

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: **B**

DATE:

August 30, 2018

RECOMMENDATION

APPROVAL OF REVISIONS TO BOARD POLICY 3.7.7

ACTION REQUESTED

It is recommended that the Board of Regents of Eastern Michigan University approve the attached revision to Board Policy 3.7.7 (Sexual Misconduct and Interpersonal Violence Policy).

STAFF SUMMARY

All University policies must be approved by The Board of Regents of Eastern Michigan University. A University policy is defined by all of the following: a) has broad application throughout the University; and b) helps to ensure compliance with applicable laws and regulations, promotes operational efficiencies, enhances the university's mission or reduces institutional risks.

Pursuant to 2018 PA 265, the FY 2018-19 Education Omnibus Appropriation Act (the "Act"), the University must certify that it complies with certain requirements of the Act. Among these requirements are certain newly required elements of a university's Title IX investigative procedure. Board Policy 3.7.7 (Sexual Misconduct and Interpersonal Violence) includes details related to the University's Title IX investigative procedure and the attached revisions have been made in order to comply with the new requirements of the Act.

FISCAL IMPLICATIONS

Not applicable.

ADMINISTRATIVE RECOMMENDATION

The proposed Board action has been reviewed and is recommended for Board approval.



University Executive Officer
Lauren M. London
General Counsel

8/30/18
Date



Policies, Rules and Regulations

Chapter Name: Employment Affirmative Action And Civil Rights
Chapter No. 3.7.7
Issue: Sexual Misconduct and Interpersonal Violence Policy
Effective Date: 7-01-16
Revision Date: ~~10-20-17~~ 8-30-18

Introduction

Title IX Coordinator Contact Information

The President of Eastern Michigan 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. The contact information for the Title IX Coordinator and Deputy Title IX Coordinators is below:

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Title IX Coordinator

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University Policy Statement

Eastern Michigan University is an institution built upon honor, integrity, trust, and respect. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment. The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 ("Title IX"); Title VII of the Civil Rights Act of 1964 ("Title VII"); and Michigan's Elliott-Larsen Civil Rights Act. The University also addresses such behavior pursuant to its obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA").

The University prohibits Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, and Sexual or Gender-Based Harassment, collectively referred to as "Prohibited Conduct." Retaliation against a person for the good faith reporting or participation in any investigation or proceeding under this Policy is also a form of Prohibited Conduct. These forms of Prohibited Conduct are unlawful, undermine the character and purpose of the University, and will not be tolerated.

The University will take prompt and equitable action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The University conducts ongoing prevention, awareness, and training programs for Employees and Students to facilitate the goals of this policy.

A Student or Employee determined by the University to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including separation from the University. Third Parties who commit Prohibited Conduct may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

Where the date of the Prohibited Conduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) occurred.

Scope of Policy

To Whom Does the Policy Apply?

This policy is applicable to Students, Employees, and Third Parties.

- “Student” includes any person who meets any of the following criteria at the time the prohibited conduct is alleged to have occurred:
 - is enrolled in any number of courses, in any format at EMU,
 - is living in University housing, and/or
 - is not officially enrolled for a particular term, but whose EMU record indicates a continuing relationship with the University. The term relationship includes, but is not limited to:
 - those eligible and/or applying for re-enrollment and/or readmission;
 - those involved in an appeal or grievance process; and
 - those with unresolved business matters with EMU.
- “Employee” includes all persons who are legally defined as employees of the University.
- “Third Parties” includes all contractors, vendors, visitors, guests or any other third parties.
 - The University’s ability to take appropriate corrective action against a Third Party will be determined by the nature of the relationship of the Third Party to the University. The Title IX Coordinator will determine the appropriate manner of resolution consistent with the University’s commitment to a prompt and equitable process consistent with federal and state law, federal guidance, and this policy.
 - Where the Respondent is not a University Student or Employee, or a participant in any University related program or activity, the University’s ability to take action may be limited.

When and Where Does This Policy Apply

This policy pertains to acts of Prohibited Conduct committed by or against Students, Employees and Third Parties when:

- The conduct occurs on campus or other property owned or controlled by the University;
- The conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored study abroad, research, on-line, or internship programs; or
- The conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects that create a hostile environment for Students, Employees or Third Parties while on campus or other property owned or controlled by the University or in any University employment or education program or activity.

Intersection with Other Policies

The University’s Office of Diversity and Affirmative Action (D&AA) administers separate policies (</policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.2-equal-employment-opportunity-affirmative-action.php>) and [Civil Rights \(/policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.3-civil-rights.php\)](/policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.3-civil-rights.php) that address discrimination and harassment not covered by this Policy. Where Prohibited Conduct violates the Sexual Misconduct Policy and also violates other policies, the University’s response will be governed by this Policy. Questions about which policy applies in a specific instance should be directed to the University’s Title IX

Coordinator. In addition, conduct may be inappropriate, but not a violation of this Policy. Such conduct will be reviewed by the Title IX Coordinator and may be addressed through other appropriate processes (e.g. administrative offices, collective bargaining agreements, student conduct proceedings).

Prohibited Conduct [1]

Prohibited Conduct includes the following specifically defined forms of behavior: Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, and Retaliation.

Conduct under this policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant or Respondent. Being impaired by alcohol or other drugs does not excuse a Respondent from responsibility for committing Prohibited Conduct that violates this policy.

