



HOGAN MARREN
BABBO & ROSE, LTD

For the University of Michigan

***Report of
Review of Sexual Misconduct
Policies and Procedures
(Focus on Faculty and Staff)***

April 2019

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I. Introduction

The Regents of the University of Michigan (the “University”) engaged Hogan Marren Babbo & Rose, Ltd. (“HMBR”) to conduct a review (“Review”) of the reporting mechanisms and written policies and procedures used by the University to address sexual misconduct. We conducted an independent assessment of the quality and organization of the University’s published reporting mechanisms and written policies and procedures for investigating and adjudicating all types of sexual misconduct cases, with a focus on sexual misconduct involving University faculty and staff. Based on our Review, we offer the following assessment and recommendations.

During the course of this Review, which began in the summer 2018, we have shared and discussed our recommendations with University leadership. To the University’s credit, many of the twelve recommendations listed in this report have already been implemented or are in the process of being implemented by the University. This Report thus presents a snapshot of the current state of the University’s dynamic and iterative work in this area.

II. Executive Summary

Our goals in this Review were to assess and make recommendations regarding the alignment of the University’s reporting mechanisms and written policies and procedures with applicable federal and state laws, the best practices of its peer institutions, and the University’s commitment to and interest in preventing and addressing sexual misconduct within the entire University community. Based on our discussions with University leadership, including University President Mark Schlissel, we found that the University’s decision to engage in this Review reflected a sincere and robust commitment to ensure that – for the entire University community, including students, faculty, staff, as well as for patients, visitors, guests and other third parties – the University’s sexual misconduct policies and procedures are clear, fair and compassionate for all parties involved, and effective in preventing, stopping and remedying sexual misconduct and protecting the University community.

“We are examining our procedures to see where we can improve reporting, accountability and support for those who come forward. This is a top institutional priority for all of us, including the Board [of Regents] and the executive team.”

“Now we will seek a broader examination of our entire community. This includes students, faculty, staff, visitors and patients.”

“We care very deeply about this issue, and we share a commitment to look each other in the eye and say that we simply won’t tolerate these types of behaviors at the University of Michigan.”

*--Opening Remarks of
University President Mark Schlissel
University Board of Regents
February 15, 2018*

We examined the University’s reporting mechanisms and written policies and procedures that pertain to sexual misconduct committed *against* and/or *by* employees, students, and third parties. This Review specifically addressed the mechanisms, policies and procedures that apply institution-wide (at the University’s three campuses in Ann Arbor, Flint and Dearborn), as well as those that apply only to the University’s Ann Arbor campus and/or to Michigan Medicine, the University’s hospital and medical program. For example, we examined the University’s sexual harassment policy for employees, which applies to employees at all three campuses. We also examined the student sexual misconduct policy that applies to students at the Ann Arbor campus, but did not as part of the present Review examine the sexual misconduct policies applicable to students at the Flint and Dearborn campuses. A review of the sexual misconduct policies and procedures applicable specifically on the Flint and Dearborn campuses is ongoing. We also examined additional policies that Michigan Medicine has that apply only to patients or to staff at Michigan Medicine.

The applicable federal laws include Title VII of the 1964 Civil Rights Act (“Title VII”), Title IX of the Educational Amendments of 1972 (“Title IX”), and the Clery Act and the Violence Against Women Act (“VAWA”). While Title VII and Title IX prohibit sex discrimination and sexual harassment, including sexual assault, the Clery Act and VAWA address sexual assault as well as the additional categories of dating violence, domestic violence, and stalking. Institutions must have procedures in place that meet the standards of Title IX and Title VII as well as the Clery Act and VAWA. We also considered the requirements of Michigan state law, including the state’s Elliott Larsen Civil



Rights Act. In addition, in 2018, the Michigan Legislature adopted new requirements for state higher educational institutions relating to the handling of sexual misconduct cases. These requirements are part of the appropriations legislation for the 2018-2019 fiscal year (October 1, 2018 - September 30, 2019).

Our Review is one part of the University's ongoing and multi-faceted approach to improving its efforts to prevent and appropriately respond to sexual misconduct. In February 2018, the University issued an updated version of its student sexual misconduct policy for the Ann Arbor campus, entitled the *Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence* ("Student Sexual Misconduct Policy"). In January 2019, the University issued a revised, interim version of this policy ("Interim Student Sexual Misconduct Policy") to comply with a recent ruling of the U.S. Sixth Circuit Court of Appeals. The policy update includes an in-person hearing facilitated by a trained hearing officer where students involved in sexual misconduct investigations have the opportunity to ask questions of each other and witnesses. (Links to the policies and procedures referred to in this report and available on the University's website are included in Appendix A.) During the course of the Review, the University also established a new Ombuds office for staff, in addition to the Ombuds offices currently available for students and for faculty.

The University also appointed an internal Working Group in early 2018 that was tasked with developing recommendations for improving reporting and accountability of incidents of sexual misconduct, improving the overall workplace culture within the University, and raising awareness of the need to address the problem of sexual misconduct from all angles and on every level of the various areas within the University community. We viewed our work as complementary to the ongoing work of the internal Working Group, and many of our recommendations were overlapping with those made by the Working Group. We especially support the Working Group's recognition of the importance of strong, visible support from University leadership in providing attention and resources to these issues as well as the importance of having a University-wide vision and commitment to a harassment-free environment.

We noted that, as recommended by the Working Group, the University has updated its website to include a comprehensive "sexual misconduct" page with information about the policies and procedures that apply to employee and student sexual misconduct. This page (<https://sexualmisconduct.umich.edu/>) can be easily accessed through the main University website gateway (www.umich.edu) (click on "Report Sexual Misconduct" at the top of the page). The University's website includes a Resource Guide, entitled, "Our Community Matters."¹ The University's website also contains the campus safety information required to be posted under state law.

Like many colleges and universities, the University has devoted significant attention and resources in recent years to updating its reporting mechanisms, policies and procedures relating to student sexual misconduct. We recommend that the University take steps to make the reporting mechanisms, policies and procedures that apply to sexual misconduct by employees and third parties as robust as those that already apply to sexual misconduct by students. As noted below, with respect to our recommendations relating to the written policies and procedures, we specifically encourage the University to use its student sexual misconduct policy as the basis for improving its sexual misconduct policies and procedures relating to employees and third parties. Our specific recommendations (including those that we have identified as being required by federal law) are outlined below.

A. Reporting Mechanisms

The University has numerous internal and external mechanisms for reporting sexual misconduct, including options to report sexual misconduct to the Office for Institutional Equity ("OIE"), Human Resources ("HR") offices, University employees designated to receive and report sexual misconduct ("responsible employees"), the University-wide 24/7 compliance hotline, designated Michigan Medicine offices, and law enforcement. We found that most of the University's current reporting mechanisms, and the published information about individuals and organizations that provide confidential resources, are clear, widely-known, and easy-to-use, and that each of these mechanisms is, in fact, used by some individuals to report sexual misconduct. However, we noted that it is not uniformly evident which reporting mechanism should or can be used in particular situations. For example, the compliance hotline can be more

¹ <https://studentsexualmisconductpolicy.umich.edu/article/our-community-matters-resource-guide>.



clearly promoted as being available to receive reports of sexual misconduct (although it has received and handled these reports when made), some confidential resources are viewed by some individuals (incorrectly) as not being available to faculty and staff, and the concept of who has been designated as a “responsible employee” with an obligation to report sexual misconduct is not consistently defined across the University’s policies. As discussed in the next section, we also found that because the University has multiple sexual misconduct policies and procedures, it is not always easy to discern which policy and procedure apply to a particular situation.

University officials emphasized their interest in encouraging greater reporting of alleged sexual misconduct in order for the University to be aware of, and respond appropriately to, sexual misconduct in the University community. We also heard concerns from employees about the possibility of false reporting of sexual misconduct and, conversely, heard from some employees and students that, in the employment context, there continues to be great fear that reporting sexual misconduct against a supervisor or other University staff member with authority over the employee or student will result in some type of retaliation and/or other reprisals in their academic or professional careers at the University and beyond. The faculty and staff policy should track the student policy, which assumes that all complaints are made in good faith. The possibility of retaliation against someone making a good faith complaint is heightened in the academic setting and will need to be specifically addressed if the University’s goal to encourage reporting is to be achieved.

We agree that, in order for the University to be able to respond appropriately to sexual misconduct, it must first be aware of that misconduct and we fully support the University’s goal of encouraging greater reporting of sexual misconduct across the University. Listed below are the steps that we recommend that the University take to broaden the existing reporting mechanisms to more fully capture reports of alleged sexual misconduct *by any individual* across the entire University, and to improve the transparency and availability of reporting avenues by more robustly promoting all of the reporting mechanisms.

In our view, although the listed steps are not mandated by federal or state requirements, they would further the University’s goals and objectives in this area. Also, as noted elsewhere in this Review, many of these recommendations have already been implemented or are in the process of being implemented by the University. We specifically recommend that the University:

1. **Reporting**: Strongly encourage *all members of the University community* – employees and students — as well as third parties to report sexual misconduct.
2. **Hotline**: Expand the promotion of the availability of the University-wide 24/7 compliance hotline as a mechanism for reporting sexual misconduct.
3. **Options**: Clearly publicize and describe all of the institutional and confidential options available at the University, including for the central Ann Arbor campus and Michigan Medicine, to report sexual misconduct to the University, to law enforcement, or to both, and offer assistance in making a report to the University or to law enforcement.
4. **Confidential Resources**: Take specific steps to ensure that faculty and staff at the University, including at the central Ann Arbor campus and Michigan Medicine, are aware of, and comfortable using, the confidential resources offered, including those offered by the University’s Sexual Assault Prevention and Awareness Center (“SAPAC”).
5. **Ombuds**: Establish an Ombuds office available to staff for sexual misconduct as well as other sensitive issues, as planned.
6. **Immediate Support**: Offer immediate confidential support more prominently (*i.e.*, as a “pop up” screen) on the University’s website for all individuals using the University’s website to get information about sexual misconduct.



B. Written Policies and Procedures

The University has multiple written policies and procedures that apply to sexual misconduct by employees, students, and third parties. The policies are organized according to the relationship of the respondent to the University, *i.e.*, whether the respondent is an employee, student or third party. We found the University's multiple written sexual misconduct policies and procedures to be confusing in that they do not uniformly provide clear notice to the public as to which policy and procedure apply to misconduct by different respondents (student, employee or third party).

For alleged sexual misconduct by employees, the main written policies and procedures apply institution-wide and include: the University's *Sexual Harassment Policy* (hereafter "*Employee Sexual Harassment Policy*") (SPG 201.89), *Procedural Guidelines* (hereafter "*Employee Procedural Guidelines*") (also in SPG 201.89), and *Discrimination and Harassment Policy* (hereafter "*Employee Discrimination and Harassment Policy*") (SPG 201.89-1). For alleged sexual misconduct by students, there is a written policy and procedure for the Ann Arbor campus, which is the *Interim Student Sexual Misconduct Policy*.

For alleged sexual misconduct by third parties, the *Interim Student Sexual Misconduct Policy* applies when the harassment is against students, employee policies apply when the harassment is against employees and other third parties, and Michigan Medicine policies apply when the harassment is against patients.

Significantly and in addition, many of the procedural requirements for investigations and adjudication of sexual misconduct cases are described in "*Information Sheets*," operational materials used by OIE to inform complainants, respondents, and witnesses about the investigation and adjudication process. (These *Information Sheets* are included in the Appendix as Appendix B.)

In addition, we considered related policies and procedures including University bylaws that specifically apply to faculty and academic staff, other Standard Practice Guide policies ("SPGs") that apply to University employees, Michigan Medicine-specific policies and procedures (the vast majority of third party complaints are handled by Michigan Medicine under its patient policy and investigation process), consensual relationship policies, employee handbooks, and college, school and program-specific policies (*e.g.*, codes of conduct applicable to students in specific colleges, schools or programs), the University's *Statement of Student Rights and Responsibilities*, and collective bargaining agreements.

We found that the current written policies and procedures related to sexual misconduct by University *employees* and *third parties* require updating to ensure compliance with the applicable federal laws, including incorporation of the procedural provisions already contained in the *Information Sheets*. We noted that, during the course of our Review, the University's *student* sexual misconduct policies and procedures were revised to address several technical recommendations that we made (relating to the opportunity for the parties to challenge interim measures on an expedited basis, the designation of a timeframe for the initial assessment of a sexual misconduct report, and a specific provision allowing extensions of the applicable timeframes for "good cause").

At the start of our Review, we pointed out to University Leadership that the University did not have a clear description on its website or in any University publication of all of its sexual misconduct policies and procedures. For this reason, we developed a comprehensive matrix of all the University's policies and procedures applicable to sexual misconduct committed by employees, students and third parties; the matrix is included as Appendix A. We noted that the University launched a new "Sexual Misconduct Reporting & Resources" website ("Sexual Misconduct website") (<https://sexualmisconduct.umich.edu/>) in fall 2018. The website includes information about reporting sexual misconduct where the respondent is a student and where the respondent is a faculty or staff member. The University's updated Sexual Misconduct website is an improvement given that previously information about the student *and* the employee processes was not available on any one University website. However, the website page does not address how to report sexual misconduct when the respondent is a third party or when the sexual misconduct occurs at Michigan Medicine.



The following are the steps that we recommend that the University take with respect to its written policies and procedures. We have noted where, in our view, these steps are *required* by federal law. Also, as noted elsewhere in this Review, many of these recommendations have already been implemented or are in the process of being implemented by the University. For example, to specifically address these recommendations on policies and procedures, the University has established a task team with representation from all three campuses and Michigan Medicine.

7. **Transparency**: Continue its efforts to increase the transparency of the University's policies and procedures for addressing sexual misconduct committed by employees and third parties.
8. **Sexual Misconduct Policy**: Address sexual misconduct in an expanded, more comprehensive, and consistent manner across all applicable University policies and procedures.

Specifically, we recommend that the University adopt an umbrella “policy” that addresses “sexual misconduct” broadly and applies to the entire University community, including sexual misconduct by employees and students and also by third parties. This approach would demonstrate an institutional commitment not to tolerate sexual misconduct anywhere in the University’s learning and working environment. The policy should include University-wide definitions and descriptions of the type of conduct that is prohibited by the University, who can file a complaint and against whom, how a complaint can be filed, and which University employees are considered “responsible employees” with an obligation to report sexual misconduct to University officials.

The umbrella policy to be used for sexual misconduct by employees, students and third parties should incorporate the enhancements already made to the current *Interim Student Sexual Misconduct Policy* and include the following specific provisions:

- a. Use a broad definition of “prohibited conduct” that includes sexual misconduct, gender-based harassment, retaliation, violation of protective measures and the additional VAWA-required categories of intimate partner violence and stalking;
- b. Include University-wide definitions of key terms, such as the types of “prohibited conduct,” as well as “student,” “employee,” “third party,” and “responsible employee”;
- c. Clearly explain the University’s jurisdiction over “off-campus” sexual misconduct;
- d. Emphasize that sexual misconduct complaints may be filed by any individual (*i.e.*, including witnesses or others with direct or indirect knowledge of the misconduct);
- e. Emphasize that sexual misconduct complaints may be filed against any individual (*Required*);
- f. Emphasize that sexual misconduct complaints will be deemed to have been made in good faith;
- g. List all of the related University policies and procedures;
- h. Eliminate the timeframes for reporting sexual misconduct, while noting the difficulties of investigating older allegations;
- i. Require a periodic review and appropriate updating of the written policy and procedures.



9. Procedures²

- a. General: Continue to use respondent-specific “procedures” for handling investigations and adjudications relating to sexual misconduct allegations;
- b. Information Sheets: Incorporate into the written procedures the updates already contained in the *Information Sheets (Required)*;
- c. Employee Misconduct: Make specific improvements to the procedures that apply to alleged sexual misconduct by employees, including faculty and staff.

Specifically,

- i. Include an opportunity for the complainant and the respondent to challenge interim measures³ on an expedited basis;
- ii. Include specific, designated and reasonable timeframes for all of the major stages of the investigation and adjudication process and require that notice be provided of any delays in the process for good cause and the reasons for the delays (*Required*);
- iii. Require that adequate notice of the outcome of the proceeding be provided to the parties simultaneously, including notice of the sanctions and, in the case of faculty, the referral of findings to the dean or department chair, if any (*Required*);
- iv. Include a specific statement of assurance that the University will take steps to prevent the recurrence of sexual misconduct and remedy the discriminatory effects, if any, of such misconduct (*Required*);
- v. Add the following additional information (*Required*):
 - A description of the informal resolution options available for addressing complaints of sexual misconduct and the timeframes for these options;
 - A description of how confidentiality can be requested and will be handled;
 - A description of the specific interim measures available to complainants and to respondents; and
 - Information about the options to report sexual misconduct to the University, to law enforcement, or to both;
- vi. Require a periodic review and appropriate updating of the written procedures;

² Throughout this report, we use the term “procedures” to refer to the general *grievance procedures* that the University uses to investigate and adjudicate sexual misconduct allegations. We recognize that the collective bargaining agreements for employees also include specific procedures for handling grievances and have included a specific recommendation relating to the procedures in those agreements in 9.c.vii.

³ We use the term, “*Interim measures*”, to refer to both supportive and protective measures. This is how the University defines interim measures in its *Interim Student Sexual Misconduct Policy*.



- vii. Undertake a review with appropriate stakeholders of the existing collective bargaining agreements to assess and ensure consistency with the University's sexual misconduct policies and procedures for employees;
 - d. **Student Misconduct:** Make specific improvements to the University's procedures that apply to alleged sexual misconduct by students. Specifically,
 - i. Include an opportunity for the complainant and the respondent to challenge interim measures on an expedited basis;
 - ii. Include in the published policies, a specific, designated and reasonable timeframe for the initial assessment stage and allow extensions of the overall timeframes for investigation and adjudication for good cause (*Required*);
 - e. **Third Party Misconduct:** Make specific improvements to the University's grievance (or other) procedures that apply to alleged sexual misconduct by third parties. Specifically,
 - i. More clearly explain what grievance (or other) procedures apply to allegations of sexual misconduct by third parties (*Required*);
 - ii. Include the items noted above in 9.c. relating to the investigation and adjudication of alleged sexual misconduct by employees (including those that are required, as noted).
10. **Michigan Medicine:** For the University's policies and procedures that apply to sexual misconduct involving employees, students or third parties at Michigan Medicine, more clearly explain and make available to the public the applicable policies and procedures, including explaining how Michigan Medicine-specific policies and procedures are related to the applicable University policies and procedures, and review the Michigan Medicine-specific policies and procedures to ensure that they are consistent with University policies and procedures.
11. **Up-to-Date and Consistent:** Review and revise all University sexual misconduct policies and procedures and related policies and procedures (including its consensual relationships policies, employee handbooks, college, school and program-specific policies and procedures) to ensure that they are up-to-date and internally consistent with one another and with the University's policy (or separate policies) for addressing sexual misconduct and the related procedures.
12. **Applicable laws:** Continue to work to ensure that the University's policies and procedures reflect the current state of laws and regulations in this area (*Required*).

Finally, we note that our assessment and recommendations are based upon the documents and information that we received and reviewed, and on current federal and state legal and regulatory requirements.

III. Review Process and Protocol

Our Review included the following four stages:





In the *Preliminary Stage*, HMBR met with University officials to discuss the University's goals and objectives for the Review. We conducted an introductory meeting with University President Mark Schlissel on July 13, 2018. We also met on a weekly basis to discuss the Review progress with University officials.

