



## INTERIM SEXUAL MISCONDUCT POLICY

Approved By:	Senior Management Team
Date of Last Revision:	November 21, 2014
Responsible Office/Department:	Division of Inclusion and Equity/Office of the Title IX Coordinator

### **Policy Statement**

#### **Purpose**

Grand Valley State University is committed to maintaining a climate conducive to an educational and employment environment that is free from sexual assault, dating and domestic violence, and stalking, all of which constitute sexual misconduct. This policy is intended to provide clarity on how the University prevents, investigates, and addresses incidents of sexual misconduct consistent with its values and with requirements of Title IX of the Educational Amendments Act of 1972, the Elliot-Larsen Civil Rights Act, and other applicable federal, state, and local laws.

### **Procedures**

#### **Prohibited Conduct**

GVSU prohibits sexual misconduct, which includes acts of sexual assault, dating/domestic violence, and stalking. The University encourages members of its community to report acts of sexual misconduct to the Title IX Coordinator.

#### **Sexual Assault**

No person shall engage in the sexual assault of any student, faculty, or staff member or others in the University community nor shall a person engage in conduct that threatens, intimidates or endangers the health, safety, or welfare of any such person. Sexual assault includes intentional bodily contact that is without consent and/or by force (either by body part or by object) with the breasts, buttocks, groin, inner thigh, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts.

#### **What is “Consent?”**

For the purpose of this policy, consent to sexual activity is defined as: clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual acts. Consent cannot be inferred from the absence of a “no.” A clear “yes,” verbal or otherwise, is necessary. Silence, passivity, or lack of active resistance does not imply consent.

Consent must be clear and unambiguous for each participant throughout any sexual encounter. Consent to some sexual contact does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent can be revoked at any time.

Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition. Consent cannot be obtained by intimidation, threat, coercion, or force. Agreement given under such conditions does not constitute consent.

### **Dating/Domestic Violence**

No person shall engage in acts of dating/domestic violence. Dating/domestic violence constitutes behavior or physical force that intimidates, manipulates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures or wounds someone in order to obtain and/or maintain power or control over another. It is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the other person and where the existence of such a relationship is determined based upon the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Dating/domestic violence includes: felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the injured person; by a person with whom the injured person shares a child in common; by a person who is cohabitating with or has cohabitated with the injured person as a spouse or intimate partner; by a person similarly situated to a spouse of the injured person under the domestic or family violence laws of the State of Michigan, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the State of Michigan. These definitions do not require sexual contact between partners.

### **Stalking**

No person shall engage in acts of stalking. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress because of fear, intimidation, apprehension or threat. It is the willful course of conduct over time that involves repeated or continuing harassment made against the expressed wishes of another.

### **Filing A Report**

The University strongly encourages the prompt reporting of sexual misconduct to the Title IX Coordinator. A sexual misconduct report may be made by the person who believes they have experienced sexual misconduct (the "Complainant") or a person who has information that sexual misconduct may have been committed by a University student, faculty, staff member or other person in the University community (the "Reporter").

To promote prompt, thorough, and effective investigations, the University strongly encourages Reporters and Complainants to report possible incidents of sexual misconduct within 180 calendar days following the last occurrence of the misconduct. Although the Title IX Coordinator may conduct an investigation based on a report made after 180 days of the last occurrence of the behavior, the lapse of time may make it more difficult to gather relevant and reliable information.

If the Reporter or Complainant chooses not to participate in the University investigation of the report, the University may, as described below, pursue the report without that person's participation.

## **The University's Procedure for Responding to Incidents of Sexual Misconduct**

Upon receipt of a sexual misconduct report, the University will proceed as described below:

### **Services**

Once the Title IX Coordinator receives a report of a possible sexual misconduct, a Victim Advocate will be offered to the Complainant to provide appropriate support and other resources and will notify the Complainant of applicable institutional policies. If needed, the Victim Advocate will help to inform the Complainant of the services provided for students by various University offices. The Complainant may also consult with the Director of Judicial and Special Programs.