Sexual Assault

Sexual Assault is:

- Sexual Contact and/or Sexual Intercourse that occurs without Consent.
 - Sexual Contact includes touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts, and/or making another touch you or themselves with or on any of these body parts.
 - Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger, however slight; (b) anal penetration by a penis, object, tongue, or finger, however slight; and (c) any contact between the mouth of one person and the genitalia of another person.
- **Consent Is:**
 - informed (knowing);
 - voluntary (freely given); and
 - clearly communicated, through the demonstration of clear words or actions a person has indicated willingness to engage in a particular form of sexual activity.

Consent cannot be gained by force or coercion. Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. Coercion is conduct, including intimidation and express or implied threats of immediate or future physical, emotional, reputational, financial, or other harm to the Complainant or others, that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

An incapacitated individual cannot consent to sexual activity.

Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

A person who is incapacitated is unable, temporarily or permanently, to give Consent because of physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

When alcohol or other drugs are involved, it is important to understand the level of impairment that results from a person's level of consumption. The impact of alcohol and other drugs varies from person to person, and a person's level of impairment can change quickly over time. A person's level of impairment is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.

Evaluating whether another individual is incapacitated requires an assessment of whether the consumption of alcohol or other drugs has rendered that individual physically helpless or substantially incapable of:

- making decisions about whether to engage in Sexual Contact or Sexual Intercourse; or
- communicating Consent to Sexual Contact or Sexual Intercourse.

In evaluating Consent where the question of incapacitation is at issue, the University asks two questions: (1) did the person initiating sexual activity know that the other party was incapacitated, and if not, (2) should a sober, reasonable person, in the same situation, have known that the other party was incapacitated? If the answer to either question is yes, then there has not been consent.

One should be cautious before engaging in Sexual Contact or Sexual Intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether consent has been sought or given. If one has doubt about either party's ability to give consent, the safe thing to do is to forego all sexual activity.

Additional guidance about Consent and Incapacitation:

- A person who initiates a specific activity is responsible for obtaining Consent for that activity
- Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may not be sufficient to ascertain Consent.
- Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual Consent to engage in any sexual activity.
- Consent to engage in one sexual activity is not Consent to engage in a different sexual activity or to engage in the same sexual activity on a later occasion.
- Consent to engage in sexual activity with one person is not Consent to engage in sexual activity with any other person.
- Consent can be withdrawn by either party at any point. Once Consent is withdrawn, the sexual activity must cease immediately.

Sexual Exploitation

Sexual Exploitation is purposely or knowingly doing any of the following:

- causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Consent to sexual activity.
- allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., livestreaming of images) without the consent of all subjects or participants;
- engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy;
- recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
- disseminating or posting or otherwise sharing images of private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
- prostituting another person; or
- exposing another person to a sexually transmitted infection or virus without the other's knowledge.

Intimate Partner Violence [2]

Intimate Partner Violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.

Intimate Partner Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

Physical Assault is attempting, threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person or group. In general, Physical Assault will be addressed under this policy if it involves Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.

Stalking [3]

Stalking occurs when a person engages in a Course of Conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

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

Substantial emotional distress means significant mental suffering or anguish.

Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

Sexual or Gender-Based Harassment

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.

Gender-Based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) and/or (2), below, are present.

- 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
- 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.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Examples of possible Sexual Harassment include:

- Offering or implying an employment related reward (such as a promotion, raise, or different work assignment) or an education related reward (such as a better grade, a letter of recommendation, favorable treatment in the classroom, assistance in obtaining employment, grants or fellowships, or admission to any educational program or activity) in exchange for sexual favors or submission to sexual conduct.
- Threatening or taking a negative employment action (such as termination, demotion, denial of an employee benefit or privilege, or change in working conditions), or negative educational action, (such as giving an unfair grade, withholding a letter of recommendation, or withholding assistance with any educational activity) or intentionally making the individual’s job or academic work more difficult because sexual conduct is rejected.
- Excluding a person from a program, activity or facility based on sex, sexual orientation or gender identity.
- Unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is unwelcome, or sexual gestures, noises, remarks, jokes, questions, or comments about a person’s sexuality or sexual experience. Such conduct between peers must be sufficiently severe, persistent, or pervasive that it creates an educational or working environment that is hostile or abusive.
- Explicit sexual pictures are displayed in a professor’s office or on the exterior of a residence hall door.
- The use or display in the classroom or workplace, including electronic, or pornographic or sexually harassing materials such as posters, photos, cartoons or graffiti without pedagogical justification.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.
- Touching oneself sexually in view of others without their consent.

Retaliation

Retaliation means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in the processes contained in this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of Prohibited Conduct. A good faith pursuit by either party of civil, criminal or other legal action, even in response to an initial report under this Policy, does not constitute retaliation.

How to Report

There are two options for reporting Prohibited Conduct – Department of Public Safety (criminal) and the Title IX Office (University Complaint). A Complainant may choose to report to one, both, or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and University complaints. The University will support Complainants in understanding, assessing and pursuing these options and will assist a Complainant in notifying law enforcement and seeking medical treatment or counseling.

Law Enforcement – EMU Department of Public Safety (Criminal)

The Department of Public Safety is a fully deputized police department. Police have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking Emergency Protective Orders.