In *Stage 1: Information Gathering*, HMBR gathered data and information concerning the University's current reporting mechanisms and written policies and procedures relating to sexual misconduct. We also reviewed related materials from the University's external and internal websites, including its codes of conduct and handbooks for students, faculty and staff at specific units,⁴ hotlines, public safety avenues, and training materials, as well as other related materials, including the specific notices of information for complainants, respondents and witnesses. We also studied the results of the University's most recent (2015) climate surveys, *Title IX Student Sexual Misconduct Annual Reports* (fiscal years 2018 and 2015), *Annual Report Regarding Institutional Response to Reports of Sexual Harassment by Faculty, Staff and Third Parties* (first report issued October 22, 2018) and *Annual Security Report and Annual Fire Safety Report* (Ann Arbor 2017-2018).⁵

We also conducted interviews with University officials, faculty, staff and students, including representatives from the Office of the President, Office of the General Counsel, Office of Diversity, Equity and Inclusion ("DEI"), Office for Institutional Equity ("OIE") (including the former OIE Director and Title IX Coordinator for the University, who resigned in October 2018), Human Resources ("HR"), Office of Student Life, Office of the Dean of Students, Office of Governmental Affairs, the University's internal Working Group, Office of University Audits, and Michigan Medicine, as well as from the Faculty Senate Advisory Committee on University Affairs ("SACUA"), the Central Student Government and Rackham Student Government.

In *Stage 2: Analysis and Assessment*, we conducted a comprehensive review, analysis and assessment of the University's current reporting mechanisms and written policies and procedures relating to sexual misconduct. For the reporting mechanisms, we considered whether the mechanisms were sufficiently broad and well-known to the University community to encourage reporting by all members of the community. For the written policies and procedures, the focus was on determining whether the University's published written policies and procedures are consistent with the applicable federal and state laws, including Title VII, Title IX, the Clery Act/VAWA, and Michigan state law. This included consideration of relevant federal regulatory guidance from the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Education ("Department"), Office for Civil Rights ("OCR"). (A summary of the applicable legal standards is included in Appendix F.) We also compared the University's published reporting mechanisms and written policies and procedures, specifically those related to faculty and staff, to the current and emerging best practices at peer universities. For this, we examined the written policies and procedures relating to sexual misconduct cases at twenty-one comparable colleges and universities, including public and private institutions and one university system.

In *Stage 3, Comprehensive Report and Recommendations*, we prepared the present report for the University's consideration. We shared our developing recommendations with University leadership over the course of the Review, and many of the recommendations in this Report have already been implemented or are in the process of being implemented.

⁴ E.g., *Standards of Conduct and Commentary* from the Law School; *Undergraduate Handbook of Academic Policies and Procedures* (2017-2018) from the School of Nursing, *Student Academic and Professional Conduct Policy* from the College of Pharmacy, *Policies and Procedures* from the School of Public Health, and *Rackham Academic and Professional Integrity Policy*, from the Rackham Graduate School.

⁵ <https://diversity.umich.edu/strategic-plan/climate-survey/>; <https://hr.umich.edu/sites/default/files/student-sex-misconduct-report-fy-18.pdf>; <https://hr.umich.edu/sites/default/files/FY-15-annual-report.pdf>; <https://hr.umich.edu/sites/default/files/fy18-sexual-harassment-annual-report.pdf>; and <https://www.dpss.umich.edu/content/crime-safety-data/annual-security-fire-safety-report/>.



IV. Findings and Recommendations

Our Review examined the (1) reporting mechanisms and (2) written policies and procedures used by the University for sexual misconduct by students, employees and third parties, including those used institution-wide, as well as those used only at the University's Ann Arbor campus and/or Michigan Medicine.

A. Reporting Mechanisms

Sexual misconduct may be reported internally to the University, to local law enforcement or to both the University and local law enforcement. The University has numerous internal and external mechanisms for reporting sexual misconduct, including options to report sexual misconduct to OIE,⁶ HR,⁷ University "responsible employees," the compliance hotline, designated Michigan Medicine offices (including a discrimination coordinator who is primarily focused on patient complaints), and law enforcement. Individuals and organizations are also available to provide confidential resources, regardless of whether an individual chooses to make a sexual misconduct report. Most of the University's current reporting mechanisms themselves are clear, widely-known, and easy-to-use, and each of these mechanisms is, in fact, used by some individuals to report sexual misconduct. We found, however, that it was not uniformly evident which reporting mechanism should or can be used in particular situations. For example, at the start of our Review, the compliance hotline was not clearly designated to receive reports of sexual misconduct (although it did receive and handle these reports when made). In addition, the concept of who has been designated as a "responsible employee" with an obligation to report sexual misconduct is not consistently defined across the University's policies and the confidential resources available through SAPAC are viewed by some (incorrectly) as not being available to faculty and staff.

Our survey of peer institutions revealed that universities have established a variety of reporting systems. For example, eight of the twenty-one peer institutions surveyed have a single, online mechanism for reporting sexual misconduct, including all constituencies, while others have more decentralized reporting systems. The University's former Title IX Coordinator explained that the University uses a decentralized reporting system with multiple avenues available for individuals to use to file a complaint or report. One benefit of this approach is that, if an individual feels uncomfortable for whatever reason using a specific reporting option, there are other options available.

University leadership has expressed a strong interest in encouraging the reporting of sexual misconduct. We agree that, in order for the University to be able to respond appropriately to sexual misconduct, it must first be aware of that misconduct.

Our recommendations below seek to further the University's interest in encouraging reports of sexual misconduct by enhancing the available reporting mechanisms and better promoting their use by the entire University community. We specifically recommend that the University:

1. **Reporting: Strongly encourage *all members of the University community* – employees and students – as well as third parties to report sexual misconduct.**

During the course of the Review, the University updated its main website to include a new "Report Sexual Misconduct" link at the top of the home page and provide a one-stop Sexual Misconduct website. These changes greatly improved the visibility of the available University options for reporting sexual misconduct, which was one improvement we strongly recommended to the University during our Review.

⁶ Reports may be made to OIE in person, by email or by phone. OIE staff members are available to talk with individuals during regular business hours. Complaints may also be reported to OIE through an on-line complaint form. For student sexual misconduct, the report can be made online through the *Interim Student Sexual Misconduct Policy* website: <https://studentsexualmisconductpolicy.umich.edu/report-an-incident>.

⁷ For employee sexual misconduct, the University's HR website includes a Harassment and Discrimination Reporting Form for reporting discrimination and/or harassment prohibited by University policy. <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity/harassment-discrimination-reporting-form>. Upon completion, this form is reviewed by HR.



The University should be clear that anyone, including employees, students, and/or third parties, may report sexual misconduct. This recommendation is based upon two key factors: (1) we heard from members of the University community a concern that sexual misconduct is currently being underreported, including underreporting of staff and faculty sexual misconduct; and (2) the University needs to know about alleged sexual misconduct in order to respond appropriately and effectively to it.

We further recommend that the University explicitly state on the website and in all of its policies, procedures and other communications about reporting sexual misconduct that *any individual* may file a complaint of sexual misconduct with the University against *any individual*. The University should be clear too that “any individual” means “any employee, student, or third party.”

We noted that statements consistent with our recommendation are already included in the *Interim Student Sexual Misconduct Policy (Section VII. Reporting Options)*, which states: “The University strongly encourages prompt reporting of conduct that may violate this Policy” and “Any individual (including a student, employee, visitor, guest, or other third party) not just the Claimant may make a report under this Policy.” The University’s recently updated Sexual Misconduct website states that the University “addresses every report that is brought to its attention.” <https://sexualmisconduct.umich.edu/reporting-process/>.

2. Hotline: Expand the promotion of the availability of the University-wide 24/7 compliance hotline as a mechanism for reporting sexual misconduct.

The University has a designated compliance hotline for employees, students, vendors and others to raise concerns. The hotline is available at <http://compliancehotline.umich.edu/>. Reports may be made by phone or through an online report, and may be made anonymously. The reports initially go to an external vendor, who then reports the information to the appropriate University compliance offices, including the central campus University Audits Office and/or the Michigan Medicine Compliance Office. A trained interview specialist is available 24/7 to speak with individuals and multilingual staff members are available as needed.

To date, the compliance hotline has not been specifically targeted or marketed to the University community as a resource for individuals to complain about or report sexual misconduct by employees, students, or third parties or about other forms of interpersonal violence. However, University staff members stated that sexual misconduct has been frequently reported using this hotline, and then referred to the appropriate University office, generally OIE, for appropriate handling.

During the course of our Review, the University made improvements to update the compliance hotline website and reporting form. For example, the introductory information on the website and online reporting form now include “sexual misconduct” as a specific incident type that may be reported through the hotline under the “Human Resources” category. Previously, the website and the reporting form did not include sexual misconduct as a specific “incident type.” However, the current website still includes descriptive language about the purpose of the compliance hotline stating that the hotline is “a tool for U-M employees, students, vendors and others to anonymously report regarding financial, regulatory, NCAA [National Collegiate Athletics Association], substance abuse and patient safety issues.”

We recommend that the University expand the promotion and marketing of the availability of the compliance hotline for reporting sexual misconduct. The hotline offers a unique feature, the availability of an individual to talk with 24/7, that is not available through other University reporting mechanism. Specifically, the website should make clear that: (1) sexual misconduct may be reported regarding any type of sexual misconduct, including sexual misconduct by students, employees, and third parties and not just sexual misconduct related to HR issues or concerns relating to financial, regulatory, NCAA, substance abuse or patient safety issues; and (2) the hotline may be used to make an anonymous report or a non-anonymous report of sexual misconduct. In addition, the University’s updated Sexual Misconduct website should more clearly indicate that the hotline is also available for reporting sexual misconduct. Currently, it is listed as under “Other university compliance information”, which incorrectly suggests that it is not intended to be used for sexual misconduct.



In addition to the main compliance hotline, the University could create a separate “sexual misconduct” hotline in order to emphasize the availability of a 24-hour hotline for reporting sexual misconduct.

The University should also publicize the availability of the new confidential State of Michigan hotline, announced in summer 2018.⁸

3. **Options:** Clearly publicize and describe all of the institutional and confidential options available at the University, including for the central Ann Arbor campus and Michigan Medicine, to report sexual misconduct to the University, to law enforcement, or to both, and offer assistance in making a report to law enforcement.

We emphasized to University officials that, to be effective, the options for reporting sexual misconduct must be clear and understandable to the entire University community. This includes reporting sexual misconduct committed *by* or *against* employees, students, and third parties. The options and the designated “responsible employees” with obligations to report sexual misconduct should be clearly and consistently set forth in the University’s communications, including its website, and (as discussed below) in its written policies and procedures.

The University made great strides in this area over the course of our Review that are consistent with our recommendations. The recently-updated Sexual Misconduct website includes an entire page on “Reporting and Process” with links to the policies to be used when the respondent is a student or an employee. This page includes a clear statement of the University’s efforts to encourage greater reporting of sexual misconduct: “The U-M community is encouraged to report potential sexual misconduct through the following channels.”

We recommend that the website also specifically describe the options for reporting sexual misconduct by third parties and for reporting sexual misconduct at Michigan Medicine. We further recommend that the University’s Sexual Misconduct website describe who is considered a “responsible employee” for cases of employee sexual misconduct and specifically offer assistance to individuals in making a report to law enforcement. We noted that the *Interim Student Sexual Misconduct Policy* already includes a separate and useful section describing the “reporting options” available for reporting student sexual misconduct internally and externally and a clear explanation of who are “responsible employees.”

4. **Confidential Resources:** Take specific steps to ensure that faculty and staff at the University, including at the central Ann Arbor campus and at Michigan Medicine, are aware of, and comfortable using, the confidential resources offered, including those offered by SAPAC.

The University has widely publicized the available confidential resources on its website, in its written policies and procedures, and in the *Information Sheets* provided for complainants/claimants and respondents. These resources include SAPAC, Counseling and Psychological Services (“CAPS”), the University’s Mediation Services, and the University Ombuds for students and for faculty. Confidential resources are also listed in the University’s *Our Community Matters Resource Guide* and include those identified above, as well as the Faculty and Staff Assistance Program (“FASAP”), which is available for central campus faculty and staff, and the University of Michigan Health Services (“UMHS”) Employee Assistance Program (“EAP”), which is available for Michigan Medicine faculty and staff. (FASAP has been renamed to the “Faculty and Staff Counseling and Consultation Office” (“FASCCO”); EAP has been renamed to the “Michigan Medicine Office of Counseling and Workplace Resilience.”)

Although SAPAC is open to faculty, staff and students, University staff and faculty members that we met with stated that there is a widely-held perception that SAPAC is intended to be a resource only for students and that, therefore, faculty and staff generally do not feel comfortable going to SAPAC. The historical reasons for this misperception are

⁸ During the course of our Review, the Governor of Michigan announced the launching of the State’s new sexual assault hotline (1-855-VOICES4). The confidential hotline is available 24 hours a day, seven days a week to provide crisis support and referrals to sexual assault victims and their friends and family.



unclear, but to overcome this misperception the University should take specific steps to ensure that employees are aware that SAPAC is a resource for faculty and staff and that employees feel more comfortable using this resource.

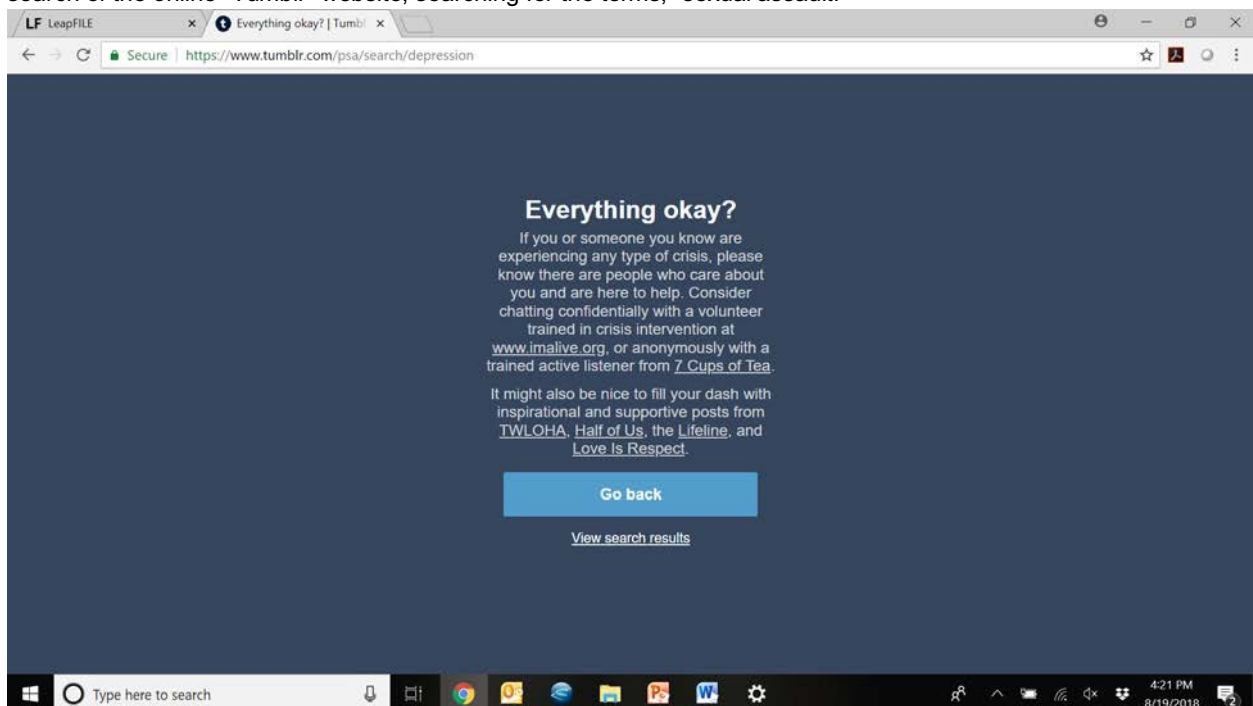
The University should continue its practice of anonymously tracking the use of SAPAC resources in order to ensure that the resources are being provided to and used by faculty and staff members, as well as students.

5. Ombuds: Establish an Ombuds office available to staff for sexual misconduct as well as other sensitive issues, as planned.

The University has previously established Ombuds offices for faculty and for students (including one specifically for graduate students). The websites for these Ombuds are: facultyombuds.umich.edu/ and <https://ombuds.umich.edu/>. The Ombuds office is considered a place where individuals can confidentially raise concerns and complaints. The office provides information about possible complaint options and resources. During the course of this Review, the University established a designated Ombuds office for staff. We view this new office as a useful addition to the reporting options available to staff.

6. Immediate Support: Offer immediate confidential support more prominently (*i.e.*, as a “pop-up” screen) on the University’s website for all individuals using the University’s website to get information about sexual misconduct.

We recommended that the University create some type of “pop-up” on its external and internal websites, including Wolverine Access, to offer immediate and more personal assistance to individuals (including complainants *and* respondents) searching the University’s website for information about sexual misconduct.⁹ The “pop-up” would ask the individuals whether they are “ok” and direct them to immediate University and community resources. For example, the “pop-up” could be a short message on the screen that appears when someone searches keywords such as “sexual abuse”, “sexual assault”, and “sexual harassment.” It could include a supportive message from the school as well as links for what to do next and information on sexual assault. Below is an example of a “pop-up” from a search of the online “Tumblr” website, searching for the terms, “sexual assault.”



⁹ Further, we recommend that the University made clear that assistance may be provided for complainants *and for respondents*, and more fully explain the resources for respondents on the website.



As noted, during the course of the Review, the University updated its Sexual Misconduct website. The current “Reporting” page includes information about “confidential assistance” at the top of the page. While this information is not presented as a separate “pop-up” from the webpage and includes language that is somewhat more legalistic than that described above, it appears to be intended to largely serve the same purpose of making clear to anyone looking for information about sexual misconduct that they may be assisted in a confidential manner. We recommend that the University monitor whether a more personal and direct “pop-up” would also be useful in encouraging the reporting of sexual misconduct by those who may be reluctant to make a report.

Reporting & Process

Confidential Assistance

Information about or assistance with sexual misconduct policy or support resources may be obtained from a variety of university resources. Prior to filing a report, some individuals may find it helpful to consult with a confidential resource. All information shared will remain confidential to the extent permitted by law and university policy. Discussions with representatives from these offices are not considered a formal report to the university and, without additional action, will not result in intervention.

FOR STUDENTS

FOR FACULTY & STAFF

B. The University’s Policies and Procedures relating to Sexual Misconduct

We examined the University’s written policies and procedures that apply to the reporting, investigation and adjudication of sexual misconduct. The following overview is provided as context for our recommendations.

The University has a general notice of nondiscrimination, which applies to all students, employees and third parties.¹⁰ The policies and procedures applicable to sexual misconduct are generally organized according to the respondent’s status as an employee, student, or third party.

A matrix of the applicable written University policies and procedures relating to sexual misconduct is provided in Appendix A. (Appendix A also includes detailed citations to the locations of the policies and procedures, where available, on the University’s website.)

Employee Respondents: The University uses Standard Practice Guide policies (“SPGs”) to address allegations of misconduct by employees. SPGs are institution-wide policies and procedures and thus apply to employees at the Ann Arbor, Flint and Dearborn campuses. Allegations of sexual harassment committed by University employees (including faculty and staff) are covered by the SPGs entitled “*Employee Sexual Harassment Policy*” and “*Employee Procedural Guidelines*.” Allegations of other types of discrimination and harassment committed by University employees (including faculty and staff) are subject to the SPG entitled, “*Employee Discrimination and Harassment Policy*.”

¹⁰ This notice is posted on the University’s website at several locations, including the websites for the University’s HR Office, OIE office and Office of Student Conflict Resolution (“OSCR”). <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity/nondiscrimination-policy-notice>; <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity> (links to policy on HR page); and <https://oscr.umich.edu/NondiscriminationPolicy>. See also University Regents Bylaw Sec. 14.06 Nondiscrimination and Affirmative Action, at <http://www.regents.umich.edu/bylaws/bylaws14.html#6>.



