Responsible for monitoring process to ensure that the requirement for a prompt and equitable review are met;
- Knowledgeable and trained in state and federal laws that apply to matters of sexual harassment, as well as University policy and procedure;
- Available to advise any individual, including a Complainant, a Respondent or witness, about the courses of action that are available at the University, both informally and formally, and in the community, and what involvement that individual may or may not have in the process;
- Available to provide assistance to any University employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, intimate partner violence, or stalking;
- Available to provide assistance to the Executive Director of Public Safety (or designee) regarding how to respond appropriately to reports of sexual violence;
- Responsible for coordinating policies and procedures with local law enforcement, and victim advocacy and service providers;

STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL  
VIOLENCE INVESTIGATORY PROCEDURE

- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this policy;
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture.

Inquiries or complaints concerning the application of Title IX may be referred to the University's Title IX Coordinator:

**Title IX Coordinator**  
Melody A. Werner  
734-487-3617  
Email: mwerner@emich.edu

Trained Title IX Deputy Coordinators who can also offer assistance are available in the offices of Housing, Athletics, and Human Resources.

It is the University's intention that through these procedures, any complaint will be resolved internally. However, a complaint can also be filed with the following agencies:

**United State Department of Education**  
Clery Act Compliance Division  
clery@ed.gov

**Office for Civil Rights**  
OCR@ed.gov

**The Equal Employment Opportunity Commission**  
info@eoc.gov

**Michigan Department of Civil Rights**  
www.michigan.gov/mdrc/ or 517-335-3165

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the Complainant believes was discriminatory. There is no time limit for making a report to Eastern Michigan; however, if the Respondent is no longer a student or employee, the University's authority to pursue disciplinary action may be limited. Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects.

The Complaint Resolution Procedures are guided by principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation and resolution of the complaint. Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. Additional guidance about the role of the advisor is contained in the Appendix.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

### II. Time Frame for Resolution:

Eastern Michigan University will make every effort to successfully resolve all reports (through the imposition of sanction or final remedies) within 60 days. The time allotted for the appeal process is not included in the 60 days. In general, a Complainant and Respondent can expect the process will proceed according to the time frames provided in this procedure. However, any timeframe expressed in this policy, including the 60 days, may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may exist for a variety of factors, including the complexity of the circumstances of each case, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate reasons.

Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. All parties involved are entitled to periodic status updates on the progress of the investigation and resolution of the complaint and any subsequent appeal. During the period that an investigation is pending, the University may deny and/or delay issuance of a degree for an accused student.

### III. Interim Measures:

#### A. **Overview**

Upon receipt of a report of sexual harassment, sexual violence, intimate partner violence, or stalking and potentially through the completion of any appeals, the University will take reasonable and appropriate interim measures to protect the parties involved. The Title IX Coordinator, or designee, will maintain consistent contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed. Interim measures may be imposed at any time regardless of whether formal disciplinary action is sought by the Complainant or the University in order to ensure the preservation of the Complainant's education experience and the overall University environment. Interim measures will be kept private to the extent that maintaining privacy would not impair the ability of the university to provide interim measures.

A Complainant or Respondent may request separation or other protection, or the University may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader University community and/or the integrity of the process. A decision to arrange for such separation or other protection need not be based on a finding of responsibility, and shall not be interpreted as a finding of fault. Interim measures are initiated based on information gathered during a report and are not intended to be permanent resolutions: hence, they may be amended or withdrawn as additional information is gathered. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The University will take immediate and responsive action to enforce a previously implemented measure.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

### **B. Range of Measures**

Interim Measures will be implemented at the discretion of the University, and will be established by the Title IX Coordinator. Potential remedies, which may be applied to the Complainant and/or the Respondent include:

- Imposition of No-Contact Directives for any or all parties;
- Change in class schedule, including the ability to transfer course sections or drop a course without penalty;
- Rescheduling of exams and assignments;
- Change in work schedule or job assignment;
- Change in living arrangements;
- Limiting an individual or organization's access to certain University facilities or activities pending resolution of the matter;
- Providing an escort to ensure safe movement between classes and activities;
- Providing counselling services and assistance in setting up an initial appointment;
- Providing academic support services, such as tutoring;
- Removal from campus housing in accordance with the policies and procedures of the University;
- Other remedies which are deemed appropriate;
- Interim suspensions –
  - An interim suspension may be imposed by the Director of Student Conduct and Community Standards when there is reason to believe that the student(s)/student organization's conduct poses a substantial threat of harm to oneself or others, threatens or endangers University property, or disrupts the stability and continuances of normal University operations and functions.
  - A student will be denied access to the residence halls, and/or to the campus (including classes), and to all other University activities or events, which the student might otherwise be eligible to participate in or attend.
  - A student will be notified of an interim suspension orally, by written notice served on the student, or by written notice sent to the email address on record. The interim sanctions or interim suspension takes effect the day they are issued.
  - A student given an interim suspension will be given an opportunity to appear before the Associate Vice-President of Student Affairs or a designee within three (3) working days in order to discuss the following issues only:
    - The reliability of the information concerning the student alleged misconduct.
    - Whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on University premises poses a substantial and immediate threat to himself/herself, to others, or to property.
  - The Associate Vice President of Student Affairs or his/her designee may affirm or alter the interim suspensions based on the discussion with the student. If the decision is affirmed, the Associate Vice President of Student Affairs or his/her designee will inform the student of that decision at the conclusion of the discussion. If the interim suspension is affirmed by the Associate Vice President of Student Affairs, the Title IX Coordinator will expedite the investigation of the alleged violation so that the interim suspension will not be prolonged.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

### IV. Complaint Resolution Procedures:

#### **A. Overview of Options**

The University is committed to providing all members of the University community with a safe place to live, learn, and work. Consistent with this priority, the University will respond promptly and equitably to all allegations of Prohibited Conduct.. Any individual may make a report under the Sexual Misconduct and Interpersonal Violence Policy, which will indicate a review of the complaint as outlined in this section.