A report to DPS is a criminal complaint. In keeping with its commitment to taking all appropriate steps to eliminate, prevent, and remedy all Prohibited Conduct, the University urges Complainants to report Prohibited Conduct immediately to the Department of Public Safety (/police) at 734.487.1222 . However, Complainants have the right to notify or decline to notify law enforcement. In the event of conduct that poses a threat to the health or safety of any individual, the University may initiate a report to law enforcement.

EMU Title IX Office (University Complaint)

The Title IX Coordinator is a University employee and is responsible for monitoring compliance with Title IX; ensuring appropriate education and training; coordinating the University’s investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures. The University has also designated Deputy Title IX Coordinators to assist the Title IX Coordinator in the discharge of these responsibilities.

- The University urges anyone who has experienced or knows about an incident of Prohibited Conduct to immediately contact the Title IX Coordinator.
- The University’s Title IX Coordinator or any Deputy Title IX Coordinator may be reached by telephone, email, or in person at their respective locations, email addresses and/or phone numbers listed in the Introduction to this Policy or @ emich.edu/title-nine.
- The University’s website is available for online reporting @ emich.edu/title-nine.

Time Frame for Reporting

There is no time limit for reporting Prohibited Conduct to the University under this policy; however, the University’s ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the University. If the Respondent is no longer a Student or an Employee, the University will provide reasonably appropriate remedial measures, assist the Complainant in identifying external reporting options, and take reasonable steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Amnesty for Good Faith Reporting

The University will not pursue disciplinary action against students (Complainants or witnesses) for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or investigation of Prohibited Conduct.

Concerns about the University's application of Title IX, VAWA, Title VII, the Clery Act, or Michigan's Elliott-Larsen Civil Rights Act may be addressed to the Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov (<mailto:clery@ed.gov?subject=>)); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov (<mailto:OCR@ed.gov?subject=>) or (800) 421-3481); the Equal Employment Opportunity Commission (at info@eeoc.gov (<mailto:info@eeoc.gov?subject=>) or (800) 669-4000) and/or the Michigan Department of Civil Rights (<https://www.michigan.gov/mdcr/>) (517-335-3165)

Employees' Responsibility to Report Prohibited Conduct

A Responsible Employee who learns of Prohibited Conduct must report it as outlined below.

Every employee is designated as either a "Responsible Employee" or a "Confidential Employee." To assure that all Complainants are provided with equitable access to support and information about options and that the University provides a consistent response to Prohibited Conduct that allows for the tracking of patterns and climate concerns, Responsible Employees have an obligation to share information about Prohibited Conduct with the Title IX Coordinator and DPS. In contrast, Confidential Employees, who are an invaluable resource for University community members, are not permitted to share information about Prohibited Conduct, except under very limited circumstances.

Responsible Employee

Responsible Employees are all EMU employees except Confidential Employees (See V.B. below). A Responsible Employee is required to immediately report to the University's Title IX Coordinator and DPS all relevant details (obtained directly or indirectly) about an incident of Prohibited Conduct that involves any member of the EMU community ("students", "employees" and "third parties") as a Complainant, Respondent, and/or witness.

Responsible Employees include Resident Advisors, Graduate Assistants, and all other student-employees, when disclosures are made to any of them in their capacities as employees.

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs" or other public forums in which students may disclose incidents of Prohibited Conduct; collectively, "Public Awareness Events"), or (2) during a student's participation as a subject in an Institutional Review Board-approved human subjects research protocol ("IRB Research").

Confidential Employee

"Confidential Employee" is (1) any Employee who is a licensed medical, clinical or mental-health professional (e.g., physicians, nurses, physicians' assistants, psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision), when acting in their professional role in the provision of services to a patient who is a Student or Employee ("health care providers"); and (2) any Employee providing administrative, operational and/or related support for such health care providers in their performance of such services. A Confidential Employee will not disclose information about Prohibited Conduct to the University's Title IX Coordinator without the Student's permission (subject to the exceptions set forth in the next paragraph).

Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Michigan law. See also Section VII.B. When information is shared by an individual with a Confidential Employee, the Confidential Employee cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

Clery Act Reporting

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to maintain a daily crime log and issue timely warnings to the University community about certain

crimes that have been reported and may continue to pose a serious or continuing threat to Students and Employees. Consistent with the Clery Act, the University withholds the names and other personally identifying information of Complainants when issuing timely warnings to the University community.

Privacy

The University is committed to protecting the privacy of individuals engaged in the reporting and investigative process, including the identity of individuals and information involved in the investigation and resolution of a report under this policy. With the exception of Title IX reporting, Responsible Employees will maintain the privacy of information related to a report of Prohibited Conduct, and information will only be shared beyond the Title IX Coordinator or DPS on a “need to know” basis in order to assist in the review, investigation and resolution of the report, or support of the parties.

The University is committed to providing assistance to help Students, Employees and Third Parties make informed choices. With respect to any report under this policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

The privacy of Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual’s medical and related records generally are protected in the United States by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. The privacy of Employee personnel records will be protected in accordance with Michigan state law.

Open Records laws may require disclosure of law enforcement records. However, victim and witness names in law enforcement records will not be disclosed, unless otherwise required by law.

Investigative Procedures

There are two procedures for investigating complaints of prohibited conduct.