Allegations can be lodged under the applicable policy and then the *Employee Procedural Guidelines* address the investigative process under both policies.

OIE provides additional written information about the investigation and adjudication process for employee harassment and discrimination cases in separate *Information Sheets* for complainants, respondents and witnesses. These *Information Sheets* include a general description of the investigative process and the participants' "rights" with respect to that process. The University's website includes the *Information Sheets* as well as a now-outdated flowchart for employee sexual misconduct cases (the "SPG 201.89 and 201.89-1 Investigation Process Flowchart").¹¹ The information sheets and flowchart (entitled "Faculty and Staff Investigation Flowchart") were updated during the course of the Review and the current versions are included in Appendices B and C to this report.

Student Respondents: Allegations of sexual misconduct, gender-based misconduct, as well as other forms of interpersonal violence (including domestic violence, dating violence, and stalking) by *University students* at the Ann Arbor campus are covered by the *Interim Student Sexual Misconduct Policy*, updated in January 2019 in response to a federal appellate court to include an opportunity for a hearing. OIE provides additional written information about its investigation process for student sexual misconduct cases in separate *Information Sheets* for student claimants, respondents and witnesses. In addition to these main documents, related policies include the University's *Statement of Student Rights and Responsibilities* (which covers other forms of misconduct not covered by the *Interim Student Sexual Misconduct Policy*) and the *Community Violence Policy*. The *Information Sheets* and flowchart for student sexual misconduct cases also detail the above procedures and were updated to reflect recent changes made in the *Interim Student Sexual Misconduct Policy*. The University includes a flowchart of the resolution options in the policy itself, and on the website entitled, "Student Investigative Resolution." The current versions of the information sheets and flowchart are included in Appendices B and D to this report.¹²

Third Party Respondents: The University's updated Sexual Misconduct website does not address how to report sexual misconduct when the respondent is a third party. During our Review, we learned that the specific policies and procedures that apply to allegations of misconduct by *third parties* depend upon the identity of the individual that is subject to the misconduct. Allegations of sexual misconduct, gender-based misconduct, and other forms of interpersonal violence committed by third parties against students are covered by the *Interim Student Sexual Misconduct Policy*. Allegations of violence by third parties against University employees or other third parties as defined and prohibited by the *Community Violence Policy* are covered under that policy. Allegations of sexual misconduct committed by third parties against employees or other third parties are not clearly addressed in any of the University's written policies and procedures. The University's former Title IX Coordinator explained that the applicable policies would include the *Non-Discrimination Policy* and the *Employee Discrimination and Harassment Policy*. Allegations of violence by patients at Michigan Medicine are covered by the policies described below for Michigan Medicine. Some third parties are subject to the *Employee Sexual Harassment Policy*, *Community Violence Policy* and other relevant University policies through a contractual relationship with the University. In those instances, the relevant policy and procedures would apply. For example, if a vendor were to sexually harass a member of the University's community, the vendor's contract with the University generally would obligate them to abide by its policies and procedures while on campus. The former Title IX Coordinator indicated that the investigation and adjudication of complaints against third parties would be handled in the same manner as complaints against employees.

Under the above policies and procedures, OIE investigates all sexual misconduct matters except: (1) interpersonal violence and stalking involving faculty and staff, which are addressed by the appropriate HR office; and (2) patient concerns, which are addressed by Michigan Medicine's Discrimination Investigator under the patient rights policy. Other types of student misconduct are covered by the University's *Statement of Student Rights and Responsibilities* and handled by OSCR. Cases involving faculty, staff and patients at Michigan Medicine may also be handled by the Patient Relations and Clinical Risk Office. Under the *Interim Student Sexual Misconduct Policy*, OIE is responsible for conducting the investigation and a hearing officer is responsible for making a determination as to whether the policy has been violated. Determinations relating to discipline are handled, for students, by OSCR; for staff, by HR; and for

¹¹ <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity/filing-complaint>.

¹² <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity/student-sexual-misconduct-policy>.



faculty, by the department chair or dean. In instances where there is a question as to the individual's status and/or the applicable policy or procedure, OIE, HR officials and/or officials from the Office of the General Counsel work collaboratively, as appropriate, to determine which policy or procedure will apply.

Based on our Review, we found that, like many colleges and universities, the University has devoted significant attention and resources in recent years to updating its reporting mechanisms, policies and procedures relating to student sexual misconduct and less attention to the reporting mechanisms, policies and procedures that apply to sexual misconduct by employees and third parties. We found that the current written policies and procedures related to sexual misconduct by University employees and third parties require updating to ensure compliance with the applicable federal laws, including incorporation of the procedural provisions in the *Information Sheets*. We also recommended several clarifications to the University's student sexual misconduct policies and procedures; these were included in the updated *Student Sexual Misconduct Policy*.

Listed below are the steps that we recommend that the University take with respect to its written policies and procedures; we have noted where these steps are required by federal law. We specifically recommend that the University:

7. Transparency: Increase the transparency of the University's efforts to address sexual misconduct committed by employees and third parties.

During the course of our Review, the University expanded and updated its Sexual Misconduct webpage to include information in one location on the website about reporting sexual misconduct by students and by faculty or staff members. The updated website, featured prominently on the University's home page, with a new "Report Sexual Misconduct" link at the top of the page, greatly improved the transparency to the University community of the University policies and procedures applicable to sexual misconduct reports by faculty and staff. The website includes links to the University's four major policies and procedures relating to sexual misconduct at the University, including the *Employee Sexual Harassment Policy*, *Employee Procedural Guidelines* (included in the *Employee Sexual Harassment Policy*), *Employee Discrimination and Harassment Policy*, and *Interim Student Sexual Misconduct Policy*. The website does not currently, but should, also include information about reporting sexual misconduct by third parties and sexual misconduct at Michigan Medicine.

Our interviews with faculty, staff and student representatives indicated that some employees and students are confused as to which policy applies in particular situations. For example, we heard that staff members at Michigan Medicine, including nurses, are aware of how to file a complaint of sexual misconduct against other staff members, but not as familiar with how to file a complaint of sexual misconduct against a physician faculty member. In fact, some policies and procedures (specifically policies and procedures relating to Michigan Medicine) are only available upon request to the HR office and thus are not readily available to individuals looking to find the applicable policies and procedures. We noted that the *Interim Student Sexual Misconduct Policy* includes a section explaining the applicable and related policies and procedures that is helpful and easy-to-understand and suggest that a similar section be included in all of the University's sexual misconduct policies and procedures.

To increase the transparency of the University's efforts relating to sexual misconduct, the University should ensure that all of the applicable policies and procedures are available on its website. We further recommend that the University continue to publically disclose information about sexual misconduct by employees and third parties, and student sexual misconduct. In fall 2018, the University issued its first annual report on the University's response to reports of sexual harassment by faculty and staff members. The University may also want to conduct periodic assessments of its employees' knowledge of and comfort with using the available sexual misconduct policies and procedures. This could be done through employee climate surveys similar to those already used for students.

We noted a concern that the *Employee Sexual Harassment Policy* specifically provides that OIE "may deviate from these Guidelines as necessary to achieve the goals of prompt, thorough and effective complaint resolution in a procedurally fair manner." The University's description of its SPGs, and discussions with University officials, also suggested that the University views the SPGs as "guidelines," rather than more formal policies and procedures that



must be consistently followed. The applicable *Information Sheets* for employee misconduct cases, also state: “The [investigation] process may vary somewhat depending upon a variety of factors that arise during investigations,” and that individuals should contact OIE if they have questions as the investigation proceeds. We do not suggest that the University must detail every contingency that may arise in the handling of a complaint against an employee or third party, and eliminate all flexibility in the process, but do recommend that the applicable policies and procedures be revised to eliminate any reference to “deviating” and provide greater notice to the parties and the public as to what to expect from a sexual misconduct proceeding involving faculty and staff or third parties.

8. Sexual Misconduct Policy: Address sexual misconduct in an expanded, more comprehensive, and consistent manner across all applicable written policies and procedures.

Specifically, we recommend that the University consider adopting an umbrella “policy” that addresses “sexual misconduct” broadly and applies to the entire University community, including sexual misconduct by employees, students and third parties. This approach would demonstrate an institutional commitment not to tolerate sexual misconduct anywhere in the University’s learning and working environment. The policy should include University-wide definitions and descriptions relating to the type of conduct that is prohibited by the University, who can file a complaint and against whom, how a complaint can be filed, and which University employees are considered “responsible employees” with an obligation to report sexual misconduct to University officials.

The umbrella policy to be used for sexual misconduct by employees, students and third parties should incorporate the enhancements already made to the current *Interim Student Sexual Misconduct Policy* and include the following specific provisions:

The University should make clearer *across all sexual misconduct policies* that it will not tolerate sexual misconduct of any member of the University community (including employees and students) or of a third party committed by any member of the University community or by a third party. The University should emphasize that, for purposes of addressing sexual misconduct, it views its community in broad terms to include all employees and students. The University should also make clear that these policies and procedures apply to the University’s Ann Arbor campus, institution-wide to the extent the policies and procedures apply to all three University campuses, and to Michigan Medicine.

We specifically recommended that the University consider adopting an umbrella “policy” prohibiting sexual misconduct (and other types of specified misconduct) and the University has begun the internal process of adopting an umbrella sexual misconduct *policy*. Fourteen of the twenty-one peer institutions we reviewed have a university-wide sexual misconduct policy for students, faculty and staff. Some also have a single on-line complaint form that can be used to report sexual misconduct, but all recognize that different grievance proceedings may apply, depending on whether the respondent is a student, a member of the faculty or staff, or third party.

a. Use a broad definition of “prohibited conduct” that includes sexual misconduct, gender-based harassment, retaliation, violation of protective measures and the additional VAWA-required categories of intimate partner violence and stalking;

Using the same broader definition of “prohibited conduct” that includes sexual misconduct and the VAWA-categories will ensure compliance with applicable laws and promote a University-wide principle as to what conduct is not allowed in the University community. The University’s multiple policies and procedures do not include or address “sexual misconduct” in a uniform and consistent manner. While the *Student Sexual Misconduct Policy* addresses “sexual misconduct,” which includes sexual harassment and other misconduct, the employee policies only address “sexual harassment.”



Specifically, the University's employee sexual misconduct policies and procedures, including the *Employee Sexual Harassment Policy*, the *Employee Procedural Guidelines*, and the *Employee Discrimination and Harassment Policy*, do not address all of the VAWA-required categories (specifically, they do not address domestic violence and dating violence, although these categories are covered as prohibited violence in the University's *Community Violence Policy*) and do not include a definition of "consent," as also required by VAWA. The *Employee Sexual Harassment Policy* only addresses "sexual harassment." We noted that stalking is listed as a form of "unwanted personal attention" in the *Employee Sexual Harassment Policy*. Other types of discrimination and harassment, including sex discrimination such as different treatment on the basis of sex and discrimination and harassment based on gender or sexual orientation, are covered by the University's *Employee Discrimination and Harassment Policy*.

We noted that the *Interim Student Sexual Misconduct Policy* prohibits a broader range of student misconduct than sexual misconduct alone, specifically including sexual and gender-based harassment, the VAWA required categories of sexual assault, domestic and dating violence (referred to as intimate partner violence), stalking, as well as retaliation, and violation of interim measures. This policy also includes definitions of "consent," "incapacitation," "coercion," and "force."

b. Include University-wide definitions of key terms, such as the types of "prohibited conduct," as well as "student," "employee," "third party," and "responsible employee";

Clear definitions and examples of the prohibited conduct and key terminology are an important part of an institution's sexual misconduct policies. The umbrella policy should include University-wide definitions for each category of prohibited misconduct (including retaliation), and other key terms, such as "student," "employee," "third party," "responsible employee," "claimant" or "complainant," "advisor" (rather than "adviser" or "support person"), and "preponderance of the evidence." (See Appendix E, *Comparison of Key Terminology in University Sexual Misconduct Policies and Procedures*). We recommend that the University use the definitions that are provided in the *Interim Student Sexual Misconduct Policy*; the terms used in this policy are more current and consistent with the applicable laws and the University's interests in this area. A definition of "consent" as used in the applicable jurisdiction should also be included.

Our interviews with University representatives, as well as the recommendations of the University's internal Working Group, made clear that employees and students continue to fear that they will be retaliated against for filing a complaint or participating in a sexual misconduct investigation. We recommend using the more specific definition of retaliation contained in the student policy because it will be clearer and will strengthen the University's retaliation provisions for employees.¹³ We further suggest that the definition of retaliation for all policies specifically state that the University prohibits retaliation by the parties and participants as well as by any other individual acting on behalf of a party or participant.

c. Clearly explain the University's jurisdiction over "off-campus" sexual misconduct;

The University's policies and procedures relating to sexual harassment or other sexual misconduct by employees, including faculty and staff, and by third parties (*i.e.*, the *Employee Sexual Harassment Policy*, the *Employee Procedural Guidelines*, and the *Employee Discrimination and Harassment Policy*) do not specifically address whether and, if so, how off-campus sexual misconduct by employees and third parties will be addressed. While recognizing that issues relating to a university's jurisdiction over "off-campus" sexual misconduct are being considered as part of the U.S. Department of Education's Title IX rulemaking process and in continued federal litigation, we recommend

¹³ The *Interim Student Sexual Misconduct Policy* provides that "prohibited conduct," which includes retaliation under the Policy, will not be tolerated at the University. The Policy further prohibits retaliation against any person who files a complaint under the Policy or participates in a proceeding under the Policy, and broadly defines retaliation to including "intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under [the policy]." The University's *Employee Sexual Harassment Policy* and *Employee Disability and Harassment Policy* specifically state, "Retaliation will not be tolerated at the University of Michigan" and that individuals who file complaints or participate in an investigation are protected from retaliation.



that the University's umbrella policy include a clear explanation of what off-campus misconduct is prohibited by its policy in order for complainants and respondents to have appropriate notice of the prohibited conduct.¹⁴

d. Emphasize that sexual misconduct complaints may be filed *by any individual (i.e., including witnesses or others with direct or indirect knowledge of the misconduct)*;

The University's written sexual misconduct policies and procedures are organized according to the identity of the respondent, and not by the identity of the complainant. To further the University's interest in ensuring that sexual misconduct is addressed for its entire community, including employees and students, as well as for third parties, we recommend that the umbrella sexual misconduct policy emphasize that complaints may be filed by *any* individual, including employees, students, patients, job applicants, visitors to University events and other third parties. This practice would be consistent with the practices of most of the peer institutions we surveyed, who allow complaints to be filed by employees and students, as well as by visitors, guests and other third parties. We note that the *Interim Student Sexual Misconduct Policy* already includes the following provisions to this effect.¹⁵ As noted above, the University's updated Sexual Misconduct website states that the University "addresses every report that is brought to its attention." <https://sexualmisconduct.umich.edu/reporting-process/>.

e. Emphasize that sexual misconduct complaints may be filed *against any individual (Required)*;

The procedures used for sexual misconduct must apply to complaints alleging sexual misconduct by University employees and students and by third parties. The current written University sexual misconduct policies and procedures are confusing and unclear as to whether and how they apply to sexual misconduct by third parties. While the *Interim Student Sexual Misconduct Policy* specifically covers sexual misconduct, gender-based misconduct, and other forms of interpersonal violence by third parties against students, allegations of sexual misconduct by third parties against employees or other third parties are not clearly addressed in the University's written policies and procedures. The Title IX Coordinator explained that the applicable policy would, in many instances, be the University's *Non-Discrimination Policy* and *Employee Procedural Guidelines*. In addition to these policies, allegations of violence by third parties against University employees or other third parties are prohibited by the University's *Community Violence Policy*. As noted, Michigan Medicine also has policies and procedures relating to patient complaints. To provide specific guidance relating to third parties, the umbrella policy that we recommend should clarify and specifically provide that sexual misconduct on University property or in or at a University program or activity by a third party against any member of the University community, including students and employees, as well as against third parties, is against University policy. The policy should recognize that the University's ability to take appropriate action against a third party may be limited by the nature of the relationship of the third party to the University and may have to be referred to law enforcement.

¹⁴ The University's *Interim Student Sexual Misconduct Policy* states that the University has jurisdiction over a respondent whenever the prohibited conduct by a student occurs:

- On campus, including the University of Michigan Health System; or
- Off campus, including online or electronic conduct, if the conduct:
 - Occurs in connection with a University-related program or activity, including University-sponsored study abroad, research or internship programs;
 - May pose a serious threat of harm to any member(s) of the University community, including where the reported conduct was not directed at any member(s) of the University community, but by its nature creates a risk that may pose a serious threat of harm to any member(s) of the University community; or
 - May have the effect of creating a hostile environment for any member(s) of the University community.

¹⁵ "[A]ny individual (including a student, employee, visitor, guest, or other third party) not just the Claimant may make a report under this Policy," and "Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community."



f. Emphasize that sexual misconduct complaints will be deemed to have been made in good faith;

To encourage greater reporting, the University should provide assurance that it presumes that complaints are made in good faith, rather than emphasizing that the filing of false complaints may lead to discipline. The employee policies and procedures currently include specific provisions highlighting that the filing of a “false complaint” may result in University discipline.¹⁶

g. List all of the related University policies and procedures;

We also recommend that the umbrella policy specifically list other potentially relevant policies and procedures (as the *Interim Student Sexual Misconduct Policy* does). These would include the other policies applicable to faculty and staff listed in the Matrix in Appendix A, such as the policies relating to consensual relationships. Because of the inter-related nature of many of these policies, a sexual misconduct complaint may also trigger the application of other policies. For example, in addition to main employee documents described above, related policies include the *Non-Discrimination Policy* (SPG 201.35), the *Community Violence Policy* (SPG 601.18),¹⁷ and the consensual relationships policies, including the *Faculty-Student Relationships Policy* (SPG 601.22) and the *Employee-Student Relationships Policy* (SPG 601.22-1).¹⁸ Faculty members are also covered by the Board of Regents *Bylaw Section 5: The Faculties and Academic Staff*, and by faculty grievance procedures and collective bargaining agreements applicable to either the complainant or the respondent. Staff members are also covered by the *Grievance and Dispute Resolution Policy* (SPG 201.08) or, if bargained-for employees, by the applicable collective bargaining agreement. The inter-relationship between these policies is usually case specific, and highly dependent on the status of the respondent as well as the complainant.

h. Eliminate the timeframes for reporting sexual misconduct, while noting the difficulties of investigating older allegations;

In the context of employee sexual misconduct, University policy provides that a 180-day timeline applies for filing complaints, with the possibility of an extension by OIE for “good cause shown.” The former Title IX Coordinator informed us that, to her knowledge, the University has never declined to address a complaint that was more than 180-days old. In the interest of encouraging reports of sexual misconduct, a better practice, and one used by other institutions, would be to encourage prompt reporting without a fixed timeframe for reporting and to explain the consequences of reporting after a longer period of time. The *Interim Student Sexual Misconduct Policy* does just this, stating that there is no time frame for reporting sexual misconduct, but that “to promote timely and effective review,” the University “strongly encourages” individuals to report possible sexual misconduct within 180 calendar days of the

¹⁶ The *Interim Student Sexual Misconduct Policy* includes the following provision, entitled, “Presumption of Good Faith Reporting,” which states: “The University presumes that reports of Prohibited Conduct are made in good faith. A finding that the behavior at issue does not constitute a violation of this Policy or that there is insufficient evidence to conclude that the incident occurred as reported does not mean that the report was made in bad faith.”

¹⁷ The *Community Violence Policy* prohibits domestic violence, stalking, and other acts of violence and aggression that “create fear or apprehension of bodily harm or threaten the safety of a supervisor, co-worker, faculty member, student, patient, general public or the University community at large.” The policy refers to SPG 201.12 (“Discipline”) (hereafter “*Employee Discipline Policy*”) for issues related to employee misconduct and to Regent’s Bylaw Section 5.09 for issues related to faculty misconduct.

