

Policies, Rules and Regulations

**Chapter Name:** Employment, Affirmative Action and Civil Rights

**Chapter 3.7.7**

**Issue: INTERIM Eastern Michigan University: Sexual Misconduct and Sex-based Discrimination Policy**

**Effective Date:** 8-14-20

Revision Date:

## **I. 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 assault, domestic violence, dating violence, stalking, sexual exploitation, and gender-based harassment. The contact information for the Title IX Coordinator and Deputy Title IX Coordinators is below:

Anika Awai-Williams, J.D.

**Title IX Coordinator**

Eastern Michigan University Title IX Office

734.487.2202

aawaiwil@emich.edu

Jeanette Zalba

**Deputy Title IX Coordinator**

Coordinator Director, Housing and Residential Life

734.487.5372

jzalba@emich.edu

Erin Kido

**Deputy Title IX Coordinator**

Senior Associate Athletic Director/Senior Women's Administrator

734.487.1050

ekido@emich.edu

## **II. 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 Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, Sexual Exploitation and Gender-Based Harassment, which are collectively referred to as “Prohibited Conduct.”<sup>1</sup> 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 University 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.

### **III. SCOPE OF POLICY**

**A. To Whom This Policy Applies.** This policy is applicable to Students, Employees, and Third Parties.

1. “Student” includes any person who meets any of the following criteria:
  - 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.

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<sup>1</sup> “Prohibited Conduct” is broken down into two separate categories: (1) Prohibited Conduct Under Title IX, which is defined and described in Section IV of this Policy, and (2) Other University-Prohibited Conduct, which is defined and described in Section V of this Policy.

2. “Employee” includes all persons who are legally defined as employees of the University.
3. “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.

**B. 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:

1. the conduct occurs on campus or other property owned or controlled by the University;
2. the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, both on-campus and on-line classes, research, or internship programs; or
3. the conduct occurs outside the context of a University employment or education program or activity, or, did not occur against a person in the United States, but has continuing adverse effects 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. Such conduct would not be Prohibited Conduct Under Title IX (as defined in Section IV) but may be Other University-Prohibited Conduct (as defined in Section V).

**C. Intersection with Other Policies.** The University’s Office of Diversity and Affirmative Action (ODAA) administers separate policies ([EEO/Affirmative Action](#) and [Civil Rights](#)) that address of discrimination and harassment not covered by this Policy. Where Prohibited Conduct violates the Sexual Misconduct and Sex-based Harassment 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).

#### IV. PROHIBITED CONDUCT UNDER TITLE IX:

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Michigan regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

EMU has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

A. **Sexual Harassment.** "Sexual Harassment", as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Sexual harassment is conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following criteria:

1. **Hostile Environment Sexual Harassment** is unwelcome<sup>2</sup> conduct determined by a reasonable person to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to an EMU education program or activity;

2. **Quid Pro Quo Sexual Harassment** is when an EMU Employee conditions the provision of an aid, benefit, or service of EMU, on an individual's participation in unwelcome sexual conduct.

3. **Sexual Assault** is any sexual act<sup>3</sup> directed against another person, without the consent of the Complainant<sup>4</sup>, including instances where the Complainant is incapable of giving consent. Sexual Contact includes touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these

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<sup>2</sup>Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>3</sup> A "sexual act" is specifically defined by federal regulations to include one or more of the following: (1) forcible rape; (2) forcible sodomy; (3) sexual assault with an object; (4) forcible fondling; (5) incest; and (6) statutory rape. Each of these six sexual acts are defined in Section VII of this Policy.

<sup>4</sup> 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.

body parts, and/or making another touch you or themselves with or on any of these body parts.

4. **Domestic Violence** is violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the State of Michigan.

5. **Dating Violence** is violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition: Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

6. **Stalking** occurs when a person engages in a course of conduct on the basis of sex, 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.