The University's response to reports of sexual harassment, sexual violence, intimate partner violence, and stalking under this policy is pursued in multiple stages: report, assessment, investigation, resolution, and appeal. At each of these stages, the University is committed to maintaining fairness for all parties and to balancing the needs and interest of the individuals involved with the safety of the community as a whole.

Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects. The Title IX Coordinator will only consult with those who "need to know" in order to implement procedures under this policy.

Upon receipt of a report, the Title IX Coordinator will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment, sexual violence, intimate partner violence, and stalking. The assessment will consider the nature of the report, the safety of the individual and the campus community, the Complainant's expressed preference for resolution, and the necessity for any interim measure to protect the safety of the Complainant or the community.

Following the initial assessment, the University may, at the discretion of the Title IX Coordinator:

1. Seek Informal Resolution that does not involve disciplinary action against a Respondent;  
or
2. Seek formal resolution by initiating an investigation to determine if the disciplinary action is warranted.

Each resolution process is guided by the same principles of fairness and respect for all parties. Any individual who violates these standards will be held accountable for their behavior through a process that protects the rights of both the Complainant and the Respondent. Resources are available for both students and employees, whether as Complainants, Respondents, or witnesses, to provide support and guidance throughout the investigation and resolution of the complaint.

#### **B. Title IX Assessment**

When a report is made, the Title IX Coordinator will conduct an initial Title IX assessment. The first step of this assessment will usually be a preliminary meeting between the Complainant and

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

the Title IX Coordinator. In the course of this assessment, the University will consider the interest of the Complainant and the Complainant's expressed preferences for manner of resolution. Where possible and when supported by the facts and circumstances, the University will seek action consistent with the Complainant's request.

As part of the initial assessment of the facts, the University will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement;
- Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the Complainant of the importance of the preservation of evidence;
- Provide the Complainant with information about on-and off-campus resources;
- Notify the Complainant of the available interim measures;
- Provide the Complainant with an explanation of the procedural options, including informal resolution and formal resolution;
- Inform the Complainant and the Respondent they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the complaint, and that the advisor may accompany them to any meeting or proceeding under this policy;
  - (Additional guidance about the role of the advisor is contained in the Appendix).
- Assess for pattern evidence or other similar conduct by the Respondent;
- Explain the University's policy prohibiting retaliation.

The initial interview review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the University has sufficient information to determine the best course of action.

At the conclusion of the Title IX Assessment, the Title IX Coordinator will determine the appropriate manner of resolution, which may include Informal Resolution or the initiation of an investigation to determine if disciplinary action is warranted. It is at the discretion of the Title IX Coordinator to determine which method of resolution is appropriate. Any individual wishing to explore alternative resolution methods is encouraged to discuss these options with the Title IX Coordinator.

Where the Complainant requests that their identity not be shared with the Respondent or that the University not pursue an investigation, the University must consider this request in the context of the University's responsibility to provide a safe and non-discriminatory environment for all University community members. The University, through the Title IX Coordinator, will take all reasonable steps to investigate and respond to the complaint consistent with the request not to share identifying information or pursue an investigation, but its ability to do so may be limited by the request. Under these circumstances, the Complainant's request will be balanced against the following factors:



## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

- The seriousness of the conduct;
- The roles of the Complainant and Respondent;
- Whether there have been other complaints or reports of harassment or misconduct against the Respondent;
- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence;
- Whether the Respondent has a history or arrests or prior conduct violations (At Eastern Michigan or elsewhere) indicating a history of violence;
- Whether the alleged Respondent threatened further sexual violence or other violence against the student or others;
- Whether the sexual violence was committed by multiple individuals;
- Whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances;
- Whether sexual violence was perpetrated with a weapon;
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

The University will take all reasonable steps to investigate and respond to the report consistent with the request not to share the identifying information or pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the University is unable to take action consistent with the request of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action, which may include the University seeking disciplinary action against the Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

At the conclusion of the initial Title IX assessment, the Complainant will receive a written notice of the determination about how the University plans to proceed. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University seeks action that would impact a Respondent, such as protective measures that restrict the Respondent's movements on campus, the initiation of an investigation, or the decision to request the Respondent's involvement in an Informal Resolution.

### **C. Informal Resolution**

Informal Resolution is an alternative approach designed to stop the Prohibited Conduct without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that Informal Resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to educational, extracurricular, and employment activities at the University and to eliminate a hostile environment. Depending on the form of Informal Resolution used, it may be possible for a Complainant to maintain anonymity.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

Informal Resolution, even if voluntary, may not be used in cases involving sexual assault. The decision to pursue Informal Resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation is voluntary, and a Complainant or Respondent can request to end Informal Resolution and initiate an investigation at any time. Additionally, if an informal resolution is reached but either party fails to abide by the resolution, the Title IX Coordinator may initiate an investigation and formal resolution, if deemed appropriate.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which will typically be completed within sixty (60) days of the conclusion of the initial Title IX assessment.

### **D. Investigation**

#### Overview of Investigation:

Where the initial Title IX assessment concludes that Prohibited Conduct may have occurred, based on the University's determination that an investigation should be pursued based on the potential risk of harm or threat to public safety, the Title IX Coordinator will initiate an investigation. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

Throughout the investigation and resolution, a Complainant or Respondent may have an advisor of their choosing present at any meeting or proceeding. Additional guidance about the role of the advisor is contained in the Appendix.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the University campus community, and take appropriate measures designed to end the misconduct, prevent its recurrence, and address its effects.

#### Notice of Investigation

Both the Complainant and the Respondent will receive written notice that an investigation has been initiated. The notice will include the description of the complaint, the potential policy violations at issue, the name and contact information of the assigned investigator, and a copy of the investigative procedures.

#### Investigator

The University will designate an investigator who has specific training and experience investigating allegations of Prohibited Conduct.. The investigator may be an employee of the University, an external investigator engaged to assist the University in its fact gathering, or both. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest.