¹⁸ The University’s *Employee Sexual Harassment Policy* includes a section on “consensual relationships” and specifically states, “In the event of a charge of sexual harassment, the University will in general be unsympathetic to a defense based upon consent when the facts establish that a professional faculty-student, staff-student, or supervisor- employee power differential existed within the relationship.” The policy links to the University’s two separate consensual relationships policies. Until February 2019, the faculty-student policy “strongly discourage[d]” romantic and/or sexual relationships between faculty members and students. In February 2019, the University issued a revised policy that is broader in scope and more restrictive than the previous policy. The revised policy prohibits faculty and other “teachers” from having a “covered relationship” (including “any relationship which may reasonably be described as sexual, romantic, amorous, and/or dating”) with any student. The staff-student policy requires disclosure between an employee and a student of a romantic and/or sexual relationship when there is a conflict of interest and development of a “conflict resolution” plan (*i.e.*, an employee’s professional responsibilities make it possible for him or her to influence the status or circumstances of a student). Most of the peer institutions prohibit faculty-student intimate/romantic relationships when there is also a supervisory relationship. Some of them go even further and provide for an outright ban on faculty-student (especially undergraduates) intimate/romantic relationships. Still others allow for certain of these types of relationships, so long as specific reporting/disclosure requirements are followed and/or alternative/mitigation plans are put in place to address any conflicts of interest and otherwise provide for any necessary safeguards.



last occurrence. The University explains that a complaint made after 180 days “may make it more difficult to gather relevant and reliable information.”

i. Require a periodic review and appropriate updating of the written policy.

Periodic review will further demonstrate the University’s commitment to the ongoing assessment and continuous improvement of its sexual misconduct compliance program for its entire community. We suggest including a periodic review provision similar to that used for the *Interim Student Sexual Misconduct Policy*.¹⁹

9. Procedures

a. General: Continue to use respondent-specific “procedures” for handling investigations and adjudications relating to sexual misconduct allegations;

As noted above, we recommended and the University has begun the internal process of adopting an umbrella sexual misconduct *policy*. We recommend that the University continue using respondent-specific procedures for investigating and adjudicating sexual misconduct by employees and make specific improvements to those procedures as described below. Given the different legal relationships the University has with its various constituencies (including with employees, students and third parties), it is appropriate for the University to continue to use separate discrimination grievance procedures for different categories of respondents.

b. Information Sheets: Incorporate into the procedures the procedural updates already contained in the *Information Sheets (Required)*;

The University should incorporate the procedural updates already contained in the *Information Sheets* for complainants and respondents into the written policies and procedures themselves (specifically or by reference). These include the updates relating to the availability of interim measures, anonymous reporting, the notice of the allegations provided to the parties, as well as the parties’ opportunities to provide evidence or suggest witnesses, to review and provide input on their interview statements, to challenge the impartiality of the investigator assigned to their case, and to review and provide input on the preliminary investigative report.

For example, anonymous reporting is specifically allowed through the University’s Compliance Hotline and in the *Interim Student Sexual Misconduct Policy*. We recommend that the procedures provide, as do the *Information Sheets* for students and employee complaints, that OIE will consider requests for anonymity on a case-by-case basis. The current *Employee Procedural Guidelines* may discourage anonymous reporting, by stating: “Anonymous Complainants. The University may not be able to investigate an anonymous complaint unless sufficient information is furnished to enable the University to conduct a meaningful and fair investigation.” In addition, while the employee policies and procedures do not specifically require written notice of the allegations to be provided to the respondent or describe the contents of the notice, the *Information Sheets* specifically state that respondents are provided “enough information about the allegations to allow them a full and fair opportunity to respond; the level of detail necessary to do so varies depending on the circumstances surrounding the incident(s).”

This level of detail for these issues, and the others noted above and covered in the *Information Sheets*, should be incorporated into the written procedures.

¹⁹ “The University will review and update this Policy, as appropriate, 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.”



c. Employee Misconduct: Make specific improvements to the procedures that apply to sexual misconduct by employees, including faculty and staff. Specifically,

- i. Include an opportunity for the complainant and the respondent to challenge interim measures on an expedited basis;**

Currently, the University's procedures state that OIE should be contacted if a complainant or respondent has a need for or concern about interim measures. We recommend that the employee procedures more specifically provide for an opportunity for the complainant and the respondent to challenge interim measures on an expedited basis. The University may limit the measures that can be challenged on an expedited basis to those that would result in a deprivation of the individual's access to the University's educational programs or activities or employment opportunities.

- ii. Include specific designated and reasonable timeframes for all of the major stages of the investigation and adjudication process and require that notice be provided of any delays in the process for good cause and the reasons for the delays (*Required*);**

The written policies and procedures for sexual misconduct by employees do not presently include designated and "reasonably prompt" timeframes for the major stages of the investigation, including timeframes for any preliminary assessments, and the investigation and adjudication process. The policies and procedures also do not provide for extensions of the timeframes for good cause, and do not require written notice to be provided to the parties of the delay and reason for the delay.²⁰

- iii. Require that adequate notice of the outcome of the proceeding be provided to the parties simultaneously, including notice of the sanctions and in the case of faculty, the referral of findings to the dean or department chair, if any (*Required*);**

The policies and procedures relating to sexual misconduct by employees need to be updated to require that appropriate notice of the outcome and information relating to sanctions be provided simultaneously to the parties. Currently, none of the written policies nor the *Information Sheets* require that the notice be provided simultaneously (although we understand that this is the University's practice) or that notice of any disciplinary sanctions be provided to the complainant.

- iv. Include a specific statement of assurance that the University will take steps to prevent the recurrence of sexual misconduct and remedy the discriminatory effects, if any, of such misconduct (*Required*);**

Under Title IX, procedures for responding to sexual misconduct allegations must include a specific assurance that the institution will take steps to prevent the recurrence of sexual misconduct and remedy the discriminatory effects, if any, of such misconduct. This type of assurance is included in the University's *Interim Student Sexual Misconduct Policy* (noting, on page 1, the University's commitment to "eliminating, preventing, and addressing the effect of" conduct

²⁰ The *Employee Procedural Guidelines* state that the investigator will "seek to complete his or her investigation promptly." We noted that the University, like many other institutions, previously used a 60-calendar-day goal for the completion of investigations of student sexual misconduct complaints. The *Interim Student Sexual Misconduct Policy* sets a 90-day goal for completion of the investigation, hearing and sanction, if any. The Policy allows the timeframe to be extended for "good cause," which it states "may exist if additional time is necessary to ensure the integrity and completeness of the investigation; comply with a request by law enforcement for temporary delay to gather evidence; accommodate the availability of witnesses; account for University breaks or vacations; account for case complexities (including the number of witnesses and volume of information provided by the parties), or for other legitimate reasons." The policy states, "Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness, fairness, and promptness." The University is to update the parties as to the status of the investigation with "reasonable frequency" throughout the investigation.



prohibited under the Policy), but is not included in the *Employee Sexual Harassment Policy*, *Employee Procedural Guidelines*, *Employee Discrimination and Harassment Policy*, or the *Information Sheets*.

v. Add the following additional information (Required):

- **A description of the informal resolution options available for addressing complaints of sexual misconduct and the timeframes for these options;**
- **A description of how confidentiality can be requested and will be handled;**
- **A description of the specific interim measures that are available to complainants and respondents; and**
- **Information about the options to report sexual misconduct to the University, to law enforcement, or to both;**

The additional information described above is specifically required for proceedings covered by VAWA and has also previously been required by OCR in many Title IX resolution agreements. Some of this information is included in the *Information Sheets* provided to the parties (including information about confidential reports, the availability of interim measures and reporting to law enforcement); the information listed above should be incorporated more directly into the written procedures.

Informal Resolution: The University's policies and procedures for sexual misconduct by employees do not describe a specific formal alternative resolution process. The University may use a "different or less formal response" than an investigation. The *Employee Procedural Guidelines* state that, although OIE may deviate from these guidelines, it will still respond to the complaint in a prompt, thorough and effective manner that is procedurally fair. The *Information Sheets* do not reference any formal alternative process or a "different or less formal response." We noted that the *Interim Student Sexual Misconduct Policy* specifically includes "adaptable resolution" as an option and separate policy section.

Confidentiality: Issues relating to confidentiality can frequently affect the willingness of an individual to come forward to report sexual misconduct or to participate in a sexual misconduct proceeding. The *Employee Procedural Guidelines* state, "Discrimination and harassment complaints will be handled in a confidential manner to the extent possible and consistent with principles of due process. Information will only be shared on a need-to-know basis and as provided for by University policy and applicable federal and state law." The *Information Sheet* for complainants states that the information may be shared with other University officials "as necessary and appropriate." We recommend that the University provide clear notice in all of its sexual misconduct policies and procedures (as it already does in the *Interim Student Sexual Misconduct Policy*) about the difference between the concepts of privacy versus confidentiality and about how to request confidentiality.²¹

Interim Measures: The employee sexual misconduct formal policies do not currently include any information about interim measures, although some information is available in the *Information Sheets*. We recommend that this information be specifically incorporated into the written policies and procedures. Detailed information about interim measures for student sexual misconduct cases is provided on OIE's website.²² In the interest of providing the same procedural opportunities for both parties, interim measures should be made available for both parties, the complainant and the respondent, as well as for witnesses and other members of the University community.²³ We also

²¹ The *Interim Student Sexual Misconduct Policy* provides more detailed information about the available confidential and non-confidential resources, including a link (referenced above) to the University's *Our Community Matters Resource Guide*. The Policy explains, "University resources who are not Confidential Resources as defined above will make every effort to respect and safeguard the privacy of the individuals involved. Privacy means that concerns about Prohibited Conduct will be shared with a limited circle of University representatives who need to know only to assist in the assessment, investigation, and resolution of the report, and to the extent required by law or court order." The Policy also includes information about how the University will handle requests for confidentiality (*i.e.*, requests that an individual's identity not be revealed and/or requests not to participate in the investigation).

²² Section VI of the *Interim Student Sexual Misconduct Policy*.

²³ The University's *Interim Student Sexual Misconduct Policy* makes clear that interim measures (the University uses the terms "supportive measures" and "protective measures" to refer to interim measures) are available for the complainant, the respondent,



noted and recognized that deans and department chairs are responsible for making employment decisions, and thus there needs to be close communication and coordination between OIE and the specific unit at issue when interim measures relating to an employee are being considered and implemented.

Law Enforcement: The recommendation to include more detailed information about the option to report to law enforcement is described above. Again, we note that there is information in the *Information Sheets* for student claimants about reporting to law enforcement, but recommend that the available reporting options be more clearly highlighted in the procedures for all complainants or claimants, respondents and witnesses.

- vi. **For the reasons described above in this section (recommendation 8.i.), require a periodic review and appropriate updating of the written procedures;**
- vii. **Undertake a review with appropriate stakeholders of the existing collective bargaining agreements to assess and ensure consistency with the University's sexual misconduct policies and procedures for employees;**

Bargained-For Employees: In developing a University-wide policy to address sexual misconduct, the University needs to be sensitive to how these policies and procedures will apply to its unionized workforce, which amounts to approximately 28% of the University's employees. The University currently has eight separate collective bargaining agreements with labor organizations representing certain "bargained for" employees as well as agreements with the Graduate Employees Organization (GEO) and the Lecturers' Employee Organization (LEO). Several of these agreements are either currently under negotiation or were recently negotiated while the remaining are set to expire at various dates in 2019, 2020 and 2021. Each of these collective bargaining agreements includes grievance and arbitration procedures regarding employee discipline but the timelines, procedures and opportunity for mediation or alternative resolution of the grievance vary by agreement. In terms of the grounds for employee discipline, all provide a general prohibition allowing for discipline of an employee for violation of University policies or regulations. None of the non-faculty collective bargaining agreements, however, include a specific provision that provides for discipline arising out of sexual misconduct, as that term is broadly defined in this report.

Both the GEO and LEO collective bargaining agreements specifically contain provisions defining sexual harassment or refer to the Faculty and Staff Sexual Harassment Policy but even these agreements do not include the broader definition of sexual misconduct, as the term is used in this report, as a ground for either discipline or for a complaint by a graduate student or lecturer covered by these agreements.

The University *Employee Sexual Harassment Guidelines* provide that violations of the policy for bargained for employees may be processed through the grievance and arbitration proceedings provided for in the collective bargaining agreement. In all of these agreements, the standard of proof applied is the "just cause" standard which is understood in the labor-management context to be the equivalent of a preponderance of evidence standard.

The University should undertake a review with the appropriate stakeholders of the existing collective bargaining agreements to assess and ensure consistency with the University's sexual misconduct policies and procedures for employees. This should include consistency in the restrictions, if any are deemed necessary and do not deprive the parties of the ability to obtain and present evidence or otherwise defend their interests, on the ability of either party to discuss the investigation. Whether additional provisions should be negotiated in future contracts regarding specific reference to sexual misconduct or sexual harassment as grounds for employee discipline may depend on the particular groups of employees represented under the various agreements.

witnesses and other members of the University community. The policy includes a list of the specific interim measures that are available. The University also provides information about the availability of interim measures for both parties on its updated website: <https://studentsexualmisconductpolicy.umich.edu/content/resources>.



- d. **Student Misconduct:** Make specific improvements to the University's procedures that apply to alleged sexual misconduct *by students*. Specifically,
- i. **Include an opportunity for the complainant and the respondent to challenge interim measures on an expedited basis;**

Under the *Student Sexual Misconduct Policy*, for cases in which a student respondent's actions "pose an immediate danger" to any member of the University community, the University's Vice President for Student Life or designee may immediately suspend the student pending a meeting (typically within two calendar days). If the emergency suspension is continued, the respondent will be offered a hearing option as soon as practicable, typically within ten calendar days, pursuant to the *Statement of Student Rights and Responsibilities*.

Under the previous policy, in situations where a respondent's actions do not "pose an immediate danger," the Title IX Coordinator was available to meet with a complainant or a respondent "to address any concerns about the need for or the adequacy of supportive or protective measures." We recommended that the University's policy specifically provide for an opportunity for the complainant and the respondent to challenge interim measures on an expedited basis. The updated *Student Sexual Misconduct Policy* now includes this opportunity, as follows:

The Claimant or the Respondent may present a written challenge regarding the need for or the adequacy of supportive or protective measures to the Title IX Coordinator. Once a written challenge of interim measures is received, the Title IX Coordinator will schedule a meeting with the party challenging the interim measures, hear the party's concerns, conduct any necessary follow-up, and render a decision regarding the need for or the adequacy of the supportive or protective measures within seventy-two (72) hours of the meeting.

- ii. **Include in the published policies, a specific, designated and reasonable timeframe for the initial assessment stage and allow extensions of the overall timeframes for investigation and adjudication for good cause (*Required*);**

The University's previous student sexual misconduct policy did not include a timeframe for the completion of any initial assessment of a complaint after its receipt and prior to the notice to the parties. We recommended that the written policies and procedures include a specific, reasonable timeframe for this stage of the process. The updated *Student Sexual Misconduct Policy* now includes the following language:

An initial assessment typically will be made within seventy-two (72) hours after receiving a report of Prohibited Conduct, unless the Claimant requests anonymity, that investigative or adaptable resolution not be pursued, or that no disciplinary action be taken, in which case the Title IX or Deputy Title IX Coordinator will refer the matter to the review panel as described in Section XII below, typically within two to three weeks after the report of Prohibited Conduct was made, or within one week of the Claimant's request described above.

The updated policy also now includes the following explicit language relating to extensions "for good cause" in the University's investigation and adjudication process.

The University will strive to complete resolution of any matter, meaning the period from commencement of an investigation, which begins with the determination that an investigation will be opened, through the completion of the investigation, and hearing and sanction, if any, within ninety (90) calendar days. This time frame may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; comply with a request by law enforcement for temporary delay to gather evidence; accommodate the availability of witnesses; account for University breaks or vacations; account for case complexities (including the number of witnesses and volume of information provided by the parties), or for other legitimate reasons. If one or both of the parties pursue an appeal, the University will strive to



complete resolution, meaning the period from commencement of an investigation through completion of the appeal, within one hundred twenty (120) calendar days.

Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness, fairness, and promptness.

e. Third Party Misconduct: Make specific improvements to the University's grievance (or other) procedures that apply to sexual misconduct by third parties. Specifically,

i. More clearly explain what grievance (or other) procedures apply to allegations of sexual misconduct by third parties (*Required*);

As noted above, a university's procedures for addressing sex discrimination, including sexual misconduct, must apply to complaints alleging sexual misconduct by employees and students and by third parties. The current written University sexual misconduct policies and procedures are confusing and unclear as to whether and how they apply to sexual misconduct by third parties.

ii. Include the items noted above in 9.c. relating to the investigation and adjudication of alleged sexual misconduct by employees (including those that are *required*, as noted).

10. Michigan Medicine: For the University's policies and procedures that apply to sexual misconduct involving employees, students or third parties at Michigan Medicine, more clearly explain and make available to the public the applicable policies and procedures, including explaining how the Michigan Medicine-specific policies and procedures are related to the applicable University policies and procedures and review the Michigan Medicine-specific policies and procedures to ensure that they are consistent with University policies and procedures.

Our Review revealed that Michigan Medicine uses the University's policies and procedures that apply to sexual misconduct involving employees and students, and also has Michigan Medicine-specific discrimination policies and procedures. Complaints from patients involving discrimination at Michigan Medicine may be made to the designated Discrimination Investigator/Coordinator. Patients also receive a notice of patient rights and responsibilities that includes information about how to file a complaint with the Patient Relations and Clinical Risk Office at Michigan Medicine.²⁴ The University's most recent Annual Security Report also references a policy for filing complaints against Michigan Medicine employees, entitled, "Managing Disruptive Behavior Michigan Medicine Policy 04-06-047." The policy is not located on the University's website, but may be obtained by calling the HR office at Michigan Medicine. We noted that the Medical School at Michigan Medicine has a "Manager's Discipline Manual," that includes provisions specifically related to sexual harassment and also includes a complaint form.²⁵ Michigan Medicine also publishes a nondiscrimination notice specifically for patients and has also recently adopted Patient Non-Discrimination and Access Plan for Michigan Medicine; this policy is not yet available on the University's website (the University provided it to us as part of our review).²⁶

We found that at least two of these Michigan Medicine policies and procedures (regarding the managing of disruptive behavior and the new nondiscrimination policy) are currently not readily available to the public. It is important that all of the University's policies and procedures relating to sexual misconduct be available, clear and understandable to the Michigan Medicine constituencies (including students, faculty, staff, and patients) and, even if specific to Michigan Medicine, be consistent with the University's other policies and procedures.

²⁴ See <https://www.uofmhealth.org/patient-visitor-guide/patients-rights-responsibilities>.

²⁵ See <http://www.med.umich.edu/medschool/staff/discipline/>.

²⁶ See <https://www.uofmhealth.org/discrimination-against-law>.



11. **Up-to-Date and Consistent:** The University should also review and revise all of its sexual misconduct policies and procedures and related policies and procedures (including its consensual relationships policies, employee handbooks and school, college and program-specific policies and procedures) to ensure that they are up-to-date and internally consistent with one another and with the University's policy (or separate policies) for addressing sexual misconduct and the related procedures.

We noted that some of the University's policies and procedures are not internally consistent with other University policies and procedures and do not include current and up-to-date information (e.g., in the *Employee Sexual Harassment Policy*, there are broken links and cross-references to incorrect student disciplinary policies and the old employee complaint flowchart is still included as a link on the website). Students, parents, faculty, staff, or third parties looking at the University's website for information on reporting sexual misconduct or responding to allegations of sexual misconduct should find accurate and consistent information even when the information is provided in different locations on the website.

12. **Applicable laws:** Continue to work to ensure the University's policies and procedures reflect the current state of laws and regulations in this area (*Required*).