B. **Retaliation.** "Retaliation" is 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. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

EMU will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation. Filing a complaint pursuant to the Code of Community

Responsibility grievance process could be considered retaliatory if those charges could be applicable under Title IX and that would otherwise initiate the Sexual Misconduct and Sex-based Discrimination Policy grievance process, when the Code of Community Responsibility grievance process charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Sexual Misconduct and Sex-based Discrimination Policy grievance process that is not provided by the Code of Community Responsibility grievance process.<sup>5</sup> Therefore, EMU vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Conduct in violation of EMU Board Policy 3.1.8 may also be considered a violation of this Policy.

EMU reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy

## **V. OTHER UNIVERSITY-PROHIBITED CONDUCT**

In addition to the forms of sexual harassment described above, which are covered by Title IX, EMU additionally prohibits Sexual Exploitation and Gender-Based Harassment as Other University-Prohibited Conduct. Other University-Prohibited Conduct also includes Sexual Harassment that occurs outside the context of University employment or a University education program or activity, but which has continuing adverse effects 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.

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

1. 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.
2. allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., live streaming of images) without the consent of all subjects or participants;
3. 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;

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<sup>5</sup> Charging an individual with a Code of Community Responsibility violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

4. recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
5. disseminating or posting images of private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
6. prostituting another person; or
7. exposing another person to a sexually transmitted infection or virus without the other's knowledge.

**B. 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. Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities. Conduct must be deemed severe, pervasive from an objectively offensive perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

1. The frequency, nature, severity, location, duration and context of the conduct; and
2. 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.

## **VI. EXAMPLES OF SEXUAL HARASSMENT AND OTHER PROHIBITED CONDUCT**

A. 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.

B. 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.

C. Excluding a person from a program, activity or facility based on sex, sexual orientation or gender identity.

D. 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.

E. Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.

F. 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.

G. 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.

H. 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.

I. Touching oneself sexually in view of others without their consent.

## **VII. ADDITIONAL DEFINITIONS**

The following definitions of consent, incapacitation, force, and coercion, as well as the definitions for six specified types of sexual acts (forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest, and statutory rape) shall be used for purposes of this Policy.

A. **Consent** is (a) informed (knowing); (b) voluntary (freely given); and (c) 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. 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.

**B. Incapacitation.** 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, poor judgment, 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 either (a) making decisions about whether to engage in sexual contact or sexual intercourse; or (b) 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 sexual 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.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on EMU to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. Conduct under this policy is prohibited regardless of the sex. Being impaired by alcohol or other drugs does not excuse a Respondent from responsibility for committing Prohibited Conduct that violates this policy.

**C. Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**D. 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. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**E. Forcible Rape** is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

**G. Forcible Sodomy** is oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**H. Sexual Assault with an Object** - To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**I. Forcible Fondling** is the touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the

Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

J. **Incest** is nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Michigan law.

K. **Statutory Rape** is nonforcible sexual intercourse with a person who is under the statutory age of consent of 16 years in the State of Michigan.

## **VIII. REPORTING**

### **A. How to Report**

There are two options for reporting Prohibited Conduct – through the Department of Public Safety (for criminal complaints) and through the Title IX Office (for complaints to the University alleging a violation of this Policy). A Complainant may choose to report to one, both, or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal complaints and complaints through the Title IX Office. 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.

#### **1. Law Enforcement – EMU Department of Public Safety (for criminal complaints)**

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](https://www.emu.edu/dps) 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.

#### **2. EMU Title IX Office (for complaints of Prohibited Conduct)**

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 at [emich.edu/title-nine](http://emich.edu/title-nine). The University's website is available for online reporting at [emich.edu/title-nine](http://emich.edu/title-nine).

**B. 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.

**C. Amnesty for Good Faith Reporting:** The University's Office of Wellness and Community Responsibility will grant amnesty in accordance with the Code of Community of Responsibility to students 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)); the United States Department of Education, Office for Civil Rights (at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481); the Equal Employment Opportunity Commission (at [info@eeoc.gov](mailto:info@eeoc.gov) or (800) 669-4000) and/or the Michigan Department of Civil Rights (<https://www.michigan.gov/mdcr/> or 517-335-3165).