The procedure for investigating and resolving complaints of Prohibited Conduct when the Respondent is a **Student** is titled [Student Investigative Procedures \(/title-nine/documents/student-procedures.pdf\)](/title-nine/documents/student-procedures.pdf).

The procedure for investigating and resolving complaints of Prohibited Conduct when the Respondent is an **Employee** or **Third Party** is titled [Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff or Visitors \(/title-nine/documents/faculty-staff-procedures.pdf\)](/title-nine/documents/faculty-staff-procedures.pdf). [If allegations against an employee are made in more than one Title IX complaint that resulted in the University finding that no misconduct occurred, the University requires that the Title IX officer promptly notify the President and a member of the Board of Regents in writing and take all appropriate steps to ensure that the matter is being investigated thoroughly, including hiring an outside investigator for future cases involving that employee. A third-party Title IX investigation under such circumstances does not prohibit the University from simultaneously conducting its own Title IX investigation through its own Title IX coordinator.](#)

The Title IX Coordinator will make the determination of what office (Title IX or ODAA) is appropriate to investigate the complaint.

The procedures referenced provide for prompt and equitable response to reports of Prohibited Conduct, conducted by University representatives who receive annual training on issues related to Prohibited Conduct. The procedures designate specific time frames for major stages of the process and provide for thorough and impartial investigations, which afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred. The University applies the Preponderance of the Evidence standard when determining whether this Policy has been violated.

“Preponderance of the Evidence” means that it is more likely than not that a policy violation occurred. [The University prohibits the use of medical experts that have an actual or apparent conflict of interest. The University also prohibits the issuance of divergent reports to complainants, respondents, and administration and instead requires that identical reports be issued to them.](#)

Available Support

Remedial and Protective Measures

The University offers a wide range of resources for Students and Employees, whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of Prohibited Conduct. The University will offer reasonable and appropriate measures to protect a Complainant and facilitate the Complainant's continued access to University employment or education programs and activities. These measures may be both remedial (designed to address a Complainant's safety and well-being and continued access to educational opportunities) or protective (involving a restrictive action against a Respondent). Remedial and protective measures, which may be temporary or permanent, may include no-contact directives, residence modifications, academic modifications and support, work schedule modifications, interim disciplinary suspension, suspension from employment, and pre-disciplinary leave (with or without pay). Remedial measures are available regardless of whether a Complainant pursues a complaint or investigation under this policy. The University will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable, and will promptly address any violation of the protective measures.

The availability of remedial and protective measures will be determined by the specific circumstances of each report. The University will consider a number of factors in determining which measures to take, including the needs of the Student or Employee seeking remedial and/or protective measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether other judicial measures have been taken to protect the Complainant (e.g. protective orders).

Regardless of when or where the Prohibited Conduct occurred, the University will offer resources and assistance to community members who experience and/or are affected by Prohibited Conduct. In those instances when this Policy does not apply, the University will assist a Complainant in identifying and contacting external law enforcement agencies and appropriate campus or community resources.

The University will provide reasonable remedial and protective measures to Third Parties as appropriate and available, taking into account the role of the Third Party and the nature of any contractual relationship with the University.

Complainants or others should report information concerning a violation of protective measures to the Title IX Coordinator as soon as possible, and should dial 911 in situations of immediate health or safety concern. The Title IX Coordinator has the discretion to impose and/or modify any interim measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of interim measures.

Campus and Community Resources

The University offers a wide range of resources for all Students and Employees to provide support and guidance in response to any incident of Prohibited Conduct. There are a number of resources in which Students and Employees can obtain confidential, trauma informed counseling and support. These resources include:

- [Counseling and Psychological Services \(CAPS\) \(/caps/services/appointment.php\)](#)
- [EMU Psychology Clinic \(/psychology/psychologyclinic/\)](#)
- [EMU Counseling Clinic \(/coe/clinics/counseling-clinics.php\)](#)
- [Safe House \(https://www.safehousecenter.org/\)](https://www.safehousecenter.org/)
- [RAINN \(Rape, Abuse and Incest National Network\) \(https://www.rainn.org/about-national-sexual-assault-telephone-hotline\)](https://www.rainn.org/about-national-sexual-assault-telephone-hotline)

Employees can also obtain such counseling through the [Employee Assistance Program \(http://www.emich.edu/hr/benefits/information/assistance-program.php\)](http://www.emich.edu/hr/benefits/information/assistance-program.php).

Prevention and Awareness Programs

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming Students and new Employees receive primary prevention and awareness

programming as part of their orientation.

Trainings

The University provides training to Students and Employees to ensure they understand this policy and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

Obligation to Provide Truthful Information

All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information, in bad faith or with a view to personal gain or intentional harm to another, in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the University's Student Code and disciplinary action under the appropriate Employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

Annual Review

This policy is maintained by Title IX Office. The University will review and update this policy, as appropriate, by October 31 of each year. The University will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year (including, but not limited to, time frames for completion and sanctions and remedies imposed).

[1] For purposes of this Policy, the individual who is reported to have experienced Prohibited Conduct, regardless of whether that individual makes a report or participates in the review of that report by the University, is referred to as the Complainant. The individual who is reported to have engaged in Prohibited Conduct is referred to as the Respondent.