The recommendations in this Report are based upon the documents and information that we received and reviewed, and on current federal and state legal and regulatory requirements. The legal and higher education landscape relating to sexual misconduct is complex, dynamic and evolving. For example, we noted that in 2018 the Michigan Legislature adopted new requirements for state higher educational institutions relating to the handling of sexual misconduct cases. These requirements are part of the appropriations legislation for the 2018-2019 fiscal year (October 1, 2018 - September 30, 2019). The University will need to consider and, as appropriate, heed any changes in the legal requirements for compliance in this area, particularly with respect to: (1) the applicable case law relating to the constitutional rights of the parties and the results of litigation specifically involving the University, (2) any changes to the federal Title IX requirements as a result of OCR's Title IX Notice of Proposed Rulemaking, (3) possible revisions required by OCR to resolve the pending Title IX investigation of the University, and (4) additional requirements enacted by the Michigan Legislature.

V. Conclusion

We have provided our specific assessments and recommendations above relating to the University's current sexual misconduct reporting mechanisms and written policies and procedures. This continues to be a dynamic and evolving legal area, and there may be additional and or different legal requirements announced by the Department or directed by the courts in the future. During this time period, we encourage University leadership to robustly affirm the University's continued commitment to ensuring that – for the entire University community, including students, faculty, and staff, as well as for patients, visitors, guests and other third parties – the University's sexual misconduct policies and procedures are clear, fair and compassionate for all parties involved, and effective in preventing, stopping and remedying sexual misconduct and protecting the University community.



APPENDIX



APPENDIX A

MATRIX OF UNIVERSITY SEXUAL MISCONDUCT POLICIES AND PROCEDURES



University of Michigan Sexual Misconduct Policies and Procedures

Matrix of Applicable University Sexual Misconduct Policies and Procedures				
Employee Respondent			Student Respondent	Third Party Respondent
Faculty Member	Staff Member			
	“bargained-for”	not “bargained for”		
Notice of Non-Discrimination; Non-Discrimination Policy (SPG 201.35)	Notice of Non-Discrimination; Non-Discrimination Policy (SPG 201.35)	Notice of Non-Discrimination; Non-Discrimination Policy (SPG 201.35)	Notice of Non-Discrimination	Notice of Non-Discrimination; Non-Discrimination Policy (SPG 201.35)
Sexual Harassment Policy and Procedural Guidelines (SPG 201.89)	Sexual Harassment Policy and Procedural Guidelines (SPG 201.89)	Sexual Harassment Policy and Procedural Guidelines (SPG 201.89)	Interim Policy and Procedures on Student Sexual and Gender- Based Misconduct and Other Forms of Interpersonal Violence	Sexual Harassment Policy and Procedural Guidelines (SPG 201.89)
Information Sheets for Complainants and Respondents	Information Sheets for Complainants and Respondents	Information Sheets for Complainants and Respondents	Information Sheets for Claimants and Respondents	Information Sheets for Complainants and Respondents
Discrimination and Harassment Policy (SPG 201.8-19)	Discrimination and Harassment Policy (SPG 201.89-1)	Discrimination and Harassment Policy (SPG 201.89-1)	Statement of Student Rights and Responsibilities	Discrimination and Harassment Policy (SPG 201.89-1)
Community Violence Policy (SPG 601.18)	Community Violence Policy (SPG 601.18)	Community Violence Policy (SPG 601.18)	Community Violence Policy (SPG 601.18)	Community Violence Policy (SPG 601.18)
Faculty-Student Relationships Policy (SPG 601.22)	Employee-Student Relationships Policy (SPG 601.22-1)	Employee-Student Relationships Policy (SPG 601.22-1)		For third party patient respondents, see Michigan Medicine policies.
Applicable Faculty Grievance Procedures		Grievances and Dispute Resolution Policy (SPG 201.08)		
Collective Bargaining Agreements	Collective Bargaining Agreements	Discipline Policy (SPG 201.12)		
Bylaws Sect. 5: The Faculties and Academic Staff				



University of Michigan Board of Regents Bylaws

- a. Bylaws Section 5: The Faculties and Academic Staff¹

University of Michigan Standard Practice Guide (“SPG”)

- a. SPG 201.08 Grievances and Dispute Resolution² (*“Employee Grievance Policy”*)
- b. SPG 201.12 Discipline³ (*“Employee Discipline Policy”*)
- c. SPG 201.35 Non-Discrimination⁴ (*“Non-Discrimination Policy”*)
- d. SPG 201.89 Sexual Harassment⁵ (*“Employee Sexual Harassment Policy”*)
- e. Procedural Guidelines for Handling Discrimination Complaints⁶ (*“Employee Procedural Guidelines”*)
- f. SPG 201.89-1 Discrimination and Harassment⁷ (*“Employee Discrimination and Harassment Policy”*)
- g. SPG 601.18 Violence in the University Community⁸ (*“Community Violence Policy”*)
- h. SPG 601.22-1 Employee-Student Relationships⁹ (*“Employee-Student Relationships Policy”*)
- i. SPG 601.22 Faculty-Student Relationships¹⁰ (*“Faculty-Student Relationships Policy”*)

Policies and Procedures

- a. Notice of Non-Discrimination¹¹
- b. Faculty Grievance Procedures¹² (*also known as “Faculty Appeal Procedures”*)
- c. Interim Policy and Procedures on Student Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence (*“Interim Student Sexual Misconduct Policy”*)¹³
- d. Statement of Student Rights and Responsibilities.¹⁴
- e. *Information Sheets*. See Appendix B. For employee misconduct cases, there are separate *Information Sheets* for claimants, respondents and witnesses.¹⁵ For student misconduct cases, there are also separate *Information Sheets* for claimants, respondents and witnesses.

¹ <http://www.regents.umich.edu/bylaws/bylaws05a.html>.

² <https://hr.umich.edu/working-u-m/management-administration/uhr-procedures/20108-grievances-dispute-resolution> (updated March 1, 2018).

³ <http://spg.umich.edu/policy/201.12> (updated September 1, 2018).

⁴ <http://spg.umich.edu/policy/201.35> (updated September 6, 2013).

⁵ <http://spg.umich.edu/policy/201.89-0> (updated August 25, 2011).

⁶ <https://hr.umich.edu/sites/default/files/sh-procedures-spg20189-0.pdf> (undated).

⁷ <http://spg.umich.edu/policy/201.89-1> (updated February 23, 2008).

⁸ <http://www.spg.umich.edu/policy/601.18> (updated July 2, 2018).

⁹ <http://spg.umich.edu/policy/601.22-1> (issued May 23, 2005).

¹⁰ <http://www.spg.umich.edu/policy/601.22> (updated February 18, 2019).

¹¹ <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity/nondiscrimination-policy-notice>; <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity> (with link to policy on HR page); and <https://oscr.umich.edu/NondiscriminationPolicy>. See also University Regents Bylaw Sec. Nondiscrimination and Affirmative Action, at <http://www.regents.umich.edu/bylaws/bylaws14.html#6>.

¹² <https://hr.umich.edu/working-u-m/my-employment/academic-human-resources/faculty-grievance-procedures>.

¹³ <https://studentsexualmisconductpolicy.umich.edu/content/policy-statement> (updated January 9, 2019).

¹⁴ <https://oscr.umich.edu/statement> (effective July 1, 2018).

¹⁵ <https://hr.umich.edu/working-u-m/workplace-improvement/office-institutional-equity/filing-complaint>. See for faculty/staff complainants: https://hr.umich.edu/sites/default/files/201.89-c_info_sheet_11.9.18.pdf; for faculty/staff respondents: https://hr.umich.edu/sites/default/files/201.89-r_info_sheet_11.9.18.pdf; and for witnesses: <https://hr.umich.edu/sites/default/files/discrimination-harassment-witness-5-2018.pdf>.



Collective Bargaining Agreements (“CBA”)

The University website lists the CBAs (and their effective dates) with AFSCME, COAM (Command Officers Association of Michigan), HOA (House Officers Association), IATSE (Theatrical Stage Employees), IUOE (Operating Engineers), Nurses (Michigan Nurses Association), POAM (Police Officers Association of Michigan), and UMSTU (University of Michigan Skilled Trades Union, Inc.).¹⁷ The website states that contracts involving the Graduate Employees Organization (GEO) and Lecturers Employee Organization (LEO) can be found at University’s Office of Academic HR, at <https://hr.umich.edu/working-u-m/my-employment/academic-human-resources/contracts>.

Michigan Medicine

- a. Nondiscrimination Notice (specifically for patients)¹⁸
- b. Patient Non-Discrimination and Access Plan for Michigan Medicine, Policy 6-01-002 (not available on website)
- c. Notice of Patient Rights and Responsibilities¹⁹
- d. “Managing Disruptive Behavior Michigan Medicine Policy 04-06-047”²⁰ (not available on website)
- e. “Manager’s Discipline Manual,” for the University’s Medical School²⁰

¹⁷ <https://hr.umich.edu/working-u-m/my-employment/union-contracts-wage-schedules>.

¹⁸ See <https://www.uofmhealth.org/discrimination-against-law>.

¹⁹ See <https://www.uofmhealth.org/patient-visitor-guide/patients-rights-responsibilities>.

²⁰ See <http://www.med.umich.edu/medschool/staff/discipline/> (Fall 2002).



APPENDIX B

INFORMATION SHEETS

***For employee misconduct,
information for complainants, respondents and witnesses***

***For student misconduct,
information for claimants, respondents and witnesses***

Information for Complainants

This is a general description of the investigation process. The process may vary somewhat depending upon a variety of factors that arise during investigations. Please contact OIE if you have any questions as the investigation proceeds. In addition, please know that reasonable accommodations are available to individuals with disabilities. You may contact OIE at any time to request such accommodations, as needed.

We are neutral. OIE does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. If you have a concern that the OIE staff member assigned to your case cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), please immediately contact Jeffery Frumkin, Associate Vice Provost for Academic and Faculty Affairs and Interim Senior Director of OIE. Dr. Frumkin may be reached at 734-763-0235 or institutional.equity@umich.edu. The situation will be assessed and a determination made as to whether a different staff member should be assigned to the matter.

We help you find the right process. The University has processes that provide prompt and effective review of discrimination and discriminatory harassment complaints. OIE addresses many of these concerns directly, but in those instances in which OIE is not best suited to address the concerns, we will assist you in determining the appropriate office and provide contact information for that office. In addition, if your concerns do not involve discrimination or discriminatory harassment (for example, you have concerns about bullying), we will assist you in determining the appropriate office to address your concerns and provide contact information for that office.

Support person/advisor. You may bring a support person/advisor with you to any meetings with OIE. Please let us know in advance if you will be doing so. Examples of a support person/advisor include, but are not limited to: a friend, family member, attorney, etc. Please note that any individual who may be a witness may not be present during your interview and therefore may not serve as your support person/advisor.

Anonymity and Confidentiality. Information provided to OIE may be shared with other University officials as necessary and appropriate. Respondents are provided enough information about the allegations to allow them a full and fair opportunity to respond; the level of detail necessary to do so varies depending on the circumstances surrounding the incident(s). If you have concerns about anonymity, please let OIE know. OIE considers requests for anonymity on a case-by-case basis, consistent with University policy.

Interim measures. Interim measures are steps that may be taken before an investigation has been completed, as appropriate. Such measures may include separating the parties or other measures as may be appropriate under the circumstances. Please let us know if you have any need for or concern about interim measures.

Understanding your concerns. The first step OIE takes in an investigation is to gather information about the complaint. During your interview, OIE will ask for details about your concerns, as well as any documentation and witnesses. You are not required to participate in the investigation, but you are strongly encouraged to share all information you have regarding the matter. The Respondent is not present during your interview and vice versa. OIE then drafts a written statement summarizing your interview, and you are given two business days to review the draft for accuracy and completeness (if you are participating in the investigation). You may submit any comments you wish to the draft. OIE reviews all comments and relevant and clarifying information is incorporated into your statement. You may also request that OIE attach your comments to the investigation report. OIE can generally accommodate this request.

Interviewing the Respondent. After OIE understands the nature and scope of the concerns, the Respondent is informed of the allegations and given a full and fair opportunity to respond. During this process, the Respondent is cautioned against engaging in any retaliation against the witnesses or you. You are not present during the Respondent's interview and vice versa. After the interview, OIE drafts a written statement for the Respondent, who is given two business days to review the draft for accuracy and completeness (if the Respondent is participating in the investigation).



Gathering other information. OIE interviews witnesses and reviews documentation relevant to the matter at issue. Witnesses are offered the opportunity to review their statements for accuracy and completeness. Depending upon the information obtained from witnesses and documents, OIE may contact the Respondent and/or you with additional questions or to request additional information.

Review of preliminary investigation report. If OIE determines it will produce a written investigation report, the Respondent and you will typically be provided with a “preliminary report” and given five calendar days to review and comment upon it. The preliminary report is a written summary of the information OIE will consider in reaching a decision as to whether University policy was violated. It generally includes the statement of each person interviewed (Respondent, witnesses, and you) and other relevant information, such as documents. The preliminary investigation report does not include a finding. OIE reviews all comments submitted by the parties, if any, and determines whether the preliminary report should be modified. During the preliminary report review phase, you may request that OIE attach your comments to the final investigation report. OIE can generally accommodate this request.

All information or documentation provided by either party or by a witness may be included in the final investigation report and shared with the parties and relevant University officials.

Investigation Report. After receiving the parties’ comments on the preliminary investigation report, if any, OIE analyzes the information, reaches a conclusion and issues the investigation report, which includes a finding. Both the Respondent and you receive a copy of the investigation report, and it is submitted to relevant administrators.

Administrative Response. If OIE finds that inappropriate behavior, discrimination or discriminatory harassment has occurred, relevant administrators will follow up with action aimed at addressing the behavior and preventing its recurrence. Such action may include, but is not limited to, educational programs, time off without pay, and other actions, up to and including termination of employment. If a Respondent does not agree with the disciplinary action taken, that action may be grieved using the applicable grievance procedure.

Retaliation. University policy prohibits retaliation. Complainants and witnesses are protected from retaliation for engaging and/or participating in the investigation process. Anybody who experiences retaliation is strongly encouraged to report retaliation to OIE. Respondents who engage in retaliatory behavior, either directly or through others, are subject to discipline. If you have questions about retaliation, you are strongly encouraged to ask OIE.

Resources for Support. The University offers a variety of supportive services for faculty and staff, a short list of which are included below. Any individual who has experienced a crime or is concerned for their safety should call UMPD at 9-1-1 immediately. If the incident occurred off campus, local police should also be called. OIE can provide additional information about resources, as requested.

- [Faculty and Staff Counseling and Consultation Office](#): 734/936-8660 or fascco@umich.edu
- [MM Office of Counseling and Workplace Resilience](#): 734/763-5409 or counseling@med.umich.edu
- [Sexual Assault Prevention and Awareness Center](#): 734/936-3333
- [Faculty Ombuds](#): 734-763-2707
- [Mediation Services](#): 734/615-4789 or mediation.services@umich.edu

More information. If you have any other questions about the investigation, investigation process, resources or related matters, please do not hesitate to contact the OIE staff member handling your case at 734/763-0235.

This information was reviewed with me and I was offered the opportunity to ask questions before proceeding. At this point, I would like/would not like/ not sure an OIE investigation of my concerns to occur. (circle one)

Signature

Complainant’s Name (please print)

Date

Revised 11/9/2018

Information for Respondents

This is a general description of the investigation process. The process may vary somewhat depending upon a variety of factors that arise during investigations. Please contact OIE if you have any questions as the investigation proceeds. In addition, please know that reasonable accommodations are available to individuals with disabilities. You may contact OIE at any time to request such accommodations, as needed.

We are neutral. OIE does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. If you have a concern that the OIE staff member assigned to your case cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), please immediately contact Jeffery Frumkin, Associate Vice Provost for Academic and Faculty Affairs and Interim Senior Director of OIE. Dr. Frumkin may be reached at 734-763-0235 or institutional.equity@umich.edu. The situation will be assessed and a determination made as to whether a different staff member should be assigned to the matter.

Support person/advisor. You may bring a support person with you to any meetings with OIE. Please let us know in advance if you will be doing so. Examples of a support person/advisor include, but are not limited to: a friend, family member, attorney, etc. Please note that any individual who may be a witness may not be present during your interview and therefore may not serve as your support person/advisor.

Interim measures. Interim measures are steps that may be taken before an investigation has been completed, as appropriate. Such measures may include separating the parties or other measures as may be appropriate under the circumstances. Please let us know if you have any need for or concern about interim measures.

Initiating an investigation. The first step in an investigation is to gather information about the concerns at issue. This usually involves interviewing the Complainant and also asking them for documentation and names of witnesses, if any. Complainants are strongly encouraged to share all information they have regarding the matter. You are not present during the Complainant's interview and vice versa. After the interview, OIE drafts a written statement for the Complainant, who is given two business days to review the draft for accuracy and completeness (if the Complainant is participating in the investigation).

Interviewing the Respondent. After OIE understands the nature and scope of the concerns, it contacts you to inform you of the investigation, provide a copy of the policy and investigation procedures, and share general information about the allegations. OIE also requests two meetings with you. During the first meeting, OIE discusses the policy and investigation process and answers any questions you may have about them. OIE also then provides you with detailed information about the allegations. Specifically, you are provided enough information about the allegations to allow you a full and fair opportunity to respond. The purpose of the second meeting is for you to respond to the allegations. During this interview, OIE will ask about the allegations, as well as any documentation and witnesses. If you prefer to respond to the allegations in the first meeting, you may do so rather than wait for the second meeting; however, this is entirely up to you. You are not required to participate in any aspect of the investigation, but you are strongly encouraged to share all information you have regarding the matter. The Complainant is not present during your interview and vice versa. OIE then drafts a written statement summarizing your interview, and you are given two business days to review the draft for accuracy and completeness (if you are participating in the investigation). You may submit any comments you wish to the draft. OIE reviews all comments and relevant and clarifying information is incorporated into your statement. You may also request that OIE attach your comments to the investigation report. OIE can generally accommodate this request.

Gathering other information. OIE interviews witnesses and reviews documentation relevant to the matter at issue. Witnesses are offered the opportunity to review their statements for accuracy and completeness. Depending upon the information obtained from witnesses and documents, OIE may contact the Complainant and/or you with additional questions or to request additional information.



Review of preliminary investigation report. If OIE determines it will produce a written investigation report, both the Complainant and you will typically be provided with a “preliminary report” and given five calendar days to review and comment upon it. The preliminary report is a written summary of the information OIE will consider in reaching a decision as to whether University policy was violated. It generally includes the statement of each person interviewed (Complainant, witnesses, and you) and other relevant information, such as documents. The preliminary investigation report does not include a finding. OIE reviews all comments submitted by the parties, if any, and determines whether the preliminary report should be modified. During the preliminary report review phase, you may request that OIE attach your comments to the final investigation report. OIE can generally accommodate this request.

All information or documentation provided by either party or by a witness may be included in the final investigation report and shared with the parties and relevant University officials.

Investigation Report. After receiving the parties’ comments on the preliminary investigation report, if any, OIE analyzes the information, reaches a conclusion and issues the investigation report, which includes a finding. Both the Complainant and you receive a copy of the investigation report, and it is submitted to relevant administrators.

Administrative Response. If OIE finds that inappropriate behavior, discrimination or discriminatory harassment has occurred, relevant administrators will follow up with action aimed at addressing the behavior and preventing its recurrence. Such action may include, but is not limited to, educational programs, time off without pay, and other actions, up to and including termination of employment. If a Respondent does not agree with the disciplinary action taken, that action may be grieved using the applicable grievance procedure.