#### Investigative Steps

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

The investigator will conduct the investigation in an appropriate manner in the light of the circumstances of the case. The investigator will coordinate the gathering of information from the Complainant, the Respondent, and any other individual who may have information relevant to the determination. The investigator may consider prior or subsequent conduct that is relevant to evaluating the current conduct. The investigative interviews may be audio-recorded and notes of the interview will be maintained by the University until the parties have had the opportunity to review and comment on the draft investigation report. The investigator will also gather any available physical evidence, including documents, communications between parties, and other electronic records as appropriate and as described more fully below. The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information.

### Complainant and Respondent Interviews

The investigator will interview the Complainant and Respondent separately. Each party will be asked to participate in an initial interview and may be asked to participate in a follow up interview(s) as needed.

### Other Sexual History

The Sexual History of a Complainant or Respondent will never be used to prove character or reputation. An investigation under this policy may consider prior or subsequent sexual history between the parties if the investigator, with the agreement of the Title IX Coordinator, determines that there was a prior or ongoing relationship between the Complainant and Respondent and the investigator is asked to determine whether consent was sought and given. As noted in other sections of the policy, whether someone consented on a prior or subsequent occasion is not evidence that the person consented on this occasion, and consent must be sought and given each time. Any prior or subsequent sexual history between the parties will only be used to help understand the manner and nature of communications between the parties and the context of the relationship. If the investigator and Title IX Coordinator determine that prior or subsequent sexual history should be considered both the Complainant and Respondent will be notified and have the opportunity to provide any additional relevant information to the investigator.

### Witness Interviews

The investigator will make a good faith effort to contact and interview any witness identified by the parties or in the documentation, including those no longer at the University. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator may also interview any other individual he or she finds to be potentially relevant to the allegations of the complaint. The investigator will inform each witness that they are prohibited from retaliating against the Complainant and Respondent or other witnesses, and request that the witness respect the privacy of the parties and the integrity of the process.

### Experts

The investigator may contact any expert they determine is necessary to ascertain the facts related to the complaint. An expert witness may be contacted for an informal consultation or for a professional opinion regarding information learned from the investigation.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

### Documents/Records Review

In addition to reviewing any documents submitted by the Complainant and Respondent, the investigator will try to obtain such other physical or medical evidence relevant to the investigation as the investigator determines, in their judgement, to be necessary, including but not limited to documents, police records, electronic or other records of communications between the parties or witnesses and records of other relevant information. In obtaining such information the investigator will comply with applicable laws and Eastern Michigan University policies.

### Site Visits

The investigator may visit relevant sites or locations and record observations through written or electronic documentation, such as videos or photographs.

### Consideration of Other Conduct by a Respondent

Evidence of an occurrence or occurrences of sexual or other relevant behavior so distinctive and so closely resembling either party's version of the alleged encounter as to tend to prove a material fact, including whether consent was sought or given, may be admissible. Where there is evidence of a pattern of similar conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a policy violation, this information may be deemed relevant to the determination of policy violation or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous or subsequent incident was substantially similar to the conduct cited in the report or indicates a pattern of behavior and substantial conformity with that pattern. Where there is a prior finding of a policy violation by the Respondent for a similar act of prohibited conduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and assigning of a sanction.

### Consolidation of Investigation

The investigator and the Title IX Coordinator have the discretion to consolidate multiple reports against a Respondent into one investigation if the evidence related to each incident would be relevant in reaching a determination in the other incident. In addition, in gathering the facts, the investigator may consider similar prior or subsequent allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant.

### Concurrent Law Enforcement Investigation

If there is a concurrent criminal investigation, at the request of law enforcement, the University may agree to defer its Title IX fact-gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the Complainant and Respondent regarding Title IX rights, procedural options, and the implementation of interim measures to assure the safety and well-being of all affected individuals. The University will promptly resume its Title IX fact-gathering as soon as law enforcement has released the case of review following the initial criminal investigation.

### Investigation Report Content

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

At the conclusion of the investigation, the investigator will prepare a draft report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts, and analyzes the relevant facts determined through the investigation, referencing any supporting documentation or statements. The investigation report may include summaries of interviews with the Complainant, Respondent, third-party witnesses, experts, and any other individuals with relevant information, photographs of relevant sites or physical evidence, electronic records, and forensic evidence.

In preparing the draft report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the investigator will not include information that is irrelevant, more prejudicial than probative, or immaterial. The investigator may also redact statements of personal opinion, rather than direct observation or reasonable inferences from the facts and statements as to general reputation for any character trait, including honesty.

### Review of Draft Investigation Report

Before the report is finalized, the Complainant and Respondent will be given the opportunity to review the draft report. Consistent with FERPA or safety concerns, identifying information about the Complainant or witnesses may be redacted at the discretion of the Title IX Coordinator. A Complainant and Respondent may submit any additional comment or evidence to the investigator within two (2) days of the opportunity to review the report. A Complainant and Respondent may also raise concerns about the inclusion of any evidence, even if relevant, that the party believes may be more harmful than probative. Upon request by either the Complainant or Respondent prior to the expiration of the two (2) day period, an additional three (3) days may be granted to submit additional comments or evidence to the investigator.

Upon receipt of any additional information or comments by the Complainant or Respondent, or after the two (2) day comment period has lapsed without comment, the investigator will prepare the final investigation report. In completing the report, the investigator, in consultation with the Title IX Coordinator, will determine whether any information included in the report should be excluded. After any adjustments are made in response to comments and information received, the investigator shall determine whether there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred.

The investigator will submit a final report and investigative finding to the Title IX Coordinator. The final report will include all investigation materials subject to the guidelines set forth in the preceding section, the Complainant and Respondent responses, the finding of whether this Sexual Misconduct and Interpersonal Violence Policy policy and any additional policies being explored through this investigation have been violated, and the investigator's rationale. The finding will be based on the standard of preponderance of the evidence, i.e., whether it is more likely than not that the policy was violated.