[2] Intimate Partner Violence includes "dating violence" and "domestic violence," as defined by VAWA. Consistent with VAWA, the University will evaluate the existence of an intimate relationship based upon the Complainant's statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Authority for Creation and Revision:

Minutes of the Board of Regents, June 21, 2016.

Minutes of the Board of Regents, October 20, 2017.

Minutes of the Board of Regents, August 30, 2018.



Policies, Rules and Regulations

Chapter Name:	Employment Affirmative Action And Civil Rights
Chapter No.	3.7.7
Issue:	Sexual Misconduct and Interpersonal Violence Policy
Effective Date:	7-01-16
Revision Date:	8-30-18

Introduction

Title IX Coordinator Contact Information

The President of Eastern Michigan 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. The contact information for the Title IX Coordinator and Deputy Title IX Coordinators is below:

Melody A. Werner

Title IX Coordinator

734.487.3617 | mwerner@emich.edu (<mailto:mwerner@emich.edu?subject=>)

Sharon Abraham

Deputy Title IX Coordinator

Director, Diversity and Affirmative Action

Human Resources

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Jeanette Zalba

Deputy Title IX Coordinator

Director, Housing and Residential Life

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Erin Kido

Deputy Title IX Coordinator

Senior Associate Athletic Director/Senior Woman Administrator

734.487.8172 | ekido@emich.edu (<mailto:ekido@emich.edu?subject=>)

University Policy Statement

Eastern Michigan University is an institution built upon honor, integrity, trust, and respect. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment. The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 ("Title IX"); Title VII of the Civil Rights Act of 1964 ("Title VII"); and Michigan's Elliott-Larsen Civil Rights Act. The University also addresses such behavior pursuant to its obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA").

The University prohibits Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, and Sexual or Gender-Based Harassment, collectively referred to as "Prohibited Conduct." Retaliation against a person for the good faith reporting or participation in any investigation or proceeding under this Policy is also a form of Prohibited Conduct. These forms of Prohibited Conduct are unlawful, undermine the character and purpose of the University, and will not be tolerated.

The University will take prompt and equitable action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The University conducts ongoing prevention, awareness, and training programs for Employees and Students to facilitate the goals of this policy.

A Student or Employee determined by the University to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including separation from the University. Third Parties who commit Prohibited Conduct may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

Where the date of the Prohibited Conduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) occurred.

Scope of Policy

To Whom Does the Policy Apply?

This policy is applicable to Students, Employees, and Third Parties.

- “Student” includes any person who meets any of the following criteria at the time the prohibited conduct is alleged to have occurred:
 - is enrolled in any number of courses, in any format at EMU,
 - is living in University housing, and/or
 - is not officially enrolled for a particular term, but whose EMU record indicates a continuing relationship with the University. The term relationship includes, but is not limited to:
 - those eligible and/or applying for re-enrollment and/or readmission;
 - those involved in an appeal or grievance process; and
 - those with unresolved business matters with EMU.
- “Employee” includes all persons who are legally defined as employees of the University.
- “Third Parties” includes all contractors, vendors, visitors, guests or any other third parties.
 - The University’s ability to take appropriate corrective action against a Third Party will be determined by the nature of the relationship of the Third Party to the University. The Title IX Coordinator will determine the appropriate manner of resolution consistent with the University’s commitment to a prompt and equitable process consistent with federal and state law, federal guidance, and this policy.
 - Where the Respondent is not a University Student or Employee, or a participant in any University related program or activity, the University’s ability to take action may be limited.

When and Where Does This Policy Apply

This policy pertains to acts of Prohibited Conduct committed by or against Students, Employees and Third Parties when:

- The conduct occurs on campus or other property owned or controlled by the University;
- The conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored study abroad, research, on-line, or internship programs; or
- The conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects that create a hostile environment for Students, Employees or Third Parties while on campus or other property owned or controlled by the University or in any University employment or education program or activity.

Intersection with Other Policies

The University’s Office of Diversity and Affirmative Action (D&AA) administers separate policies ([EEO/Affirmative Action \(/policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.2-equal-employment-opportunity-affirmative-action.php\)](/policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.2-equal-employment-opportunity-affirmative-action.php) and [Civil Rights \(/policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.3-civil-rights.php\)](/policies/policies/03-employment-affirmative-action-and-civil-rights/3.1-employment/3.1.3-civil-rights.php)) that address discrimination and harassment not covered by this Policy. Where Prohibited Conduct violates the Sexual Misconduct Policy and also violates other policies, the University’s response will be governed by this Policy. Questions about which policy applies in a specific instance should be directed to the University’s Title IX

Coordinator. In addition, conduct may be inappropriate, but not a violation of this Policy. Such conduct will be reviewed by the Title IX Coordinator and may be addressed through other appropriate processes (e.g. administrative offices, collective bargaining agreements, student conduct proceedings).

Prohibited Conduct [1]

Prohibited Conduct includes the following specifically defined forms of behavior: Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, and Retaliation.

Conduct under this policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant or Respondent. Being impaired by alcohol or other drugs does not excuse a Respondent from responsibility for committing Prohibited Conduct that violates this policy.