## **IX. INVESTIGATIVE PROCEDURES**

There are three procedures for investigating complaints of Prohibited Conduct:

A. For allegations of Prohibited Conduct Under Title IX (as defined in Section IV above), the University will proceed pursuant to the University's Sexual Misconduct and Sex-based Discrimination Grievance Process.

B. For allegations of Other University-Prohibited Conduct (as defined in Section V below) *involving students*, the University will proceed pursuant to the Office of Wellness and Community Responsibility's [Community Responsibility Process](#).

C. For allegations Other University-Prohibited Conduct (as defined in Section V below) *involving employees or third parties*, the University will proceed pursuant to the University's [Discrimination/Harassment Investigation Procedure for Complaints Against Faculty, Staff or Visitors](#).

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<sup>6</sup> when determining whether this Policy has been violated.

## **X. AVAILABLE SUPPORT**

**A. Supportive 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 without unreasonably burdening the Respondent. 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). Supportive 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). Supportive measures are available regardless of whether a Complainant pursues a complaint or investigation under this policy. The University will maintain the privacy of any supportive measures provided under this policy to the extent practicable, and will promptly address any violation of the protective measures.

The availability of supportive and remedial 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 supportive and remedial 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 Title IX Conduct and Other University Prohibited Conduct occurred, the University will offer resources and assistance to community members who experience and/or are affected by Title IX Prohibited Conduct and Other University 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.

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<sup>6</sup> "Preponderance of the Evidence" means that it is more likely than not that a policy violation occurred.

The University will provide reasonable supportive and remedial 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 supportive measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of supportive measures.

## **B. Campus and University 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:

- EMU Counseling and Psychological Services (CAPS), located in the Campus Wellness Center at 1075 North Huron River Drive Ypsilanti, Michigan 48197; 734-487-1118; <https://www.emich.edu/caps/index.php>.
- The EMU Community Behavioral Health Clinic, also located in the Campus Wellness Center at 1075 North Huron River Drive Ypsilanti, Michigan 48197; 734-487.4987; <https://www.emich.edu/cbhc/index.php>.
- The EMU Counseling Clinic in 135 Porter Hall; 734.487.4410; <https://www.emich.edu/coe/clinical-services/counseling-services.php>.
- Employees can also obtain such counseling and support through the Employee Assistance Program. <http://www.emich.edu/hr/benefits/information/assistance-program.php>

## **XI. NOTICE/COMPLAINT**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps EMU needs to take. The Title IX Coordinator will initiate at least one of three responses:

1. Offering supportive measures because the Complainant does not want to file a formal complaint;
2. An informal resolution (upon submission of a formal complaint); and/or
3. A formal grievance process including an investigation, and which may also include a hearing.

EMU uses the formal grievance process to determine whether or not this Policy has been violated. If EMU determines this Policy has been violated, EMU will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

**A. Initial Assessment.** Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>7</sup> engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

1. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
2. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
3. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
4. The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
5. The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
6. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
7. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
8. If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
9. If a formal grievance process is preferred, the Title IX Coordinator determines if the misconduct alleged involved Prohibited Conduct under Title IX. If the

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<sup>7</sup> If circumstances require, the University President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Title IX Coordinator or should the Title IX Coordinator be otherwise unavailable or unable to fulfill their duties.

misconduct alleges Prohibited Conduct under Title IX, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:

- (i) an incident;
- (ii) a pattern of alleged misconduct; and/or
- (iii) a culture/climate issue, based on the nature of the complaint.

If the misconduct alleged is not Prohibited Conduct under Title IX, but may allege Other University-Prohibited Conduct, the Title IX Coordinator (a) determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), (b) assesses which policies may apply and which resolution process may be applicable, and (c) will refer the matter accordingly under the University’s Community Responsibility process or the University Discrimination/Harassment Complaint Investigation Procedure for Faculty, Staff, and Visitors. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit EMU’s authority to address a complaint with an appropriate process and remedies.