### **Formal Resolution**

The Title IX Coordinator will assign the matter to a Review Panel. The members of the Review Panel are fair and impartial decision-makers. The Review Panel has received appropriate training

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

to participate as informed and impartial decision-makers. The Review Panel is comprised of three University employees (faculty and staff). The Review Panel members must have no prior experience with the parties, witnesses, or incident(s) in question that would present any actual conflict of interest. The Complainant and Respondent will be informed of the composition of the Review Panel and may raise a challenge for bias or conflict to the Title IX Coordinator before the review begins.

The Review Panel will review the final investigation report to determine whether:

1. The investigation was conducted in a fair, impartial, and reliable manner;
2. The information is sufficient to support the factual findings; and
3. There is a rational basis, applying a preponderance of the evidence standard, for the recommended finding(s) of responsibility or no responsibility.

In reaching a determination, the Review Panel may elect to meet with the investigator, but the Review Panel may not conduct its own investigation or hearing.

After the Review Panel has concluded its review of the final investigative report and any additional information requested, the Review Panel shall either affirm or reject the investigator's finding(s).

### **Review Panel Rejection of Investigator's Report, in Whole or in Part:**

The Review Panel may:

1. Accept or reject the investigator's finding in whole or in part and modify the investigative report accordingly;
2. Request that further investigation be undertaken by the same or another investigator;
3. Request that a de novo investigation be conducted.

### **Review Panel's Acceptance of Investigator's Report:**

1. If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is insufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will affirm the finding of no responsibility.
2. If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will consider the imposition of a sanction designed to eliminate the misconduct, prevent its reoccurrence, and remedy its effects. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

The Review Panel is responsible for determining the appropriate sanction. The Review Panel will consult with the Title IX Coordinator with respect to sanction and remedy.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

The Review Panel may impose a sanction deemed appropriate after a consideration of all the relevant information. In general, the imposition of sanctions will take effect immediately and will not be deferred pending the resolution of the appeal.

The sanctions may include disciplinary action up to and including suspension from the University or permanent dismissal. A full list of the range of sanctions for students is contained later in this policy.

Sanctions may be issued individually, or a combination of sanctions may be imposed. The determination of sanctions is based upon a number of factors including: the nature of the conduct by the Respondent; the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by the Respondent; the impact of the violation on the community, its members, or its property; any previous conduct violations; and any mitigating or aggravating circumstances.

In situations where it is determined that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability, or other protected class, the sanction imposed may be enhanced to account for the bias motivation.

For a student employee who is acting in the scope of his/her employment at the time of the incident, the sanction may include any permissible sanction from the Sexual Misconduct and Interpersonal Violence Policy or the personnel policies for employees.

### Possible Student Sanctions

- 1. Warning:** Notice to a student or organization that continuation or repetition of conduct found to be in violation of the Sexual Misconduct and Interpersonal Violence Policy may result in further disciplinary action.
- 2. Housing Restriction(s):** Housing restrictions include, but are not limited to, restricted access to any or all parts of residence halls, the loss of room selection privileges, relocation to another University residential facility, requirement to move on-or off-campus at an individual's own expense, removal of guest privileges, and/or restriction from specific housing options.
- 3. Assessment and Treatment:** Referral to the Wellness Center or approved off-campus agency for assessment and/or treatment.
- 4. Restrictions on Participation or Use:** Restrictions on participating may include the revocation, or the loss for a stated period of time or under a stated set of conditions, of a student's ability to participate in certain University-approved activities, including, but not limited to, varsity sports, clubs, organizations (including but not limited to Greek organizations), or leadership positions in such sports, clubs, and organizations.
- 5. Probation:** A specified period of time requiring maintenance of exemplary conduct. Further violations during this time may result in more serious sanctions than are imposed in the absence of probationary status. During a probationary period, the terms imposed on an organization will also be binding on its members.
- 6. Deferred Suspensions:** A student or organization on deferred suspension has been found responsible for conduct that warrants suspension from the University. In the exercise of

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

its discretion, the University has determined to withhold immediate imposition of the suspension and allow the individual or organization to remain on campus, usually with additional terms of compliance. If a student or organization is found in violation of any aspect of the Sexual Harassment and Misconduct Policy or of terms of compliance during the period of the Deferred Suspension, the deferment of this suspension may be lifted and the suspension will become effective immediately, resulting in separation from the University for the remainder of the suspension period. In addition, any other sanctions for the new violation(s) will be imposed. During a period of deferred suspension, the terms imposed on an organization will also be binding on the members of the organization.

7. **Suspension from the University:** A student suspended from the University may not participate in classes or other University activities and may not be on University property (except by appointment, arranged in advance with the Title IX Coordinator (or designee) or the Associate Vice President of Student Affairs (or designees)) for the period of time specified in the notice of suspension. Suspension extending beyond the semester in which action is taken shall consist of units of full semesters and/or summer sessions. In no case shall the suspension terminate prior to the end of a semester. Courses taken at another institution during this period of suspension will not be accepted for transfer at the University. Conditions for resuming active status on campus following suspension may be imposed by the University. A sanction of immediate suspension will go into effect within 24 hours of receipt of the outcome letter unless otherwise noted in the outcome letter and shall remain in effect throughout any appeal process. An organization that is suspended shall be required to forfeit its ability to conduct group-sponsored activities or to participate in University-sponsored activities, and any University support for the organization will be withdrawn, during the period of suspension.
8. **Revocation or Withholding of Diploma and Degree:** If a student has graduated from the University, or has otherwise satisfied the requirements for earning a degree, before violations of the Sexual Misconduct and Interpersonal Violence Policy are discovered or before a determination of violations is complete, the University reserves the right to revoke the diploma and/or degree conferred, or to withhold the conferring of a degree or diploma otherwise earned for a specified period of time or indefinitely.
9. **Permanent Dismissal:** For an individual, permanent termination of student status includes exclusion from any University property, University sponsored, or University affiliated events. A person Permanently Dismissed for the University is denied the rights and privileges of inclusion in the Eastern Michigan University community both as a student and as an alumnus/alumna. Permanent Dismissal will go into effect within 24 hours of receipt of the outcome letter unless otherwise noted in the outcome letter, and shall remain in effect throughout any appeals process. For an organization, permanent termination of the organization's relationship and status with the University, which includes termination of access to facilities, funding, and/or right to assemble as an organization on University property and at University-sponsored or affiliated events. An organization expelled from the University is denied the rights and privileges of inclusion in the Eastern Michigan University community as an organization.
10. **Other:** Such other sanctions as may be appropriate at the discretion of the University.