Retaliation. University policy prohibits retaliation. Complainants and witnesses are protected from retaliation for engaging and/or participating in the investigation process. Anybody who experiences retaliation is strongly encouraged to report retaliation to OIE. As the Respondent, you must not take direct or indirect retaliatory action against the Complainant, witnesses or any other individual who has participated in OIE’s review. Respondents who engage in retaliatory behavior, either directly or through others, are subject to discipline, up to and including termination of employment. If you have questions about retaliation, you are strongly encouraged to ask OIE.

Resources for Support. The University offers a variety of supportive services for faculty and staff, a short list of which are included below. OIE can provide additional information about resources, as requested.

- [Faculty and Staff Counseling and Consultation Office](#): 734/936-8660 or fascco@umich.edu
- [MM Office of Counseling and Workplace Resilience](#): 734/763-5409 or counseling@med.umich.edu
- [Faculty Ombuds](#): 734-763-2707
- [Mediation Services](#): 734/615-4789 or mediation.services@umich.edu

More information. If you have any other questions about the investigation, investigation process, resources or related matters, please do not hesitate to contact the OIE staff member handling your case at 734/763-0235.

This information has been reviewed with me and I have been given the opportunity to ask questions about the investigation process, resources and related University policies before proceeding to respond to the allegations.

Signature

Respondent’s Name (please print)

Date

Revised 11/9/2018

Information for Witnesses

Please know that reasonable accommodations are available to individuals with disabilities. You may contact OIE at any time to request such accommodations, as needed.

Your statement. OIE will create a written summary of your comments to us. The summary will not be verbatim, but will include the relevant information you shared with us. We will send you the draft statement to review and give you two business days to check it for accuracy and completeness. If there is anything in the written statement that is incorrect or if you have more to share, you can provide us with your comments at that time. Your entire statement or portions of your statement will be shared with the Complainant, Respondent and relevant University officials.

Use of your name/identity. It sometimes is not possible to write witness statements in a way that completely de-identifies a person. In many instances, a person familiar with the underlying incident will be able to figure out a witness' identity even if that person's name is not used. If you have concerns about this, please let us know. In addition, it can be helpful to use names in statements, so you may be asked if you are amenable to being identified by name.

Retaliation. Sometimes witnesses are concerned about sharing information because they are concerned about possible retaliation. The University prohibits retaliation. Any witness who feels they are being subjected to retaliatory behavior is strongly encouraged to contact OIE immediately. We will look into the matter and the University will take action if retaliation has occurred. It is also important that you, along with all other persons who are aware of this investigation, avoid engaging in conduct that may be perceived as retaliatory.

Confidentiality for the parties. OIE recognizes that it is investigating a matter that may be of significant impact on both parties. The University is working to address this matter in a fair manner and requests, but does not require, that you not share information about this investigation with others.

Resources for support. The University offers a variety of support services for faculty and staff, including those listed below. The OIE investigator can provide additional information about resources, as requested.

- [Faculty and Staff Counseling and Consultation Office](#): 734/936-8660 or fascoco@umich.edu
- [MM Office of Counseling and Workplace Resilience](#): 734/763-5409 or counseling@med.umich.edu

Revised 5/3/18



This is a general description of the investigative resolution process. The process may vary somewhat, in accordance with the Policy and depending upon a variety of factors that arise during investigations. Please contact OIE if you have any questions as the investigation proceeds. In addition, please know that reasonable accommodations are available to individuals with disabilities. You may contact OIE at any time to request such accommodations, as needed.

Information for Student Claimants

We are neutral. OIE does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. We also help Claimants and Respondents by providing information about support and advocacy services. If you have a concern that the investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), please contact the Title IX Coordinator immediately. The Title IX Coordinator may be reached at 734-763-0235 or institutional.equity@umich.edu. The situation will be assessed and a determination made as to whether a different investigator should be assigned to the matter.

Adviser. You may bring an adviser with you to any meetings with OIE. Please let us know in advance if you will be doing so. Examples of an adviser include, but are not limited to, friend, family member, SAPAC advocate, attorney, etc. Please note that any individual who may be interviewed as a witness in the investigation or hearing may not be present during your interview and therefore may not serve as your adviser.

Anonymity and confidentiality. Information provided to OIE may be shared with other University officials as necessary and appropriate. During an investigative resolution process, all evidence obtained during the investigation will be made available to both parties.

Interim measures and academic accommodations. In many cases, interim measures may be appropriate. Such measures may include separation of the Claimant's and Respondent's academic, living, and/or dining situations, or such other measures as may be appropriate under the circumstances. Interim measures may also include supportive measures that only impact one party, such as academic support services and accommodations, on-campus counseling, housing assignment or contract modifications, etc., Please let us know if you need any such accommodations. These measures are typically arranged by the Dean of Students Office, but you may also raise this need with OIE, who will inform the Dean of Students of the request.

Criminal investigations and preservation of evidence. The University process for addressing sexual misconduct is separate from a criminal investigation. You have the right to file a police report regarding possible criminal behavior. We can connect you with a staff member who can assist you in making a report to law enforcement if you would like. Even if you are not sure that you want to file a police report, *it can be helpful to have any available evidence collected in case you decide to file a report with law enforcement at a later date.* The University of Michigan Police Department (UMPD) can be reached at (734) 733-1131. If the incident(s) occurred off campus and you wish to file a police report, please contact local police (UMPD is available to assist you with this).

Intake. The first step OIE takes is to gather information about your concerns. OIE will ask for information, as well as any documentation and witnesses. If you choose to participate in an

investigation/hearing, you will then receive a written statement, as described below. If you choose to participate in adaptable resolution, the information you provide will be used to determine whether and what type of alternative resolution is available. If adaptable resolution is undertaken, the rest of the process explained below does not apply, except for the “Adaptable Resolution” section and those that follow it.

Investigative resolution - your statement. You are strongly encouraged to share all information you have regarding the matter. Based on the information you provide, OIE drafts a written statement summarizing your interview, and you are given five calendar days to review the draft for accuracy and completeness. You may submit any comments you wish. OIE reviews all comments and will attach your comments to the investigation report. During your interview and while providing feedback, please mention any questions you wish to be asked of Respondent and witnesses. OIE will ask all relevant questions and pose them in a manner designed to obtain relevant information.

Interviewing the Respondent. After OIE understands the nature and scope of the concerns, the Respondent is informed of the allegations and given a full and fair opportunity to respond. During this process, the Respondent is cautioned against engaging in any retaliation against the witnesses or you. After the interview, OIE drafts a written statement for the Respondent, who is given five calendar days to review the draft for accuracy and completeness and to provide feedback, including suggested questions.

Gathering other information. OIE interviews witnesses (if they choose to participate and with the understanding they will be identified by name in the report and asked to participate in a subsequent hearing) and reviews all available documentation deemed relevant to the situation. Witnesses are offered the opportunity to review their statements for accuracy and completeness. Depending upon the information obtained during the investigation, OIE may contact the Respondent and/or you with additional questions or to request additional information. OIE will also gather other evidence of any kind as may be available, relevant, and appropriate for consideration. OIE does not accept the results of polygraph tests and related evidence. Only information that is provided to the OIE investigator or otherwise uncovered by the OIE investigator during the course of the investigation may be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the hearing officer should be provided to the investigator prior to the hearing and any new information will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation.

Review of evidence and preliminary investigation report. After OIE has gathered all available, relevant evidence, the Respondent and you will typically be provided with an electronic file of all evidence gathered during the investigation, and a preliminary report. The preliminary report is a written summary of the information OIE has gathered. It generally includes the statement of each person interviewed (Respondent, witnesses, and you) and other relevant information. The preliminary investigation report does not include a finding or recommendations. You and the Respondent will each have the opportunity to review the electronic file of evidence and the preliminary report, and provide any comments, feedback and additional documents or evidence, up to 15 pages, within 10 calendar days after they are sent to you. OIE will review all comments submitted by either party and will attach those comments to the final investigation report.

All information/documentation provided by either party, or by a witness interviewed in the course of an investigation, may be included in the electronic file of evidence, preliminary



- Sexual Assault Prevention and Awareness Center 734/936-3333
- Counseling and Psychology Services 734/764-8312 or www.umich.edu/~caps
- UM Police Department 734/763-1131; Ann Arbor Police Department 734/794-6900
- University Health Service (UHS) 734/764-8320, including Wolverine Wellness 734/763-1320 or www.uhs.umich.edu/wolverine-wellness
- After hours UM Psychiatric 734/996-4747
- Dean of Students 734/764-7420
- UM Student Legal Services 734/763-9920
- Graduate Student Crisis 800/GRAD-HLP (800/472-3457)
- Crisis Line 800/273-TALK (8255)
- www.crisischat.org
- [Office of the Ombuds](http://www.umich.edu/~oie) 734/763-3545

More information. If you have any other questions about the investigation or hearing process, please do not hesitate to contact OIE at 734-763-0235.

This information was reviewed with me and I have been given the opportunity to ask questions about the investigative resolution process, resources and related University policies before proceeding to discuss the allegations.

At this point, I choose: (1) investigative resolution – (2) adaptable resolution – (3) no action wanted– (4) not sure
(circle one)

Signature

Claimant's Name (please print)

Date

Revised 12/10/2018



This is a general description of the investigative resolution process. The process may vary somewhat, in accordance with the Policy and depending upon a variety of factors that arise during investigations. Please contact OIE if you have any questions as the investigation proceeds. In addition, please know that reasonable accommodations are available to individuals with disabilities. You may contact OIE at any time to request such accommodations, as needed.

Information for Student Respondents

We are neutral. OIE does not take sides. We are committed to providing a fair and unbiased review, and our investigations are focused on the information available. We also help Claimants and Respondents by providing information about support and advocacy services. If you have a concern that the investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), please contact the Title IX Coordinator immediately. The Title IX Coordinator may be reached at 734-763-0235 or institutional.equity@umich.edu. The situation will be assessed and a determination made as to whether a different investigator should be assigned to the matter.

Adviser. You may bring an adviser with you to any meetings with OIE. Please let us know in advance if you will be doing so. Examples of an adviser include, but are not limited to: a friend, family member, Dean of Students Respondent Support Advisor, attorney, etc. Please note that any individual who may be a witness may not be present during your interview and therefore may not serve as your adviser.

Anonymity and confidentiality. Information provided to OIE may be shared with other University officials as necessary and appropriate. During an investigative resolution process, all evidence obtained during the investigation will be made available to both parties.

Interim measures and academic accommodations. In many cases, interim measures may be appropriate. Such measures may include separation of the Claimant's and Respondent's academic, living, and/or dining situations, or such other measures as may be appropriate under the circumstances. Interim measures may also include supportive measures that only impact one party, such as academic support services and accommodations, on-campus counseling, housing assignment or contract modifications, etc., Please let us know if you need any such accommodations. These measures are typically arranged by the Dean of Students Office, but you may also raise this need with OIE, who will inform the Dean of Students of the request.

Initiating an investigative resolution. The first step the investigator takes in an investigation is to gather information about the concern at issue. This usually involves interviewing the Claimant and asking them for documentation and names of witnesses, if any. You are not present during the Claimant's interview and vice versa. After the interview, OIE drafts a written statement for the Claimant, who is given five calendar days to review the draft for accuracy and completeness (if the Claimant is participating in the investigation and to provide feedback, including suggested questions

Your statement. After OIE understands the nature and scope of the concerns, it contacts you to inform you of the investigation, provide a copy of the policy and investigative resolution procedures, and share general information about the allegations. OIE also requests two meetings with you. During the first meeting, OIE discusses the policy and investigative resolution process and answers any questions you may have about them. OIE also then provides you with detailed information about the allegations. Specifically, you are provided enough information about the allegations to allow you a full and fair opportunity to respond. The purpose of the second meeting is for you to respond to the allegations. During this interview, OIE will ask about the allegations, as well as any documentation and witnesses. If you prefer to respond to the allegations in the first meeting, you may do so rather than wait for the second meeting; however, this is entirely up to you. You are not required to participate in any aspect of the investigative resolution, but you are strongly encouraged to share all information you have regarding the matter. The Complainant is not present during your interview and vice versa. OIE then drafts a written statement summarizing your interview, and you are given five calendar days to review the draft for accuracy and completeness (if you are participating in the investigation). You may submit any comments you wish regarding the draft. OIE reviews all comments and will attach your comments to the investigation report. During your interview and while providing feedback, please identify any questions you wish to be asked of Claimant and witnesses. OIE will ask all relevant questions and pose them in a manner designed to obtain relevant information.

Gathering other information. OIE interviews witnesses (if they choose to participate and with the understanding they will be identified by name in the report and asked to participate in a subsequent hearing) and reviews all available documentation deemed relevant to the situation. Witnesses are offered the opportunity to review their statements for accuracy and completeness. Depending upon the information obtained during the investigation, OIE may contact the Claimant and/or you with additional questions or to request additional information. OIE will also gather other evidence of any kind as may be available, relevant, and appropriate for consideration. OIE does not accept the results of polygraph tests and related evidence. Only information that is provided to the OIE investigator or otherwise uncovered by the OIE investigator during the course of the investigation may be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the hearing officer should be provided to the investigator prior to the hearing and any new information will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation.

Review of evidence and preliminary investigation report. After OIE has gathered all available, relevant evidence, the Claimant and you will typically be provided with an electronic file of all evidence gathered during the investigation, and a preliminary report. The preliminary report is a written summary of the information OIE has gathered. It generally includes the statement of each person interviewed (Claimant, witnesses, and you) and other relevant information. The preliminary investigation report does not include a finding or recommendations. You and the Claimant will each have the opportunity to review the electronic file of evidence and the preliminary report, and provide any comments, feedback and additional documents or evidence, up to 15 pages, within 10 calendar days after they are sent to you. OIE will review all comments submitted by either party and will attach those comments to the final investigation report.

All information/documentation provided by either party, or by a witness interviewed in the course of an investigation, may be included in the electronic file of evidence, preliminary

report, and/or final investigation report and shared with you, the Claimant, the hearing officer, and relevant University officials.

Final investigation report and pre-hearing meeting. After attaching both parties' feedback, if any, following review of the evidence and preliminary report, the investigator will provide both parties and the hearing officer with a copy of OIE's final investigation report, which will not include any findings or recommendations. There will be a pre-hearing meeting to plan for the hearing, including identifying issues of interest to the hearing officer and parties, and to further describe and review the procedures to be followed at the hearing.

Hearing. The hearing officer will subsequently conduct a hearing at which both parties and all witnesses will have the opportunity to answer questions posed by the hearing officer, and by the other party. You and the Claimant will both have the opportunity to have your adviser present at this hearing. You will not have any responsibility for organizing the hearing or ensuring witnesses appear. Both parties will have the opportunity to pose questions to one another and witnesses, and the hearing officer will likely ask questions as well. You and the Claimant will each have an opportunity to offer closing remarks at the end of the hearing.

Decision and follow up. Following this hearing, the hearing officer will reach a conclusion as to whether or not the evidence supports the conclusion that you have violated the Policy. This determination will be made using the preponderance of the evidence standard, meaning that the evidence in support a finding of a violation must be more convincing than the evidence offered against it. The hearing officer will issue a written decision and share that decision with the Office of Student Conflict Resolution (OSCR), which will inform you and the Claimant of the finding, make the hearing report available to both of you, and notify you both of any applicable appeal and/or sanctioning processes. OSCR will not share this information with a party who has asked not to receive this type of follow up.

Retaliation. The University policy prohibits retaliation. Claimants and witnesses are protected from retaliation for engaging and/or participating in the investigation/hearing process. Anybody who experiences retaliation is strongly encouraged to report retaliation to OIE. As the Respondent, you must not take direct or indirect retaliatory action against the Claimant, witnesses or any other individual who has participated in the investigative resolution. Individuals who engage in retaliatory behavior, either directly or through others, are subject to discipline in accordance with the Policy. If you have questions about retaliation, you are strongly encouraged to ask OIE.

Resources for support. The University offers a variety of services to support to students, a short list of which is included below. The OIE investigator can provide additional information about the resources, as requested.

- Respondent Support, Dean of Students Office 734/764-7420
- Counseling and Psychology Services 734/764-8312 or www.umich.edu/~caps
- University Health Service (UHS) 734/764-8320, including Wolverine Wellness 734/763-1320 or www.uhs.umich.edu/wolverine-wellness
- After hours UM Psychiatric 734/996-4747
- UM Student Legal Services 734/763-9920
- Graduate Student Crisis 800/GRAD-HLP (800/472-3457)
- Crisis Line 800/273-TALK (8255)
- www.crisischat.org



- Office of the Ombuds 734/763-3545

More information. If you have any other questions about the investigative resolution process, please do not hesitate to contact the OIE staff member investigating your case at 734/763-0235.

This information has been reviewed with me and I have been given the opportunity to ask questions about the investigative resolution process, resources and related University policies before proceeding to respond to the allegations.

Respondent's Name (please print)

Signature

Date

Revised 12/10/2018



Please know that reasonable accommodations are available to individuals with disabilities. You may contact OIE at any time to request such accommodations, as needed.

Information for Witnesses in Student Matters

Your participation is voluntary. OIE would like to speak with you because we understand that you may have information that will help the University to determine whether a University policy has been violated. Participation in this process means participating in an interview with an OIE investigator, and answering questions at a hearing on a later date. Please note that whether you choose to participate in this process is up to you, but if you participate in an interview, you will be expected to participate in the hearing as well.

Adviser. You may bring an adviser with you to any meetings with OIE and to the hearing. Please let us know in advance if you will be doing so. Examples of an adviser may include, but are not limited to: a friend, family member, attorney, etc. Please note that any individual who may be a witness, or who is a party to this matter, may not be present during your interview and therefore may not serve as your adviser.

Your statement and your anonymity. If you agree to speak with OIE, we will create a written summary of your comments to us. The summary will not be verbatim, but will include the relevant information you shared with us. We will send you the draft statement to review and ask you to check it for accuracy and completeness. If there is anything in the written statement that is incorrect or if you have more to share, you can provide us with your comments at that time. Your statement will identify you by name and say whether/how you know the parties and whether/how you are connected to the University. Your entire statement or portions of your statement (including your identity) will be shared with the Claimant, Respondent, hearing officer, and relevant University officials.

Hearing. Once OIE has spoken with the parties involved in this matter, other witnesses, and you, and has otherwise gathered available, relevant evidence, you will receive information about a hearing, at which you will be asked to appear in person. During the hearing, questions will be asked of you directly, and may be asked by the Claimant, the Respondent, and/or the hearing officer.

Retaliation. Sometimes witnesses are concerned about sharing information because they are concerned about possible retaliation. The University prohibits retaliation. Any witness who feels they are being subjected to retaliatory behavior by anyone at the University is strongly encouraged to contact OIE immediately. We will look into the matter and the University will take action if retaliation has occurred. It is also important that you, along with all other persons who are aware of this investigation, avoid engaging in conduct that may be perceived as retaliatory.

Confidentiality for the parties. OIE recognizes that it is investigating a matter that may be of significant impact on both parties. The University is working to address this matter in a fair manner and requests, but does not require, that you not share information about this investigative resolution with others.

Amnesty. We understand that witnesses are sometimes reluctant to speak with us because they do not wish to disclose participation in underage drinking, use of alcohol or other drug use. The University does not pursue misconduct charges when it learns about personal consumption of alcohol or other drugs during the course of an investigation, provided the behavior did not and does not place the health or safety of any other person at risk. The University may elect to initiate an assessment, educational discussion or pursue other non-disciplinary options to address the alcohol or other drug use.



Resources for support. The University offers a variety of services to students, a short list of which is included below. The OIE investigator can provide additional information about resources, as requested.