Sexual Assault

Sexual Assault is:

- Sexual Contact and/or Sexual Intercourse that occurs without Consent.
 - Sexual Contact includes touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts, and/or making another touch you or themselves with or on any of these body parts.
 - Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger, however slight; (b) anal penetration by a penis, object, tongue, or finger, however slight; and (c) any contact between the mouth of one person and the genitalia of another person.
- **Consent Is:**
 - informed (knowing);
 - voluntary (freely given); and
 - clearly communicated, through the demonstration of clear words or actions a person has indicated willingness to engage in a particular form of sexual activity.

Consent cannot be gained by force or coercion. Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. Coercion is conduct, including intimidation and express or implied threats of immediate or future physical, emotional, reputational, financial, or other harm to the Complainant or others, that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

An incapacitated individual cannot consent to sexual activity.

Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

A person who is incapacitated is unable, temporarily or permanently, to give Consent because of physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

When alcohol or other drugs are involved, it is important to understand the level of impairment that results from a person's level of consumption. The impact of alcohol and other drugs varies from person to person, and a person's level of impairment can change quickly over time. A person's level of impairment is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.

Evaluating whether another individual is incapacitated requires an assessment of whether the consumption of alcohol or other drugs has rendered that individual physically helpless or substantially incapable of:

- making decisions about whether to engage in Sexual Contact or Sexual Intercourse; or
- communicating Consent to Sexual Contact or Sexual Intercourse.

In evaluating Consent where the question of incapacitation is at issue, the University asks two questions: (1) did the person initiating sexual activity know that the other party was incapacitated, and if not, (2) should a sober, reasonable person, in the same situation, have known that the other party was incapacitated? If the answer to either question is yes, then there has not been consent.

One should be cautious before engaging in Sexual Contact or Sexual Intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether consent has been sought or given. If one has doubt about either party's ability to give consent, the safe thing to do is to forego all sexual activity.

Additional guidance about Consent and Incapacitation:

- A person who initiates a specific activity is responsible for obtaining Consent for that activity
- Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may not be sufficient to ascertain Consent.
- Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual Consent to engage in any sexual activity.
- Consent to engage in one sexual activity is not Consent to engage in a different sexual activity or to engage in the same sexual activity on a later occasion.
- Consent to engage in sexual activity with one person is not Consent to engage in sexual activity with any other person.
- Consent can be withdrawn by either party at any point. Once Consent is withdrawn, the sexual activity must cease immediately.

Sexual Exploitation

Sexual Exploitation is purposely or knowingly doing any of the following:

- causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that persons' ability to give Consent to sexual activity.
- allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., livestreaming of images) without the consent of all subjects or participants;
- engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy;
- recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
- disseminating or posting or otherwise sharing images of private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
- prostituting another person; or
- exposing another person to a sexually transmitted infection or virus without the other's knowledge.

Intimate Partner Violence [2]

Intimate Partner Violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.

Intimate Partner Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

Physical Assault is attempting, threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person or group. In general, Physical Assault will be addressed under this policy if it involves Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.

Stalking [3]

Stalking occurs when a person engages in a Course of Conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

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

Substantial emotional distress means significant mental suffering or anguish.

Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

Sexual or Gender-Based Harassment

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.

Gender-Based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) and/or (2), below, are present.

- 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
- 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.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Examples of possible Sexual Harassment include:

- Offering or implying an employment related reward (such as a promotion, raise, or different work assignment) or an education related reward (such as a better grade, a letter of recommendation, favorable treatment in the classroom, assistance in obtaining employment, grants or fellowships, or admission to any educational program or activity) in exchange for sexual favors or submission to sexual conduct.
- Threatening or taking a negative employment action (such as termination, demotion, denial of an employee benefit or privilege, or change in working conditions), or negative educational action, (such as giving an unfair grade, withholding a letter of recommendation, or withholding assistance with any educational activity) or intentionally making the individual's job or academic work more difficult because sexual conduct is rejected.
- Excluding a person from a program, activity or facility based on sex, sexual orientation or gender identity.
- Unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is unwelcome, or sexual gestures, noises, remarks, jokes, questions, or comments about a person's sexuality or sexual experience. Such conduct between peers must be sufficiently severe, persistent, or pervasive that it creates an educational or working environment that is hostile or abusive.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- The use or display in the classroom or workplace, including electronic, or pornographic or sexually harassing materials such as posters, photos, cartoons or graffiti without pedagogical justification.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.
- Touching oneself sexually in view of others without their consent.

Retaliation

Retaliation means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in the processes contained in this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of Prohibited Conduct. A good faith pursuit by either party of civil, criminal or other legal action, even in response to an initial report under this Policy, does not constitute retaliation.

How to Report

There are two options for reporting Prohibited Conduct – Department of Public Safety (criminal) and the Title IX Office (University Complaint). A Complainant may choose to report to one, both, or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and University complaints. The University will support Complainants in understanding, assessing and pursuing these options and will assist a Complainant in notifying law enforcement and seeking medical treatment or counseling.

Law Enforcement – EMU Department of Public Safety (Criminal)

The Department of Public Safety is a fully deputized police department. Police have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking Emergency Protective Orders.

A report to DPS is a criminal complaint. In keeping with its commitment to taking all appropriate steps to eliminate, prevent, and remedy all Prohibited Conduct, the University urges Complainants to report Prohibited Conduct immediately to the Department of Public Safety (/police) at 734.487.1222 . However, Complainants have the right to notify or decline to notify law enforcement. In the event of conduct that poses a threat to the health or safety of any individual, the University may initiate a report to law enforcement.