Notice of Outcome



## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

Both the Respondent and the Complainant will simultaneously receive written notice of the outcome, the sanction, and the rationale for both.

To provide notice of the outcome, University-issued email is the primary means of communication. Alternative methods may be used, if appropriate.

The notice of outcome will include the findings as to whether there has been a policy violation and the rationale for the result. The notice of outcome will also include the sanction and the rationale for the sanction. The Respondent will be informed of the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be fully informed of any sanctions and remedies that directly relate to the Complainant, including information about the Respondent's presence on campus (or in a shared class or residence hall), that may help a Complainant make informed decisions or work with the University to eliminate harassment and prevent its recurrence. The notice of outcome will also provide each party with their appeal options.

The University may also notify appropriate University officials, such as the Executive Director of Public Safety, faculty members, residence life staff, coaches, as necessary, to implement the outcome and/or sanctions.

### Appeal

Either party may appeal the outcome and/or sanction. The appeal will be conducted in an impartial manner. The Associate Vice President for Student Affairs will conduct appeals. A review of the matter will be prompt and narrowly tailored to stated appeal grounds. The limited grounds for appeal are as follows:

1. New information that could affect the finding of the investigator or Review Panel and was not available through the exercise of due diligence at the time of the investigation;
2. A deviation from University policy or procedure that materially affected the outcome;
3. Sanctions too harsh or too lenient.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. Dissatisfaction with the outcome of the investigation is not grounds for appeal. The appeal must be submitted to the Title IX Coordinator within five (5) days of the date of the outcome letter. Upon receipt of the appeal, the Title IX Coordinator will forward the request to the Associate Vice President for Student Affairs.

The Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within five (5) days from the receipt of the appeal. In the event both parties initially appeal the findings, each party will be provided notice and a copy of the other party's appeal.

Upon receipt of the appeal and any response, the Title IX Coordinator will coordinate and be copied on all matters related to the appeal.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

appropriately. The appeal is not a new review of the underlying matter. The Associate Vice President of Student Affairs shall consider the merits of an appeal only on the basis of the three grounds for appeal. The Associate Vice President of Student Affairs will review the written investigation report and all supporting documents and may consult with both parties.

Appeals are not intended to be a full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation regarding the grounds for the appeal. This is not an opportunity for the Associate Vice President of Student Affairs to substitute his/her judgment for that of the original reviewing body merely because s/he disagrees with it finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is a clear error based on the stated appeal grounds.

The Associate Vice President of Student Affairs can:

1. Affirm the original findings, or
2. Alter the findings, and/or
3. Alter the sanctions, depending on the basis of the requested appeal.

If the appeal is based on procedures not having been followed in a material manner, the Associate Vice President of Student Affairs can ask that a new investigation and/or imposition of sanctions occur. In the case of new and relevant information, the Associate Vice President of Student Affairs can recommend that the case be returned to the Review Panel to assess the weight and effect of the new information and render a determination after considering the new facts.

The Associate Vice President of Student Affairs will communicate the result of the appeal to the Complainant and Respondent within ten (10) days from the date of the submission of all appeal documents by both parties. Decisions on Appeals are final.

### **E. Additional Considerations**

#### Group Infractions

When members of a student group, organization, team, or individuals act in concert in violation of the Sexual Misconduct and Interpersonal Violence Policy, their conduct may be reviewed as a group or as individuals, and an investigation may proceed against the group as joint Respondents or against one or more involved individuals as appropriate given available information and circumstances.

A student group, organization, or team's officers and membership may be held collectively and individually responsible when violations of the Sexual Misconduct and Interpersonal Violence Policy by the organization or its members take place at organization sponsored events, have received the consent or encouragement of the organization or the organization's leaders or officers, or was known or reasonably should have been known to the membership or its officers.

In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and individually.

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

### Records

The Title IX Coordinator will retain records of all reports, allegations, and complaints, regardless of whether the matter is resolved by Title IX assessment, Informal Resolution, or Formal Resolution. In general, records will be maintained for the duration of the Respondent's enrollment at the University and may be retained for no less than seven years following the Respondent's departure from the University.

### Students

Findings of responsibility in matters resolved through Formal Resolution are part of a student's conduct record. Such records shall be used in reviewing any further conduct or in developing sanctions and shall remain a part of a student's conduct record.

Complaints resolved by a Title IX assessment or Informal Resolution are not part of a student's conduct file or academic record. The conduct files of students who have been suspended, permanently dismissed, or who withdrew pending disciplinary action from the University are maintained in the Student Conduct and Community Standards office for seven years after their departure from the University.

Further questions should be directed to the Associate Director of Student Conduct and Community Standards. Records of disciplinary action involving organizations are maintained in the Student Conduct and Community Standards office indefinitely.

Students who declare an interest in studying abroad through the Academic Programs Abroad are subject to a conduct record check. Information that will be shared with the Office of Academic Programs Abroad includes, but is not limited to, determination of sexual misconduct violations. It is within the sole discretion of the University, through the Office of Academic Programs Abroad, to determine whether a student who has violated University policy is eligible to study abroad. Consideration and qualification for study abroad are not disciplinary determinations but may be affected by a student's disciplinary record.