The Respondent will be offered appropriate support and other resources and notified of applicable institutional policies by the Director of Judicial and Special Programs.

The Title IX Coordinator will take appropriate steps to prevent and/or address retaliatory conduct following a report.

If requested, other participants in the process (such as those who reported the assault or witnesses) may also be offered appropriate support services and information.

### **Confidentiality, Privacy, and Reporting**

For purposes of this policy, "confidential" and "confidentiality" shall mean that the Title IX Coordinator, Victim Advocate and others involved in the investigation pursuant to this policy or providing support to the victim-survivor, that the personally identifiable information will be restricted to those persons unless the victim-survivor consents or that the law so requires.

To the extent the law recognizes counselor-patient privilege, representatives of the University Counseling Center and licensed counselors in GVSU's Employment Assistance Program for University Employees are not obligated to release any information as may be reported to them by those seeking their assistance.

All investigative documents and files will remain in the Investigator's office pending the conclusion of the investigation. At the close of an investigation, the files will be maintained by the office of the Title IX Coordinator.

### **Interim Interventions**

The University may also implement interim interventions, as may be appropriate for the individuals involved and for the larger University community. Interim interventions may include letters instructing both the Complainant and the Respondent not to contact one another, separation of the Complainant's and Respondent's academic, employment, and living situations, or other interventions. These interim interventions may be kept in place until the end of any investigation and/or any subsequent corrective actions.

### **Decision to Proceed with Investigation**

If the Complainant is willing to participate with an investigation, the University will proceed as described in the Investigation section below.

If the Complainant requests confidentiality or asks that the report of sexual misconduct not be pursued, the University will, before taking any further investigative steps, forward that information, along with all available

information about the report, to the Title IX Coordinator. The Title IX Coordinator is charged with balancing the University's commitment to supporting survivor/victim-centered practices with its equally strong commitment to providing due process to the Respondent and promoting a safe University community.

In rendering the decision on whether to proceed with an investigation, the Title IX Coordinator shall consider the following factors:

1. Whether, how, and to what extent, the University should further investigate the report of sexual misconduct;
2. What steps may be possible or appropriate when a Respondent is unknown, and
3. What other measures or remedies might be considered to address any effects of the reported sexual misconduct on the campus community.

In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation, and whether other measures will be taken in connection with any allegation of sexual misconduct, rests solely with the Title IX Coordinator.

## **Investigation**

The Title IX Coordinator will determine the most effective method of reviewing the concerns raised by the reported sexual misconduct, including whether to proceed with an investigation. When an investigation is deemed warranted, the Title IX Coordinator will appoint an Investigator, usually a member of the University who is trained to investigate matters of sexual misconduct, to conduct the investigation. In all cases, the University will respond to the report in a prompt, thorough, and procedurally fair and effective manner. Upon receipt of a report, the University will strive to complete its review of the complaint within sixty (60) calendar days. If circumstances prevent the completion of an investigation within sixty (60) calendar days, the Investigator will notify the Complainant and Respondent.

The Title IX Coordinator may assign an Assistant in an investigation, if needed. The Assistant will also be a University member trained to investigate matters of alleged sexual misconduct. In conducting an investigation, the Investigator may meet separately with the Complainant (if participating), Respondent, Reporter (if applicable), any pertinent witnesses, and may also review other relevant information offered by either party or discovered independently by the Investigator.

At any time during the course of an investigation, the Complainant, Respondent, or any witnesses may provide a written statement, other supporting materials, or identify other potential witnesses, regarding the matter under review.

Throughout the process, the Complainant or Respondent may have a Support Person present at any meeting they participate in that is related to the review of the reported sexual misconduct. This Support Person may be any individual selected by the Complainant or Respondent. The Complainant or Respondent may choose an attorney as a Support Person, but it shall be at his/hers own expense. The Support Person shall have no role during any meeting related to the review of the reported sexual misconduct and may not participate in any meeting, other than to advise the Complainant or Respondent.