EMU Title IX Office (University Complaint)

The Title IX Coordinator is a University employee and is responsible for monitoring compliance with Title IX; ensuring appropriate education and training; coordinating the University's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures. The University has also designated Deputy Title IX Coordinators to assist the Title IX Coordinator in the discharge of these responsibilities.

- The University urges anyone who has experienced or knows about an incident of Prohibited Conduct to immediately contact the Title IX Coordinator.
- The University's Title IX Coordinator or any Deputy Title IX Coordinator may be reached by telephone, email, or in person at their respective locations, email addresses and/or phone numbers listed in the Introduction to this Policy or @emich.edu/title-nine.
- The University's website is available for online reporting @ emich.edu/title-nine.

Time Frame for Reporting

There is no time limit for reporting Prohibited Conduct to the University under this policy; however, the University's ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the University. If the Respondent is no longer a Student or an Employee, the University will provide reasonably appropriate remedial measures, assist the Complainant in identifying external reporting options, and take reasonable steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Amnesty for Good Faith Reporting

The University will not pursue disciplinary action against students (Complainants or witnesses) for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or investigation of Prohibited Conduct.

Concerns about the University's application of Title IX, VAWA, Title VII, the Clery Act, or Michigan's Elliott-Larsen Civil Rights Act may be addressed to the Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov (<mailto:clery@ed.gov?subject=>)); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov (<mailto:OCR@ed.gov?subject=>) or (800) 421-3481); the Equal Employment Opportunity Commission (at info@eeoc.gov (<mailto:info@eeoc.gov?subject=>) or (800) 669-4000) and/or the Michigan Department of Civil Rights (<https://www.michigan.gov/mdcr/>) (517-335-3165)

Employees' Responsibility to Report Prohibited Conduct

A Responsible Employee who learns of Prohibited Conduct must report it as outlined below.

Every employee is designated as either a "Responsible Employee" or a "Confidential Employee." To assure that all Complainants are provided with equitable access to support and information about options and that the University provides a consistent response to Prohibited Conduct that allows for the tracking of patterns and climate concerns, Responsible Employees have an obligation to share information about Prohibited Conduct with the Title IX Coordinator and DPS. In contrast, Confidential Employees, who are an invaluable resource for University community members, are not permitted to share information about Prohibited Conduct, except under very limited circumstances.

Responsible Employee

Responsible Employees are all EMU employees except Confidential Employees (See V.B. below). A Responsible Employee is required to immediately report to the University's Title IX Coordinator and DPS all relevant details (obtained directly or indirectly) about an incident of Prohibited Conduct that involves any member of the EMU community ("students", "employees" and "third parties") as a Complainant, Respondent, and/or witness.

Responsible Employees include Resident Advisors, Graduate Assistants, and all other student-employees, when disclosures are made to any of them in their capacities as employees.

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs" or other public forums in which students may disclose incidents of Prohibited Conduct; collectively, "Public Awareness Events"), or (2) during a student's participation as a subject in an Institutional Review Board-approved human subjects research protocol ("IRB Research").

Confidential Employee

"Confidential Employee" is (1) any Employee who is a licensed medical, clinical or mental-health professional (e.g., physicians, nurses, physicians' assistants, psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision), when acting in their professional role in the provision of services to a patient who is a Student or Employee ("health care providers"); and (2) any Employee providing administrative, operational and/or related support for such health care providers in their performance of such services. A Confidential Employee will not disclose information about Prohibited Conduct to the University's Title IX Coordinator without the Student's permission (subject to the exceptions set forth in the next paragraph).

Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Michigan law. See also Section VII.B. When information is shared by an individual with a Confidential Employee, the Confidential Employee cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

Clery Act Reporting

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to maintain a daily crime log and issue timely warnings to the University community about certain

crimes that have been reported and may continue to pose a serious or continuing threat to Students and Employees. Consistent with the Clery Act, the University withholds the names and other personally identifying information of Complainants when issuing timely warnings to the University community.

Privacy

The University is committed to protecting the privacy of individuals engaged in the reporting and investigative process, including the identity of individuals and information involved in the investigation and resolution of a report under this policy. With the exception of Title IX reporting, Responsible Employees will maintain the privacy of information related to a report of Prohibited Conduct, and information will only be shared beyond the Title IX Coordinator or DPS on a “need to know” basis in order to assist in the review, investigation and resolution of the report, or support of the parties.

The University is committed to providing assistance to help Students, Employees and Third Parties make informed choices. With respect to any report under this policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

The privacy of Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual’s medical and related records generally are protected in the United States by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. The privacy of Employee personnel records will be protected in accordance with Michigan state law.

Open Records laws may require disclosure of law enforcement records. However, victim and witness names in law enforcement records will not be disclosed, unless otherwise required by law.

Investigative Procedures

There are two procedures for investigating complaints of prohibited conduct.

The procedure for investigating and resolving complaints of Prohibited Conduct when the Respondent is an **Student** is titled [Student Investigative Procedures \(/title-nine/documents/student-procedures.pdf\)](/title-nine/documents/student-procedures.pdf).