### V. Appendix and Definition of Terms:

**Advisor:** Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. The advisor may be any person, including an attorney engaged at the party's expense, who is not otherwise a party or witness in the investigation. The advisor may accompany the Complainant or Respondent to any meeting or related proceeding with an investigator or a University employee. While the advisor may confer quietly with the Complainant or Respondent to provide advice or support, the advisor may not speak on behalf of the Complainant or Respondent or otherwise actively participate in, or in any manner disrupt, the meeting or proceeding. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process in accordance with the University's objective of completing the resolution process in sixty (60) days or less.

The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. No copies of written materials or any other evidence will be

## STUDENT SEXUAL MISCONDUCT AND INTERPERSONAL VIOLENCE INVESTIGATORY PROCEDURE

given to an advisor, although the parties may share such information with an advisor as necessary to assist them in the proceedings.

**Character Witness:** An individual(s) attesting to the character of either the Complainant or Respondent. Character witnesses provide information in written form for use by the Review Panel for determining sanctioning, only if there is an affirmative decision regarding responsibility for the violation(s) in question. A character statement must be requested by the party it is written to support and must be submitted to the Title IX Coordinator in advance of the Review Panel meeting.

**Complainant:** An individual who invokes the University's investigation and resolution process to determine if the sexual misconduct policy has been violated and identifies him or herself as a victim of the alleged misconduct. In some circumstances, the University may assume the role of Complainant.

**Parties:** A term referencing collectively to the Complainant and Respondent.

**Prohibited Conduct:** Prohibited Conduct is defined in the University's Sexual Misconduct and Interpersonal Violence Policy ([link](#)) and includes Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender Based Harassment and Retaliation.

**Respondent:** Any individual(s) or organization(s) alleged to have violated the Sexual Misconduct and Interpersonal Violence Policy and against whom a complaint has been brought to the attention of the University.

**Student:** Any student enrolled at the University at the time of the alleged sexual misconduct. For the purposes of this policy, student status begins when a student has accepted an offer for admission to the University and ends when the student has graduated, withdrawn, been permanently dismissed, or otherwise separated permanently from the University.

**Title IX:** Title IX refers to the Educational Amendments of 1972 (Title IX), 20 U.S.C. §§1681 et seq., and its implementing regulations, 32 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The University is required to comply with Title IX. Sexual harassment of students, which includes acts of sexual misconduct described in this policy, is a form of sex discrimination prohibited by Title IX.

**Victim:** Any individual who has been harmed by an act or acts of sexual misconduct.

**Witness:** Any individual who has seen, heard, or otherwise knows or has information about a violation.

Effective Date: July 1, 2016



Discrimination/Harassment Complaint  
Investigation Procedure for Complaints  
against Faculty, Staff, or Visitors



DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
PROCEDURE FOR COMPLAINTS AGAINST  
FACULTY, STAFF OR VISITORS

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#### UNIVERSITY POLICY STATEMENT

It is the policy of Eastern Michigan University, in recognition of the essential rights of all employees and applicants as individuals, to recruit and hire in all job classifications without regard to race, color, religion, creed, sex, age, national origin, ancestry, marital status, veterans status or physical or mental disability as provided for and to the extent required by state and federal statutes. Further, it is the policy of the University to take affirmative action to ensure that all personnel actions such as rate of compensation, promotion, retirement, transfers, fringe benefits, layoffs, return from layoff, University training programs, social and recreational programs are administered without regard to race, color, religion, creed, sex, age, national origin, ancestry, marital status, veterans status, Vietnam-era veterans status, non-relevant mental or physical disability or other protected status, as provided for and to the extent required by state and federal statutes. Finally, it is the policy of the University to recruit, hire and take other personnel actions in all job classifications without regard to sexual orientation, gender identity or expression. (See EMU Board Policies 3.1.2, 3.1.3 and 3.1.8).

EMU takes all allegations of discrimination and harassment seriously and is committed to providing an environment free of unlawful discrimination and harassment.

The Office of Diversity and Affirmative Action (D&AA) has prepared the following procedures to be used for a complaint investigation to allow all parties an opportunity to understand the general direction of the process of an investigation. These procedures apply to complaints of all applicable federal and state equal opportunity and discrimination violation allegations raised by employees, students, or third parties against a faculty, staff member, or third party, such as a vendor or visitor to EMU. The Office of Diversity and Affirmative Action may deviate from these procedures as necessary in order to achieve the goals of prompt, thorough, and effective resolution of the matter at hand.

#### DEFINITIONS

##### Discrimination

Discrimination is as the unequal treatment of a person based on that person's protected characteristic. This prohibition covers any term or condition of employment, academic program, student service, activity, benefit or opportunity provided by EMU. An example of discrimination is a supervisor denying wage increases, preferential shifts, or other terms or conditions of employment because of that person's race, color, religion, creed, sex, age, national origin, ancestry, marital status, veteran status, Vietnam-era veterans status, gender identity or expression, non-relevant mental or physical disability, or other protected status.

DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
PROCEDURE FOR COMPLAINTS AGAINST  
FACULTY, STAFF OR VISITORS

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Sex discrimination includes sexual harassment and sexual assault. The definition and examples of Sexual Harassment can be found in Section III.E. of the [Sexual Misconduct and Interpersonal Violence Policy](#). Further information may be found in the [Sexual Harassment and Other Prohibited Conduct Policy](#).

#### REPORTING OF COMPLAINT

Overall, the University's response to an allegation of violation of law or policy will be determined by the nature of the alleged violation and the totality of information available at the time of the alleged incident. Requests from complainants to "just record my concerns" or "not take any action at this time" may not be honored depending on the circumstances involved. If at any time the university feels an investigation is necessary, an investigation may proceed without the support of the potential complainant.

#### TIME LIMIT FOR FILING COMPLAINT:

Complaints must be filed within 60 days of the most recent offending incident. The University reserves the right, in its sole discretion, to investigate and act on complaints involving incidents that have occurred beyond the time limit.