## **Standard of Proof**

The Investigator's findings of responsibility for sexual misconduct will be made using the preponderance of the evidence standard. This standard requires that the information supporting a finding of responsibility to be more convincing than the information in opposition to it. Under this standard, individuals are presumed to not have engaged in sexual misconduct unless a preponderance of the evidence supports a finding that sexual misconduct occurred.

## **Investigation Findings and Outcome Notification**

Where an investigation is completed, the Investigator will prepare a written report at the investigation's conclusion. Before the report is finalized, the participating Complainant and Respondent will be given the opportunity to review their own statements and, to the extent appropriate to honor due process and privacy considerations, the participating Complainant and Respondent will be provided with a summary of other information collected during the investigation. A Complainant or Respondent must submit any comments about their own statement, or on any investigation summary that might be provided, to the Investigator within five (5) work days after that statement or summary was sent to them for review.

For the purpose of this Policy, a "work" day is a day where the University is open and conducting regular University operations. Work days do not include weekends, holidays that close the University, and days where emergency conditions warrant University closure.

Following the receipt of any comments submitted, or after the five (5)-day comment period has lapsed without comment, the Investigator will address any identified factual inaccuracies or misunderstandings, as appropriate, and then make a determination.

The Investigator's final written report will generally contain, at a minimum:

1. A summary of the investigation;
2. The Investigator's findings, and
3. A summary of the Investigator's rationale in support of the findings.

The Title IX Coordinator will review the report and findings of the Investigator. A summary of the University's determination will be sent simultaneously to the participating Complainant and Respondent. The University neither encourages nor discourages the subsequent disclosure or sharing of the written notification by either person.

If a Complainant has chosen not to participate in the University's review of the sexual misconduct report, but expresses, in writing to be notified of the outcome, the University will notify the Complainant. If a Complainant has expressed a desire, in writing, not to be notified of the outcome, the University will honor that decision. In such cases, the University will not send the notification itself to the Complainant, but may proceed with any necessary follow-up, including as described below. If appropriate, the University may need to provide notification of that follow-up.

## **Sanctioning for Students**

If the Respondent is found responsible for sexual misconduct, the University will initiate a sanctioning process designed to address the misconduct, prevent its recurrence, and remedy its effects, while engaging in the University's educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety or deter Respondents from future misconduct. Some behavior is so harmful to the University community or so deleterious to the educational process that it may require more serious sanctions or interventions, such as

removal from University housing, removal from specific courses or activities, suspension from the University, or expulsion.

### **A. Process**

Whether resolved by agreement or decision, the University will strive to complete the sanctioning process within fifteen (15) work days after the University's findings are shared with the participating Complainant and Respondent.

### **B. Decisions of Remedial Actions**

A Conduct Coordinator will be appointed to determine appropriate sanctions/interventions. The Conduct Coordinator's review will consist solely of (1) reviewing the Investigative Report and any written objections to the proposed resolution agreement submitted by the Complainant or Respondent; and (2) consulting with appropriate University officials. To ensure fairness and consistency, as well as compliance with the University's Title IX obligations, the Conduct Coordinator must consult, at a minimum, with the Director of Judicial and Special Programs ("DJSP") and the Title IX Coordinator.

Once a decision has been reached, the Conduct Coordinator will issue a letter to the Respondent and Complainant sharing, in a manner appropriate to honor due process and privacy considerations, the final remedial actions. A decision made by the Conduct Coordinator may be appealed in accordance consistent with the appeal process.

### **C. Remedial Actions:**

Any student who violates this Policy will be subject to a range of remedial actions (in accordance with University policies), which for students, range from probation to expulsion, depending on the totality of the circumstances of the incident, and taking into account any previous Student Code violations. Remedial actions may include, but are not limited to, one or more of the following:

- Formal Reprimand: A formal written censure that the student has violated University policy and that future violations may be dealt with more severely.
- Disciplinary Probation: A designated period of time during which the student is not in good standing with the University. The terms of probation may involve restrictions of student privileges and/or set specific behavioral expectations.
- Restriction from Employment at the University: Prohibition of, or limitation of University employment.
- Restorative Project: A project specifically designed to lead the respondent to understand the harm done to the victim and the community, to accept the responsibility for that harm, and to repair that harm, if possible.
- University Housing Transfer or Removal: Placement in another room or housing unit, or removal from University housing. Housing transfers or removals may be temporary or permanent depending on the circumstances.