The procedure for investigating and resolving complaints of Prohibited Conduct when the Respondent is an **Employee** or **Third Party** is titled [Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff or Visitors \(/title-nine/documents/faculty-staff-procedures.pdf\)](/title-nine/documents/faculty-staff-procedures.pdf). If allegations against an employee are made in more than one Title IX complaint that resulted in the University finding that no misconduct occurred, the University requires that the Title IX officer promptly notify the President and a member of the Board of Regents in writing and take all appropriate steps to ensure that the matter is being investigated thoroughly, including hiring an outside investigator for future cases involving that employee. A third-party Title IX investigation under such circumstances does not prohibit the University from simultaneously conducting its own Title IX investigation through its own Title IX coordinator.

The Title IX Coordinator will make the determination of what office (Title IX or ODAA) is appropriate to investigate the complaint.

The procedures referenced provide for prompt and equitable response to reports of Prohibited Conduct, conducted by University representatives who receive annual training on issues related to Prohibited Conduct. The procedures designate specific time frames for major stages of the process and provide for thorough and impartial investigations, which afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred. The University applies the Preponderance of the Evidence standard when determining whether this Policy has been violated.

“Preponderance of the Evidence” means that it is more likely than not that a policy violation occurred. The University prohibits the use of medical experts that have an actual or apparent conflict of interest. The University also prohibits the issuance of divergent reports to complainants, respondents, and administration and instead requires that identical reports be issued to them.

Available Support

Remedial and Protective Measures

The University offers a wide range of resources for Students and Employees, whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of Prohibited Conduct. The University will offer reasonable and appropriate measures to protect a Complainant and facilitate the Complainant's continued access to University employment or education programs and activities. These measures may be both remedial (designed to address a Complainant's safety and well-being and continued access to educational opportunities) or protective (involving a restrictive action against a Respondent). Remedial and protective measures, which may be temporary or permanent, may include no-contact directives, residence modifications, academic modifications and support, work schedule modifications, interim disciplinary suspension, suspension from employment, and pre-disciplinary leave (with or without pay). Remedial measures are available regardless of whether a Complainant pursues a complaint or investigation under this policy. The University will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable, and will promptly address any violation of the protective measures.

The availability of remedial and protective measures will be determined by the specific circumstances of each report. The University will consider a number of factors in determining which measures to take, including the needs of the Student or Employee seeking remedial and/or protective measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether other judicial measures have been taken to protect the Complainant (e.g. protective orders).

Regardless of when or where the Prohibited Conduct occurred, the University will offer resources and assistance to community members who experience and/or are affected by Prohibited Conduct. In those instances when this Policy does not apply, the University will assist a Complainant in identifying and contacting external law enforcement agencies and appropriate campus or community resources.

The University will provide reasonable remedial and protective measures to Third Parties as appropriate and available, taking into account the role of the Third Party and the nature of any contractual relationship with the University.

Complainants or others should report information concerning a violation of protective measures to the Title IX Coordinator as soon as possible, and should dial 911 in situations of immediate health or safety concern. The Title IX Coordinator has the discretion to impose and/or modify any interim measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of interim measures.

Campus and Community Resources

The University offers a wide range of resources for all Students and Employees to provide support and guidance in response to any incident of Prohibited Conduct. There are a number of resources in which Students and Employees can obtain confidential, trauma informed counseling and support. These resources include:

- [Counseling and Psychological Services \(CAPS\) \(/caps/services/appointment.php\)](#)
- [EMU Psychology Clinic \(/psychology/psychologyclinic/\)](#)
- [EMU Counseling Clinic \(/coe/clinics/counseling-clinics.php\)](#)
- [Safe House \(https://www.safehousecenter.org/\)](https://www.safehousecenter.org/)
- [RAINN \(Rape, Abuse and Incest National Network\) \(https://www.rainn.org/about-national-sexual-assault-telephone-hotline\)](https://www.rainn.org/about-national-sexual-assault-telephone-hotline)

Employees can also obtain such counseling through the [Employee Assistance Program \(http://www.emich.edu/hr/benefits/information/assistance-program.php\)](http://www.emich.edu/hr/benefits/information/assistance-program.php).

Prevention and Awareness Programs

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming Students and new Employees receive primary prevention and awareness

programming as part of their orientation.

Trainings

The University provides training to Students and Employees to ensure they understand this policy and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

Obligation to Provide Truthful Information

All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information, in bad faith or with a view to personal gain or intentional harm to another, in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the University's Student Code and disciplinary action under the appropriate Employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

Annual Review

This policy is maintained by Title IX Office. The University will review and update this policy, as appropriate, by October 31 of each year. The University will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year (including, but not limited to, time frames for completion and sanctions and remedies imposed).

[1] For purposes of this Policy, the individual who is reported to have experienced Prohibited Conduct, regardless of whether that individual makes a report or participates in the review of that report by the University, is referred to as the Complainant. The individual who is reported to have engaged in Prohibited Conduct is referred to as the Respondent.

[2] Intimate Partner Violence includes "dating violence" and "domestic violence," as defined by VAWA. Consistent with VAWA, the University will evaluate the existence of an intimate relationship based upon the Complainant's statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Authority for Creation and Revision:

Minutes of the Board of Regents, June 21, 2016.

Minutes of the Board of Regents, October 20, 2017.

Minutes of the Board of Regents, August 30, 2018.