Supervisors who learn of incidents that may be a violation of the University's prohibition against discrimination or harassment are expected to promptly report the matter to the Office of Diversity and Affirmative Action.

#### SUPPORT PERSONS

An individual who is a Complainant or Respondent may have another member of the University community present during an investigation as a support person. That support person may not be an attorney and may be present in support of the Complainant or Respondent, but may not participate in the investigative process. Faculty or staff who are members of a union will be informed that they may have a union representative as a support person. Individuals who are witnesses to the behavior in question may not serve

DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
PROCEDURE FOR COMPLAINTS AGAINST  
FACULTY, STAFF OR VISITORS

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as support persons. All are expected to maintain confidentiality regarding any and all exchanges of information during the investigation.

#### CONFIDENTIALITY

The University will make every reasonable effort to maintain confidentiality and privacy of all parties involved to the extent allowable in accordance with state and federal laws and EMU policy.

Timely cooperation is expected of all involved parties throughout the investigative process. All parties (complainant, respondent, witnesses, support persons) are expected to be respectful and confidential during the process of an investigation.

#### INVESTIGATIVE PROCESS

The Office of Diversity and Affirmative Action will determine the most effective method of investigating the allegations raised by the complainant. This will most likely involve conducting a thorough fact finding investigation, which includes separate meetings with the Complainant, Respondent, and witnesses with first hand knowledge of the situation; and reviewing and analyzing relevant records as they relate to the allegations. A complainant will be provided an opportunity to discuss his/her complaint with the investigator who will in turn determine if the complaint falls within the scope of nondiscrimination/harassment procedures. The Complainant, Respondent, and witnesses will have the right to present evidence (including documents and names of witnesses) to the investigator. It will be within the investigator's discretion to determine the weight of the evidence and whether it is necessary or appropriate to talk to all persons listed.

Participants in the process may be requested to document their statements. If a person declines to provide a written statement or sign a statement taken by the investigator that documents his/her account of the incident (s), D&AA will conduct an investigation based upon available information. However, at all times, those involved will receive a procedurally fair, prompt, and thorough evaluation whose outcome is documented in writing. Upon completion of the investigation, the Complainant and the Respondent will be notified of the outcome.

The University will take interim measures as necessary to prevent the Complainant from being subjected to discrimination or harassment during the investigative process. The University will take steps to ensure that any interim measures taken do not adversely affect the Complainant.

#### Pre-Investigation Process

During the pre-investigation evaluation period, the investigator will determine if:  
--the complaint is timely



DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
PROCEDURE FOR COMPLAINTS AGAINST  
FACULTY, STAFF OR VISITORS

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- the situation described in the complaint arose in the course of a University program or activity
- the complaint is directed against a University employee, student, administrative unit (e.g. Admissions Office), or visitor.
- if factually supported, the alleged behavior could constitute unlawful discrimination or retaliation

If the complaint does not meet the above criteria or establish a violation of a law or policy enforced by the Diversity and Affirmative Action office, the D&AA office may close the case. However, the Respondent may still be subject to University Action if the alleged behavior violates another University policy or is otherwise inappropriate.

#### Informal Resolution Process

The Office of Diversity and Affirmative Action will have 21 days from receipt of a complaint to evaluate the complaint, contact the respondent and complainant and attempt to resolve the complaint if informal resolution is possible. The informal resolution process is an abbreviated process for less complicated matters that can be quickly resolved to the satisfaction of both parties. An example of such a matter might be a single comment that the complainant deemed objectionable and either a clarification or an apology would resolve the matter. The informal process is completely voluntary, and both parties must agree to it. A complainant has the right in every case to insist on a formal investigation and findings. The University recognizes that there may be certain complaints, for example those involving sexual assault, where the informal process will never be appropriate.

#### How and Where to Lodge a Complaint:

A person wishing to file a complaint should submit a written statement to the Title IX Coordinator or the Office of Diversity and Affirmative Action. Forms are available on the D&AA office webpage ([www.emich.edu/diversity](http://www.emich.edu/diversity)). Individuals may also be assisted in the D&AA Office located at 140McKenny Hall. The complaint should specify:

- the name of the individual(s) against whom the complaint is made
- the nature of the alleged offense (discrimination based on a protected criteria, harassment, disability, etc)
- the specifics of the offending incident (s) with precise details (what happened, who was present, when, where, any reasons why they believe the action was taken)
- the date and signature of the person making the complaint.

The Title IX Coordinator will be informed of all complaints alleging sex discrimination. The contact information for the Title IX Coordinator is:

Melody A. Werner, Ed.D.  
246B Student Center  
734.487.3617  
[mwerner@emich.edu](mailto:mwerner@emich.edu)

DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
PROCEDURE FOR COMPLAINTS AGAINST  
FACULTY, STAFF OR VISITORS

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The person responsible for handling the complaints is:

Sharon Abraham  
Director- Diversity/Affirmative Action Human Resources  
140McKenny  
Ypsilanti, MI 48197  
734.487.3430  
[sabraha1@emich.edu](mailto:sabraha1@emich.edu)

The contact information and a description of responsibilities for the Office of Diversity and Affirmative Action and for other offices handling complaints of discrimination, sexual harassment and sexual assault can be found at:

<http://www.emich.edu/title-nine/>

#### COMPLAINT INVOLVING STUDENTS

Allegations of discrimination or policy violation involving student to student interactions will be referred to the [Title IX Coordinator](#). Allegations involving university employees, applicants, or visitors will be handled by the Office of Diversity and Affirmative Action

#### EVIDENTIARY STANDARD

The investigator shall determine there is unlawful discrimination based upon a "preponderance of evidence" standard. This standard means that it is more likely than not that the unlawful discrimination occurred.