- Sexual Assault Prevention and Awareness Center 734/936-3333 or <https://sapac.umich.edu>
- Counseling and Psychology Services 734/764-8312 or www.umich.edu/~caps
- University Health Service (UHS) 734/764-8320, Wolverine Wellness 734/763-1320 or www.uhs.umich.edu/wolverine-wellness
- Dean of Students 734/764-7420

Revised 12/10/2018

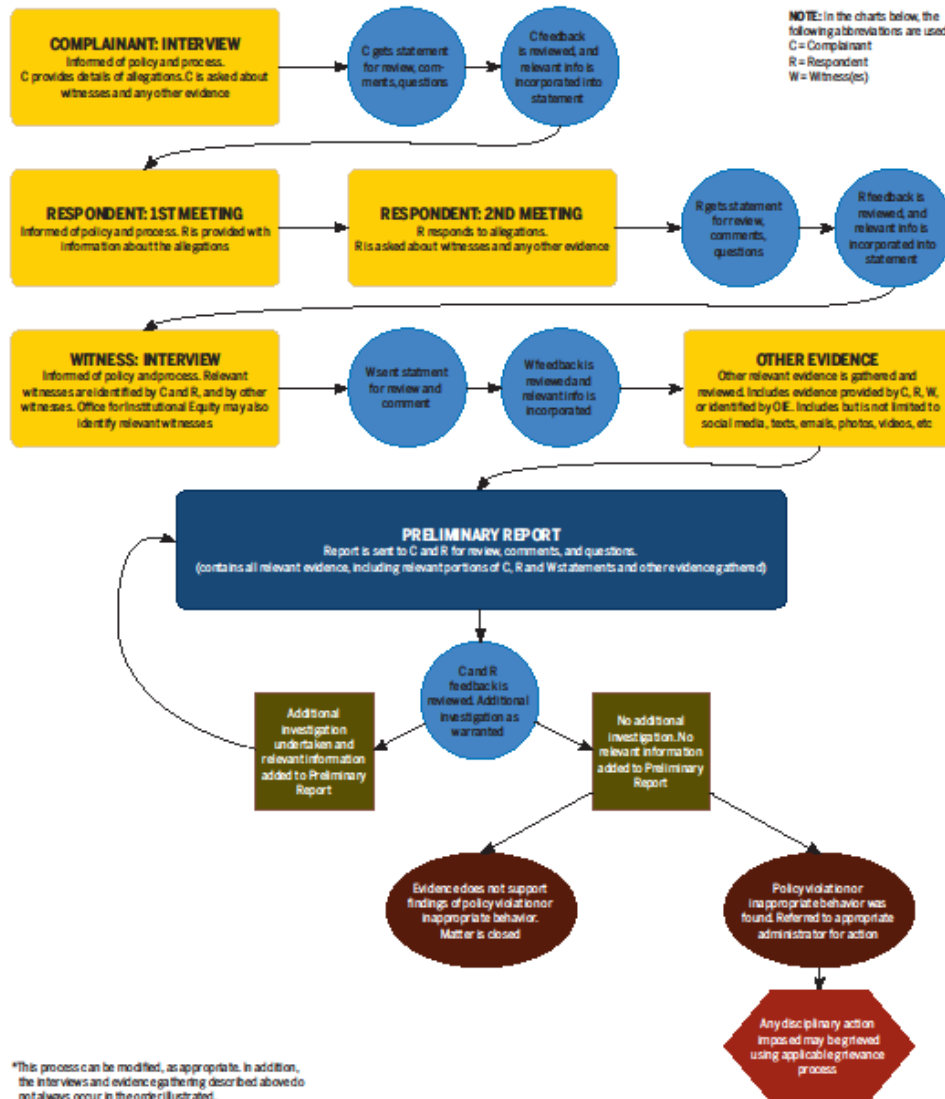


APPENDIX C

FLOWCHART FOR EMPLOYEE HARASSMENT/DISCRIMINATION CASES



SPG 201.89 AND 201.89-1 FACULTY AND STAFF INVESTIGATION FLOWCHART*



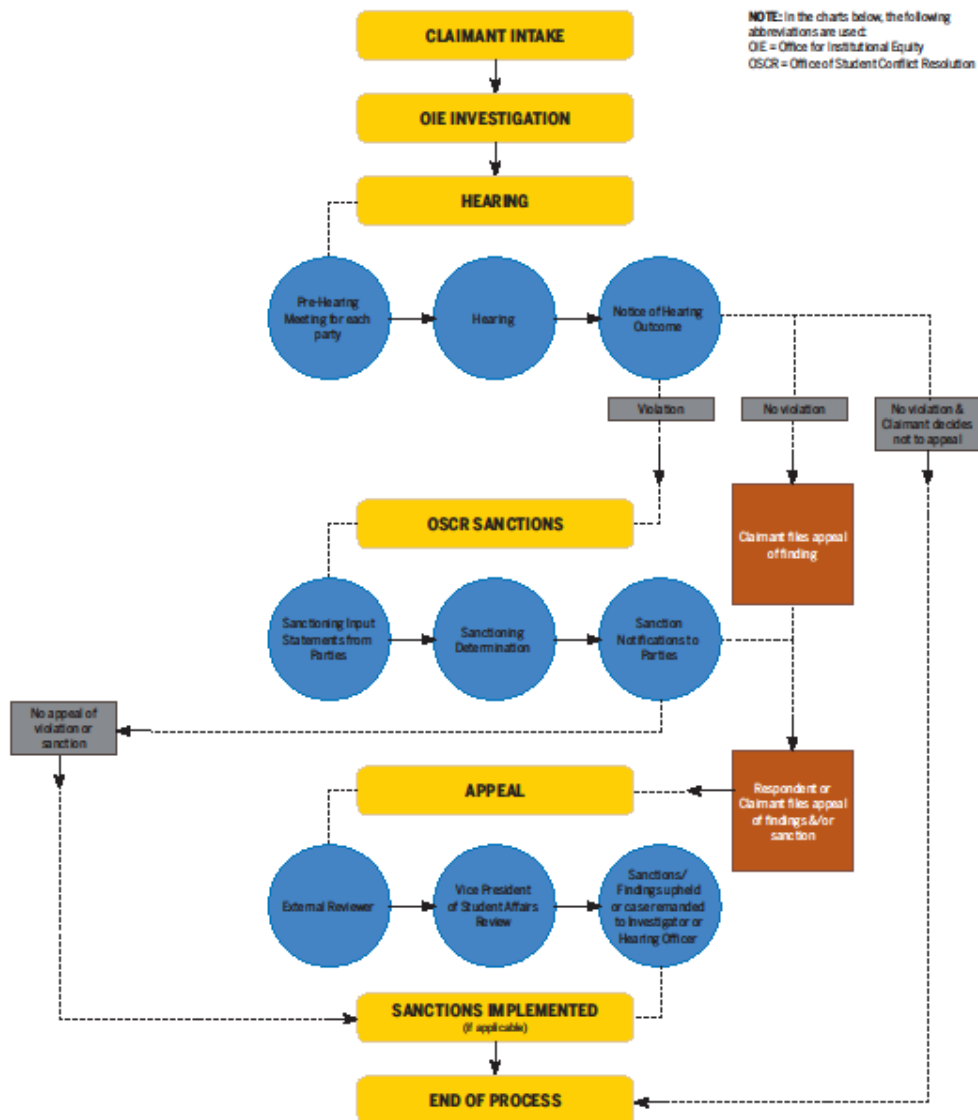
This flowchart is available at:
<https://sexualmisconduct.umich.edu/wp-content/uploads/2019/02/faculty-staff-flowchart1.pdf> .
 It is posted on the new Sexual Misconduct website.



APPENDIX D

FLOWCHART FOR STUDENT SEXUAL MISCONDUCT CASES

POLICY & PROCEDURES **STUDENT INVESTIGATIVE RESOLUTION**



This flowchart is available at:
<https://sexualmisconduct.umich.edu/wp-content/uploads/2019/02/student-flowchart-02-05-19.pdf>.
 It is also linked in the *Interim Student Sexual Misconduct Policy* and posted on the new Sexual Misconduct website.



APPENDIX E

COMPARISON OF KEY TERMINOLOGY IN UNIVERSITY SEXUAL MISCONDUCT POLICIES AND PROCEDURES

**Comparison of Key Policy Terminology
in University Sexual Misconduct Policies and Procedures**

	<i>Employee Sexual Harassment Policy</i>	<i>Employee Procedural Guidelines</i>	<i>Employee Discrimination and Harassment Policy</i>	<i>Interim Student Sexual Misconduct Policy</i>
Person who files complaint	Complainant	Complainant	Complainant	Claimant
Person who complaint is filed against	Respondent	Respondent	Respondent	Respondent
Third Party				A third party is any individual who is not a University student or employee or a participant in any University-related program or activity.
Advisor		Support Person		Adviser
Prohibited Conduct (sexual)	Sexual Harassment	Discrimination and Harassment	Discrimination and Harassment	Sexual Misconduct (including sexual or gender-based harassment, the VAWA categories of sexual assault, intimate partner violence, and stalking, retaliation, violation of protective measures)
Description of Prohibited Conduct	<p>For the purposes of determining whether a particular course of conduct constitutes sexual harassment under this policy, the following definition will be used:</p> <p>Some examples of conduct that may constitute sexual harassment include, but are not limited to:</p> <p>Unwanted sexual statements – sexual or “dirty” jokes, comments on physical</p>		<p>For the purposes of determining whether a particular course of conduct constitutes discrimination or harassment under this policy, the following definition will be used:</p> <p>Conduct that is based upon an individual’s race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran’s status that:</p> <p>1. adversely affects a</p>	<p>Conduct under this Policy is prohibited regardless of the sex, sexual orientation and/or gender identity or expression of the Claimant or Respondent. Prohibited Conduct includes the following specifically defined forms of behavior: sexual or gender-based harassment, sexual assault, intimate partner violence, stalking, retaliation, and violation of interim measures.</p> <p style="text-align: center;">A. SEXUAL OR GENDER-BASED HARASSMENT</p> <p style="text-align: center;">1. Sexual Harassment</p> <p>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</p>

	<p>attributes, spreading rumors about or rating others as to sexual activity or performance, talking about one's sexual activity in front of others, and displaying or distributing sexually explicit drawings, pictures and/or written material. Unwanted sexual statements can be made in person, in writing, electronically (email, instant messaging, blogs, web pages, etc.), and otherwise.</p> <p>Unwanted personal attention – letters, telephone calls, visits, pressure for sexual favors, pressure for unnecessary personal interaction, pressure for dates where a sexual/romantic intent appears evident but remains unwanted, and stalking.</p> <p>Unwanted physical or sexual advances – touching, hugging, kissing, fondling, touching oneself sexually for others to view, sexual assault, intercourse, or other</p>		<p>term or condition of an individual's employment, education, living environment or participation in a University activity;</p> <p>2. is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment or participation in a University activity; or</p> <p>3. has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment, or participation in a University activity.</p> <p>Consistent with state and federal law, reasonable accommodation will be provided to persons with disabilities and to accommodate religious practices.</p>	<p>otherwise, when the conditions outlined in Section VIII(A)(2)(a) and/or (b) below are present.</p> <p>2. Gender-Based Harassment</p> <p>Gender-based harassment includes harassment based on actual or perceived gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (a) or (b) below, are present.</p> <p>a) 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</p> <p>b) Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably (i) interferes with, (ii) limits, or (iii) 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 the nature, frequency, intensity, location,</p>
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	<p>sexual activity.</p> <p>Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated Incidents generally create a stronger claim of sexual harassment, a serious incident, even if isolated, can be sufficient.</p> <p>This policy addresses intentional conduct. It also addresses conduct which results in negative effects even though such negative effects were unintended. Sexually-related conduct forms the basis of a sexual harassment claim if a reasonable person, in view of all the surrounding circumstances, would consider it sufficiently severe, persistent or pervasive as to interfere unreasonably</p>		<p>Some examples of conduct that may constitute prohibited discrimination may include, but are not limited to:</p> <p>A. Denying a person access to an educational program based on that person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status;</p> <p>B. Denying raises, benefits, or promotions on the basis of a person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status;</p> <p>C. Preventing any person from using University facilities or services because of that person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression,</p>	<p>context, and duration of the behavior.</p> <p>Although a sexually harassing hostile environment is generally created through a series of incidents, a severe incident, even if isolated, can be sufficient. For example, a single instance of sexual assault may constitute sexual harassment.</p> <p>Examples of conduct that may constitute sexual or gender-based harassment include:</p> <ul style="list-style-type: none"> • Unwanted touching or sexual advances; • Unwanted written, verbal, or electronic statements of a sexual nature, directed at an individual including sexually suggestive comments, jokes, or innuendos; • Written, verbal, or electronic statements that disparage a person based on a perceived lack of stereotypical masculinity or femininity or perceived sexual orientation; • Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purposes of compromising that person's ability to give consent to the alleged sexual activity; • Allowing other individuals to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., FaceTime, Snapchat, Skype or live-streaming of images) without consent of the participant(s); • Engaging in voyeurism (e.g., watching private sexual activity without the consent of the 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, photographing, disseminating, or transmitting intimate or sexual
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	<p>with academic, other educational, or employment performance or participation in a University activity or living environment.</p> <p>Sexual harassment most often occurs when one person has actual or apparent power or authority over another; however, it may also occur between individuals of equal status or rank within the University. It is also possible for a person who is not in a position of power or authority over another to sexually harass that person, such as a professor being sexually harassed by a student or a supervisor being sexually harassed by a supervisee. Sexual harassment occurs between persons of the same gender and persons of different genders.</p> <p>Alleged discriminatory behavior that does not include conduct of a sexual nature is not</p>		<p>disability, religion, height, weight or veteran's status;</p> <p>D. Instigating or allowing an environment that is unwelcoming or hostile based on a person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status.</p>	<p>utterances, sounds, or images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without the consent of the participants;</p> <ul style="list-style-type: none"> • Excluding a person from a program or activity based on pregnancy; • Touching oneself sexually for others to view without their consent; • Excluding a person from a program, activity or facility based on sexual orientation or gender identity. <p>In some cases, harassment may be based on multiple protected class bases included in the University's <i>Nondiscrimination Policy Notice</i> [linked to website]. In general, harassment by a student, involving protected class bases other than actual or perceived gender, sexual orientation, gender identity, or gender expression, falls under the <i>Statement of Student Rights and Responsibilities (Statement)</i>, and may be addressed accordingly by the Office of Student Conflict Resolution (OSCR). Where there is an indication that reported harassment may be based on both gender (including sexual orientation, gender identity, or gender expression) and another protected class basis (e.g., race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight, or veteran status), the Title IX Coordinator and the Director of OSCR will assess the available information in order to determine whether the matter is most appropriately addressed under this Policy, under the Statement, or for different aspects of the matter to be addressed separately under each.</p>
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	<p>covered by this policy; however, the discriminatory conduct is addressed by other <i>University policies prohibiting discrimination</i> [website link included] (e.g., sex, gender identity, gender expression, sexual orientation, etc.). In some cases, an individual may allege there has been discriminatory action in addition to unwelcome conduct of a sexual nature. In these instances, the matter is assessed under the policy prohibiting the type of discrimination alleged as well as this sexual harassment policy and any other applicable University policy.</p> <p>Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute harassment when:</p> <p>1. submission to such conduct is made either explicitly or</p>			<p>The Title IX Coordinator will have final decision-making authority regarding whether and how a matter is addressed under this Policy, and the OSCR Director will have final decision-making authority regarding whether and how a matter is addressed under the Statement.</p> <p>B. SEXUAL ASSAULT</p> <p>Sexual assault is touching of a sexual nature, including: vaginal or anal intercourse; anal, oral or vaginal penetration with an object; oral-genital contact; or other sexual contact that occurs without consent. Sexual contact includes: (a) intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; or (b) making an individual touch another person or themselves with or on any of these body parts. Consent, as well as the terms force, coercion, and incapacitation are further defined below.</p> <ol style="list-style-type: none"> 1. Consent [text omitted] 2. Incapacitation [text omitted] 3. Coercion [text omitted] 4. Force [text omitted] <p>C. STALKING</p> <p>Stalking occurs when a person engages in a course of conduct toward another person under circumstances that would cause a reasonable person to fear bodily injury to themselves or to others, or experience</p>
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	<p>implicitly a term or condition of an individual's employment, education, living environment, or participation in a University activity;</p> <p>2. submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University activity; or</p> <p>3. such conduct has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment, or participation in a</p>			<p>substantial emotional distress. Stalking often involves individuals who are known to one another or who have a current or previous relationship, but may also involve individuals who are strangers. Stalking behavior generally addressed under this Policy typically includes one or more of the following elements:</p> <ul style="list-style-type: none"> • Is sexual or romantic in nature; • Is committed by a Claimant's current or former partner of an intimate, romantic or sexual relationship; or • Is related to the Claimant exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, sexual orientation, gender identity, or gender expression of the Claimant. <p>The Title IX Coordinator, in consultation with OSCR will determine if the reported conduct meet these criteria. Stalking behavior not addressed under this Policy may be addressed under the <i>Statement of Student Rights and Responsibilities</i> [website link included] as harassment.</p> <p>For purposes of this Policy, course of conduct means two or more unwelcome acts in which a person directly, indirectly, or through other persons, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person, or interferes with a person's property.</p> <p>D. INTIMATE PARTNER VIOLENCE</p> <p>Intimate partner violence, also referred to as dating violence, domestic violence, or</p>
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	University activity.			<p>relationship violence, is any act of violence or pattern of emotionally or financially abusive behavior that one person uses against a current or former partner in a sexual, dating, spousal, domestic, or other intimate relationship, to gain or maintain power and control over another.</p> <p>The determination of whether any conduct constitutes intimate partner violence is whether the conduct is so severe, pervasive or persistent as to significantly interfere with an individual's ability to learn and/or work or cause substantial emotional distress, when judged both objectively (meaning that a "reasonable person" would find the behavior to be emotionally abusive) and subjectively (meaning the impacted individual felt the behavior was emotionally abusive).</p> <p>Intimate partner violence may include any form of Prohibited Conduct under this Policy; physical assault; or a pattern of abusive behavior. Intimate partner violence can be a single act or a pattern of behavior within a relationship.</p> <p>E. RETALIATION [text included below]</p> <p>F. VIOLATION OF PROTECTIVE MEASURES</p> <p>Protective measures are typically measures Respondents are required to comply with and may include: no-contact directives, work or academic schedule or housing modifications or other actions that the University may implement to protect and/or support Claimants, witnesses, or other members of our University community as appropriate. Protective measures are discussed in more detail in</p>
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				Section V(A) above. Failure of a Respondent to comply with protective measures as required is a separate and independent violation of this Policy.
Retaliation	The University will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an informal resolution or formal investigation of a sexual harassment allegation will not be subjected to retaliation. The University also will take appropriate steps to assure that a person against whom such an allegation is made is treated fairly. The University will also take appropriate follow-up measures to assure the goals of this policy are met. Persons who believe they are Experiencing retaliation are strongly encouraged to lodge a complaint with the University using the same procedure for lodging a sexual harassment complaint.		The University will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an informal resolution or formal investigation of a discrimination or harassment allegation will not be subjected to retaliation. The University also will take appropriate steps to assure that a person against whom such an allegation is made is treated fairly. The University will also take appropriate follow-up measures to assure the goals of this policy are met. Persons who believe they are experiencing retaliation are strongly encouraged to lodge a complaint with the University using the same procedure for lodging discrimination or harassment complaint.	Retaliation means any adverse action taken by individuals or groups against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy. Retaliation may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under this Policy. A good faith pursuit by either party of civil, criminal or other legal action, internal or external to the University, does not constitute retaliation.
Standard of Evidence		The Investigator's findings of fact will be made using the		Presumption of Non-Responsibility. The Respondent is presumed to be not responsible until a preponderance of the evidence supports a finding that the