**B. Violence Risk Assessment.** In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by a risk assessment team as part of the initial assessment. Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other appropriate University employees. A VRA authorized by the Title IX Coordinator should occur in collaboration with a risk assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., under Michigan’s Mental Health Code, 1974 PA 258), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

**C. Emergency Removal.** The University may act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when a VRA (as described above) has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. In such cases, the University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to removing a student from a residence hall, temporarily re-assigning a student employee, restricting

a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator within 24 hours, to show cause why the action/removal should not be implemented or should be modified. The Title IX Coordinator may suspend the removal proceeding pending the notice of the removal and the Respondent's request to meet. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

When the Respondent is an employee, the above emergency removal process may be modified as necessary in order to comply with any applicable University employment policy or collectively bargained agreement.

**D. Dismissal (Mandatory and Discretionary) pursuant to Title IX<sup>8</sup>.** EMU must dismiss a formal complaint or any allegations therein pursuant to Title IX if, at any time during the investigation or hearing, it is determined that:

1. The conduct alleged in the formal complaint would not constitute Prohibited Conduct under Title IX, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by EMU (including buildings or property controlled by recognized student organizations), and/or EMU does not have control of the Respondent;
3. The conduct did not occur against a person in the United States; and/or

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<sup>8</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of EMU<sup>9</sup>.

EMU may dismiss a formal complaint or any allegations therein pursuant to Title IX if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled in or employed by EMU; or
3. Specific circumstances prevent EMU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal under this section, EMU will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. EMU will also notify the parties of any intent to proceed under the University Community Responsibility process or the University Discrimination/Harassment Investigation Process for Faculty, Employees, and Visitors.

## **XII. OFFICIALS WITH AUTHORITY**

EMU will act on any formal or informal notice/complaint of violation of this Policy that is received by the Title IX Coordinator or any other Official with Authority. An Official with Authority is an EMU representative whom EMU has authorized to institute corrective measures in response to a violation of the Policy. For purposes of reporting under this policy, the University considers the following individuals to be an Official with Authority:

- The Title IX Coordinator and any Deputy Title IX Coordinators
- The President of Eastern Michigan University
- The Provost and Executive Vice President for Academic and Student Affairs
- The Associate Vice President of Student Affairs
- The Vice President and Athletics Director
- All Eastern Michigan University Department of Public Safety Officers: 734.487.1222

## **XIII. MANDATORY REPORTING**

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment (those resources are described in more detail in Section XIII, below). They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

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<sup>9</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them. A party who wants to make a complaint alleging a violation of this Policy can do so themselves by making a report directly to the University in the following ways:

- Contact the Title IX Coordinator: Anika Awai-William: E-mail [aawaiwil@emich.edu](mailto:aawaiwil@emich.edu)
- Contact the Title IX Office: 734.487.2202.
- The Title IX Office located at 100C Boone Hall.
- Online reporting: <http://www.emich.edu/title-nine>.

All regular EMU employees are Mandatory Reporters, except for those few employees who are considered Confidential Employees (as described in Section XIV below). A Mandatory Reporter 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. Mandatory Reporters additionally include Resident Advisors, Graduate Assistants, and all other student-employees, when disclosures are made to any of them in their capacities as employees.

Mandatory Reporters 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").

#### **XIV. CONFIDENTIAL RESOURCES**

**A. 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. 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.

**B 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.

**C. 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, Mandatory Reporters 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. The University also protects privacy with regard to personal information pursuant to The General Data Protection Regulation (GDPR), FERPA, HIPAA, and the California Consumer Privacy Act (CCPA).

## **XV. 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, and returning Students and current Employees receive ongoing training and related education.

#### **XVI. TRAINING**

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.

#### **XVII. 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 EMU's Code of Community Responsibility 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.

#### **XVIII. ANNUAL REVIEW**

This policy is maintained by the 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, timeframes for completion and sanctions and remedies imposed).