#### INVESTIGATIVE TIME FRAMES

The investigator will create a written report describing the findings. The D&AA will strive to complete the investigation within 90 days of receipt of the complaint. Both parties will receive notification of the outcome within seven days of the completion of the report. This period may be extended should it take a longer period of time to properly investigate a complaint

#### PROHIBITION AGAINST RETALIATION

Retaliation against persons who participate in the complaint procedure is prohibited by federal and state law, including Title VII of the 1964 Civil Rights Act, Title IX of the Educational Amendments of 1972, and Michigan's Elliott-Larsen Civil Rights Act and is a violation of the University's non-discrimination policy. Retaliation exists when action is taken against a participant which affects his or her employment, academic, or business status which is motivated in whole or in part by his or her participation in the process. Retaliation may be found even where the underlying complaint is found to have no merit. Persons who feel that they have been subject to retaliation may file a complaint under this procedure.

DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
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CORRECTIVE ACTION

If a final report finds that unlawful discrimination or harassment occurred, the University will determine appropriate corrective action. The University will take steps to prevent reoccurrence of any discrimination with remedies including discipline up to and including discharge for the Respondent. The University will also provide remedies to the Complainant, as deemed appropriate. For example, if because of sexual discrimination an employee was denied a pay increase, the University will take steps to ensure the employee receives an appropriate pay increase.

Guests and other persons who violate the policy are subject to corrective action, which may include removal from campus and termination of contractual agreements. The University may also decide to take action if a Respondent is found to have engaged in inappropriate workplace behavior. Disciplinary action will be determined in accordance with Human Resources practice and any applicable collective bargaining agreement.

FILING A FALSE COMPLAINT.

Any individual who knowingly files a false complaint under this policy, or who knowingly provides false information to or intentionally misleads University officials who are investigating a complaint, may be subject to disciplinary and/or corrective action.

DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION  
PROCEDURE FOR COMPLAINTS AGAINST  
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# Appendix B

## List of Individuals Interviewed

1. Dr. Melody Werner, Title IX Coordinator
2. Anika Anai-Williams, Title IX Investigator
3. Robert Heighes, Executive Director of Public Safety and Chief of EMU Police
4. David Turner, Vice President of Human Resources
5. David Woike, Assistant Vice President for Academic Affairs
6. Jeff Ammons, Associate General Counsel
7. Lauren London, General Counsel
8. Jeff Kortman, Assistant Director for Residence Life
9. Joline Davis, Director of Labor and Employee Relations
10. Julie Berger, Academic Collective Bargaining Administrator
11. Scott Wetherbee, Vice President and Athletic Director
12. Erin Kido, Senior Associate Athletics Director and Senior Women Administrator
13. Sean Woolf, Associate Director of the Office of Wellness and Community Responsibility

Appendix C  
Information Forms for Parties

# Eastern Michigan University

## Title IX Office

### *Information for Complainants and Respondents*

- We are neutral.** The Investigator does not take sides. We are committed to providing a fair and unbiased review and our investigations are focused on the information available.
- Advisor.** You may bring an advisor (support person) with you to any meeting during the investigation process. Please notify us in advance if you will be bringing an advisor.
- Anonymity and confidentiality.** Information provided to our office may be shared with other University offices as necessary and appropriate. Respondents are provided information about the allegations in order to allow them a fair opportunity to respond. The Title IX Office will consider requests for Complainant anonymity on a case-by-case basis, consistent with the EMU Sexual Misconduct and Interpersonal Violence policy.
- Remedial and interim measures.** In many cases, interim and remedial measures are appropriate. Such measures may include separation of the Complainant and Respondent's academic, living and/or dining situations. In addition, academic accommodations may be provided, such as extra time for turning in assignments, making up a missed test, etc.
- Criminal investigations.** The University's process for addressing sexual misconduct and interpersonal violence is different and separate from a criminal investigation. A Complainant has the right to report to law enforcement, to the University, to both, or to neither.
- Interviewing the Complainant.** The first step the investigator takes in an investigation is to gather information about the incident(s). This usually involves interviewing the Complainant and gathering information from them, including documentation and names of witnesses, if any. Complainants are strongly encouraged to share all the information they have with the investigator.
- Interviewing the Respondent.** After the investigator understands the nature and scope of the incident(s), the Respondent is asked about the allegations and given a full and fair opportunity to respond. The Respondent is also asked to provide any documentation and identify witnesses relevant to the complaint. Respondents are strongly encouraged to share all information they have regarding the incident(s).



- Investigator follow-up.** The investigator may contact the Complainant, and the Respondent, and witnesses with additional questions or to request additional information.
- Review of Draft Summary and evidence.** Once all the investigation interviews have been completed, the investigator will prepare a Draft Summary, which will consist of a summary of each interview and all relevant evidence. Both the Complainant and the Respondent will be provided an opportunity to review the Draft Summary and the evidence. If either the Complainant or the Respondent chooses to review the Draft Summary, they must make arrangements to review the documentation at the Title IX Office within five days of notification by the Title IX Coordinator. During the review, the parties may make written comments on the Draft Summary.
- Decision and follow up.** After receiving any written comments from the Complainant and/or the Respondent, the investigator completes the Final Investigation Report, which includes an analysis of the information and a finding of either “responsible” or “not responsible.” A Title IX Review Panel will review the Final Investigation report, and in cases in which the decision is “responsible” will determine appropriate sanctions.
- Retaliation.** The University prohibits retaliation. Complainants or witnesses who feel they are being subjected to retaliatory behavior are strongly encouraged to immediately contact the Title IX Coordinator.
- Resources for support.** The University and community offers a variety of services to support students:
  - [Counseling and Psychological Services \(CAPS\)](#)
  - [EMU Psychology Clinic](#)
  - [EMU Counseling Clinic](#)
  - [Safe House](#)
  - [RAINN \(Rape, Abuse and Incest National Network\)](#)
- More information.** If you have any other questions about the investigation process, please contact the Title IX Coordinator at 734-487-3617 or by email at [mwerner@emich.edu](mailto:mwerner@emich.edu).