- Professional Assessment: Completion of a professional assessment that could help the student or the University ascertain the student's ongoing supervision or support needed to successfully participate in the University community. The cost of professional assessment will be paid by the sanctioned student.
- Removal from Specific Courses or Activities: Suspension or transfer from courses or activities at the University for a specified period of time.
- Removal or non-renewal of academic scholarship.
- No Contact: Restriction from entering specific University areas and/or from all forms of contact with certain person(s).
- Suspension: Separation from the University for a specified period of time, indefinitely, or until certain conditions are met. As part of their suspension, students who later seek re-admittance to the University may be required to complete a project specifically designed to help the student understand why certain behavior was inappropriate, and to prevent its recurrence.
- Expulsion: Permanent separation from the University.

In addition to the sanctions/interventions applied to students found responsible for sexual misconduct, the University may find it helpful or necessary to request or require others to undertake specific steps designed to eliminate the misconduct, prevent its recurrence, or remedy its effects. Examples include, but are not limited to, the following:

- Requesting or requiring a University entity to conduct training for its staff or members;
- Making involved parties aware of available academic support services;
- Making involved parties aware of available counseling or medical services;
- Arranging, where possible, for a party to re-take or withdraw from a course without penalty, and;
- Revising University policies, practices, or services.

Respondents may also be subject to civil action or criminal prosecution because sexual misconduct may also violate state or federal laws.

### **Review of the Findings and/or Remedial Actions**

Either party may appeal the outcome of the matter except where a Respondent has accepted an agreement under the sanctioning process outlined above. A party may seek review only on the following grounds:

1. The procedures of the sexual misconduct policy were not materially followed;
2. Discovery of new evidence, which was not available at the time of the investigation, that could reasonably affect its findings; or
3. The sanctions/interventions are inappropriate or disproportionate to the determined violations(s).

To request a review, a party must submit a written appeal to the Dean of Students within two (2) work days of the date of the notification of the decision regarding any sanctions or interventions. If the investigation concluded that no violation occurred, a party may seek review of that decision based on any of the above grounds for review within two (2) work days of the date of the notification of the Investigator's decision. The Dean of Students may deem a late submission reasonable under extenuating circumstances.

Dean of Students will strive to complete review of an appeal within ten (10) work days of its receipt. The Dean of Students will review the matter based on the issues identified in the request for appeal. The Dean of Students may conclude that there are no relevant issues of concern and may affirm the final decision and any sanctions/interventions. If the Dean of Students identifies issues of concern, he or she will provide the Title IX Coordinator with one of the following recommended actions and any additional instructions or recommendations it deems appropriate under the circumstances:

1. If there was a material deviation from procedure, remand the matter to the Title IX Coordinator and/or a new Investigator with corrective instructions.
2. If new information appears relevant, refer the matter to the Title IX Coordinator, and the original Investigator, if available, to determine whether any modifications may need to be made to the original investigative report.
3. If the sanctions are clearly inappropriate or disproportionate, alter the sanctions or interventions accordingly.

The Dean of Students' decision is final will be made available to the participating parties, in writing, simultaneously.

### **Retaliation**

Any attempt to retaliate against an individual who reports an incident of sexual misconduct, files a complaint, or participates in an investigation of sexual assault is prohibited by this Policy and by law. Parties that engage in retaliation are subject to the same remedial actions as stated above.

### **Consensual Relationships**

Consenting romantic and sexual relationships between faculty/staff and their students or between supervisors and their subordinates are governed by the University's [Consensual Relationship Policy](#).