		<p>“preponderance of the evidence standard.” Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a “preponderance of the evidence” supports a finding that the conduct occurred. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence offered in opposition to it.</p>		<p>Respondent violated the Policy.</p> <p>Standard of Evidence. In all cases before a hearing officer, the standard of proof is a preponderance of evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the reasonable evidence and reasonable inferences from the evidence, that the Respondent violated this Policy.</p>
Responsible Employee	<p>An individual may complain to the University about alleged sexually harassing behavior or retaliation by contacting a University official, such as a supervisor; Dean, Director or department head; the Office of Institutional Equity; the appropriate Human Resources Office; the Dean of Students (for students); the Dean’s Office of the Horace H. Rackham Graduate School (for graduate students); the Center for the Education of</p>	<p>Individuals may raise concerns to the University about discrimination or harassment by contacting a University official, such as a supervisor; Dean, Director or department head; the Office of Institutional Equity; the appropriate Human Resources Office; the Dean of Students (for students); the Dean’s Office of the Horace H. Rackham Graduate School (for Rackham graduate students); the Center for the</p>	<p>An individual who wishes to complain to the University about alleged discriminatory or harassing behavior or retaliation should contact a University official, such as a supervisor; Dean, Director or department head; the Office of Institutional Equity; the appropriate Human Resources Office; the Dean of Students (for students); the Dean’s Office of the Horace H. Rackham Graduate School (for graduate students).</p>	<p>The following individuals are, for purposes of this Policy, responsible employees:</p> <ul style="list-style-type: none"> • Regents, who are not employees but, rather, Constitutional Officers under the Michigan Constitution; • Executive officers (including those serving in the role of Associate or Assistant Vice President/Provost, as designated by the executive officer); • Deans, directors, department heads/chairs (including those serving in assistant or associate roles); • Graduate and undergraduate chairs; • Supervisors who have hiring or firing power over at least three employees who are not student or post-doc employees; • University faculty or staff providing oversight to, or traveling with, students¹ on University related travel abroad, including University-sponsored study abroad, research, fieldwork, or internship programs;

	Women; and the Department of Public Safety.	Education of Women; or the Department of Public Safety.		<ul style="list-style-type: none"> • Faculty and staff, who serve as advisors to or coaches of University-recognized student groups; • Any individual, whether an employee or not, who serves as a coach of a club sports team; • All individuals, including student-employees, (such as Resident Advisors) working in Student Life, the Division of Public Safety and Security, Intercollegiate Athletics, and OIE, except those who serve in non-supervisory positions in dining services, clerical or custodial/maintenance capacities; • Campus Security Authorities designated by the University under the Clery Act not otherwise specified in this provision; and • Individuals serving in any of the positions described above on an acting or interim basis. <p>¹ “Students” means University students or students from other U.S. based institutions participating in University related travel abroad.</p>
Policy Goal	It is the policy of the University of Michigan to maintain an academic and work environment free of sexual harassment for students, faculty, and staff. Sexual harassment is contrary to the standards of the University community. It diminishes individual dignity and impedes equal employment and educational opportunities and equal access to freedom of academic	The purpose of these Procedural Guidelines is to ensure that discrimination complaints, including harassment, are handled promptly and effectively in a manner that is procedurally fair to all parties. The Office of Institutional Equity may deviate from these Guidelines as necessary to achieve the goals of prompt, thorough and effective complaint resolution in a	It is the policy of the University of Michigan to maintain an academic and work environment free of discrimination and harassment for all students, faculty, and staff. Discrimination and harassment are contrary to the standards of the University community. They diminish individual dignity and impede educational opportunities, equal access to freedom of academic inquiry, and equal employment. Discrimination and	The University of Michigan (University) supports its educational mission by fostering a community based on civility, dignity, diversity, inclusivity, education, equality, freedom, honesty, and safety. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community. The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities.

	<p>inquiry. Sexual harassment is a barrier to fulfilling the University's scholarly, research, educational, and service missions. It will not be tolerated at the University of Michigan.</p>	<p>procedurally fair manner.</p>	<p>harassment are barriers to fulfilling the University's scholarly, research, educational, patient care, and service missions . . . The University is firmly committed to an environment free of discrimination and harassment as prohibited by this policy and federal and state laws. The University has a compelling interest in assuring an environment in which learning and productive work thrives. At the same time, the University has an equally compelling interest in protecting freedom of speech and academic freedom and in preserving the widest possible dialogue within its instructional and research settings.</p>	
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APPENDIX F

APPLICABLE LEGAL STANDARDS

F. Applicable Legal Standards

The applicable federal laws for higher education institutions include Title VII of the 1964 Civil Rights Act (“Title VII”), Title IX of the Educational Amendments of 1972 (“Title IX”), the Clery Act and the Violence Against Women Act (“VAWA”). These laws, as well as the applicable state laws, are discussed below. Students and certain employees of public institutions may also be entitled to constitutional protections, including due process protections relating to adequate notice and an opportunity to be heard.

1. Title VII

Title VII, 42 U.S.C. §§ 2000e-1-2000e-17, and its implementing regulation, at 29 C.F.R. § 1604, prohibit employers from discriminating against employees on the basis of sex. Title VII is enforced by the EEOC and applies to employers with 15 or more employees. As an employer of more than 15 employees, the University is subject to the requirements of Title VII.

Title VII prohibits discrimination on the basis of sex in any aspect of employment. The EEOC regulations include a specific prohibition on sexual harassment of employees at, 29 C.F.R. § 1604.11:

Sexual harassment. “(a) Harassment on the basis of sex is a violation [] of title VII. [note omitted] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment,” and “(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.”

The law makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Administrative complaints of alleged violations of Title VII must be filed with the EEOC and, upon the exhaustion of this administrative remedy, a complaint may be filed in federal court.

The EEOC has stated that employers should establish anti-harassment policies and complaint procedures for unlawful harassment.¹ The EEOC requires that employers post notices of the protections afforded by Title VII in prominent and accessible places where notices to employees, applicants and members are customarily maintained.

The EEOC has issued the following policy guidance on sexual harassment in the employment context: “*Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*.”² The guidance states that an employer’s anti-harassment policy and complaint procedure should “be written in a way that will be understood by all employees in the employer’s workforce.” The EEOC further stated, that anti-harassment policy and complaint procedure should contain, at a minimum, the following elements:

1. A clear explanation of prohibited conduct;
2. Assurance that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation;
3. A clearly described complaint process that provides accessible avenues of complaint;

¹ See 29 C.F.R. § 1604.11(f) (“Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned”).

² <https://www.eeoc.gov/policy/docs/harassment.html> (June 18, 1999).

4. Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible;
5. A complaint process that provides a prompt, thorough, and impartial investigation; and
6. Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

The EEOC explained that the policy should make clear that the employer will not tolerate harassment based on sex and other protected bases or protected activity (“i.e., opposition to prohibition discrimination or participation in the statutory complaint process”). The prohibition “should cover harassment by anyone in the workplace – supervisors, co-workers or non-employees.”

2. Title IX

Title IX, 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to the requirements of Title IX. The University is currently the subject of an ongoing Title IX investigation by the Department’s OCR relating to student-on-student sexual misconduct.

Title IX specifically prohibits discrimination in employment on the basis of sex. Title IX’s protection of discrimination on the basis of sex has been interpreted by OCR to include protection against harassment on the basis of sex and gender, including sexual harassment, sexual assault and other forms of sexual violence, gender-based harassment, and gender stereotyping. Title IX also prohibits retaliation (including intimidation, threats, coercion or other discrimination) for the purpose of interfering with any right or privilege protected by Title IX or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation or other proceeding.

Beginning in 2011, the Obama Administration, including the Department and OCR, devoted significant attention to the issuance of policy guidance and enforcement actions relating to student on student sexual violence.³ Under the Trump Administration, the Department has substantively revised its approach to Title IX sexual harassment issues. In September 2017, the Department issued its “*Interim Guidance on Sexual Misconduct*,” which withdrew the 2011 and 2014 policy guidance issued under the Obama Administration, and announced plans to issue a notice of proposed rulemaking to clarify the obligations of educational institutions to address sex discrimination.

The “Notice of Proposed Rulemaking for Title IX” was issued on November 29, 2018.⁴ The Department is currently reviewing the comments submitted in response to the Notice and has not issued any final revised regulations. The 2017 *Interim Guidance* continues the agency’s focus on student-on-student sexual misconduct, but OCR specifically noted that in “regulating the conduct of students and faculty to prevent or redress discrimination, schools must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech.”

As of the date of this Report, the following are the applicable OCR policy guidance documents relating to sexual misconduct:

- *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, January 2001;⁵

³ See *Dear Colleague Letter on Sexual Violence*, April 2011; and the *Q&A on Title IX and Sexual Violence*, April 2014. The policies (now archived) are available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> (2011 DCL); and <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (2014 Q&A).

⁴ *Interim Guidance*, at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>. *Dear Colleague Letter*, September 2017, at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>; 2018 NPRM, at <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

⁵ <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

- *Dear Colleague Letter on First Amendment*, July 2003; See also Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, issued by President Donald Trump on March 21, 2019;⁶
- *Dear Colleague Letter on Title IX Grievance Procedures, Postsecondary Education*, August 2004;⁷
- *Dear Colleague Letter on Sexual Harassment*, January 2006;⁸
- *Dear Colleague Letter on Bullying*, October 2010;⁹
- *Dear Colleague Letter on Title IX Coordinators*, April 2015;¹⁰
- *Title IX Resource Guide*, April 2015;¹¹
- *Dear Colleague Letter on Sexual Violence*, September 2017;¹² and
- *Interim Guidance Campus Sexual Misconduct* (“Interim Guidance”), September 2017.

The Title IX regulations, at 34 C.F.R. §§ 106.8-9, require that recipients publish “notices of nondiscrimination” and “grievance procedures” providing for the prompt and equitable resolution of student and employee complaints alleging any sex discrimination, which includes sexual misconduct. OCR has identified, including in the 2017 *Interim Guidance*, six required elements for prompt and equitable grievance procedures. These include whether the institution:

1. Provides notice to students and employees of the institution’s grievance procedures, including how to file a complaint, to students and employees;
2. Applies the grievance procedures to complaints alleging sexual misconduct carried out by employees, students, or third parties;
3. Ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. Designates and follows reasonably prompt timeframes for the major stages of the complaint process;
5. Notifies the parties of the outcome of the complaint; and
6. Provides assurance that the school will take steps to prevent recurrence of sexual misconduct, and to remedy its discriminatory effects, as appropriate.

OCR has stated that Title IX requires that internal grievance procedures for the resolution of student and employee complaints of sex discrimination include notice to students and employees of the procedures, including what the procedures are, what misconduct they cover, and how to file a complaint, to students and employees. The grievance procedures must be current and up-to-date, easily understood and widely disseminated. The procedures must specify who can file a complaint and that the procedures apply to complaints alleging discrimination or harassment carried out by employees, students, and third parties.

OCR previously has stated that federal statutes and regulations do not require that educational institutions use any specific model for investigation, such as a single-investigator model, hearing model or hybrid.¹³ In the 2017 *Interim Guidance*, Question 8, OCR stated: “The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school’s sexual misconduct policy” and that “[i]f the complaint presented more than a single allegation of misconduct, a decision should be reached separately as to each allegation of misconduct.” OCR added, “In every investigation conducted under the school’s grievance procedures, the burden is on the school—not on the parties—to gather sufficient evidence to reach a fair, impartial determination as to whether sexual misconduct has occurred and,

⁶ <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>; <https://www.whitehouse.gov/presidential-actions/executive-order-improving-free-inquiry-transparency-accountability-colleges-universities/>.

⁷ https://www2.ed.gov/about/offices/list/ocr/responsibilities_ix_ps.html.

⁸ <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>.

⁹ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

¹⁰ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

¹¹ <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

¹² 2017 DCL available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>.

¹³ Note that the proposed Title IX regulations include possible revisions to the current regulations and OCR policies. For example, the proposed Title IX regulations suggest that the single-investigation model may not provide sufficient procedural protections. For purposes of analysis, this report focuses upon Title IX regulations and policy guidance currently in effect, and not those that have been proposed in the NPRM.

if so, whether a hostile environment has been created that must be redressed.” OCR described an “equitable investigation” as follows:

An equitable investigation of a TIX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence — including both inculpatory and exculpatory evidence — and take into account the unique and complex circumstances of each case.

In the 2017 *Interim Guidance*, OCR stated provided that if an institution chooses to allow appeals from its decisions regarding responsibility and/or disciplinary sanctions, the institution “may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.”

OCR has consistently stated that Title IX requires that grievance procedures include designated and reasonably prompt timeframes for the major stages of the complaint process. In its 2017 *Interim Guidance*, OCR stated that there is “fixed time frame under which a school must complete a TIX investigation” and that OCR expected institutions to make a “good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.”

OCR has also explained that the content of the notice of the outcome “may vary depending on the underlying allegations, the institution, and the age of the students”:

Under the Clery Act, postsecondary institutions must provide simultaneous written notification to both parties of the results of the disciplinary proceeding along with notification of the institution’s procedures to appeal the result if such procedures are available, and any changes to the result when it becomes final. This notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions.

For proceedings not covered by the Clery Act, such as those arising from allegations of harassment, and for all proceedings in elementary and secondary schools, the school should inform the reporting party whether it found that the alleged conduct occurred, any individual remedies offered to the reporting party or any sanctions imposed on the responding party that directly relate to the reporting party, and other steps the school has taken to eliminate the hostile environment, if the school found one to exist. In an elementary or secondary school, the notice should be provided to the parents of students under the age of 18 and directly to students who are 18 years of age or older. [footnotes omitted].

3. The Application of Title VII and/or Title IX

Employees at educational institutions are protected against sex discrimination, including sexual misconduct, by both Title VII and Title IX. The substantive Title VII legal requirements relating to an employer’s obligations to address sexual harassment have been largely imported into the Title IX context when addressing the obligations of educational institutions to address sexual harassment involving employees.¹⁴ Generally, the EEOC has taken the lead in addressing sexual harassment in the employment context, and OCR has taken the lead in addressing sexual harassment in the educational context.

Employees may file suit under Title VII or Title IX alleging sex discrimination, although Title VII requires employees to exhaust their procedural remedies at the EEOC before going to court, while Title IX does not have an exhaustion

¹⁴ U.S. Department of Justice *Title IX Legal Manual*, at 14, <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/ixlegal.pdf> (January 11, 2001). (“Title IX borrows heavily from Title VII in its theory and approach to sex-based employment discrimination. It is generally accepted outside the sexual harassment context that the substantive standards and policies developed under Title VII apply with equal force to employment actions brought under Title IX. By contrast, however, it is generally held that Title IX does not incorporate the procedural requirements of Title VII.”)

requirement.¹⁵ Per the established government wide procedures, sex discrimination complaints filed may be filed by employees with the EEOC or OCR, but are then generally handled by the EEOC, not OCR.¹⁶

The legal standards used by courts for assessing liability for damages for peer-on-peer sexual harassment *in private litigation* differ under Title VII and Title IX. Under Title VII, an employer may be liable for harassment by a non-supervisor if the employer had notice of the harassment and failed to take appropriate and immediate responsive action. Under Title IX, courts have used a higher “deliberate indifference” standard that requires proof that the institution had actual knowledge and was deliberately indifferent to harassment. (This issue of whether OCR should also use the higher standard of “deliberate indifference” in administrative proceedings is one that is discussed specifically in the Department’s Title IX NPRM.)

4. The Clery Act and VAWA

Higher education institutions that participate in the federal student financial aid programs are also subject to the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“the Clery Act”), 20 U.S.C. § 1092(f). The Clery Act requires that institutions comply with certain campus safety and security related requirements. The Violence Against Women Act of 2013 (“VAWA”) amended the Clery Act to require institutions to compile statistics for incidents of domestic violence, dating violence, sexual assault, and stalking. VAWA also requires the inclusion of policies, procedures, and programs pertaining to these incidents, including prevention and awareness programs, in an institution’s Annual Security Report. In October 2014, the Department issued amended regulations to implement these statutory changes.¹⁷

VAWA specifically requires institutions to have written policies that describe each type of disciplinary proceeding that will be used by the institution in cases of alleged dating violence, domestic violence, sexual assault, or stalking; and describe the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how and to whom to file a disciplinary complaint; how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking; and the standard of evidence that will be used during the disciplinary proceeding. VAWA also requires institutions to list all possible sanctions that the institution may impose following the results of a disciplinary proceeding. Institutions must provide students or employees who report being alleged victims with a written explanation of their rights and options, including written notification of counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services provided within the institution and in the community. Moreover, the procedures must describe the availability of changes to academic, living, transportation, and working situations, or protective measures regardless of whether the alleged complainant reports to law enforcement.¹⁸

VAWA also requires that institutions provide prompt, fair, and impartial disciplinary proceedings in cases of alleged dating violence, domestic violence, sexual assault, or stalking in which:

1. The proceeding is completed in a reasonably prompt timeframe and the process allows for the extension of timeframes for good cause with written notice to the complainant and the respondent of the delay and the reason for the delay;
2. The proceeding is conducted in a manner that is consistent with the institution’s policies and transparent to the complainant and the respondent;
3. Officials are appropriately trained and free of conflict of interest or bias;
4. The complainant and the respondent are given timely notice of meetings at which one or both parties may be present; and
5. The complainant, the respondent, and appropriate officials are given timely and equal access to information that will be used during informal and formal disciplinary meetings and hearing.¹⁹

¹⁵ The Sixth Circuit Court of Appeals has also ruled that Title VII does not preempt Title IX. See *Ivan v. Kenta State Univ.*, 19996 WL 422496 (6th Cir. July 26, 1996).

¹⁶ See OCR’s *Case Processing Manual*, at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

¹⁷ 34 C.F.R. § 668.46. See also the Department’s *Dear Colleague Letter*, July 2015, available at: <https://ifap.ed.gov/dpccletters/GEN1515.html> and *The Handbook for Campus Safety and Security Report* (2016 Edition), at <https://ifap.ed.gov/eannouncements/attachments/HandbookforCampusSafetyandSecurityReporting.pdf>.

¹⁸ 34 C.F.R. § 668.46(b)(11).

¹⁹ 34 C.F.R. § 668.46(k).

VAWA also provides that the disciplinary proceedings require that the complainant and the respondent receive simultaneous, written notification of the result of the proceeding (including any sanctions) and any available appeal procedures, and provide the parties with information about how the institution will protect confidentiality, an equal opportunity to have an advisor of choice present, and notice of the importance of preserving evidence in cases of sexual assault. VAWA also provides that the institution must prohibit retaliation against complainants or witnesses in cases of sexual misconduct.

5. State Law of Michigan

a. Michigan Constitution

Article I, Section 26 of the Michigan Constitution provides that “[t]he University of Michigan, Michigan State University, Wayne State University, and any other public college or university, community college, or school district shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting.”²⁰

b. Elliott-Larsen Civil Rights Act

The Elliott-Larsen Civil Rights Act prohibits discriminatory practices and policies, and customs in the exercise of civil rights based upon religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. The Act provides, in relevant part, that “the opportunity to obtain employment and the full and equal utilization of educational facilities without discrimination because of sex as prohibited by this act, is recognized and declared to be a civil right.”²¹ The Act then goes on to list employer prohibited practices under the Act, including, without limitation, the failure to hire or recruit, the discharge of, or the discrimination against, an individual with respect to employment, compensation or any other term, condition or privilege of employment because of sex, among other protected categories.²² Similarly, the Act forbids a state educational institution from discriminating on the basis of sex, including by discriminating against an individual on the basis of sex in the full utilization of or benefit from the institution, or the services, activities, or programs provided by the institution.²³

²⁰ Michigan Const. of 1963, Art. I, §26(1).

²¹ Public Act 453 of 1976, Michigan Compiled Laws, 37.2102, Section 102(1).

²² Michigan Compiled Laws, 37.2202, Section 202(1)(a)-(d).

²³ Michigan Compiled Laws, 37.2402, Section 402(1)(a)-(e).